



# **Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020**

**Report No. 3, 57th Parliament**  
**Education, Employment and Training Committee**  
**February 2021**

## **Education, Employment and Training Committee**

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All web address references are current at the time of publishing.

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## Abbreviations

the Act	<i>Workers' Compensation and Rehabilitation Act 2003</i>
Ahpra	Australian Health Practitioner Regulation Agency
AMA Queensland	Australian Medical Association Queensland
AWU	The Australian Workers' Union
Beyond Blue report	Beyond Blue Limited, 2018, <i>Answering the call</i> national survey, National Mental Health and Wellbeing Study of Police and Emergency Services – Final report
CFMMEU	Construction, Forestry, Maritime, Mining and Energy Union, Mining and Energy Division, Queensland District Branch
the committee	Education, Employment and Training Committee
the department	Department of Education
DSM-5 / DSM 5 / DSM-V	American Psychiatric Association, 2013, <i>Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition</i> .
EESBC	Education, Employment and Small Business Committee of the 56th Parliament
ERZ Controller	Explosive Risk Zone Controller
ETU	Electrical Trades Union of Employees Queensland
FDS	Forensic Disability Service
GP	General Practitioner
HRA	<i>Human Rights Act 2019</i>
LSA	<i>Legislative Standards Act 1992</i>
Minister	Minister for Education, Minister for Industrial Relations and Minister for Racing
NT	Northern Territory
OCE	Open Cut Examiner
PSO	Protective Security Officer
PTSD	Post Traumatic Stress Disorder
PTSI	Post Traumatic Stress Injury
QCU	Queensland Council of Unions
QLS	Queensland Law Society
QNMU	Queensland Nurses & Midwives Union
RANZCP	Royal Australian and New Zealand College of Psychiatrists Queensland Branch
the Regulation	Workers' Compensation and Rehabilitation Regulation 2014
Together Queensland	Together Queensland, Industrial Union of Employees
UFUQ	United Firefighters' Union of Australia, Union of Employees, Queensland
WorkCover	WorkCover Queensland

## Chair's foreword

This report presents a summary of the Education, Employment and Training Committee's examination of the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill, and gave evidence at our public hearing. I also thank our Parliamentary Service staff and the Department of Education.

I commend this report to the House.



Kim Richards MP  
**Chair**

## Recommendations

### **Recommendation 1** **5**

The committee recommends the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 be passed.

### **Recommendation 2** **16**

The committee recommends the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 be amended to provide the presumption of injury for PTSD to the following workers who are required to perform first responder duties as a part of their employment:

- a coal mine worker performing the statutory roles of Open Cut Examiner, Explosive Risk Zone controller, or mines rescue team member under the *Coal Mining Safety and Health Act 1999* and the Coal Mining Safety and Health Regulation 2017
- an employee who as part of their regular duties is required to attend and secure a site to provide safe access for other first responders, or whose employment requires them to recover human remains
- an employee of a local government whose duties correspond to that of an ambulance officer, a corrective services officer, or a fire service officer, or who is required to attend and secure a site to provide safe access for other first responders.

### **Recommendation 3** **16**

The committee recommends that the planned review of the presumptive legislation introduced by the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 to be conducted 12 months after commencement consider additional occupations highlighted by submitters to this inquiry for inclusion in presumptive legislation, and that the Minister for Education, Minister for Industrial Relations and Minister for Racing table a report on the outcome of the review for the information of the Legislative Assembly.

### **Recommendation 4** **19**

The committee recommends that the planned review of the presumptive legislation introduced by the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 to be conducted 12 months after commencement consider the inclusion of other psychological injuries.

### **Recommendation 5** **22**

The committee recommends that the planned review of the presumptive legislation introduced by the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 to be conducted 12 months after commencement consider the appropriateness of the use of the DSM-5 for diagnosis of PTSD.

### **Recommendation 6** **27**

The committee recommends that the Minister for Education, Minister for Industrial Relations and Minister for Racing consider including examples for the terms 'extreme' and 'repeated' in proposed new section 36EC(1)(b) in clause 3 of the Bill.

### **Recommendation 7** **33**

The committee recommends that the Bill be amended to insert the schedules of 'first responders' and 'eligible employees' into the *Workers' Compensation and Rehabilitation Act 2003* such that future amendments to these provisions are to be considered by the Legislative Assembly.



## 1 Introduction

### 1.1 Role of the committee

The Education, Employment and Training Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The committee's primary areas of responsibility are:

- Education, Industrial Relations, and Racing
- Employment, Small Business, Training and Skills Development.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.<sup>2</sup>

The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 (the Bill) was introduced into the Legislative Assembly and referred to the committee on 26 November 2020. The committee was required to report to the Legislative Assembly by 12 February 2021.

In introducing the Bill on 26 November 2020, the Minister for Education, Minister for Industrial Relations and Minister for Racing, Hon Grace Grace MP, advised the Legislative Assembly that the Bill reintroduced, with no changes, the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 which was originally presented on 12 August 2020 and referred to the former Education, Employment and Small Business Committee (EESBC). That Bill and the former EESBC's inquiry lapsed with the dissolution of the 56th Parliament on 6 October 2020.

### 1.2 Inquiry process

The former EESBC received and published on its inquiry webpage 13 submissions to its inquiry into the Bill in September 2020.<sup>3</sup> The former EESBC also received a written briefing on the Bill from the Department of Education (the department).

The committee resolved to accept the submissions that were received by the former EESBC as submissions to its inquiry, and on 1 December 2020 the committee invited these submitters to provide further information or submission on the Bill. The committee subsequently received and accepted two supplementary submissions and one further submission (a list of submitters is provided at Appendix A).

The committee sought and received written advice from the department in response to matters raised in submissions.

On 16 December 2020 the committee held a public hearing and received a public briefing from the department for its inquiry into the Bill (see Appendix B for a list of witnesses at the public hearing and Appendix C for a list of officials at the public briefing).

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<sup>1</sup> *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

<sup>2</sup> *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019*, ss 39, 40, 41 and 57.

<sup>3</sup> <https://www.parliament.qld.gov.au/work-of-committees/former-committees/EESBC/inquiries/past-inquiries/WCROLAB2020>.

The submissions, correspondence from the department, and transcripts are published on the committee's inquiry webpage.<sup>4</sup>

### 1.3 Background

The Queensland workers' compensation scheme, established under the *Workers' Compensation and Rehabilitation Act 2003*, provides for an employers' obligation to be covered against liability for compensation and damages, either under a WorkCover insurance policy or under a licence as a self-insurer, for work-related injuries.

All workers can make a claim for workers' compensation for a work-related injury. Workers are entitled to compensation for injuries, including psychological injuries such as Post Traumatic Stress Disorder (PTSD), if the worker can prove that their injury was caused by their work. Claims for psychiatric or psychological injuries are specifically excluded from compensation if they arise from reasonable management action taken in a reasonable way by the employer, or from action by the Workers' Compensation Regulator<sup>5</sup> or an insurer in connection with a worker's application for compensation.<sup>6</sup>

In January 2018, Hon Mark Ryan MP, Minister for Police and Minister for Corrective Services, requested a review of workers' compensation data in relation to care and support for police officers who develop PTSD. The Minister for Education and Minister for Industrial Relations, Hon Grace Grace MP subsequently established a steering group, with members from WorkCover, the Queensland Police Service and a psychiatrist of the Medical Assessment Tribunal. The steering group recommended an independent review be undertaken. The department engaged Phoenix Australia, Centre of Posttraumatic Mental Health, to review the workers' compensation claims process for first responders claiming for psychological injuries.<sup>7</sup>

In 2019, the Minister established a stakeholder reference group, comprised of representatives from the Queensland Police Commissioned Officers' Union, Queensland Police Union, Together Queensland Union, United Workers' Union, United Firefighters Union of Queensland, Department of the Premier and Cabinet, Queensland Police Service, Queensland Ambulance Service, Queensland Fire and Emergency Services, and WorkCover Queensland,<sup>8</sup> to consider the findings of:

- the 2018 review by Phoenix Australia of the workers' compensation claims process for first responders claiming for psychological injuries

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<sup>4</sup> <https://www.parliament.qld.gov.au/work-of-committees/committees/EETC/inquiries/current-inquiries/WCROLAB2020>.

<sup>5</sup> See *Workers' Compensation and Rehabilitation Act 2003*, ss 326-329. The Workers' Compensation Regulator's responsibilities include monitoring compliance with and enforcement of duties and obligations under the *Workers' Compensation and Rehabilitation Act 2003*, supporting the efficient operation of the scheme and dispute resolution mechanisms.

<sup>6</sup> *Workers' Compensation and Rehabilitation Act 2003*, s 32(5); Department of Education, briefing paper for the Education, Employment and Small Business Committee inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020, August 2020, <https://www.parliament.qld.gov.au/documents/committees/EESBC/2020/WCROLAB2020/bp-21Aug2020.pdf>, p 1.

<sup>7</sup> Department of Education, briefing paper for the Education, Employment and Small Business Committee inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020, August 2020, <https://www.parliament.qld.gov.au/documents/committees/EESBC/2020/WCROLAB2020/bp-21Aug2020.pdf>, p 2.

<sup>8</sup> Explanatory notes, pp 1-2.

- Beyond Blue's 2018 report, *Answering the Call* national survey, Beyond Blue's National Mental Health and Wellbeing Study of Police and Emergency Services,<sup>9</sup> (Beyond Blue report) which revealed substantially higher rates of psychological distress, mental health conditions and suicidal thinking and planning among first responders compared to the general population, and claims rates related to mental health conditions or psychological injuries for first responders 10 times higher than the Australian workforce
- the 2019 report of the Commonwealth Senate inquiry into first responder health, *The people behind 000: mental health of our first responders*,<sup>10</sup> which recognised the need for early intervention mental health support and made recommendations across the areas of prevalence, reporting and management of first responder psychological injuries, workers' compensation, return to work and post-retirement support.

The stakeholder reference group was tasked with developing an action plan for improving the workers' compensation experience and mental health outcomes of Queensland's first responders. According to the explanatory notes, the stakeholder reference group recognised that while trauma-related injuries such as PTSD from single or cumulative trauma are compensable under the scheme, presumptive workers' compensation legislation may assist in overcoming barriers to accessing compensation, such as difficulties meeting the legislative test for 'injury' because many first responders are unable to identify a single event causing their injury due to their cumulative exposure to trauma.<sup>11</sup> The stakeholder reference group also noted that acceptance of claims for trauma-related psychological injuries could be delayed by investigations regarding exposure and other possible stressors, including reasonable management action taken by the employer.<sup>12</sup>

The Beyond Blue report found that police and emergency services personnel who are exposed to the workers' compensation system overall find it unhelpful, or even detrimental to their recovery. The study found that 61% of these employees reported a negative impact on their recovery and 69% reported that they received limited to no support during the claims process. Beyond Blue's recommendation stated:

With such high claims numbers, and such poor experiences of the workers compensation system, it is clear that if effective changes were made, the results for workers at one of the most vulnerable times in their lives, could be markedly improved.<sup>13</sup>

On 30 October 2019, the *Workers' Compensation and Rehabilitation Act 2003* was amended to require insurers to take all reasonable steps to provide reasonable services to support a worker who makes an application for compensation for a psychiatric or psychological injury during the period that the

<sup>9</sup> Beyond Blue Limited, 2018, *Answering the call* national survey, Beyond Blue's National Mental Health and Wellbeing Study of Police and Emergency Services – Final report, <https://resources.beyondblue.org.au/prism/file?token=BL/1898>.

<sup>10</sup> Senate Education and Employment References Committee, *The Role Of Commonwealth, State and Territory Governments in Addressing the High Rates of Mental Health Conditions Experienced by First Responders, Emergency Service Workers and Volunteers Final Report and Government Response*, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/Mentalhealth](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Mentalhealth).

<sup>11</sup> Explanatory notes, p 2.

<sup>12</sup> Department of Education, briefing paper for the Education, Employment and Small Business Committee inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020, August 2020, <https://www.parliament.qld.gov.au/documents/committees/EESBC/2020/WCROLAB2020/bp-21Aug2020.pdf>, p 4.

<sup>13</sup> Beyond Blue Limited, 2018, *Answering the Call. Beyond Blue's National Mental Health and Wellbeing Study of Police and Emergency Services – Final report*, p 24.

claim is being determined.<sup>14</sup> Insurers must provide services to support the worker's injury such as general practitioner appointments, counselling or psychology sessions, psychiatry appointments, medication relating to the condition, mediation services and some hospital costs.<sup>15</sup>

#### **1.4 Policy objective of the Bill**

The objective of the Bill is to provide an alternative claims pathway for first responders with PTSD that presumes they have a work-related injury, unless it is proved that their injury was not caused by work.<sup>16</sup> The aim is 'to promote early claims acceptance'.<sup>17</sup>

The presumption of injury will apply to defined first responders, and others who work in roles alongside first responders who are exposed to traumatic incidents due to the nature of their roles, who are diagnosed with PTSD by a psychiatrist.<sup>18</sup>

The explanatory notes state:

Presumptive laws do not change workers' compensation entitlements but instead provide a different pathway for certain claims to access the scheme by reversing the onus of proof. Under presumptive laws, a specified injury (e.g. PTSD) is deemed to be work-related, unless there is evidence to the contrary.<sup>19</sup>

#### **1.5 Government consultation on the Bill**

The explanatory notes describe a timeframe for consultation within the stakeholder reference group during 2020, including consideration of the scope and policy objectives of the Bill.<sup>20</sup>

The following stakeholders were also invited to be part of the consultation on the scope and policy objectives of the Bill: impacted employers in the private sector, Australian Industry Group, Australian Lawyers Association, Chamber of Commerce and Industry Queensland, Department of Child Safety, Youth and Women, Department of Youth Justice, the Royal Australian and New Zealand College of Psychiatrists, Queensland Bar Association, Queensland Corrective Services, Queensland Council of Unions, Queensland Health, Queensland Law Society (QLS), and Queensland Nurses & Midwives' Union (QNMU).<sup>21</sup>

The explanatory notes state that the Office of Best Practice Regulation was consulted. The Office of Best Practice Regulation advised that the Bill 'appears unlikely to add to the burden of regulation or result in significant adverse impacts' and that no further regulatory impact analysis was required.<sup>22</sup>

#### **1.6 Should the Bill be passed?**

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill and its policy objectives and consideration of the information provided by the department, submitters, and witnesses, the committee recommends that the Bill be passed.

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<sup>14</sup> *Workers' Compensation and Rehabilitation Act 2003*, ss 232AA-232AB.

<sup>15</sup> *Workers' Compensation and Rehabilitation Act 2003*, s 232AB; Department of Education, correspondence dated 16 December 2020, p 4.

<sup>16</sup> Explanatory notes, p 2.

<sup>17</sup> Explanatory notes, p 4.

<sup>18</sup> Explanatory notes, p 4.

<sup>19</sup> Explanatory notes, p 2.

<sup>20</sup> Explanatory notes, p 5.

<sup>21</sup> Explanatory notes, p 5.

<sup>22</sup> Explanatory notes, p 6.

**Recommendation 1**

The committee recommends the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 be passed.

## 2 Examination of the Bill

### 2.1 Presumptive legislation for workers' compensation for PTSD

The Bill seeks to amend the *Workers' Compensation and Rehabilitation Act 2003* (the Act) and the *Workers' Compensation and Rehabilitation Regulation 2014* (the Regulation) to introduce a presumption of injury for workers' compensation claims by first responders and eligible employees who are diagnosed with PTSD.

The Bill allows for first responders and eligible employees working in first responder departments who are diagnosed with PTSD by a psychiatrist to be presumed to have a work-related injury for the purpose of entitlement to workers' compensation, unless it is proved that the PTSD did not arise out of, or in the course of, their employment, or their employment was not a significant contributing factor to the PTSD.<sup>23</sup>

The presumption of injury will apply to first responders and other eligible employees prescribed in the Regulation to include:

- first responders who respond to life-threatening or otherwise traumatic incidents for which time may be critical to prevent death or injury, or prevent or minimise damage to property or the environment. The occupations or professions included are:
  - an ambulance officer under the *Ambulance Service Act 1991*
  - an authorised officer under the *Child Protection Act 1999*
  - a corrective services officer under the *Corrective Services Act 2006*
  - a fire service officer, under the *Fire and Emergency Services Act 1990*
  - member of the State Emergency Service, member of the rural fire brigade, volunteer firefighter or volunteer fire warden, under the *Fire and Emergency Services Act 1990*
  - a police officer or police recruit under the *Police Service Administration Act 1990*
  - a youth justice staff member under the *Youth Justice Act 1992*
  - a doctor or nurse employed in any of the following areas – emergency and trauma care, acute care, critical care, high-dependency care
  - an occupation or profession performed in the private sector that corresponds to that of: an ambulance officer under the *Ambulance Service Act 1991*; a corrective services officer under the *Corrective Services Act 2006*; or a fire service officer, under the *Fire and Emergency Services Act 1990*<sup>24</sup>
- eligible employees in certain first responder departments whose employment requires them to:
  - experience repeated or extreme exposure to graphic details of traumatic incidents as they attend the scene of traumatic incidents, or
  - experience traumatic incidents as they happen, or
  - investigate, review or assess traumatic incidents that have happened to other persons.<sup>25</sup>

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<sup>23</sup> Bill, cl 3.

<sup>24</sup> See Bill, cl 9.

<sup>25</sup> Explanatory notes, p 3; see Bill, cl 9.

The Bill allows for the presumption to apply to applications for compensation lodged on or after commencement.<sup>26</sup> First responders and employers who are unhappy with a decision of the insurer can access an administrative review by the Workers' Compensation Regulator. If dissatisfied with the review outcome, a party may appeal to the Queensland Industrial Relations Commission and the Industrial Court.<sup>27</sup>

A worker whose occupation is not prescribed in the Regulation as proposed in the Bill, may lodge a claim for PTSD injury which would be determined by the relevant insurer following the existing process under the Act.<sup>28</sup>

## **2.2 Support for presumptive legislation for workers' compensation for PTSD**

Most submitters supported presumptive legislation for psychological injuries such as PTSD for first responders, and welcomed the recognition of the impacts of exposure to trauma on first responders' mental health.<sup>29</sup>

The United Workers Union, for example, submitted that the current workers' compensation process is 'at its worst, highly re-traumatising'<sup>30</sup> and suggested that presumptive legislation will validate and recognise 'that PTSD and other mental health issues are likely and serious consequences of first responder's work' and will 'improve awareness and acceptance of this issue and encourage treatment-seeking behaviour'.<sup>31</sup>

The Australian Workers' Union (AWU) commended WorkCover Queensland for recent initiatives to better support workers with psychological injuries, but also emphasised that 'it will be important for Workcover and the Regulator to continue to have high levels of vigilance over the quality of decision-making particularly for those with psychological injuries'.<sup>32</sup>

The United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ) recommended amending the Bill to apply to 'Post Traumatic Stress Injury' (PTSI) as a more appropriate term than PTSD, removing the label of 'disorder' to combat the stigma of psychological injury for first responders.<sup>33</sup>

The QLS submitted that it 'agrees without reservation that workers with work caused psychiatric and psychological injuries should be entitled to workers' compensation and support'.<sup>34</sup> However, QLS raised 'significant reservations' about the scope of the presumptive legislation, particularly in relation to:

- the reversal of the onus of proof in the presumption of injury
- whether there is sufficient evidence to support the breadth of workers proposed to be covered by the presumptive legislation
- the potential impact of the Bill on the viability of the WorkCover scheme.<sup>35</sup>

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<sup>26</sup> Bill cl 5.

<sup>27</sup> Explanatory notes, p 4.

<sup>28</sup> Explanatory notes, p 4.

<sup>29</sup> See submissions 1, 2, 3, 4, 6, 7, 8, 10, 11, 12, 13, 14.

<sup>30</sup> Submission 3, p 2.

<sup>31</sup> Submission 3, p 2.

<sup>32</sup> Submission 11, p 2.

<sup>33</sup> Submission 4, p 3.

<sup>34</sup> Submission 9, p 2.

<sup>35</sup> Submission 9, p 1.

## 2.3 Coverage of presumption of injury for PTSD for other occupations

A number of submitters recommended extending the range of occupations to be covered by the presumptive legislation.

### 2.3.1 Nurses, midwives, and registered doctors

The QNMU supported the inclusion of nurses as first responders and the amendment of Schedule 13 of the Regulation to insert '*nurse* means a person registered under the Health Practitioner Regulation National Law to practice in the nursing profession'.<sup>36</sup> However the QNMU suggested amending the Bill to:

- provide a broader definition of '*nurse*' to enable nurses working outside of the areas in listed in item 10 of proposed Schedule 6A<sup>37</sup> – emergency and trauma care, acute care, critical care and high-dependency care – to be eligible for presumptive worker's compensation for PTSD
- include midwives as an eligible profession – '*as the nature of midwifery often involves responding to life-threatening or otherwise traumatic events*'<sup>38</sup> and given '*research indicates that midwives carry a high psychological burden when witnessing trauma related to birthing*'.<sup>39</sup>

The department advised the committee:

A midwife who has a dual registration as a nurse and performing duties in one of the listed areas would be eligible for the presumption. However, if the midwife was not also a registered nurse, they would not be eligible.<sup>40</sup>

Ms Janene Hillhouse, Executive Director, Workers' compensation and Regulatory Services, Office of Industrial Relations provided further information to the committee:

As a result of the submission of the Queensland Nurses and Midwives Union, we have undertaken a bit of an analysis to understand, at the broadest level, the level of exposure within midwives in particular. Our initial investigations, which do not include a file review at this particular time, have found four claims in relation to midwives since 2015 in relation to PTSD. From a registration perspective, we understand there are around 84,000 registered nurses in Queensland, 1,400 midwives and 6,000 who are registered as both at this time, so it is difficult to give you an understanding as to those who may or may not be covered within the midwife group.<sup>41</sup>

The Australian Medical Association Queensland (AMA Queensland) also recommended amending proposed Schedule 6A to include General Practitioners (GPs), contending that GPs working in rural and remote areas '*may be prone to developing PTSD*' as they are called on to respond to traumatising events in situations where they are overworked and under-resourced.<sup>42</sup> AMA Queensland further submitted that all Australian Health Practitioner Regulation Agency (Ahpra) registered doctors be included, as many doctors who do not work in the areas listed in item 10 of proposed Schedule 6A may suffer from PTSD as a result of their employment. These include non-emergency doctors who witness traumatising events such as specialists/surgeons not normally working in emergency or intensive care, and doctors in training who experience bullying, discrimination and sexual harassment.<sup>43</sup>

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<sup>36</sup> Bill, cl 10.

<sup>37</sup> Bill, cl 9.

<sup>38</sup> Submission 2, p 5.

<sup>39</sup> Submission 2, p 6.

<sup>40</sup> Department of Education, correspondence dated 16 December 2020, p 6.

<sup>41</sup> Public Briefing, Brisbane, 16 December 2020, p 4.

<sup>42</sup> Submission 7, p 1 and Supplementary submission 2, p 1.

<sup>43</sup> Supplementary submission 2, pp 1-2.

Professor Chris Perry OAM, President, AMA Queensland, explained how doctors are exposed to traumatic events which lead to PTSD and other mental health issues, with a 'much higher incidence of PTSD' associated with work as a doctor than is reflected in the numbers of workers' compensation claims:

I am just a regular surgeon, a regular doctor. Every doctor has to go through an emergency department, to be a first responder. You have to do that for two or three years as a junior doctor. You do it as a registrar. The orthopaedic people do it—they see someone's hand go through a machine. We see eye injuries. Every doctor sees it. Every doctor sees it in Brisbane. Every doctor gets threats to their life by patients, often without the ability to have screening as we have here.<sup>44</sup>

In response to the recommendations that GPs, or all Apha-registered doctors, be covered in the presumptive legislation, the department advised the committee:

The presumption applies broadly to medical practitioners who are performing roles in the listed areas.

For practitioners in regional and remote areas who are performing additional duties akin to those as a first responder, particularly emergency and trauma where there is no local hospital, it is intended these practitioners are eligible for the presumption.

It should be noted many general practitioners may not be covered by the scheme as they would not meet the definition of worker (it is likely many are independent contractors or sole operators).<sup>45</sup>

### 2.3.2 Coal mine workers

The Construction, Forestry, Maritime, Mining and Energy Union, Mining and Energy Division, Queensland District Branch (CFMMEU) recommended amending the Bill to include coal mine workers who have statutory responsibilities to respond to serious accidents that occur at coal mines in the list of first responders in proposed Schedule 6A.<sup>46</sup> The CFMMEU submitted that the presumption of injury should also apply to workers employed in the statutory positions of open cut examiner (OCE) and explosive risk zone controller (ERZ Controller) under the *Coal Mining Safety and Health Act 1999*, and employees trained and competent to perform aided rescues of coal mine workers (mines rescue team),<sup>47</sup> as these workers are required to respond to traumatic incidents like other first responders, and are exposed to the same risk of developing PTSD.

The CFMMEU explained that workers in the statutory roles of OCE, ERZ Controller and mines rescue team member also have statutory responsibilities to attend and/or investigate a serious accident, often in advance of 'traditional' first responders:

Their role requires them to attend and assist in a range of accidents that will likely involve death or serious injury and will often require the workers to put their own lives at risk in order to assist injured workers and/or to save mining equipment.

Unlike other occupations, coal mining occurs in remote locations far from existing first responders covered in the legislation. Whilst these traditional occupations will attend a serious accident when it occurs on a mining lease, it will often be after the serious accident has occurred and the mines rescue team and the OCE/ERZ Controller has attended the scene and performed their statutory duty.

In these situations, the coal mine workers who attended the serious accident will be exposed to a traumatic event as the other first responders, eg ambulance officer. However, under the proposed legislation, if the ambulance officer developed a PTSD they would be entitled to the presumption that the disorder was work related but the coal mine worker would not. As both employees were required to

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<sup>44</sup> Public hearing transcript, Brisbane, 16 December 2020, p 6.

<sup>45</sup> Department of Education, correspondence dated 16 December 2020, p 6.

<sup>46</sup> Submission 5, p 1.

<sup>47</sup> See *Coal Mining Safety and Health Act 1999*, s 221; *Coal Mining Safety and Health Regulation 2017*, ss 35-38.

attend the serious accident under their legislative role, the Union submits that it would be unfair for proposed legislation to provide a presumption for one of the roles and not the other.<sup>48</sup>

As Mr Stephen Smyth, District President, CFMMEU told the committee, these workers are:

... miners, fitters and electricians. They go to work to do their job. They do not go to work to actually have to respond, but as a part of their role they do the additional training ... to provide that level of service to their workmates.<sup>49</sup>

The CFMMEU noted that similar statutory positions and roles exist for other mines and quarries in Queensland.<sup>50</sup>

In response to the request to include specific coal mine workers in the presumptive legislation, the department advised:

Mines Rescue workers who perform like-for-like roles to first responders are intended to be eligible e.g. mines paramedics and firefighters.

Open Cut Examiners have certain legislative responsibilities for health, safety and managing risks on site. However, their predominant duties are not aligned with traditional first responders. These workers will not be eligible by the presumption.

Explosion Risk Zone controllers will similarly not be eligible by the presumption unless shown their predominant duties are aligned to first responders.<sup>51</sup>

Mr Chris Newman, Senior Legal Officer, CFMMEU, explained that the union did not believe the reference to occupations in the private sector that correspond to first responder roles in item 11 of proposed Schedule 6A<sup>52</sup> would necessarily provide for the presumption of injury for coal mine workers performing these statutory roles:

Our concern is that the majority of those people are just ordinary coalminers. Their role is an operator or a mine technician. Their ancillary role is on the mines rescue team. Our concern is that the job that they could be called upon to do that would put them in that first response role is not their primary role. It is not. However, when that role is required, they need to do it. ... The regulator says that part 11, or the catch-all provision, should cover them.

Our concern is that that is all well and good for the regulator, but you have self-insurers in our industry and I can assure you that a self-insurer will look at that and say, 'Well, that's not a like for like. They are a coalminer.' Then what happens? We have to litigate. We will have to determine what parliament's intent was by that catch-all—whether that person is a coalminer or whether that person was performing ERT first-response roles. We are here today to say that that will be the problem. We can fix it ... by putting a separate section in the regulation that says that someone performing a statutory duty under the Coal Mining Safety and Health Act or associated regulations is a first responder.<sup>53</sup>

### **2.3.3 Disability services workers and carers, Protective Security Officers at health facilities**

The Australian Workers' Union (AWU) supported the Bill's inclusion of youth justice workers as well as doctors and nurses employed in specific areas in health facilities, but submitted that disability services workers and carers should also be included in the scope of occupations covered by the Bill as 'these roles are regularly exposed to incidents where there is a threat to life, serious injury and safety from the behaviour of clients with disabilities'.<sup>54</sup> The AWA provided the example of exposure to acute

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<sup>48</sup> Submission 5, p 3.

<sup>49</sup> Public hearing transcript, Brisbane, 16 December 2020, p 10.

<sup>50</sup> Submission 5, p 1.

<sup>51</sup> Department of Education, correspondence dated 16 December 2020, p 5.

<sup>52</sup> Bill, cl 9.

<sup>53</sup> Public hearing transcript, Brisbane, 16 December 2020, p 11.

<sup>54</sup> Submission 11, p 6.

and cumulative trauma experienced by Forensic Disability Service (FDS) staff which has resulted in 'significant detrimental impact on the mental health' of FDS staff, including PTSD.<sup>55</sup>

In regard to this example the department advised:

Some Forensic disability services (FDS) employees may be eligible as the department understands this cohort may include clinicians such as doctors and nurses. Otherwise, FDS employees are not eligible under the definitions for first responder or eligible employee as currently drafted.<sup>56</sup>

The AWU also submitted that 'Protective Security Officers (PSOs) and other operational services staff at public and private health facilities, working in high-risk areas such as Emergency Departments and Mental Health Units should be captured under the scope of coverage'<sup>57</sup> of the Bill. The AWU explained that workers in these roles are regularly exposed to incidents where there is threat to life, serious injury and safety from violence of patients and regularly witness threats and assaults of colleagues and clinicians.

The department advised:

It is the department's understanding that Protective Services Officers are employed by the Queensland Police Service. As such, they will be classed as eligible employees and are eligible to the presumption if they meet the other requisite tests.<sup>58</sup>

#### **2.3.4 Electrical workers**

The Electrical Trades Union of Employees Queensland (ETU) provided evidence that electrical workers are often exposed to traumatic and life-threatening situations in the course of their employment. The ETU submitted that for 'frontline electrical workers and control centre operators in Electricity Supply, Generation and Distribution, as well as Rail and Transport Main Roads, where they are diagnosed with PTSD, that it be presumed to be work-related, unless there is evidence to the contrary'.<sup>59</sup> The ETU explained:

Where there are traumatic, life threatening incidents that involve electricity, whether that be through incidents that involve live rail or powerlines or traffic lights, on each of those occasions prior to first responders being able to access the scene, it is electrical workers who must make it safe for them to undertake their important work. It is ETU members who see these traumatic incidents first.<sup>60</sup>

The ETU recommended that the Regulation be amended to include electrical workers either as first responders (proposed Schedule 6A) or as eligible employees (proposed Schedule 6B), as these workers are often in the situations described in the proposed new provisions s 36EB(b) and s 36EC(b). The ETU suggested that an 'electrical worker' be defined as a person who performs electrical work as defined in s 18 of the *Electrical Safety Act 2002*.

With respect to amending proposed Schedules 6A or 6B to include electrical workers as first responders or eligible employees, the department advised:

As their predominant duties are not aligned with traditional first responders, these workers will not be eligible under the presumption as drafted.<sup>61</sup>

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<sup>55</sup> Submission 11, pp 6-7.

<sup>56</sup> Department of Education, correspondence dated 16 December 2020, p 5.

<sup>57</sup> Submission 11, p 7.

<sup>58</sup> Department of Education, correspondence dated 16 December 2020, p 6.

<sup>59</sup> Submission 10, p 1.

<sup>60</sup> Submission 10, p 1-2.

<sup>61</sup> Department of Education, correspondence dated 16 December 2020, p 5.

### 2.3.5 Private sector employees

Items 10 and 11 of proposed Schedule 6A<sup>62</sup> provide for the resumption of injury for PTSD for private sector workers in some specific fields, namely:

- doctors and nurses<sup>63</sup> employed in emergency and trauma care, acute care, critical care, or high-dependency care
- an occupation or profession performed in the private sector that corresponds to that of: an ambulance officer under the *Ambulance Service Act 1991*; a corrective services officer under the *Corrective Services Act 2006*; or a fire service officer, under the *Fire and Emergency Services Act 1990*.

The QLS raised concerns about the coverage of public and private sector workers for whom the presumption of injury is proposed to apply and argued that the Bill does not cover some private sector workers 'performing the same role, and responding to the same events'.<sup>64</sup> The QLS stated:

A further concern is the inherent unfairness in the proposed legislation's application drafted as the benefit of the presumption will be accessible to thousands of government employees but will not be accessible by non-government employees who may routinely encounter identical traumatic circumstances to that described by the Bill. This cannot be justified.

The QLS further submitted that the meaning of 'first responder' in the Bill, which requires that 'the person's employment requires the person to respond to incidents - for which time may be critical to prevent actual or potential death or injury of persons, or to prevent or minimise damage to property or the environment'<sup>65</sup> excludes workers exposed to traumatic, but not time-critical, situations. The QLS stated:

There are however, numerous occupations including for example specialist cleaners and persons in the funeral industry whose duties do not "prevent" death or injury but which involve regularly dealing with the aftermath of distressing and violent circumstances of serious death and/or injury. This draft legislation does not assist those workers. It is difficult to understand why they would be excluded.<sup>66</sup>

In this regard, the explanatory notes state:

It is recognised there are many roles across the public and private sectors which may be exposed to traumatic incidents or who regularly work in times of crisis. If the presumption does not apply, workers are still entitled to lodge a claim for a work-related injury under the scheme's existing decision-making pathway.<sup>67</sup>

Further the department advised the committee:

The Bill recognises that there are paramedics, corrective services officers and firefighters employed by a private sector entity but perform the same role as those employed by a public agency. These workers are expressly covered under the prescribed list of roles which meet the definition of a first responder. For example, a worker who is performing the role of a paramedic or firefighter for the purpose of mine rescue would be covered by the proposal. Similarly, the department considers that local government workers who also perform these roles outside the public service are intended to be eligible for

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<sup>62</sup> Bill, cl 9.

<sup>63</sup> Clause 10 of the Bill amends Schedule 13 (Dictionary) to insert '**nurse** means a person registered under the Health Practitioner Regulation National Law to practise in the nursing profession'.

<sup>64</sup> Submission 9, pp 5-6.

<sup>65</sup> Bill, cl 3.

<sup>66</sup> Submission 9, p 5.

<sup>67</sup> Explanatory notes, p 3.

presumptive coverage. However, it is acknowledged there may be uncertainty due to the current drafting of the Workers' Compensation and Rehabilitation Regulation 2014...<sup>68</sup>

### 2.3.6 Local government workers, not-for-profit social and community services workers

The Services Union submitted that proposed Schedules 6A and 6B<sup>69</sup> of the Bill be amended to include workers employed in local government and not-for-profit social and community services sectors who are obliged to come into contact with traumatic events and/or victims of traumatic events as part of their duties. The Services Union was concerned that item 11 of proposed Schedule 6A, which provides for an occupation performed in the private sector that corresponds to that of an ambulance officer, a corrective services officer, or a fire service officer to be considered a first responder as defined in proposed new s 36EB (cl 3 of the Bill), would not include these workers.<sup>70</sup> The following amendments were suggested by the Services Union:

- expand item 11 of proposed Schedule 6A to state:  
an occupation or profession performed in the private sector, *or by employees of a local government or successor or transmittee thereto (including but not limited to entities under the Corporations (Aboriginal or Torres Strait Islander) Act 2006)* that corresponds to an occupation or profession mentioned in item 1, 3 or 4<sup>71</sup>
- add a further item to proposed Schedule 6A to state:  
Network Coordination Officers (howsoever described) employed by the Brisbane City Council who, as part of their regular duties, are required to attend and secure the site of a critical incident in advance of the arrival of other first responders herein described<sup>72</sup>
- add a further item to proposed Schedule 6B to state:  
an occupation or profession performed in the not-for-profit social and community services sector that:
  - a) corresponds to an occupation or profession mentioned in item (2) or (6); or
  - b) involves, as an integral part of the role of that occupation or profession, the provision of counselling or other direct support to a victim of domestic and family violence or other trauma.<sup>73</sup>

In response to these suggestions, the department advised the committee that:

Local government workers conducting duties aligned with those of firefighters are intended to be eligible for the presumption. However, it is acknowledged the current drafting appears to make this uncertain.

Other local government workers are not intended to be eligible unless performing roles aligned with traditional first responders.<sup>74</sup>

### 2.3.7 Extent of occupations covered

Together Queensland, Industrial Union of Employees (Together Queensland) submitted that a definition of 'eligible worker' should replace the definition of 'eligible employee' proposed in the Bill<sup>75</sup> so that 'the presumption of injury will apply to all workers who are exposed to trauma by either a single traumatic event or the cumulative effect of repeated trauma as a direct result of the nature of

<sup>68</sup> Department of Education, correspondence dated 11 December 2020, p 2.

<sup>69</sup> Bill, cl 9.

<sup>70</sup> Submission 13, p 1.

<sup>71</sup> Submission 13, p 1.

<sup>72</sup> Submission 13, p 1.

<sup>73</sup> Submission 13, p 2.

<sup>74</sup> Department of Education, correspondence dated 16 December 2020, p 5.

<sup>75</sup> Bill, cl 3.

their work', rather than the application of the presumption to eligible employees in a restricted group of employing government agencies as listed in Schedule 6B.<sup>76</sup>

In contrast, the QLS submitted that while it 'acknowledges the significantly higher prevalence of PTSD in some of the first responder groups, the evidence does not support the extent of coverage proposed for each of the groups outlined in Schedules in 6A and 6B'.<sup>77</sup> The QLS was concerned that the terms 'first responder' and 'eligible employee' as defined in the Bill are 'extremely broad', as well as the 'broad scope of persons who may be covered by the proposed inclusion of 'relevant volunteer',<sup>78</sup> and that the proposed definitions risk a negative impact on the viability of the WorkCover scheme.<sup>79</sup> (See also section 2.9 of this report regarding concerns about the viability of the scheme.)

Mr Luck Murphy, President, QLS, explained that the QLS considered that the introduction of presumptive legislation for the occupations proposed in the Bill was not yet adequately supported by empirical evidence, and that:

In our view, what is of significance in the consideration of this legislation is that the starting point is not that we are denying anyone a right; we are, in appropriately supported circumstances, enabling easier access for some. In those circumstances, where we are not removing a right from someone, we need to ensure that we are not opening up to more than are appropriately entitled to it.<sup>80</sup>

According to the explanatory notes, 'the first responder roles and other eligible employees listed in the Bill represent the cohort of workers where there is evidence of a strong causal connection between employment and PTSD'.<sup>81</sup> Data on claims collected from insurers by the Workers' Compensation Regulator to monitor workers' compensation scheme trends reveal that most PTSD claims in Queensland (32% of accepted PTSD claims in 2019-20) are from the public administration and safety industry, with the Queensland Police Service, Queensland Fire and Emergency Services, and Queensland Corrective Services accounting for approximately 60% of claims within this industry. The healthcare and social assistance industry is the second largest industry for PTSD claims (18% of accepted claims in 2019-20) which includes claims made for workers in the Queensland Ambulance Service and Queensland Health (most of which were by nurses).<sup>82</sup>

The department advised that the Bill is part of a Queensland Government strategy to improve the workers' compensation claims experience and mental health outcomes for first responders.<sup>83</sup> In regard to workers whose occupations are not prescribed in Schedules 6A and 6B of the Regulation as proposed in the Bill, the department also advised:

A worker, regardless of their occupation, is able to make a claim for any trauma-related psychological injury arising out of, or in the course of, their employment in Queensland. It is important to note that all occupations put forward for coverage by stakeholders in their submissions, such as doctors working in areas outside of emergency and trauma care, high dependency or critical care, are entitled to compensation for any work-related psychological injury including PTSD.<sup>84</sup>

The department also advised that, if the Bill is passed, the department plans to undertake a review of the scope of coverage one year from commencement. The review will, among other things, examine the effectiveness of presumptive coverage for workers included, and evaluate the appropriateness of

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<sup>76</sup> Submission 9, pp 7-8.

<sup>77</sup> Submission 9, p 3.

<sup>78</sup> Submission 9, p 3.

<sup>79</sup> Submission 9, pp 4-5, 7.

<sup>80</sup> Public hearing transcript, Brisbane, 16 December 2020, p 14.

<sup>81</sup> Explanatory notes, p 3.

<sup>82</sup> Department of Education, correspondence dated 16 December 2020, pp 1, 3.

<sup>83</sup> Department of Education, correspondence dated 16 December 2020, p 1.

<sup>84</sup> Department of Education, correspondence dated 11 December 2020, p 2.

the scope of coverage where other similar occupations may be considered viable and justifiable.<sup>85</sup> The department stated:

In supporting those workers most at risk of PTSD due to their cumulative exposure to trauma as part of their duties, an occupation or profession will be considered for future inclusion based on the legislative framework and aligned with Safe Work Australia's criteria for deemed diseases:

- there is a strong evidence base for consideration, including overrepresentation of PTSD-related workers' compensation claims, in published literature;
- the occupation or profession meets the legislative intent of the roles outlined in the *Workers' Compensation and Rehabilitation Act 2003* (the Act) definitions; and
- these workers are disadvantaged in accessing workers' compensation for PTSD due to the nature of their duties.

It is important to note that prescribing any additional occupations, professions or government agencies in future will be subject to extensive consultation, regulatory impact assessment process and must be considered and approved by Cabinet prior to any regulatory amendments.<sup>86</sup>

#### Committee comment

The committee recognises that there are workers whose roles can mean they are regularly exposed to traumatic incidents. The committee also understands that while responding to traumatic incidents may not be a predominant part of the duties of these workers, they are nonetheless required to do so as part of their job, which puts them at risk of PTSD.

The committee sees merit in the presumptive legislation including coal workers who are required to perform first responder duties in the event of a mine accident. Similarly, electrical workers and rail and transport employees, who as part of their regular duties are required to attend and secure a site to provide safe access for other first responders, or whose employment requires them to recover human remains, are responders and witnesses to traumatic incidents. The committee believes the inclusion of these occupations would be consistent with the diagnostic criteria for PTSD and with proposed new s 36EB or s 36EC.

Likewise, the committee agrees that the application of the presumption of injury to local government workers whose duties align with the duties of a first responder or eligible employee, as defined in proposed new s 36EB or s 36EC, is not clear in the Bill. The committee notes that the department has acknowledged this deficiency.

The committee recommends the Bill be amended to include these workers who are required to perform first responder duties as a part of their employment in the presumptive legislation.

The committee also recognises that disability services workers and a range of employees in the private sector and not-for-profit and community services sector are regularly exposed to traumatic situations which put them at risk of a PTSD injury. The committee appreciates that all workers will continue to be able to make a claim for any trauma-related psychological injury arising out of, or in the course of, their employment under the normal workers' compensation claims pathway.

The committee also notes the department's advice that the review after 12 months of operation is intended to consider the scope of occupations covered by the legislation. The committee recommends the review consider inclusion of the occupations highlighted by submitters to this inquiry, and that the Minister table a report on the outcome of the review.

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<sup>85</sup> Department of Education, correspondence dated 11 December 2020, p 3.

<sup>86</sup> Department of Education, correspondence dated 11 December 2020, p 3.

### **Recommendation 2**

The committee recommends the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 be amended to provide the presumption of injury for PTSD to the following workers who are required to perform first responder duties as a part of their employment:

- a coal mine worker performing the statutory roles of Open Cut Examiner, Explosive Risk Zone controller, or mines rescue team member under the *Coal Mining Safety and Health Act 1999* and the Coal Mining Safety and Health Regulation 2017
- an employee who as part of their regular duties is required to attend and secure a site to provide safe access for other first responders, or whose employment requires them to recover human remains
- an employee of a local government whose duties correspond to that of an ambulance officer, a corrective services officer, or a fire service officer, or who is required to attend and secure a site to provide safe access for other first responders.

### **Recommendation 3**

The committee recommends that the planned review of the presumptive legislation introduced by the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 to be conducted 12 months after commencement consider additional occupations highlighted by submitters to this inquiry for inclusion in presumptive legislation, and that the Minister for Education, Minister for Industrial Relations and Minister for Racing table a report on the outcome of the review for the information of the Legislative Assembly.

## **2.4 Concern about occupations and eligible employees being prescribed by regulation**

As outlined in section 2.1 above, the Bill inserts new definitional sections in the Act, to apply as prescribed by regulation:

- proposed s 36EB defines 'first responder' in part in terms of a person who is a worker, or a relevant volunteer, employed in an occupation or profession prescribed by regulation
- proposed s 36EC defines 'eligible employee' in part in terms of a person who is a worker, or a relevant volunteer, employed by or in an entity prescribed by regulation
- proposed s 36ED, which provides for the presumption of injury, applies to persons who are diagnosed as having PTSD by a psychiatrist, in the way prescribed by regulation.

The UFUQ, the Queensland Council of Unions (QCU), Together Queensland, and the QLS were concerned by the proposal to prescribe the occupations and employees to be covered by the presumptive legislation in the Regulation, and recommended amending the Bill so that 'first responders' and 'eligible employees' schedules be included in the Act instead.<sup>87</sup>

The UFUQ noted that this approach would be consistent with the existing presumption of injury provisions in the Act relating to specific work-related cancer injuries of firefighters.<sup>88</sup>

Together Queensland and the QCU were concerned that prescribing occupations in the Regulation might allow the scope of the presumptive legislation to be reduced in the future. They suggested including listed occupations in the Act 'to ensure maintenance of the existing coverage', with an

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<sup>87</sup> See submissions 4, 6, 8, 9.

<sup>88</sup> Submission 4, p 4; see *Workers' Compensation and Rehabilitation Act 2003*, ss 36B, 36D and Schedule 4A.

additional provision to include other occupations as prescribed by regulation.<sup>89</sup> Together Queensland stated that ‘as provisions in Acts are less likely to be challenged, disregarded or repealed later ... the Government's commitment towards the mental health outcomes for eligible workers would be better protected should these provisions be contained in the Act’.<sup>90</sup>

The QLS argued that as the terms ‘first responders’ and ‘eligible employees’ are central to the proposed legislation’s operation, their scope should be defined in the Act itself. However, the QLS’ concern that the Bill provided ‘the ability to further broaden the intended classes of workers and persons entitled to compensation by regulation without the usual parliamentary processes’, was for the potential impact on the on-going viability of workers’ compensation scheme.<sup>91</sup>

In response to these concerns, the department advised that it considers that prescribing specific ‘first responders’ and ‘eligible employees’ in the Regulation is a balanced approach to providing legislative clarity for insurers and providing flexibility ‘to ensure the legislation can keep pace with the changing nature of work ... and ensure like-for-like roles are accommodated when there is supporting empirical evidence’.<sup>92</sup> The department stated:

While prescribing the specific occupations, professions and relevant government agencies is a delegation of legislative power, it is beneficial in nature and is considered appropriate and justifiable the specific persons deemed first responders and eligible employees be prescribed by regulation under a suitable and defined head of power in the Act. The proposed amendments to the Act provide clear parameters of who will qualify as a first responder (e.g. a worker or relevant volunteer who responds to time critical, often life-threatening incidents) or an eligible employee. This head of power ensures that any changes to the scope in the Regulation are moderated against the explicit criteria defined by the Act.<sup>93</sup>

Mr Craig Allen, Deputy Director-General, Office of Industrial Relations, also told the committee:

We have relied on the act to give good definitions of the groups covered by PTSD. The act, as the overriding document, needs to have that definition. The employee groups and employers are in the regulation so we have the capacity to add groups after we do reviews. It is a less cumbersome process, and we are more agile and flexible to respond to things that we may not know will be issues in the future.<sup>94</sup>

The committee sought further advice from the department with respect to this matter and the application of fundamental legislative principles. This committee’s consideration of the matter is provided in section 3.1.1 of this report.

## **2.5 Coverage of presumption of injury to include other psychological injuries**

The Bill inserts s 36ED(2) to provide that for a first responder or an eligible employee diagnosed with PTSD ‘for the purposes of an entitlement to compensation, the post-traumatic stress disorder is taken to be an injury’.<sup>95</sup>

The United Workers Union, UFUQ, QCU, Mr Brian Ranse, and Associate Professor Lynda Crowley-Cyr, School of Law and Justice, University of Southern Queensland, recommended amending the Bill to provide for a presumption of injury for all psychological injuries diagnosed as work-related as a result of exposure to a traumatic event or cumulative traumatic events.<sup>96</sup> They noted that it is common for

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<sup>89</sup> Submission 6, p 4; submission 8, p 8; see also submission 4, p 4.

<sup>90</sup> Submission 8, p 8.

<sup>91</sup> Submission 9, p 7; public hearing transcript, Brisbane, 16 December 2020, p 12.

<sup>92</sup> Department of Education, correspondence dated 11 December 2020, p 4.

<sup>93</sup> Department of Education, correspondence dated 11 December 2020, p 4.

<sup>94</sup> Public briefing transcript, Brisbane, 16 December 2020, p 5.

<sup>95</sup> Bill, cl 3.

<sup>96</sup> Submission 3, p 3; submission 4, p 3; submission 6, p 4; submission 12, pp 5-6; submission 14, p 2.

other psychological injuries such as adjustment disorder, acute stress disorder, as well as anxiety conditions and depression, to develop from the traumatic circumstances first responders witness and experience in the course of their employment.

Mr Nate Tosh, Industrial Officer, UFUQ, told the committee:

... if we are looking at amending the bill to address this type of circumstance, particularly presumption of injury claim which will make it easier and less cumbersome for people to make this type of claim, it should include those types of injuries as well. It is not just isolated to PTSD.<sup>97</sup>

Associate Professor Lynda Crowley-Cyr submitted that limiting the presumption of injury to PTSD seemed 'unnecessarily restrictive',<sup>98</sup> explaining that:

PTSD trauma as defined by the DSM-V [*Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*] must be associated with death, serious injury or sexual violence. The limitation misses so many psychological injuries caused by traumatic events that are not associated with death, serious injury or sexual violence. PTSD is only one potential risk to the mental health and wellbeing of first responders.

Stress, anxiety and depression (symptoms of PTSD) can arise from other workplace stressors and risk resulting in burnout, for example. Burnout is a 'syndrome' that shares similar symptoms to PTSD but does not yet appear in the DSM-V. ... Burnout is endemic in medical professions, law enforcement and fire and rescue services. ... [the] symptoms, if sufficiently severe, can affect good judgement and decision-making, which in certain conditions can put the health and safety of first responders, their colleagues, family, and the public they serve at risk.

...

The ordinary compensation claim pathway, while available for other psychological injuries, is precisely what has been criticised for potentially re-traumatising some first responders seeking workers compensation. The limitation to PTSD means the presumption laws are missing the opportunity to progress towards a compensation system that aims to avoid retraumatising all first-responder claimants who are in need of WorkCover benefits.<sup>99</sup>

The QLS argued against allowing a presumption of injury for other psychological injuries. Ms Leeha James, QLS Accident Compensation and Tort Law Committee, told the committee:

Our observation is that there is already scope within the scheme for secondary injuries to be accepted once the PTSD is an accepted claim. The insurers, across self-insurers and WorkCover Queensland, already have their systems in place to facilitate that process. It is not uncommon for PTSD to come with other ancillary or secondary diagnoses as well, such as depression and anxiety, but there is already a process there for that. The studies that we are looking at are only really addressing the PTSD. We would ask the committee to consider not broadening the breadth and scope of the bill any further than it already is if it is inclined not to contract.<sup>100</sup>

In response to the points made by submitters, the department advised that it 'recognised there are a range of potential mental health injuries which may occur in the aftermath of a traumatic incident, including depression, anxiety, acute stress disorder, adjustment disorder, and PTSD'.<sup>101</sup> The department stated, however, that:

Unlike PTSD, the causal connection between other psychological injuries and a traumatic incident is not as clear. Conditions such as anxiety, depression and stress arising from non-occupational causes are common which leads to difficulty in identifying the causative exposures and establishing what contribution work exposures may have had on the development of these psychological injuries.

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<sup>97</sup> Public hearing transcript, Brisbane, 16 December 2020, p 3.

<sup>98</sup> Submission 12, p 5.

<sup>99</sup> Submission 12, pp 5-6.

<sup>100</sup> Public hearing transcript, Brisbane, 16 December 2020, p 13.

<sup>101</sup> Department of Education, correspondence dated 11 December 2020, p 5.

...

By contrast, the medical evidence required to support a PTSD diagnosis usually provides a clear connection to either a particular event or cumulative exposure to trauma due to the type of work done by a first responder.<sup>102</sup>

The department asserted that limiting coverage to PTSD would provide clear evidence for claims determination, clarity for stakeholders, and would support the viability of the workers' compensation scheme by not presuming an injury is work-related for conditions which may be the result of non-occupational stressors.<sup>103</sup> Further, the department reiterated that all psychological injuries 'are eligible for compensation in the scheme if employment is a significant contributing factor to the injury, and the injury has not arisen as a result of reasonable management action undertaken in a reasonable way'.<sup>104</sup>

#### Committee comment

The committee understands that PTSD is not the only psychological injury caused by traumatic events and recognises that first responders and workers who are regularly exposed to traumatic incidents may experience other psychological injuries in the course of their employment. The committee recommends that the review to be conducted after 12 months of operation of the presumptive legislation consider the inclusion of other psychological injuries, and that the outcome of these considerations be included in the report of the review.

#### **Recommendation 4**

The committee recommends that the planned review of the presumptive legislation introduced by the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 to be conducted 12 months after commencement consider the inclusion of other psychological injuries.

## **2.6 Diagnosis**

Clause 4 of the Bill inserts a new s 135A in the Act to require the insurer to arrange for a first responder or an eligible employee making a workers' compensation claim for PTSD to be examined by a psychiatrist to obtain a diagnosis (with the examination and necessary travel expenses at the insurer's cost), unless the insurer decides under s 134 to allow the claim without a diagnosis. This provision applies if the claimant has not already been diagnosed as having PTSD by a psychiatrist. An insurer can accept a claim based on a diagnosis of PTSD by a GP, but without a diagnosis from a psychiatrist, the injured worker must prove that their injury is work-related.

Clause 8 of the Bill inserts a new s 144C in the Regulation to prescribe the way a diagnosis of PTSD by a psychiatrist under new s 36ED(1)(a) should occur, namely by 'using the diagnostic criteria provided under DSM 5 for post-traumatic stress disorder'. 'DSM 5' refers to the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, published by the American Psychiatric Association in 2013.<sup>105</sup>

<sup>102</sup> Department of Education, correspondence dated 11 December 2020, p 5.

<sup>103</sup> Department of Education, correspondence dated 11 December 2020, p 5.

<sup>104</sup> Department of Education, correspondence dated 11 December 2020, p 5.

<sup>105</sup> DSM-5 (referred to in the Bill as 'DSM 5' and in other documents as DSM-V) is a manual for assessment and diagnosis of mental disorders; it does not include information or guidelines for treatment. The DSM has been reviewed and revised periodically since it was first published in 1952. The previous version, DSM-IV, was published in 1994.

### 2.6.1 Diagnosis by a psychologist or general practitioner

The Royal Australian and New Zealand College of Psychiatrists Queensland Branch (RANZCP)<sup>106</sup> and AMA Queensland<sup>107</sup> supported the requirement for diagnosis of PTSD by a registered psychiatrist.

However, UFUQ, QCU, Associate Professor Lynda Crowley-Cyr, University of Southern Queensland, and Together Queensland, recommended amending the Bill to enable diagnosis by a psychologist (as occurs in Canadian jurisdictions with presumptive legislation for workers' compensation for PTSD injuries). Associate Professor Lynda Crowley-Cyr and Together Queensland suggested GPs trained in diagnosing trauma-related injuries in adults or other suitably qualified health practitioners may also be suitable. Barriers and limitations associated with a requirement for diagnosis by a psychiatrist that were cited by submitters include:

- upfront cost
- length of time usually required to wait for an appointment
- distance and availability issues with accessing psychiatric care in rural communities
- a current nationwide shortage of psychiatrists, especially in rural areas, and the risks associated with delays in injured workers obtaining diagnoses
- workers may be discouraged from receiving early intervention and/or early access to the workers' compensation scheme as a result of difficulties with accessing the services of a psychiatrist
- workers may proceed to lodge a claim without the diagnosis of a psychiatrist and would then most likely be directed to attend an independent medical examination at the expense of the insurer, rendering the 'presumption of injury' framework essentially redundant.<sup>108</sup>

Associate Professor Lynda Crowley-Cyr noted that diagnosis by a psychologist or doctor trained in diagnosing trauma-related injuries would help to alleviate delays in the claims process, helping to create a stronger incentive for first responders in need of help to come forward and make a claim for the benefits they need to receive appropriate treatment.<sup>109</sup>

Together Queensland further submitted that the requirement for an injured worker to be examined by a psychiatrist to obtain the diagnosis needed to receive the benefit of the presumptive legislation should only be considered after the other sources of information have been exhausted. Together Queensland stated:

In the absence of a specific challenge by the employer as to why the presumptive legislation should be rebutted, it is reasonably open to the insurer to presume the injury and accept the application for compensation without requiring the injured worker to re-tell their story to a stranger.

Limiting the need for the worker to recount their traumatic experiences when there are other sources of information reasonably available from either the worker's doctor or their employer will improve the workers' compensation experience and mental health outcomes for eligible workers diagnosed with a psychological injury caused by exposure to work-related trauma.<sup>110</sup>

In relation to the requirement for a diagnosis to be made by a psychiatrist, the department noted that under the current legislation, workers with a psychological injury are able to access treatment and

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<sup>106</sup> Submission 1, p 1.

<sup>107</sup> Submission 7, p 2.

<sup>108</sup> See submissions 4, 6, 8.

<sup>109</sup> Submission 12, p 8.

<sup>110</sup> Submission 8, pp 10-11.

support, including necessary and reasonable travel for workers to attend medical appointments paid for by insurers, until a determination is made on their claim. The department further advised:

Where there is a clear event or supporting work history leading to injury, it is anticipated the insurer will continue to follow the existing process and accept claims based on a doctor's diagnosis. ... If there is uncertainty or complexity, an insurer will be required to arrange and fund a diagnosis by a psychiatrist under the Bill.<sup>111</sup>

The department also confirmed that for workers in regional and remote areas who have difficulties accessing a psychiatrist in person, 'WorkCover Queensland supports telehealth for rural and remote workers' and that 'where possible and appropriate, psychiatric assessments to satisfy the presumptive requirements can also be conducted via telehealth'.<sup>112</sup>

### 2.6.2 Use of the DSM-5

RANZCP suggested amending the Bill to provide for psychiatrists to make a diagnosis of PTSD 'based on their extensive training and clinical experience in which a number of factors, standards and guidelines are considered' rather than to prescribe that a diagnosis must be made in accordance with the DSM-5.<sup>113</sup> RANZCP submitted that there are limitations to the use of the DSM-5 and that many clinicians argue that the complexity of patients' presentations cannot be adequately summarised by limited diagnostic codes.

In its submission, Together Queensland reported that the stakeholder reference group established to consider workers' compensation and mental health outcomes for first responders in Queensland had also identified the concern that the DSM-5 provides too narrow a definition to reach the PTSD diagnosis and that 'it was noted that the comparable legislation of other jurisdictions within Australia (Tasmania and the Northern Territory) are silent on the matter of who should undertake the PTSD diagnosis and to what diagnostic criteria or standard should apply'.<sup>114</sup> Together Queensland requested that the review of the presumptive legislation after 12 months consider the appropriateness of diagnostic methodology.

The department advised:

The choice of the DSM-5 (the current version of the manual) for the proposed legislation ensures a degree of standardisation and rigour across eligible workers, noting that the requirement does not limit a clinician undertaking further assessment.<sup>115</sup>

Associate Professor Lynda Crowley-Cyr, University of Southern Queensland recommended that to avoid the need for amendments to the legislation with DSM updates, the proposed new s 144C of the Regulation, which prescribes the use of DSM-5 diagnostic criteria for diagnosis, refer instead to the 'latest version of the *Diagnostic and Statistical Manual of Mental Disorders*'.<sup>116</sup>

Mr Bradley Bick, Director, Workers' Compensation Policy, Office of Industrial Relations, explained that specifying the DSM-5 in the Regulation ensures that any changes in future versions are checked before being prescribed in legislation:

... we have tied it to that particular version at the moment because what we would like to do in the future is assess any changes that happen to the DSM-5 ... If we just referenced DSM by itself it would just update

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<sup>111</sup> Department of Education, correspondence dated 11 December 2020, p 7.

<sup>112</sup> Department of Education, correspondence dated 11 December 2020, p 7.

<sup>113</sup> Submission 1, p 2.

<sup>114</sup> Submission 8, p 10.

<sup>115</sup> Department of Education, correspondence dated 11 December 2020, p 8.

<sup>116</sup> Submission 12, p 8.

as that external document was updated. We want to make sure we are tying it to a particular version so we can actively have a look at that as it moves forward.<sup>117</sup>

#### Committee comment

The committee notes that proposed new s 36ED of the Bill requires diagnosis by a psychiatrist 'using the diagnostic criteria provided under DSM 5 for post-traumatic stress disorder'. Given the comments of RANZCP and other submitters about prescribing the use of the DSM-5, the committee supports a review of the appropriateness of the requirement for diagnoses of PTSD to be made in accordance with this diagnostic code. Consequently, the committee recommends that the planned review to be conducted after 12 months of operation of the presumptive legislation consider the use of the DSM-5 for diagnosis of PTSD, and that the outcome of these considerations be included in the report of the review.

#### **Recommendation 5**

The committee recommends that the planned review of the presumptive legislation introduced by the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 to be conducted 12 months after commencement consider the appropriateness of the use of the DSM-5 for diagnosis of PTSD.

## **2.7 Rebuttal**

Proposed new s 36ED(4)<sup>118</sup> provides for the presumption of injury to be rebutted if it is proved that the PTSD injury did not arise out of, or in the course of, the person's employment as a first responder or eligible employee, or their employment is not a significant contributing factor. Proposed new s 36ED(3) specifies that the presumption cannot be rebutted on the basis that the first responder's injury arose out of reasonable management action taken in a reasonable way. The explanatory notes state that 'excluding reasonable management action as a basis for rebuttal is appropriate as a psychiatric diagnosis of PTSD requires exposure to specific traumatic incidents which cannot arise from reasonable management action taken in a reasonable way'.<sup>119</sup>

The UFUQ and Together Queensland supported the exclusion of rebuttal on the basis that a first responder's injury arose out of reasonable management action but were concerned about the wording of this provision in the Bill.

The UFUQ reported that it is a common experience of workers in Queensland who have sustained a psychological injury as a result of their employment to encounter difficulties in proving the legislative test for 'injury' for workers' compensation 'because of several unsubstantiated, personal and/or unrelated matters that have been reported to WCQ [WorkCover Queensland] by their employer in an attempt to contend that their employment was not a significant contributing factor to their injury'.<sup>120</sup> The UFUQ contended that the Bill 'does little to alleviate this problem' and that wording of proposed new s 36ED(4) of the Bill 'provides employers with the opportunity to continue their current practice'.<sup>121</sup>

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<sup>117</sup> Public briefing transcript, Brisbane, 16 December 2020, p 5.

<sup>118</sup> Bill, cl 3.

<sup>119</sup> Explanatory notes, p 4.

<sup>120</sup> Submission 4, p 5.

<sup>121</sup> Submission 4, p 5.

Both UFUQ and Together Queensland recommended amending the wording for proposed new s 36ED(4) so that 'only demonstrable and reasonable evidence may be relied upon' to rebut a presumption of injury claim for PTSD.<sup>122</sup>

Together Queensland also recommended that guidance material be developed by the Office of Industrial Relations to 'ensure the employer is familiar with the reversed onus of proof and that they will not seek to rebut the presumption unless there is demonstrable and reasonable evidence which supports an assertion that the occurrence of the traumatic incident/s did not occur as stated'.<sup>123</sup>

The QLS submitted that it does not support the exclusion of rebuttal of a workers' compensation claim for PTSD on the basis that the first responder's injury arose out of reasonable management action taken in a reasonable way, 'particularly where an event or the person's work as a first responder occurred many years ago'.<sup>124</sup>

The United Workers Union supported the exclusion of rebuttal on the basis that a first responder's injury arose out of reasonable management action but submitted that new s 36ED(3) should be extended to 'other significant life events that would not ordinarily cause PTSD'.<sup>125</sup>

Mr Nate Tosh, Industrial Officer, UFUQ, explained the situation to the committee:

What you will find is that our members who are suffering from PTSI or some other trauma related psychological injury do not just wake up one day and suddenly are suffering from it. They have probably battled with that for some time and not realised, and it has taken them a while to get the treatment they need. In that intervening period, their life has started to maybe spiral out of control—things to do with their personal relationships, or maybe they decide to self-medicate by drinking too much of the bottle and they develop alcohol dependency or whatever it might be. Suddenly, a discussion becomes around that being the primary injury for why they are incapacitated for work—instead of what the real scenario is, that is secondary to their primary injury which is clearly work related.<sup>126</sup>

The United Workers Union argued:

It follows that other significant life events, such as a divorce or the loss of a loved one should also be expressly excluded. In our experience, such events have been raised as a basis to challenge psychological injury claims, including PTSD. To continue to permit such issues to be raised to challenge a psychiatric claim after a psychiatric diagnosis of PTSD has been made is at odds with the policy objectives of the proposed presumptive legislation.<sup>127</sup>

In response to these concerns the department advised:

The department recognises the unions' concerns that matters outside of a first responder's work may be brought into a claim and notes the provision, as currently drafted, does require evidence of a non work-related cause before the presumption can be rebutted. However, to ensure that employers and insurers better understand the department's expectations about the strength of evidence presented, the department is committed to preparing guidance material for employers, workers and insurers to better understand the exclusion of reasonable management action from consideration in these presumptive claims.<sup>128</sup>

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<sup>122</sup> Submission 4, p 5; submission 8, pp 11-13.

<sup>123</sup> Together Queensland, p 12.

<sup>124</sup> Submission 9, p 6.

<sup>125</sup> Submission 3, p 3.

<sup>126</sup> Public hearing transcript, Brisbane, 16 December 2020, p 4.

<sup>127</sup> Submission 3, p 3

<sup>128</sup> Department of Education, correspondence dated 11 December 2020, p 8.

### Committee comment

The committee agrees with the Bill's exclusion of rebuttal of a first responder or eligible employee's PTSD injury claim based on evidence that the injury arose out of reasonable management action taken in a reasonable way.

The committee acknowledges the need for verifiable and reasonable evidence for rebuttal of psychological injury claims. The committee supports the department's commitment to preparing guidance material for employers and insurers to inform them about the strength of evidence required to be presented to prove that employment was not a significant contributing factor to a PTSD injury. The committee also supports the preparation of guidance material for workers, employers and insurers about the exclusion of reasonable management action in presumptive claims for PTSD.

## **2.8 Reversal of the onus of proof**

Ordinarily the onus is placed on a worker making a claim for workers' compensation in Queensland to prove that their injury is work-related. The objective of the Bill is to provide an alternative claims pathway for first responders with PTSD by presuming that their injury is caused by their work unless there is evidence to the contrary. This presumption of injury removes the onus on the person claiming workers' compensation to prove that their injury is work-related.

Presumptive legislation provides a different pathway to access the workers' compensation scheme for first responders with cumulative exposure to traumatic incidents. Claiming under a presumptive pathway may encourage more first responders to lodge a claim and seek help earlier, and reduce the stress of the workers' compensation process.

The QLS objected to the reversal of the onus of proof in the presumption of injury provision. The QLS submitted that the onus of proof is a fundamental legal principle and that other measures could achieve the policy objective without eroding established legal process. The QLS stated:

QLS understands in the order of 80% to 90% of PTSD Statutory Workcover claims are accepted. We are also aware of administrative and policy changes which are proposed to the claim process to better support first responders with a psychological injury throughout the claim journey. ...

In these circumstances and notwithstanding the good intention of the proposed reform, QLS does not support reversing the onus of proof. This is particularly so given the available scientific and epidemiological evidence only supports a narrow definition of first responder.<sup>129</sup>

On this issue, the department noted that 'presumptive legislation is widely adopted across Australia's workers' compensation schemes for injuries and diseases where there is a high likelihood that the disease has arisen as a result of a work-related exposure'. The department also noted that 'while Queensland only has deemed diseases provisions for firefighters with certain occupational cancers, presumptive legislation for PTSD is not new; Tasmania, the Northern Territory and most provinces and territories of Canada have adopted this approach to claims determination for a variety of workers'.<sup>130</sup>

### Committee comment

The committee accepts that the reversal of the onus of proof is a necessary aspect of legislation to provide a presumption of injury for first responders with PTSD.

## **2.9 Effect on WorkCover scheme viability**

The explanatory notes state that any potential claims cost resulting from behavioural change which might occur with the introduction of the presumptive legislation will be borne by employers of first responders through their workers' compensation insurance premiums. These employers are primarily government agencies, including the Queensland Police Service, Queensland Ambulance Service,

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<sup>129</sup> Submission 9, p 3.

<sup>130</sup> Department of Education, correspondence dated 11 December 2020, pp 9-10.

Queensland Fire and Emergency Services, Queensland Corrective Services, the Department of Youth Justice, the Department of Child Safety, Youth and Women and Queensland Health.<sup>131</sup> The explanatory notes further state that 'the cost impact to private sector employers is expected to be negligible due to low claims experience and the size of these employers compared to the government agencies within scope'.<sup>132</sup>

The QLS raised concerns about the viability of the WorkCover scheme if the presumptive legislation is introduced, including 'the potential "flood gates" which may be opened by the broad definition of 'first responder' and 'eligible employee' currently proposed'.<sup>133</sup> The QLS submitted the employees who would be covered by the presumptive legislation comprised 'a workforce of at least 31,772 workers as well as thousands of volunteers, casuals and part-time workers' and that the QLS estimated that 'statutory claims for mental disorders cost (on average) \$47,480.31 according to the figures in the 2018 to 2019 WorkCover Queensland annual report'.<sup>134</sup>

In data provided to the committee, the QLS further noted an increase in the number of workers' compensation claims for mental disorders made to the workers' compensation body in British Columbia, Canada, in 2019 after the Legislatively Assembly of British Columbia introduced a presumption of injury for mental disorder claims for eligible occupations in 2018.<sup>135</sup>

The QLS submitted:

QLS considers that the very broad scope of the Bill, coupled with the ability to further broaden the intended classes of workers and persons entitled to compensation by regulation without the usual parliamentary processes, may impact operating costs and the ability of employers to meet increases in premiums.<sup>136</sup>

The department advised that it does not expect the introduction of the presumptive legislation to be detrimental to the viability of the workers' compensation scheme:

Providing presumptive coverage for first responders with PTSD is unlikely to negatively affect the financial viability of the scheme as claims in scope are already compensable. The Bill does not change or increase entitlements but instead provides an alternative pathway for decision making by reversing the onus of proof to promote early claims acceptance.

Introducing presumptive legislation may lead to behaviour changes, which in turn may increase the number of workers' compensation claims lodged and accepted for claims within the scope of this Bill. The department estimates additional claims for PTSD for employers within scope could be up to 20%. This would equate to an additional 28 statutory claims or a total of 140 claims per year for PTSD at an increased claims cost of \$9 million per annum. The anticipated cost will not be immediate, instead developing over time and borne by the first responder departments through their annual WorkCover Queensland insurance premiums.<sup>137</sup>

#### Committee comment

The committee notes the concern about the potential for increased numbers of workers' compensation claims for PTSD injuries by first responders and eligible employees following the introduction of presumptive legislation. The committee also notes the department's estimate of the additional claims cost, and the department's assessment that the introduction of the presumptive

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<sup>131</sup> Explanatory notes, p 5.

<sup>132</sup> Explanatory notes, p 5.

<sup>133</sup> Submission 9, p 4.

<sup>134</sup> Submission 9, p 5

<sup>135</sup> Queensland Law Society, correspondence dated 23 December 2020.

<sup>136</sup> Submission 9, p 7.

<sup>137</sup> Department of Education, correspondence dated 11 December 2020, p 10.

legislation is not likely to have a detrimental effect on the financial viability of the workers' compensation scheme.

The committee recognises that the introduction of a presumption of injury for PTSD claims by first responders is likely to result in more claims of this type. The objective of the legislation is to provide an alternative claims pathway for first responders and to promote early claims acceptance. Ideally this will encourage these workers to seek help earlier, reduce the stress of the workers' compensation claims process for these workers, and enable them to access the benefits they need to receive appropriate treatment and avoid permanent injury.

## **2.10 Timeframe for presumption of injury**

Proposed new s 36ED(1)(b) provides for the presumption of injury for a person diagnosed with PTSD who at any time before the diagnosis was employed as a first responder or an eligible employee.<sup>138</sup> As is the case for all work-related injuries, workers need to lodge a claim within six months after their entitlement to compensation arises,<sup>139</sup> which for a first responder or eligible employee as proposed in the Bill, would be when these workers receive a work capacity certificate for PTSD from a doctor.

The QLS, Mr Brian Ranse, and Associate Professor Lynda Crowley-Cyr, University of Southern Queensland, submitted that the Bill requires clarification about the length of time after ceasing employment as a first responder that a workers' compensation claim can be made.<sup>140</sup>

In relation to the timeframe QLS considered to be reasonable for the presumption of injury for a first responder diagnosed with PTSD, Ms Leeha James, QLS Accident Compensation and Tort Law Committee, stated:

I cannot give you an answer as to what a good threshold is. They are not nice things to talk about, particularly if a threshold is arbitrary and unfair. Nonetheless, a threshold is something that I think all presumptive legislation requires because it sets a consistency of practice and application with those who need to be making decisions and implementing the legislation.

That is not to say that somebody who keeps a diary or somebody who sees the same doctor or has a good partner who can recall things cannot put together a chronology in the absence of presumption and have a claim accepted. That is certainly my experience a lot of the time. If you put together the right information before the insurer you still can get over the line with PTSD in first responders and eligible employees without the benefit of a presumptive provision.<sup>141</sup>

To clarify the timeframe for the presumption of injury, the department advised that the Bill places no restrictions on when a worker is eligible for the presumption, because it is recognised that PTSD may have a delayed onset and develop long after a worker's exposure to a traumatic incident. The department stated further:

Given that the reasons for delayed onset are not well understood, and the eligibility to workers' compensation in Queensland does not require the worker to have developed a work-related injury within a certain timeframe from the event, there is no justification to restrict access to compensation based on a worker's time away from certain employment.

In addition, where there is uncertainty (e.g. a worker ceased their first responder role over two years ago and now is in alternative employment in another industry) the rebuttal would be available if there was evidence to the contrary.<sup>142</sup>

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<sup>138</sup> Bill, cl 3.

<sup>139</sup> See *Workers Compensation and Rehabilitation Act 2003*, s 131.

<sup>140</sup> Submission 9, p 6; submission 14, p 3; submission 12, p 8.

<sup>141</sup> Public hearing transcript, Brisbane, 16 December 2020, p 14.

<sup>142</sup> Department of Education, correspondence dated 11 December 2020, p 9.

Committee comment

The committee agrees that it is appropriate to have no restrictions on the timeframe for eligibility for the presumption of injury for PTSD, and supports this provision in the Bill.

**2.11 Other matters**

**2.11.1 Terminology**

Associate Professor Lynda Crowley-Cyr, University of Southern Queensland, and the QLS raised the need for clarification in the wording of proposed new s 36EC(1)(b), which in part defines the meaning of 'eligible employee', suggesting that examples of what is intended by the terms 'extreme' exposure, and 'repeated' exposure are required.<sup>143</sup>

In addition, the QLS reasoned that 'in an endeavour to address some of these concerns around definitions and clarity of the drafting ... the Explanatory notes have sought to provide additional guidance. For example, with respect to the scope of eligible employee in section 36EC' and submitted that 'Parliament make its intent clear in the wording of the legislation' and that 'explanatory notes should be consistent with the language of the legislation'.<sup>144</sup>

Committee comment

The committee notes that examples of 'exposure to the graphic details of traumatic incidents' are provided for subparagraphs (i), (ii) and (iii) in proposed new s 36EC(1) in the Bill. The committee considers clarification of the terms 'extreme' and 'repeated' in proposed new s 36EC(1)(b) would also be beneficial. The committee recommends that the Minister consider including examples for these terms in the Bill.

**Recommendation 6**

The committee recommends that the Minister for Education, Minister for Industrial Relations and Minister for Racing consider including examples for the terms 'extreme' and 'repeated' in proposed new section 36EC(1)(b) in clause 3 of the Bill.

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<sup>143</sup> Submission 12, p 8; submission 9, p 6.

<sup>144</sup> Submission 9, p 6.

### 3 Compliance with the *Legislative Standards Act 1992*

#### 3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992 (LSA)* states that 'fundamental legislative principles' (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the FLPs to the Bill. The committee brings the following to the attention of the Legislative Assembly.

##### 3.1.1 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, it allows the delegation of legislative power only in appropriate cases and to appropriate persons.<sup>145</sup>

As noted earlier in this report, cl 3 of the Bill proposes to insert a number of new sections into the *Workers' Compensation and Rehabilitation Act 2003* that delegate legislative power including:

- proposed s 36EB that defines 'first responder' in part in terms of a person who is a worker, or a relevant volunteer, employed in an occupation or profession prescribed by regulation
- proposed s 36EC that defines 'eligible employee' in part in terms of a person who is a worker, or a relevant volunteer, employed by or in an entity prescribed by regulation, and
- proposed s 36ED that provides for the presumption of injury, applies to persons who are diagnosed as having PTSD by a psychiatrist, in the way prescribed by regulation.

The issue of appropriate delegation of legislative power arises from the provision for future changes to the schedules of 'first responders' and 'eligible employees' to be made by regulation (including by amendment regulation). On this specific issue, the explanatory notes state briefly:

Prescribing first responders and eligible employees by regulation recognises the complexity in defining who is a first responder as the nature of the duties performed, job titles or employers change over time and ensures continued presumptive coverage to the intended classes of workers and persons entitled to compensation.<sup>146</sup>

As discussed at section 2.4 of this report, a number of key stakeholders raised concerns in their submissions about first responder occupations and eligible employees of specific government agencies being prescribed in the Regulation rather than in the Act. The department's response to the issues raised by submitters are also presented in section 2.4 of this report.

##### 3.1.1.1 Request for further advice

The committee put a number of questions to the department to assist its consideration of the delegation of legislative power in cl 3 of the Bill.

The following section sets out the committee's questions to the department and the department's responses to those questions provided in correspondence to the committee.<sup>147</sup>

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<sup>145</sup> *Legislative Standards Act 1992*, s 4(4)(a).

<sup>146</sup> Explanatory notes, p 5.

<sup>147</sup> Department of Education, correspondence dated 22 January 2021, pp 1-4.

**1. Can you clarify what the department means by the statement in the explanatory notes ‘the complexity in defining who is a first responder as the nature of the duties performed, job titles or employers change over time and ensures continued presumptive coverage to the intended classes of workers and persons entitled to compensation’?**

Department’s response

The Bill provides presumptive coverage to workers who, by the nature of their duties, are exposed to cumulative trauma from incidents and at a greater risk of developing post-traumatic stress disorder (PTSD). In giving effect to the proposed coverage, it was found that for traditional first responder occupations such as police officers, ambulance officers and firefighters, the risk of developing PTSD was able to be readily identified using an evidence-based approach including research, claims experience, and significant consultation. It is also possible that there may be other unidentified occupations at equal risk and that there may be variability of risk within roles e.g. some first responders or eligible persons may not have any active duties which would put them at risk of trauma exposure. These variables mean that, to ensure a strong connection between the work of first responders and PTSD, the Bill requires a primary focus on the nature of the duties performed rather than the occupation.

As a result, the primary tests in the Bill which place parameters around the scope of workers and eligible persons covered by the presumption are:

- the person's employment requires the person to respond to incidents-(i) that are life-threatening or otherwise traumatic; and (ii) for which time may be critical to prevent actual or potential death or injury to persons, or to prevent or minimise damage to property or the environment' (definition of 'first responder' under section 36EB); and
- the person's employment requires the person to experience repeated or extreme exposure to the graphic details of traumatic incidents by-(i) attending the scenes of traumatic incidents; or (ii) experiencing traumatic incidents as they happen to other persons; or (iii) investigating, reviewing or assessing traumatic incidents that have happened to other persons' (definition of 'eligible employee' under section 36EC).

However, it is recognised that certainty and consistency for all scheme participants is required. Consequently, additional clarity is provided by prescribing specific first responder occupations and eligible employees by regulation where it has been identified that the role or the work undertaken may meet this primary test.

The reason these occupations and employees are proposed to be prescribed in regulation rather than the Act is that it has been identified the type of roles and occupations that meet these two primary tests may naturally change and evolve over time due to:

- PTSD becoming identified as prevalent within a different cohort indicating new occupations or employers being within scope;
- changes to role titles or employers (e.g. machinery of government changes and legislative changes defining roles within departments);
- increasing and changing role responsibilities which may bring a role into scope (e.g. the United Firefighters Union of Queensland acknowledged during the public hearings that the role of a first responder can change over time, such as firefighters who now have a greater role in rescue activities); or
- changes in technology and behaviour that occur over time (e.g. recent technological changes have led to a number of different policing challenges, including cybercrime, changes in forensic practices, proliferation of child pornography, and availability of surveillance (which can be, at times, extremely graphic); all of which may place workers at a greater risk of trauma exposure).

**2. Can you advise the reasons why this 'complexity in defining who is a first responder as the nature of the duties performed, job titles or employers change over time' cannot be dealt with in the Act rather than by regulations?**

Department's response

As a result of the complexity in defining who is a first responder or eligible employee it is considered that flexibility is needed by way of prescribing in regulation under a limited head of power. However, there is no legislative barrier which prevents a list of first responders and eligible employees from being defined in the Act or a combination of the Act and Regulation.

It is noted a number of alternate options were considered in the drafting of these provisions, including the approach taken by:

- the existing presumptive laws for firefighters in primary legislation (sections 36B to 36E of the Act) which had a limited in scope to address specified occupational cancers for firefighters and the approach adopted in other jurisdictions; and
- other jurisdictions with presumptive PTSD laws in place, such as Tasmania and the Northern Territory, noting there are policy differences in the scope of workers covered and nuances in how presumptive laws are expressed due to the different underlying regulatory frameworks in both of those jurisdictions.

The scope of workers and eligible persons covered by the Bill does not align with those other jurisdictional approaches. The scope is not as narrow as the laws for firefighters with specified occupational cancers; or the approach taken in the Northern Territory where scope is limited to 'a person with specialised training such as a paramedic, police officer, fire-fighter, or other emergency personnel who attends the site of an incident...'. The scope of the Bill is also not as broad as the approach taken in Tasmania where all public servants are covered.

It was recognised that due to the changing nature of duties, job titles or employers, that the list of workers who meet the primary tests outlined in the Act may over time change and that the scheme must be responsive to these changes.

Prescribing 'first responders' and 'eligible employees' by regulation was seen to provide certainty, offer safeguards for workers' rights through transparent and accountable legislative processes, along with timeliness to allow for a more agile response compared to amendments to the Act.

**3. The committee notes the department's advice that the proposed amendments to the Act provide parameters for who will qualify as a first responder (e.g. a worker or relevant volunteer who responds to time critical, often life-threatening incidents) or an eligible employee, and that the head of power ensures that any changes to the scope in the regulation are moderated against the explicit criteria defined by the Act.**

**Given this advice, can the department assure the committee that future inclusions or exclusions of workers in the definitions of 'first responder' or 'eligible employee' or changes to how PTSD is diagnosed, that the Bill proposes to be prescribed by regulation, will only relate to relatively minor matters and will not represent significant policy changes or affect individual rights?**

Department's response

Policy setting is the responsibility of the Government.

There are existing safeguards in Government and Parliamentary process to ensure oversight of any potentially significant changes to regulations, such as the necessity to conduct regulatory impact assessments; consult with other departments and stakeholders throughout the Cabinet or Ministerial approval process; and the need for Cabinet or Ministerial approval to proceed to Executive Council for approval. Regulations are also subject to a disallowance motion, ensuring further Parliamentary scrutiny over changes to subordinate legislation.

Prescribing the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5) in the Regulation ensures consistent diagnoses based on an internationally accepted standard. However, this

manual is updated from time to time which can result in the mental health conditions and the relevant diagnostic criteria for assessment changing between editions. Of note, significant amendments were made in relation to PTSD between the DSM-4 and the current DSM-5 which required time for the medical community to adjust accordingly. While it is possible for the Bill to reference the DSM-5 more broadly to 'the current version', the approach adopted in the Bill provides Government the opportunity to review any updates to the DSM to ensure the scope of workers is not unintentionally changed.

4. **The department's advice to the committee dated 11 December 2020 stated that 'prescribing any additional occupations, professions or government agencies in future will be part of a transparent process subject to extensive consultation'.**

**Can the department clarify what consultation it will undertake and how transparency will be achieved in relation to the prescribing of additional occupations, professions or government agencies?**

Department's response

The Office of Industrial Relations, Department of Education (the department) values the contribution and feedback from consulting with a wide variety of stakeholders. The department routinely consults with stakeholders in developing options for Government on issues impacting Queensland workers.

In addition to the extensive stakeholder consultation on first responder mental health over 12 months, which formed the basis of this Bill, the department has also convened tripartite working groups to consult on the following recent issues impacting Queensland's workers including:

- legislating recommendations arising from the second five-year review of the workers' compensation scheme;
- responding to the recommendations of the Parliamentary Select Committee on the coal workers' pneumoconiosis;
- working with Government, insurers and doctors to develop clinical guidance for assessing and managing workers with silicosis in the engineered stone benchtop industry; and
- implementing the National Injury Insurance Scheme for workers who are catastrophically injured in workplace accidents connected with Queensland.

Consistent with this consultative approach, the department will work with stakeholders to define the scope and terms of reference for the proposal to review the presumptive pathway (if adopted) 12 months from commencement. It is anticipated this review will be informed by:

- workers' compensation claims data, including to request improved data capture from insurers which will allow analysis of the utilisation of the presumptive pathway and its effectiveness;
- jurisdictional updates from other schemes with presumptive laws in place;
- reviewing submissions, academic literature and empirical based evidence to identify any other at risk cohorts of workers or relevant volunteers for potential inclusion; and
- extensive consultation with insurers, employers and unions about the lived experiences of workers at-risk of exposure to work-related trauma.

It is noted that section 584A of the Act also includes a mechanism for a review of the operation of the workers' compensation scheme, which includes the Act and the proposed presumptive laws, if adopted, every five years.

Committee comment

Having considered the proposed legislation, the concerns raised by submitters, and the department's advice, the committee is of the view that cl 3 of the Bill does not have sufficient regard to the institution of Parliament.

The Legislative Assembly is the primary law making body in Queensland and has responsibility to ensure the protections of individuals' rights. Consistent with this role and the legislative principles established in the LSA, the Parliament may, and often does, allow the delegation of legislative power

to departments in the interest of expediency and efficiency. Each piece of legislation is considered on merit against principles set out in the LSA.

This Bill proposes to delegate legislative power to the department in relation to future changes to first responders and eligible employees who can access the presumption of injury. The eligibility of specific workers to the presumption of injury is a significant and central element of the legislation. The committee is concerned that altering the schedules of 'first responders' and 'eligible employees' entitled to the presumption of injury would be a significant policy change. Such changes may have significant impact on the viability of the workers' compensation scheme as well as the rights of the workers, employers and insurers specifically affected by those changes, and generally.

In this instance, the committee believes it would be more appropriate for future changes to the schedules of 'first responders' and 'eligible employees' to be considered by the Parliament, and not be delegated to the department. For that reason, the committee is not convinced that the proposed delegation of legislative power in the Bill regarding these matters is justified. On this basis, the committee concludes that the schedules of 'first responders' and 'eligible employees' proposed to be contained in the Regulation should be contained in the Act.

In its advice, the department argued on a number of grounds for the delegation of legislative power in this instance.

#### **Complexity and certainty of continued coverage**

In the explanatory notes, the department has cited the 'complexity in defining who is a first responder as the nature of the duties performed, job titles or employers change over time' as a basis for prescribing first responders and eligible employees by regulation 'to ensure continued, presumptive coverage to the intended classes of workers and persons entitled to compensation'.<sup>148</sup>

In its subsequent advice to the committee on this matter, the department stated that the types of roles and occupations that meet the primary tests to qualify to access the scheme may naturally change and evolve over time, and that prescribing these occupations and employees in the Regulation rather than in the Act will provide the required 'certainty and consistency for all scheme participants'.<sup>149</sup>

The committee appreciates that there may be complex considerations when determining whether first responders or other workers at risk of a PTSD injury should be included in the presumptive legislation, but suggests this complexity does not of itself justify the delegation of legislative power in these matters by Parliament to the department. It is also not clear to the committee how delegating legislative power in these matters to the department will necessarily ensure certainty and consistency for all scheme participants.

#### **Flexibility and agility**

Linked to the issue of complexity, the department stated that 'flexibility is needed by way of prescribing in regulation under a limited head of power,' and that this affords 'timeliness to allow for a more agile response compared to amendments to the Act'.<sup>150</sup>

The committee appreciates that the department may be able to make regulations more quickly than Parliament can likely consider a Bill to amend an Act. It is not clear to the committee, however, that the risk to rights outweighs any benefits that a more agile legislative response might afford in this instance.

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<sup>148</sup> Explanatory notes, p 5.

<sup>149</sup> Department of Education, correspondence dated 22 January 2021, p 2.

<sup>150</sup> Department of Education, correspondence dated 22 January 2021, pp 2-3.

### Policy significance

The committee sought assurances from the department that future inclusions or exclusions of workers in the schedules of 'first responders' or 'eligible employees' that the Bill proposes be prescribed by regulation would only relate to relatively minor matters and would not represent significant policy changes or affect individual rights.

The department in its advice reminded the committee that 'policy setting is the responsibility of the Government', and that there are 'existing safeguards in Government and Parliamentary process to ensure oversight of any potentially significant changes to regulations', and that 'regulations are also subject to a disallowance motion, ensuring further Parliamentary scrutiny over changes to subordinate legislation'.<sup>151</sup> The department did not indicate that significant policy changes would not be made by regulation.

Given the potential effect of presumptive PTSD claims on the workers' compensation scheme and the rights of affected workers and employees, the committee believes changes to schedules of 'first responders' or 'eligible employees' should be matters that the Parliament considers in the first instance. They should not be prescribed by regulation despite the existence of provisions for the Parliament to subsequently scrutinise and disallow subordinate legislation.

The committee considers that the matters in cl 3 of the Bill highlighted by the committee are matters that are central, not ancillary, to the operation of the presumptive legislation proposed by the Bill, and should be included in an Act of Parliament.

#### Recommendation 7

The committee recommends that the Bill be amended to insert the schedules of 'first responders' and 'eligible employees' into the *Workers' Compensation and Rehabilitation Act 2003* such that future amendments to these provisions are to be considered by the Legislative Assembly.

### 3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 of the LSA and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Under the heading 'Consistency with fundamental legislative principles' this statement appears:

The Bill is generally consistent with fundamental legislative principles (FLP) and gives sufficient regard to these principles.<sup>152</sup>

Such an imprecise statement as 'generally consistent' implies that the Bill is not wholly consistent with the FLPs.

In this instance, after stating the Bill is 'generally consistent' with FLPs, the explanatory notes continue:

Any provisions which potentially breach FLP are considered justifiable to achieve the Government's objective to provide a new claims pathway for first responders who are struggling to cope with PTSD to be presumed to have a work-related injury, unless there is evidence to the contrary.<sup>153</sup>

<sup>151</sup> Department of Education, correspondence 22 January 2021, p 3.

<sup>152</sup> Explanatory notes, p 5.

<sup>153</sup> Explanatory notes, p 5.

This paragraph amounts only to a broad statement that any breaches of FLP are justified by the objectives of the Bill. This does not appear to satisfy the requirement, in s 23(1)(f) of the LSA, that explanatory notes for a Bill are to include (in clear and precise language):

[A] brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.

To comply with this statutory requirement, explanatory notes should either (depending of the factual position) state that a Bill is consistent with FLPs, or set out any areas of inconsistency, with reasons for any inconsistency.

Here, the explanatory notes do proceed to address the issue of FLP, regarding the institution of Parliament, discussed above. To this extent, the explanatory notes go some way towards satisfying the requirements in the LSA. However, the broad introductory statement adds little.

Bearing in mind the desirable outcome of better informing the community about proposed legislation, best practice is for explanatory notes to:

- clearly identify each specific issue of FLP that arises and the specific clause giving rise to the issue
- set out the reasons for any individual specific inconsistency with the FLPs
- provide any justification for that inconsistency.

### **3.2.1 Request for further advice**

To assist its consideration of the explanatory notes, the committee sought the department's assurance that the explanatory notes satisfy the requirements specified in s 23(1)(f) of the LSA.

On this point, the department advised:

It is considered the explanatory notes comply with the *Legislative Standards Act 1992*, however, it is noted the Committee is concerned the information provided may not have been extensive enough.

Section 23(1)(f) requires a brief assessment of the consistency of the Bill with fundamental legislative principles (FLPs) and the reasons for any inconsistency.

In meeting these requirements, the explanatory notes acknowledge that prescribing the list of occupations and departments in the regulation is a potential delegation of legislative power. The reason for this inconsistency has also been assessed, noting the Bill's approach was adopted to respond quickly to any changes in employment and ensure continued coverage for the intended cohort of workers and relevant volunteers. The explanatory notes also confirm the inconsistency is limited by the defined head of power in the Act, as well as the overall beneficial nature of the Bill.<sup>154</sup>

### **Committee comment**

The committee notes the department's advice and considers that statements in the explanatory notes regarding consistency with FLPs, however brief, should be precise.

The explanatory notes otherwise comply with the requirements set out in part 4 of the LSA.

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<sup>154</sup> Department of Education, correspondence dated 22 January 2021, p 1.

## 4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.<sup>155</sup>

A Bill is compatible with human rights if the Bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA.<sup>156</sup>

The HRA protects fundamental human rights drawn from international human rights law.<sup>157</sup> Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

### 4.1 Human rights compatibility

#### 4.1.1 Right to health services (HRA, s 37); Right to privacy and reputation (HRA, s 25)

##### ***Clause 3 - proposed new section 36ED Presumption of injury***

This clause does not make a substantive change to workers' compensation entitlements but instead makes it easier for certain claimants to access the scheme by reversing the onus of proof. A first responder with PTSD is deemed to have a work-related injury, unless the contrary is proved.

This Bill seeks to answer a very old human rights problem of 'who rescues the rescuers'? In professions that prize the quality of resilience, there have been significant and well-documented mental health problems for first responders in many fields – military, police, child protection, fire and emergency response, domestic violence, health, and so on.<sup>158</sup> The empirical evidence for this issue in Australia was collated by the Commonwealth Parliament in 2019, when the Senate referred to the Education and Employment References Committee an inquiry into the role of Commonwealth, state and territory governments in addressing the high rates of mental health conditions experienced by first responders, emergency service workers and volunteers.<sup>159</sup> The final report, *The people behind 000: mental health of our first responders*, sets out a clear evidence base for the problem as defined by this Bill, describing 'wariness' on the part of first responders in engaging with the workers' compensation system. The Senate committee strongly recommended the kind of legislative reform this Bill represents as well

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<sup>155</sup> *Human Rights Act 2019*, s 39.

<sup>156</sup> *Human Rights Act 2019*, s 8.

<sup>157</sup> The human rights protected by the HRA are set out in ss 15 to 37 of the HRA. A right or freedom not included in the HRA that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in the HRA or is only partly included; *Human Rights Act 2019*, s 12.

<sup>158</sup> Beyond Blue Limited, 2018, *Answering the call* national survey, Beyond Blue's National Mental Health and Wellbeing Study of Police and Emergency Services – Final report.

<sup>159</sup> Senate Education and Employment References Committee, *The Role Of Commonwealth, State and Territory Governments in Addressing the High Rates of Mental Health Conditions Experienced by First Responders, Emergency Service Workers and Volunteers Final Report and Government Response*.

as a register of specialised medical personnel that could be drawn on and a review of the use of independent medical examiners by insurance companies.<sup>160</sup>

The human rights issue addressed by this Bill is the reluctance by those experiencing PTSD to seek help or to recognise their need for help. This often relates to the perceived stigma of having a mental health problem or to a lack of community knowledge about mental health issues and that it is normal to experience emotional reactions to traumatic events.

The Bill, as did the Commonwealth Parliament, relies on the evidence produced by a Beyond Blue study showing that police and emergency services personnel have a high rate of workers' compensation claims (10 times higher than in the Australian workforce overall) and that those who are exposed to the workers' compensation system overall find it unhelpful, or even detrimental to their recovery.<sup>161</sup> The Bill seeks to ensure that the workers' compensation processes for personnel affected by PTSD are not such as to exacerbate the mental stress of the individuals concerned.

The Bill does not represent a limitation on the right to equality before the law as framed in the statement of compatibility, but rather is a substantive equality measure. As noted by the Minister in her statement of compatibility, the Bill:

... limits the right to recognition and equality before the law because the amendments are limited to a particular cohort of workers (i.e. first responders and eligible employees diagnosed with PTSD by a psychiatrist) who will be entitled to seek compensation through an alternative pathway that reverses the onus of proof.<sup>162</sup>

Based on evidence of over-representation of first responders in workers compensation schemes, the Bill makes it easier for first responders who develop PTSD to access the support and medical care they need. Legal standing and merit claims about particular workers compensation claims are not affected by this Bill. Other workers are not disadvantaged.

It is well established that there are specific barriers that prevent many first responders from seeking assistance through the scheme, such as difficulty identifying the cause of their mental health condition after many years of cumulative exposure to trauma which is unique to their profession.

#### 4.1.1.1 Relevant precedents from other jurisdictions

Tasmania and the Northern Territory have passed similar laws, based on Canadian legislative models.

#### **Canadian precedents**

Canada is well recognised for its global leadership on many health and safety issues for firefighters. As referred to in the explanatory notes, the Canadian provinces of Alberta, Ontario and Manitoba each allow their workers' compensation board to presume that, if a worker is exposed to certain types of traumatic events and is diagnosed with PTSD, it is caused by the worker's employment, unless the contrary is proven. The intention of the presumption is to reduce stigma around mental illness and to make it simpler in some cases to establish a causal connection between PTSD and a worker's employment.<sup>163</sup>

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<sup>160</sup> Senate Education and Employment References Committee, *The people behind 000: mental health of our first responders*, [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024252/toc\\_pdf/Thepeoplebehind000mentalhealthofourfirstresponders.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024252/toc_pdf/Thepeoplebehind000mentalhealthofourfirstresponders.pdf;fileType=application%2Fpdf).

<sup>161</sup> Beyond Blue Limited, 2018, *Answering the call* national survey, Beyond Blue's National Mental Health and Wellbeing Study of Police and Emergency Services – Final report, p 24.

<sup>162</sup> Statement of compatibility, p 3.

<sup>163</sup> See further, [https://www.wcb.ab.ca/assets/pdfs/workers/WFS\\_Presumptive\\_coverage\\_for\\_traumatic\\_psychological\\_injuries.pdf](https://www.wcb.ab.ca/assets/pdfs/workers/WFS_Presumptive_coverage_for_traumatic_psychological_injuries.pdf).

**Other Australian states**

In 2019 the Tasmanian Government was the first Australian jurisdiction to introduce presumptive liability for government employees with PTSD, introducing the Workers Rehabilitation and Compensation Amendment (Presumption as to Cause of Disease) Bill 2019 which passed without amendment and came into force on 4 June 2019. There was significant debate before the introduction of the Bill around the definition of 'first responder', which led to the inclusion in the Bill of firefighters and firefighting volunteers. The Northern Territory passed a similar law in 2020.<sup>164</sup> The Victorian Government commenced a pilot that allows eligible emergency workers to access nine payments for medical treatment and services while their compensation claim is being determined.

**Commonwealth responses**

There are several federal initiatives that will complement the effectiveness of this Bill in terms of implementation and consistency (for example, when Queensland personnel are deployed to other jurisdictions). The government response to the Education and Employment References Committee Report in 2020 committed to a national action plan on first responder mental health.<sup>165</sup> The federal Minister for Agriculture, Drought and Emergency Management will lead development of a national, collaborative approach to addressing mental illness and suicidality in Australia's first responders and emergency services workers, including volunteers and former and retired workers. The Australian Government has allocated \$4.5 million for a national action plan, which will be delivered by the Department of Home Affairs and is aimed at reducing the rates of suicide and mental illness among emergency services workers.

Following the 2019-20 bushfires, the Australian Government announced that the Commonwealth would play a larger role in responding to emergencies such as fires, floods and cyclones. As part of this, the Prime Minister, the Hon Scott Morrison MP, and the Minister for Health, the Hon Greg Hunt MP, announced a commitment of \$500,000 towards the development of a cross-jurisdictional mental health framework with state and territory governments for responding to natural disasters.

In 2016 the Australian Government funded Beyond Blue to develop the Good Practice Framework for Mental Health and Wellbeing in First Responder Organisations. The Good Practice Framework provides information about the range of programs and practices required to effectively promote the mental health of first responders and to reduce suicide risk. It is intended to be used by first responder agencies as a practical guide to develop or renew their workplace mental health strategy.

**Committee comment**

The committee considers the Bill is compatible with human rights.

**4.2 Statement of compatibility**

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

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<sup>164</sup> *Return to Work Legislation Amendment Act 2020 (NT)*.

<sup>165</sup> Senate Education and Employment References Committee, *The Role Of Commonwealth, State and Territory Governments in Addressing the High Rates of Mental Health Conditions Experienced by First Responders, Emergency Service Workers and Volunteers Government Response*, p 4.

## Appendix A – Submitters

Sub #	Submitter
1	The Royal Australian and New Zealand College of Psychiatrists Queensland Branch (RANZCP)
2	Queensland Nurses & Midwives' Union (QNMU)
3	United Workers Union
4	United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ)
5	Construction, Forestry, Maritime, Mining and Energy Union, Mining and Energy Division, Queensland District Branch (CFMMEU)
6	Queensland Council of Unions (QCU)
7	Australian Medical Association Queensland (AMA Queensland)
8	Together Queensland
9	Queensland Law Society (QLS)
10	Electrical Trades Union of Employees Queensland (ETU)
11	The Australian Workers' Union (AWU)
12	Associate Professor Lynda Crowley-Cyr, School of Law and Justice, University of Southern Queensland
13	The Services Union
14	Mr Brian Ranse
<b>Supplementary submissions:</b>	
1	United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ) (supplement to Submission 4)
2	Australian Medical Association Queensland (AMA Queensland) (supplement to Submission 7)

## **Appendix B – Witnesses at public hearing**

### **United Firefighters' Union of Australia, Union of Employees, Queensland**

- Mr Nate Tosh, Industrial Officer

### **Australian Medical Association Queensland**

- Professor Chris Perry OAM, President

### **Construction, Forestry, Mining & Energy Union - Mining and Energy Division Queensland District Branch**

- Mr Stephen Smyth, District President
- Mr Chris Newman, Senior Legal Officer

### **Queensland Law Society**

- Mr Luke Murphy, President
- Ms Leeha James, Member of the QLS Accident Compensation and Tort Law Committee
- Ms Kerryn Sampson, QLS Policy Solicitor

## **Appendix C – Officials at public briefing**

### **Office of Industrial Relations, Department of Education**

- Mr Craig Allen, Deputy Director-General, Office of Industrial Relations
- Ms Janene Hillhouse, Executive Director, Workers' Compensation and Regulatory Services
- Mr Bradley Bick, Director, Workers' Compensation Policy

