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Tuesday, 14 May 2013

Industrial Relations  
(Transparency & Accountability  
of Industrial Organisations)  
Submission 006-supplementary

By email to: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

**Re: Submission to Legal Affairs & Community Safety Committee – Queensland Parliament**

Please find attached a submission specific to proposed amendments to the *Workers' Compensation and Rehabilitation Act 2003 (Qld)* in response to the Legal Affairs & Community Safety Committee – Queensland Parliament in relation to the Industrial Relations (Transparency & Accountability of Industrial Organisations) & Other Acts Amendment Bill 2013.

Yours sincerely

**TERRY BURKE**  
**GENERAL SECRETARY**



**SUBMISSION**  
**(SPECIFIC TO THE DEFINITION OF WORKER)**

*in response to the*

**LEGAL AFFAIRS AND COMMUNITY**  
**SAFETY COMMITTEE**

**Industrial Relations (Transparency & Accountability of  
Industrial Organisations) &  
Other Acts Amendment Bill 2013**

# **QUEENSLAND INDEPENDENT EDUCATION UNION (QIEU)**

## **Submission to Legal Affairs & Community Safety Committee – Queensland Parliament**

IN RELATION TO:

**Industrial Relations (Transparency & Accountability of Industrial Organisations) & Other Acts Amendment Bill 2013**

Submission specific to proposed amendments to *Workers' Compensation and Rehabilitation Act 2003* (Qld).

**By email to:** [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

### **Queensland Independent Education Union (QIEU)**

Queensland Independent Education Union (QIEU) is an industrial association of employees registered as an industrial organisation under the *Industrial Relations Act 1999* (Qld).

QIEU is a union of 15,976 members with a growing membership. Members are drawn from the non-government education sector which includes members from the Catholic system and non-systemic schools, Anglican system and non-systemic school, the Lutheran school system and Presbyterian and Methodist Schools Association, the various grammar schools, Christian community schools, stand-alone independent schools, the early childhood sector (kindergartens and preschools) and members from private education institutions such as English language colleges and business colleges.

QIEU is an industry union and has coverage of the non-government education sector generally. As an industry union QIEU covers not only teachers but also those who are ancillary to the educational activity in schools and the school office members including clerical support staff, teachers aids, laboratory assistants and the like.

Principals of non-government schools who do not have the autonomous right to hire and dismiss employees are eligible for membership of QIEU.

Services staff may also join QIEU.

### **Proposed amendments to definition of “worker” in WCRA**

The Bill proposes to amend the definition of “worker” to be applied under the *Workers' Compensation and Rehabilitation Act 2003*.

The definition of “worker” affects both employer premiums for WorkCover insurance and employee claims for WorkCover compensation. Premiums must be paid based on wages paid to “workers” and only “workers” can make claims for WorkCover compensation. Genuine independent contractors are excluded from WorkCover.

The Bill proposes to change the definition of “worker” in 2 separate areas of the WCRA.

1. The primary definition of “worker” is currently: *a person who works under a contract of service*.
  - It is proposed that the primary definition be changed to a person working under a contract and who is an employee for PAYG tax, according to Federal tax legislation.
2. Schedule 2 then designates whether a person is a worker or not based on particular circumstances. Relevantly, the Act provides a person is a worker:
  - if they provide “labour only, or substantially labour only”;
  - if paid to achieve a specified result **and** provides tools of trade **and** is liable for the cost of rectifying any defect in the work performed.

These are the most commonly used categories of “worker”.

- It is proposed to remove both these categories.

#### **1. Effect of the changes to “contract of service”**

It is likely the proposed changes are intended to reduce confusion and simplify identification of who is a “worker” for the purposes of WorkCover Queensland claims and premiums. However, it is unlikely these changes will produce the desired effect.

The concept of a “contract of service”, being the current primary definition, is a well defined legal concept. There is extensive case law that sets very clear guidelines for identifying who is a “worker”.

Having removed the well defined concept of “contract of service”, the Bill proposes to link categorisation of whether a person is a “worker” to determinations under the Federal taxation legislation.

There is nothing in the changes to give comfort that if an employer pays a person as PAYG, therefore they are a worker for WorkCover purposes, or vice versa. For example, an employer may categorise a person as a PAYG taxpayer, but do so incorrectly. The same issues and uncertainties as exist with current definitions will inevitably arise under the proposed amendments.

## 2. Removal of Schedule 2

The definitions of worker in Schedule 2 are intended to ensure workers are not disadvantaged by being excluded unfairly from the WorkCover scheme.

Specifically, workers who provide services which are in the nature of labour or substantially labour only, are often in a position of unequal bargaining power. The use of the concept of "labour only" catches many scenarios that the tax concept of PAYG does not.

For example, teachers in English language schools are frequently casual employees and can come under pressure to provide their services as independent contractors to avoid the employer's liability for tax, superannuation and leave entitlements. They have very little bargaining power and are paid at such low rates that would not allow for their taking out their own private insurance for accident cover.

Removal of the "substantially labour only" test may have unintended, detrimental consequences for many industries.

### Summary

QIEU submits reference to workers as being a person employed under a contract of service should remain as it is a well defined legal concept.

QIEU submits that of the Schedule 2 definitions, the "labour only" test should remain.

Authorised by:



Terry Burke  
General Secretary  
Queensland Independent Education Union