22 April 2022

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
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Brisbane Qld 4000

By Email: lasc@parliament.qld.gov.au

AMWU Queensland submission - *Personal Injuries Proceedings and Other Legislation Amendment Bill 2022*

The AMWU welcomes the opportunity to make a submission on the *Personal Injuries Proceedings and Other Legislation Amendment Bill 2022* (the **Bill**).

We note that the policy objectives of the Bill include, amongst other things:

- Preventing claims farming in personal injury and workers compensation claims;
- Confirming the policy intent for terminal workers compensation benefits pursuant to the *Workers Compensation and Rehabilitation Act 2003* (the WCRA).

The AMWU supports any actions to prevent claims farming of injured Queenslanders, whilst also ensuring that legitimate referral arrangements are preserved. We believe this Bill meets both of those requirements and we congratulate the Queensland Government on their ongoing commitment to stamping out the insidious practice of claims farming. We are further supportive of removing restrictions that currently prevent injured workers being educated as to their legal rights. We are commonly approached by members whose legal rights have been removed due to the operation of time limits, but who were ignorant of these. We support legal practitioners being able to educate injured workers as to their rights.

We are concerned that elements of this Bill may lead to increased legal costs for injured workers – such as through creating duplication when providing legal practice certificates. While we have not commented extensively on this in our submission, we urge the Committee to consider streamlining these requirements, and being mindful that parts of the Bill may inadvertently leave injured workers out of pocket.

Of significant concern however are amendments in this Bill that seek to substantially wind back benefits for terminally ill workers. The bulk of our submission is focussed on these amendments and their ramifications for injured workers, including for some of our members.

The AMWU specifically points to two main amendments of concern within the Bill:

1. Clause 58 of the Bill seeks to define a terminal condition as "*A terminal condition, of a worker, is a condition certified by a doctor as being a condition that is expected to terminate the worker's life within 3 years after the terminal nature of the condition is diagnosed*".

2. Clause 66 of the Bill seeks provide that the proposed new terminal condition definition (see above) is to apply retrospectively to all injuries sustained on or after 31 January 2015.

Summary of Recommendations

Recommendation 1 – That Clause 58 of the Bill be abandoned.

Recommendation 2 – That sections of Clause 66 which impose retrospectivity be abandoned.

Concerns relating to Clause 58:

A considerable percentage of AMWU members work in environments where they are potentially exposed to harmful dusts and fumes. Workers such as spray painters, welders and diesel mechanics have the potential to be exposed to a number of airborne toxins, as part of their day-to-day work.

The AMWU is proud of the support we offer to our members in helping them stay vigilant against poor workplace practices that can lead to poor health outcomes. We are also proud of the support we provide to members who have become victims of workplace illness due to exposure to airborne contaminants. This support includes ensuring that our members understand the supports and benefits available to them through workers' compensation arrangements.

The air we breathe has a big impact on our health and being exposed to poor quality air not only makes us vulnerable to serious health issues that are irreversible, but they can also be deadly.

Section 39A of the WCRA sets out the current definition of what constitutes a terminal condition for the purposes of the Act. That section has undergone a number of changes over the years.

When the WRCA was first introduced, it defined a terminal illness as "*being a condition that is expected to terminate the worker's life within two years after the terminal nature of the condition is diagnosed*".

This meant that a worker diagnosed with a terminal work-related condition with a life expectancy greater than two years was excluded from accessing the lump sum payment available to those with a life expectancy under two years.

In 2019, sensible changes were made to the Act[1] to remove the two-year marker, leaving the definition as: "*A terminal condition, of a worker, is a condition certified by a doctor as being a condition that is expected to terminate the worker's life*".

Those changes were welcome because they reflected that in many cases a person with a terminal illness can often have a life expectancy that exceeds two years, and in making this important change there was no longer an arbitrary yardstick determining who should and who should not be able to access a terminal illness benefit.

The rationale for these changes was sound in ensuring terminally ill workers were properly provided for.

The two year wait time limit which was removed in 2019 was arbitrary and did not in all cases reflect the period in which workers enter the 'end stage' of their diseases. Estimating life expectancy is fraught and rarely accurate.

[1] https://www.legislation.qld.gov.au/view/html/bill.first/bill-2019-003

It is therefore inexplicable that just a few short years later the State Government is now seeking to substantially reverse course by choosing to re-introduce amendments that seek to exclude workers with a life expectancy of greater than three years from accessing a terminal lump sum benefit.

Winding back the rights of terminally ill Queensland workers by re-introducing a three-year strict time limit is a retrograde step that will significantly disadvantage workers suffering from diseases such as silicosis, mesothelioma, asbestosis, 'black lung' and lung cancer.

Most workers with these illnesses have life expectancies beyond three years but their conditions are considered terminal, because the disease will continue to progress and will ultimately result in death.

It is also well known that workers with these diseases are often unable to continue working and indeed many are forced to stop work immediately at the time of diagnosis due to the nature of their condition, compounding an already incredibly difficult time with financial pressures.

The ability to access a lump sum for Terminal Benefits at the time of diagnosis has been profoundly beneficial for our members. It enables them to focus on adjusting to their situation (physically and mentally), without having the additional stress of financial concerns. Re-imposing an arbitrary time point at which that benefit is accessible will prove detrimental to the physical and psychological wellbeing of our members.

Denying these workers access to a lump sum payment at the outset means they will be 'attached' to Queensland's workers' compensation system, unnecessarily, for years. The impacts of reliance on long-tail schemes on mental health are well documented.

Given the above, the AMWU submits that the re-introduction of an arbitrary life expectancy is unfair, unnecessary and represents bad policy.

Recommendation 1 – That Clause 58 of the Bill be abandoned.

If there is to be an arbitrary life expectancy period re-imposed on the operation of s39A of the WCRA, Clause 58 of the Bill should be amended to reflect that the period should be five (5) years and not three (3).

Concerns Relating to Clause 66

Clause 66 of the Bill provides that the proposed new definition of a terminal condition is to apply retrospectively to all injuries sustained on or after 31 January 2015.

Then AMWU submits that this is unacceptable.

Retrospectivity has the potential to 'catch out' injured workers who are already in the system.

It would appear that these proposed changes will apply to any claim for Terminal Benefits in which Terminal Benefits have not already been decided by the insurer or reviews and/or court appeals have not been determined.

We believe that retrospective legislation should only be acceptable in rare circumstances – and that this is not one of them. It would mean that workers who have lodged an application for support under the current laws in good faith could find themselves subject to new requirements – that the goal posts have shifted.

Workers who have incurred costs (such as medical expert opinions and related legal advice) in the process of seeking Terminal Benefits under the current laws will not be able to re-coup these costs.

Workers already having to come to terms with the fact that they've developed a terminal illness as a result of their workplace do not need the additional stress of finding out that the rules for attaining a lump sum payment have suddenly changed.

We submit that if the provisions of Clause 58 must be implemented, then the new definition should only apply to those who receive their diagnosis on or after a future date, such as 1 July 2022.

This will ensure that workers diagnosed with a terminal condition before this time, who have already taken steps to access their benefits under the current law, are not unfairly impacted – psychologically or financially - by these proposed retrospective changes in the law.

Recommendation 2 – That sections of Clause 66 which impose retrospectivity be abandoned.

In Summary

While the AMWU supports initiatives aimed at stamping out claims farming, we believe that the Bill, as currently presented, does not align with the core purpose of the workers compensation scheme in Queensland.

We firmly believe that there should be no arbitrary life expectancy imposed in the definition of Terminal Illness; and that any changes to the Terminal Condition definition must not be made retrospective.

Should you wish to discuss this matter further, please do not hesitate to contact Samantha Boardman, OHS Advocate, via email [redacted] or telephone [redacted]

Rohan Webb
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