



RTBU

22 April 2022

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

Via: lasc@parliament.qld.gov.au

Dear Committee Secretary

Please see attached a submission on behalf of the Australian Rail, Tram and Bus Union, Queensland Branch (RTBU), to the *Personal Injuries Proceedings and Other Legislation Amendment Bill 2022* (the Bill).

The RTBU welcomes the opportunity to provide feedback to the Legal Affairs and Safety Committee for their examination the Bill.

We would be welcome to provide further input on this submission if required.

If you wish to discuss, please don't hesitate to contact us on (07) 3839 4988 or email at info@rtbu.com.au.

Regards

Peter Allen
Branch Secretary

Rail, Tram & Bus Union (Brisbane Office) The Power of Union

Office: First Floor, 457 Upper Edward Street Brisbane

Phone: 3839 4988

Email: info@rtbu.com.au

RTBU Queensland Branch submission

Personal Injuries Proceedings and Other Legislation Amendment Bill 2022

For decades, the RTBU has been assisting members and other transport workers who have become victims of life-threatening illnesses due to exposure to asbestos.

We have seen firsthand the impacts of asbestosis, mesothelioma and other workplace related illnesses on workers and their families. We have also seen firsthand the trauma that comes with diagnosis, with transitioning out of work, and with coming to terms with having a terminal illness.

Asbestos has been an ever-present threat to our members. Workers have been exposed in trains, in rail infrastructure, and in the removal and transport of building materials. Careers and lives have been lost due to the scourge of this deadly material and the diseases linked to exposure.

We understand that the main purpose of the Bill is to remove the insidious practice of claims farming for personal injury and workers' compensation claims. The RTBU is fully in favour of legislative amendments which can make this happen.

We do note, however, that some very concerning clauses have been added to the Bill, which stand to impact our members' capacity to access lump sum benefits for a diagnosis of a terminal illness, when they're most required.

Below we have detailed our concerns in relation to:

- Clause 58, which seeks to re-instate an arbitrary time marker, limiting when a worker diagnosed with a terminal illness can become eligible for a terminal benefit, and
- Clause 66, which seeks to make the implementation of Clause 58 retrospective, covering injuries dating back to 31 January 2015.

Definition of Terminal Condition.

The Explanatory Notes to the Bill¹ tell us that:

“Clause 58 amends section 39A(1) to insert an explicit requirement that a condition is only a terminal condition if it is certified by a doctor as being a condition that is expected to terminate a worker’s life within 3 years after the terminal nature of the condition is diagnosed.”

We note that the current definition does not mention a timeframe – merely that a condition is a terminal condition if it is certified by a doctor as being a condition that is expected to terminate a worker's life.

¹ <https://documents.parliament.qld.gov.au/tp/2022/5722T477-1BE3.pdf>: p.31

We are at a loss to understand how the adding of an arbitrary timeframe of three years is in any way a worker-centred improvement.

If a worker who has been exposed to asbestos cannot achieve a diagnosis that the condition will terminate his/her life within three years, he/she will not be eligible for the terminal benefit lump sum payment, which he/she would be automatically available under current arrangements. We are concerned that this will lead to an inequity in how injured workers are treated – even though there is agreement that their condition is terminal.

Modern treatments have ensured that the life expectancy of workers with asbestosis and related diseases has improved over the years. This is a good thing. However, the proposed changes do not take this into account.

The importance of receiving a lump sum payment, upon diagnosis of a terminal illness, cannot be understated. It gives the worker the opportunity to make plans for the future – especially for their family. It enables them to pay down their mortgage or cover expenses. At a time when their whole world has been turned upside-down, it means that financial security is something they don't need to think about. This is particularly important if they are no longer able to work due to their illness.

The alternative to being able to access the terminal benefit lump-sum, is to be left on the long-tail drip-feed of compensation payments, which is damaging both financially and psychologically.

We see Clause 58 as a winding back the rights of terminally ill Queensland workers.

The RTBU urges the Committee to accept that the re-introduction of an arbitrary life expectancy yardstick is a retrograde step for Queensland workers, and to recommend that no change to the current arrangements be legislated.

Transitional Arrangements

The RTBU remains extremely concerned that Clause 66 of the Bill proposes that the new definition of a terminal condition is intended to apply retrospectively to all injuries sustained on or after 31 January 2015.

To make any legislation retrospective is a major step, but to do so in relation to benefits for terminally ill workers is deeply concerning and should be opposed in the strongest terms.

The impacts of the new definition of a terminal condition (see above) being applied retrospectively will have significant and wide-ranging consequences for workers, including some of our members, who are suffering from terminal conditions.

This includes workers whose applications for a terminal benefit are currently being considered, as well as those workers whose insurer may have approved an application but is yet to pay this.

Making the new definition retrospective also fails to take into consideration the significant costs that many workers still awaiting the outcome of their application have outlaid in seeking a Terminal Benefit, including for expert medical reports and other legal assistance.

As stated previously, the RTBU also opposes the provisions outlined in Section 58. However, if these provisions must be implemented then it is the position of the RTBU that any new definition of a terminal condition should only apply to those seeking to make an application at a future date, and we would recommend this date be 1 July 2022.

This amended date at the least would help to ensure that those workers who are already in the process of making their applications or those diagnosed with a terminal illness before this time are not impacted as a result of these changes.

In summary, the RTBU again expresses its deep disappointment at the proposed retrospectivity sections contained in Clause 66. This will have a significant impact on workers and their families, who are already having to work through the psychological and financial realities of being diagnosed with a terminal illness as a result of a workplace exposure.

In our view, terminally ill workers deserve much better.

Conclusion

The RTBU understands and supports the main intention of the Bill - to remove the insidious practice of claims farming for personal injury and workers' compensation claims. We also understand that the sustainability of the workers' compensation scheme is important for future workers. However, in balancing the needs of terminally ill workers and scheme sustainability, we believe that the Bill goes too far.

We urge the Committee to support our belief that no change is needed to the current definition of terminal condition, and that if any changes are to be made to the definition, they should not be made retrospective.