Parliamentary Committees



Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

Report No. 7, 57th Parliament

Education, Employment, Training and Skills Committee

June 2024

Education, Employment, Training and Skills Committee

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

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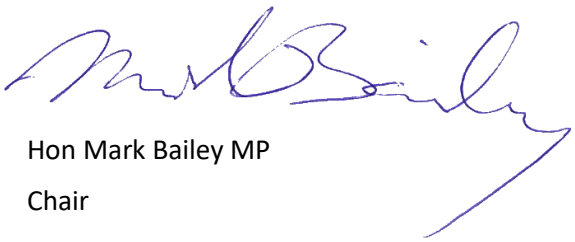
Chair's foreword

This report presents a summary of the Education, Employment, Training and Skills Committee's examination of the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024.

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. I also thank our Parliamentary Service staff, the Department of State Development and Infrastructure, and the Office of Industrial Relations.

I commend this report to the House.



Hon Mark Bailey MP

Chair

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About the Bill and the inquiry

The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (the Bill) was introduced into the Legislative Assembly by the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations, and Minister for Racing (the Minister) on 17 April 2024. The Bill was referred to the Education, Employment, Training and Skills Committee for detailed consideration.

The Bill proposes to amend the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) to implement the legislative recommendations of the 2023 Review of the Operation of the Queensland Workers' Compensation Scheme (2023 Review) and the Decision Impact Analysis Statement in relation to proposals to extend workers' compensation coverage to gig workers. Proposals include changes to the workers' compensation scheme (the scheme) designed to: allow the government to introduce a regulation prescribing that certain cohorts of individuals be classified as 'workers' within the scheme following a relevant determination by the Fair Work Commission; reduce the risk of a worker suffering a psychological injury; increase the effectiveness of rehabilitation and return to work plans (RRTW plans); improve compliance with the scheme; and, for firefighters, add an additional 10 diseases to the list of diseases that are presumed to have been work related.

The Bill also proposes to amend the *Industrial Relations Act 2016* (IR Act) in relation to superannuation contributions, unpaid flexible parental leave days (increase from 30 to 100), and the threshold for unpaid wage claims that are classified as 'small claims' (increase from $50,000 to $100,000). The Bill also proposes to amend the *Labour Hire Licensing Act 2016* to ensure compatibility with human rights and allow for the electronic service of documents.

We received 18 submissions to our inquiry, including one confidential submission. We also held a public briefing and a public hearing.

Recommendations

The committee made 2 recommendations:

1. That the Bill be passed.
2. That further consultation be undertaken with stakeholders on proposed amendments to the *Industrial Relations Act 2016* relating specifically to the appeal pathways for full bench decisions of the Queensland Industrial Relations Commission.

Human rights and fundamental legislative principles

We are satisfied that the Bill is compatible with the *Human Rights Act 2009* (HRA) and that the statement of compatibility contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights. We paid special attention to the proposed change to the definition of a 'workplace' for an insurer to allow an approved officer to gain entry without a warrant. We are satisfied that this provision is compatible with the HRA.

Regarding compliance with fundamental legislative principles and the *Legislative Standards Act 1992*, we identified 3 potential breaches. We are satisfied these are reasonable and sufficiently justified. Regarding the most vexed of them – the proposal to alter the definitions of 'worker' and 'employer' via regulation as opposed to primary legislation – we are satisfied that sufficient safeguards are in place to protect the institution of Parliament and that the proposed approach is necessary to keep pace with developments at the federal level and the ever changing nature of gig work. The explanatory notes provide sufficient information to understand the effects of the Bill on individual rights and liberties.

Potential to include gig workers in the workers' compensation scheme

During our inquiry, we heard both from those who operate gig platforms and those who represent injured gig workers. We are convinced gig workers should be afforded the same rights and protections as all other workers. We are also satisfied that, while the inclusion of gig workers into the scheme may cause operational challenges (e.g. when workers use multiple apps), there is sufficient flexibility to overcome these issues. We also heard both from those who wanted gig workers to be immediately included in the scheme and from those who believed more time was needed to allow the completion of federal processes on related matters. We are satisfied that the approach taken in the Bill strikes the right balance and will ensure timely inclusion of gig workers within a nationally consistent regulatory environment.

Minimising the risk of psychological harm

The 2023 Review identified a key long-term risk to the scheme's sustainability in the rising number of claims for psychological injury. We examined how the Bill obliges insurers to take all reasonable steps to minimise the risk of a worker who has suffered a physical injury also sustaining a psychological injury as a result. Like submitters to the inquiry, we support the provision. While several submitters suggested including examples of 'reasonable services' in the legislation, we are satisfied that the proposed code of practice offers a more flexible alternative.

Improving rehabilitation and return to work outcomes

We examined the key proposals designed to improve rehabilitation and return to work outcomes. We support the proposed maximum 10 business day timeframe for insurers to put in place an RRTW plan. We believe the proposal as drafted strikes the right balance between the need for the speedy development of a plan and the need to update a plan in light of new information. We also support the proposals regarding employer and insurer obligations and were pleased by the Office of Industrial Relation's clarification that employers' RRTW obligations are not expanded but are merely that they must provide evidence in support of their opinion that providing a suitable duties program is impracticable. In respect of the move to allow the Minister to make scheme directions (such as requirements around workplace rehabilitation providers), we acknowledge concerns by submitters on when and how often such directions will be reviewed.

Improved compliance measures for employers and insurers

We support the range of measures to improve compliance with the scheme. We are satisfied that the proposed increase in penalty units for existing and new offences are reasonable and reflected that the maximum penalties have not been updated for 20 years. We also support the introduction of Worker Information Statements which will provide information to workers about the scheme when they start work.

Increasing the list of presumed diseases for firefighters

Like submitters, we applaud the proposed inclusion of 10 additional diseases that, for firefighters, will be presumed to have been work related as well as the fact that calculating the 'qualifying period' will now recognise 'day work'. In respect of the way in which periods of extended leave are included in this calculation (notably extended maternity leave), we urge the Department of State Development and Infrastructure to provide a timeframe for the consideration of this issue with the Special Commissioner, Equity and Diversity as soon as possible.

Potential to include student nurses and midwives in the scheme

We noted the concerns of the Queensland Nurses and Midwives' Union that the 2023 Review's recommendation that student nurses and midwives be included in the scheme was not addressed in the Bill. We encourage the Queensland Government to urgently assess options to extend coverage to this cohort.

Amendments to the *Industrial Relations Act 2016*

We examined the various proposed changes to the IR Act regarding superannuation, flexible parental leave and the threshold for 'small claims' related to unpaid wages. We note that these measures received broad support. We also noted submitters' concerns regarding the change to appeal pathways and the lack of consultation on these matters. We recommend that further consultation be undertaken with stakeholders on proposed amendments to the Industrial Relations Act 2016 relating specifically to the appeal pathways for full bench decisions of the Queensland Industrial Relations Commission.

1 Introduction

1.1 Policy objectives of the Bill

The Bill has 4 principal objectives:

1. To amend the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) to implement the legislative recommendations of the 2023 Review of the Operation of the Queensland Workers' Compensation Scheme (2023 Review).
2. To amend the WCR Act following a Decision Impact Analysis Statement (Decision IAS) on extending workers compensation coverage to gig workers.
3. To amend the *Industrial Relations Act 2016* (IR Act) in response to recent Commonwealth legislation relating to superannuation, parental leave and unpaid wages.
4. To amend the *Labour Hire Licensing Act 2017* (LHL Act) to ensure compatibility with human rights and allow electronic service of documents.[1]

1.2 The Queensland Workers' Compensation Scheme

The Queensland Workers' Compensation Scheme (scheme) is a centrally funded no-fault scheme which provides compensation to employees who have suffered an injury at work. Compensation can include lost wages, medical expenses, rehabilitation costs and death entitlements. Queensland's system of worker compensation differs from other states and territories because it includes both a 'short-tail' element (limits to how long or how much a worker can in receive compensation) and a 'common-law' element (where workers can sue their employers for negligence).[2]

The scheme is administered by:

- Worker's Compensation Regulatory Services (WCRS), which performs regulatory functions and implements government policy.
- WorkCover Queensland (WorkCover), the State established default insurer administering 93 per cent of claims in Queensland.
- 27 self-insurers—large companies which are licensed by WCRS to operate their own workers' compensation insurance (instead of WorkCover).[3]

At present, many of those employed in the 'gig economy' – where individuals (gig workers) engage in freelance and/or side-employment often via mobile apps run by digital intermediary businesses (gig platforms) – are not defined as 'workers' under the scheme.[4] While gig workers often perform employee-like work, their exact legal status is difficult to determine as the way in with they are engaged varies considerably between companies, and, until recently, there has been no attempt to provide an overarching national approach to gig workers.[5]

1 Explanatory notes, pp 1-3.

2 G Fisher and D Peetz, 2023 Review, June 2023, p 16.

3 G Fisher and D Peetz, 2023 Review, June 2023, p 17.

4 Explanatory notes, p 2.

5 Explanatory notes, p 2.

1.3 2023 Review of the Operation of the Queensland Workers' Compensation Scheme

Queensland's workers' compensation system has been the subject of considerable change and amendment since it received its first major reform in 1990.[6] The 2023 Review followed a review in 2018 and a review in 2013 by the Queensland Parliamentary Finance and Administration Committee.

The 2023 Review found that the overall state of the scheme is strong and more financially efficient than in the recent past. However, the 2023 Review was concerned by the rise of mental health injury claims which 'have higher costs, lower return-to-work rates, lower acceptance rates, longer duration, and take longer to determine'.[7] Here, the 2023 Review found that, over the 4 years to 2021-22, primary mental injury claims (where the injury was initially a mental injury) have risen by 92 per cent and secondary mental injury claims (where the mental injury developed from a physical injury) have tripled in the last 10 years.[8] The 2023 Review found that if left unchecked this could impact the overall scheme.[9] In Victoria, reforms were recently introduced to limit cover following 'sky-rocketing' mental health claims.[10]

Improving decision times and increasing support for rehabilitation and return-to-work (RRTW) were seen as key ways to prevent the growth in mental injury claims. The 2023 Review noted that, compared to other states, Queensland workers were the least likely to have RRTW plans in place and have had contact with a RRTW coordinator. [11] As such, the 2023 Review recommended:

- more early intervention to stop physical injuries leading to secondary mental injuries
- addressing workplace issues that are causing or worsening mental injuries
- making it easier for injured workers to find gainful employment
- reducing the time it takes to gather information and make decisions
- facilitating coverage of gig economy workers in the system.[12]

The 2023 Review made 26 recommendations that would require legislative amendment. The Queensland Government accepted 9, accepted 13 in principle, are considering 3, and did not accept one.[13]

1.4 Decision Impact Analysis Statement

The 2018 review of the WCR Act recommended that workers' compensation coverage be extended to persons employed within the gig economy and that 'intermediary' businesses (e.g. Uber) be required

6 Safe Work Australia, Queensland, 2021, https://www.safeworkaustralia.gov.au/book/comparison-workers-compensation-arrangements-australia-and-new-zealand-2021-28th-edition/chapter-1-history-workers-compensation-schemes-australia-and-new-zealand/queensland.

7 G Fisher and D Peetz, 2023 Review, June 2023, p 18.

8 G Fisher and D Peetz, 2023 Review, June 2023, p 18.

9 G Fisher and D Peetz, 2023 Review, June 2023, p 18.

10 Guardian Staff, *The Guardian*, 5 March 2024, https://www.theguardian.com/australia-news/2024/mar/05/victoria-workers-compensation-workcover-scheme-laws-stress-burnout.

11 G Fisher and D Peetz, 2023 Review, June 2023, p 18.

12 G Fisher and D Peetz, 2023 Review, June 2023, p 19.

13 Explanatory notes, p 2.

to pay premiums.[14] Following consultation on proposed regulation, the government released its Decision IAS on 27 February 2024.[15]

This determined that while coverage of gig workers would be beneficial, further consideration was necessary to consider national work on the issue, the complexity of implementing the regulation, and the cost burden. It was recommended that the WCR Act be amended to provide flexibility for government to clarify workers' status in the future following any nationally agreed changes.

Following an election commitment, the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth) passed both Houses on 12 February 2024. This empowers the Fair Work Commission to set minimum standards for 'employee-like' workers performing digital platform work. An 'employee-like' worker is defined as someone who satisfies 2 or more of the following characteristics:

- low bargaining power
- low authority over the performance of work
- receives renumeration at or below the rate of employees performing comparable work.

Independent contractors who are not 'employee-like' and/or do not perform work for or via a gig platform are not impacted by the changes.[16]

Applications for minimum standards orders can be made by gig platforms, registered organisations representing gig workers, or the Minister for Employment and Workplace Relations. Minimum standards orders are binding while minimum standards guidelines are non-binding. The Fair Work Commission has broad discretion and can set minimum standards related to, for example: payment terms, deductions, record-keeping and insurance. It cannot include terms related to overtime rates, rostering arrangements or terms that alter the status of workers covered by the standards order (i.e. to designate workers as employees). When setting minimum standards, the Fair Work Commission must consider and balance a range of factors including: worker preferences, impacts on business viability and impacts on customers that use the services delivered by employee-like workers.[17]

Registered organisations that represent employee-like workers (i.e. trade unions) will also have the ability to make collective agreements with gig platforms. Finalised agreements must be registered with the Fair Work Commission and published on its website.[18]

The *Fair Work Legislation (Closing Loopholes No. 2) Act 2024* (Cth) has a proposed commencement date of 26 August 2024.[19]

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14 D Peetz, *The operation of the Queensland workers' compensation scheme*, May 2018, pp viii-ix, https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0021/24087/workers-compensation-scheme-5-year-review-report.pdf.

15 Office of Industrial Relations, *Decision Impact Analysis Statement – Gig workers and bailee taxi and limousine drivers*, February 2024, https://www.oir.qld.gov.au/system/files/2024-02/decision-impact-analysis-statement-gig-workers-bailee-taxi-limousine-drivers.pdf.

16 Department of Employment and Workplace Relations, *Extent the powers of the Fair Work Commission to set minimum standards for 'employee-like' workers*, March 2024, https://www.dewr.gov.au/closing-loopholes/resources/extend-powers-fwc-include-employee-forms-work, p 1.

17 Department of Employment and Workplace Relations, *Extent the powers of the Fair Work Commission to set minimum standards for 'employee-like' workers*, March 2024, https://www.dewr.gov.au/closing-loopholes/resources/extend-powers-fwc-include-employee-forms-work, p 2.

18 Department of Employment and Workplace Relations, *Extent the powers of the Fair Work Commission to set minimum standards for 'employee-like' workers*, March 2024, https://www.dewr.gov.au/closing-loopholes/resources/extend-powers-fwc-include-employee-forms-work, p 2.

19 Fair Work Commission, 'The Closing Loopholes Acts – What's Changing', n.d., https://www.fwc.gov.au/about-us/closing-loopholes-acts-whats-changing.

1.5 Key proposals in the Bill

1.5.1 *Workers' Compensation and Rehabilitation Act 2003*

Key proposals in the Bill regarding the WCR Act include the following:

Gig economy

- Implementing the Decision IAS around gig workers to provide a head of power to make a regulation to prescribe who is a 'worker' and who is an 'employer'. Individuals will not, however, *automatically* be considered 'workers' if a minimum standards order or minimum standards guideline has been made by the Fair Work Commission (FWC) or a collective agreement lodged with the FWC. Rather, the government will consider whether to make the regulation following a regulatory impact analysis and public consultation (clauses 24 and 26).[20]

Mental health claims

- Requiring an insurer to take all reasonable steps to minimise the risk of a worker sustaining a psychiatric or psychological injury arising from a physical injury following acceptance of a claim (clause 46).[21]

Rehabilitation and return-to-work

- Requiring an insurer to form their own opinion about whether it is practicable for an employer to provide suitable duties and take certain steps (clause 42).[22]
- New service delivery, competency and professional standards for workplace rehabilitation providers based on the Heads of Workers' Compensation Authorities endorsed document *Principles of Practice for Workplace Rehabilitation Providers* (clause 41).
- Enabling a worker to request a different workplace rehabilitation provider where they are dissatisfied with the initial provider selected by the insurer (clause 41).[23]
- Requiring an insurer to have an RRTW plan in place within 10 business days after the application for compensation is accepted (clause 41).[24]
- Requiring a host employer to cooperate with the labour hire provider by taking all reasonable steps to support them to meet their RRTW obligations, including by extending the provision of suitable duties (clause 43).[25]

Firefighters

- For firefighters, adding 10 additional diseases to the list of diseases which are presumed to have occurred in the course of their employment (clause 60).[26]
- Clarifying the way in which relevant duties are calculated to ensure that firefighters on day work rotation are not excluded from the presumption (clause 27).[27]

20 Explanatory notes, pp 8-9.

21 Explanatory notes, p 3.

22 Explanatory notes, p 4.

23 Explanatory notes, p 5.

24 Explanatory notes, p 5.

25 Explanatory notes, p 5.

26 Explanatory notes, p 6.

27 Explanatory notes, p 6.

Compliance and other matters

- Providing a default payment of weekly compensation after a claim is accepted and until an insurer calculates the applicable rate of weekly compensation (clause 35).[28]
- Introducing a new offence prohibiting employers from making payments to an injured worker in lieu of a compensation claim (clause 29).[29]
- Requiring employers and insurers to give statements providing information about the workers' compensation scheme to workers (clauses 29 and 34).[30]

1.5.2 *Industrial Relations Act 2016*

Key proposals in the Bill regarding the IR Act include the following:

- Ensuring employers have an obligation to make superannuation contributions under the Queensland Employment Standards (clause 9).[31]
- Increasing the number of unpaid flexible parental leave days from 30 to 100 and providing additional flexibility around when they can be taken (clause 8).[32]
- Increasing the 'small claims' threshold for unpaid wages claims to $100,000 (clauses 10 to 12).[33]

1.5.3 *Labour Hire Licencing Act 2017*

The key proposal in the Bill regarding the LHL Act is to facilitate the electronic service of documents (clause 21).[34]

1.6 Legislative compliance

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.6.1 *Legislative Standards Act 1992*

Our assessment of the Bill's compliance with the LSA identified several potential issues which are noted below.

1.6.1.1 Sufficient regard to the rights and liberties of individuals

We considered the following provisions in relation to fundamental legislative principles and conclude they have sufficient regard to the rights and liberties of individuals:

- introduce a provision that an employer may apply to WorkCover in writing to waive or reduce a penalty for failing to comply with a notice from WorkCover requesting the stated information, because of extenuating circumstances (clause 35)
- introduce provisions that WorkCover or a self-insurer must inform the Workers' Compensation Regulator (Regulator) if WorkCover or the self-insurer forms a reasonable belief that a category

28 Explanatory notes, p 7.

29 Explanatory notes, p 6.

30 Explanatory notes, p 7.

31 Explanatory notes, p 9.

32 Explanatory notes, p 9.

33 Explanatory notes, p 9.

34 Explanatory notes, p 9.

1 offence is being committed, and give the Regulator the information WorkCover or the self-insurer has about the grounds for the belief (clause 53)

- include new provisions that provide an authorised person appointed by the Regulator may give a person a compliance notice requiring the person to take stated action to prevent a contravention of the Act from continuing or being repeated (clause 53)
- expand the meaning of 'workplace' to include a place of business of an insurer (clause 61).

We considered the increase in maximum penalties for a range of offences and the creation of new offences in relation to having sufficient regard to the rights and liberties of individuals in more detail in section 2.1.13.1.

1.6.1.2 Sufficient regard to the institution of Parliament

We considered the following provisions in regard to the institution of Parliament and the delegation of legislative power:

- The Bill proposes to expand who is included in the definitions of *worker* and *employer* for the purposes of the scheme set out in the WCR Act by reference to the *Fair Work Act 2009* (Cth) (Fair Work Act) and the making of a regulation – see section 2.1.2.1.
- The Bill proposes that the Regulator may, with the approval of the Minister, make scheme directions – see section 2.1.9.1.
- The Bill proposes that the Minister may make codes of practice under the Act, which may state action to be taken by an insurer, employer or other person in performing functions, exercising powers or complying with obligations under the Act and prescribe 'reasonable steps' for a 'reasonable steps offence' – see section 2.1.9.1.

1.6.1.3 Comment

We find the Bill has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

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 contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

1.6.2 *Human Rights Act 2019*

In our assessment of the Bill's compatibility with the HRA, we analysed clauses 29, 35, 41, 53, and 61. We find the Bill is compatible with human rights. However, we did consider clause 61 in more detail in section 2.1.14.

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

1.7 Consultation on the development of the Bill

The explanatory notes advised that, in relation to the WCR Act, recommendations from the 2023 Review and proposed policy proposals were subject to consultation through a series of meetings in 2023 and 2024 with a stakeholder reference group, including registered industrial organisations, insurers, peak legal, medical and allied health bodies, and representatives of the rideshare and taxi industry. Submitters to this inquiry who were also involved in those meetings included the Australian Industry Group (Ai Group), Australian Lawyers Alliance (ALA), Business Chamber Queensland (BCQ), Master Builders Queensland (Master Builders), Queensland Law Society (QLS), Queensland Council of

Unions (QCU), and United Firefighters Union Queensland (UFUQ). Separate meetings were held with DoorDash Australia (DoorDash) and Menulog Pty Ltd (Menulog).[35]

The Ai Group was concerned that short timeframes for consulting on the content of the Bill during its development has meant insufficient time for industry to assess any proposed regulations in relation to the definition of employer and worker in the WCR Act via amendments to section 11 and schedule 3.[36]

The Office of Industrial Relations (OIR) advised that employer representatives, including BCQ, Ai Group and Uber Australia (Uber), were included 'at every step' during the development of policy matters included in the Bill, and that feedback received during consultation on the content proposed for the Bill 'assisted to shape the proposed policy and amendments'.[37]

1.8 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 be passed.

[35] See explanatory notes p 15 for more stakeholders.

[36] Submission 16, p 3.

[37] OIR, department response to submissions 16 and 17, p 6.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Amendments to the *Workers' Compensation and Rehabilitation Act 2003*

2.1.1 Definition of 'worker' and 'employer'

Clause 24 amends section 11 (Who is a worker) to provide that a person is to be considered a 'worker' if they are:

- a 'regulated worker' under the Fair Work Act and a minimum standards order, minimum standards guideline or collective agreement applies to, or covers, the person under chapter 3A of that Act; and
- they are prescribed by regulation to be a worker.

Clause 26 also amends section 30 (Who is an employer) to reflect this change in the definition of worker.

The aim of these provisions is to provide the Queensland Government with the flexibility to include gig workers and gig platforms into the scheme, should the Fair Work Commission make a minimum standards order, minimum standards guideline or collective agreement for regulated workers.[38]

The proposal to potentially include gig economy workers into the scheme, and for platforms who employ them to pay premiums, follows the recommendation of the 2018 review of the scheme.[39] This presented a number of compelling reasons for including gig workers in the scheme:

- gig workers are vulnerable, with often low pay and poor conditions
- due to low pay, gig workers are unlikely to take up their own voluntary personal injury cover
- in the absence of self-insurance, the cost of work injuries is externalised from gig platforms to individual workers and the State
- the pay and conditions of gig workers would likely be deemed illegal were it not for the legal contrivances designed to ensure that workers are not classed as employees
- by providing lower pay and conditions and not paying insurance premiums, gig platforms gain a competitive advantage over their rivals
- gig work is akin to labour hire which is regulated in Queensland, and failure to regulate gig workers would create a gap in Queensland's workers' compensation system.[40]

The 2023 review of the scheme and the Decision IAS repeated many of the above arguments and endorsed the 2018 proposal to procced with inclusion of gig workers and gig platforms into the scheme.[41] Submitters to our inquiry also made similar points.[42]

For example, in its submission, the Transport Workers' Union – Queensland (TWUQ) stated that:

> These workers have been intentionally misclassified as 'independent contractors' by gig companies, but are in reality, highly dependent, highly controlled workers who face constant risks of 'deactivation' for

38 Explanatory notes, p 2.

39 D Peetz, *Report of the second five-yearly review of the scheme*, May 2018, p xxv.

40 D Peetz, *Report of the second five-yearly review of the scheme*, May 2018, pp 99-100.

41 G Fisher and D Peetz, 2023 Review, pp 93-101; Office of Industrial Relations, *Decision Impact Analysis Statement – Gig workers and bailee taxi and limousine drivers*, February 2024.

42 See, for example, submissions 2, 7, 13, and 15.

> raising safety, workplace or pay issues… [and that] due to the low wages and job insecurity, workers are pressured to take risks and cut corners.[43]

Regarding safety, TWUQ also shared research with the committee from the Mickel Institute that found 51 per cent of gig workers have felt pressured to rush and take risks either to make enough money or to protect their jobs, something which puts gig workers and their customers at risk.[44]

However, other submitters to the inquiry, principally gig platforms, argued that the way in which gig workers operate – with a much higher degree of flexibility and autonomy than many 'traditional' employees – meant that including gig workers and gig platforms in the scheme was not practicable.[45] Menulog, an online food and drink ordering app and delivery service platform, explained how, 'traditional employment concepts like workers' compensation cannot have sensible application in the on-demand delivery industry'.[46]

Examples offered by submitters of the supposed incompatibility between gig work and the existing worker's compensation system included:

- the difficulty of determining if an accident occurred during the course of work given that workers can log into gig platform applications (apps) from home or while commuting to another job[47]
- the difficulty of determining which employer would be liable when a worker is engaged on multiple apps (multi-apping)[48]
- the difficulty of operating RRTW plans with workers who operate intermittently and who have no obligations to the gig platform[49]
- the lack of suitable duties that would match an injured worker's restrictions[50]
- the incongruence of calculating premiums based on an employer's claims history when gig platforms have much less control over their workers' behaviour compared to traditional employers.[51]

Collectively, examples such as these meant, according to the Ai Group, that 'if the scope of the WCR Act is amended as proposed, the substantive content of the legislation would not be "fit for purpose"'.[52]

Instead, the gig platforms who submitted to the inquiry argued that the personal accident insurance products they provided for their workers were a better alternative to including gig workers within the scheme.[53] As DoorDash, who operate a similar business model to Menulog, described, their personal accident insurance is provided to workers at no cost, with no sign-up requirements, excesses or co-payments and covers 'every Dasher [delivery driver] starting their very first delivery and regardless of

43 Submission 15, p 3.

44 Submission 15, p 3.

45 See, for example, submissions 6, 9, 14, 16.

46 Menulog, submission 14, p 5.

47 Uber, submission 9, p 11; Door Dash, submission 6, p 3.

48 Menulog, submission 14, p 5; Uber, submission 9, p 11.

49 Menulog, submission 14, p 5; Door Dash, submission 6, p 3.

50 Menulog, submission 14, p 5; Uber, submission 9, p 11.

51 Uber, submission 9, p 11.

52 Submission 16, p 6.

53 DoorDash, submission 6, p 4; Menulog, submission 14, p 4; Uber, submission 9, pp 4-6.

how many deliveries they make'.[54] DoorDash and Menulog supported the concept of government mandating gig platforms to provide such personal insurance free of charge to workers. Menulog stated that, as a company, it:

> …has long advocated for insurance to be a mandatory matter addressed by the federal Fair Work Commission to ensure all workers have access to cover that is designed for specific employee-like sub sectors and informed by robust consultation with the industry. It is Menulog's view that this national fit-for-purpose legislated mandatory insurance would then meet the ambition of the Queensland Government and eliminate the need for complex and resource intensive state-based schemes.[55]

Menulog also raised the potential impact of inclusion into the scheme on its costs suggesting that:

> Any potential cost increase as a result of future regulation would likely be passed on and balanced between all industry participants, resulting in a likely reduction in consumer demand (due to consumer fee increases) and a further drop in courier opportunities.[56]

Notably, no submitters raised concerns about the financial viability of the scheme should gig workers be included. Indeed, ALA highlighted research by the Australian Bureau of Statistics which revealed that less than 1 per cent of the overall workforce is retained in the gig economy.[57] ALA went on to state that even if the percentage of gig workers was close to 5 per cent, expanding the scheme to include them would only involve covering an additional 150,000 people. [58] The amount of data that gig platforms hold on their workers would also allow WorkCover to calculate appropriate premiums.[59]

In the departmental response to submissions, the OIR noted that the 'Queensland workers' compensation system has existed for over a century and has evolved to keep pace with modern ways of working'.[60] Moreover, the OIR noted that:

- The WCR Act already applies to workers who work sporadically or are engaged in non-traditional forms of work, such as interns, workers with multiple jobs, on call workers etc.
- The WCR Act already deals with liability in the case of individuals with multiple employees (e.g. recent cases related to industrial deafness and silicosis).
- Every claim is considered on its individual circumstances with assessment based on the particular aspects of the claim.
- The WCR Act contains inbuilt flexibility which recognises different working circumstances in relation to rehabilitation, return to work, and suitable duties, e.g. by only requiring that an employer take 'reasonable steps' to assist rehabilitation.
- Premium calculations take into account a range of factors and have previously been calculated for road passenger transport and courier pick-up and delivery services. [61]

Both Maurice Blackburn Lawyers and the QCU also expressed scepticism about the claim that gig platform's own insurance policies are a better alternative to inclusion into the workers' compensation

54 DoorDash, submission 6, p 4.

55 Menulog, submission 14, p 4.

56 Menulog, submission 14, p 7.

57 ALA, submission 2, p 10.

58 ALA, submission 2, p 10.

59 ALA, submission 2, p 10.

60 OIR, department response to submissions 1 to 15, p 9.

61 OIR, department response to submissions 1 to 15, pp 9-10.

scheme.[62] For example, in a comparison between the cover offered by Uber and the statutory scheme, Maurice Blackburn Lawyers highlighted that unlike the statutory scheme, Uber's insurance:

- does not cover soft tissue injuries, e.g. whiplash (which are common among drivers)
- is not 'no fault'
- only provides income support for a maximum of 30 days and up to $4,500 if the driver is not hospitalised
- caps the level of medical and like expenses at $5,000
- has less generous death entitlements than the statutory scheme.[63]

The QCU also emphasised the way in which gig platforms provided insurance often contains terms and conditions that could lead to gig workers having insurance claims unfairly denied, noting:

> A well-publicised example is Burak Dogan who was hit by a truck and died instantly while working for Uber Eats in April 2020. Burak's family was denied a $400,000 death benefit and a claim for funeral expenses by Uber because he was hit by the truck outside a 15-minute window following a delivery or cancellation.[64]

In regard to the potential cost to gig platforms of becoming part of the scheme, the OIR noted that a regulatory impact analysis would be undertaken if any regulation was proposed. The OIR also highlighted the work done during the Decision IAS to estimate potential costs, which found that:

- The total estimated costs of work-related injuries sustained by gig workers in financial year 2023-24 was $90 million.
- This $90 million total cost was made up of $23 million in direct costs (compensation payments, and costs related to injury) and $67 million in indirect costs (e.g. costs to the public health system).
- Of the $23 million in direct costs, gig workers bore 70 per cent, the community bore 27 per cent, and gig platforms bore 4 per cent.
- If workers' compensation scheme coverage was extended to gig workers, the direct costs would be borne by the gig platforms at a cost of $23 million.[65]

Committee comment

For over a century, Queensland's workers compensation scheme has helped to protect workers from the impact of accidents at work, providing workers and their families with the compensation they deserve and the support they need. By requiring employers to pay insurance, it not only ensures everyone pays their fair share but has helped to make Queensland's workplaces safer.

One reason for the scheme's success to date has been that it covers all workers and all employers. No evidence presented as part of our inquiry has led us to conclude that those who work on gig platforms are not workers. As such, they deserve the same rights and entitlements as those in more 'traditional' employment arrangements. While the move by gig platforms to provide their workers with free personal accident insurance cover is a positive step, it is not of the same standard as that provided by the scheme.

62 Maurice Blackburn Lawyers, submission 7, pp 4-6; QCU, submission 13, p 20.

63 Maurice Blackburn Lawyers, submission 7, pp 4-5.

64 QCU, submission 13, p 20.

65 OIR, department response to submissions 1 to 15, pp 14-15.

While gig work is undoubtedly a new development, the scheme has shown that it has the capacity to adapt to new ways of working – from the rise of labour-hire firms to the increasing numbers of those who 'work from home'.

During our inquiry, we heard from gig platforms that the nature of gig work is not compatible with a workers' compensation scheme. However, we dispute this view as the scheme already caters for those with multiple employers or who work in a casual or sporadic fashion, such as on-call workers. As such, we have every confidence that, given the flexibility of the scheme, gig workers and their employers could be accommodated within it.

2.1.2 The means by which gig workers may be included in the scheme

As explained in section 2.1.1, the Bill would neither immediately include gig workers and gig employers in the scheme nor automatically include them once the Fair Work Commission (FWC) issues a minimum standards order (MSO), minimum standards guideline or registers a collective agreement (relevant FWC determination). Rather, the Bill provides the Queensland Government with the *option* to consider if a regulation should be made that would include the category of individuals in the scheme should there be a relevant FWC determination.

Submitters representing both employer and employee groups had concerns with this mechanism. On the one hand, ALA, Maurice Blackburn Lawyers, and the TWUQ believed that gig workers should be included immediately by allowing the Queensland Government to make a regulation to include gig workers in the scheme irrespective of any FWC determination. On the other hand, gig platforms argued that the legislation was premature as Commonwealth legislation is yet to be implemented and a key report by Safe Work Australia into gig workers has not been completed.

For a discussion of whether the term 'worker' and 'employer' should be defined directly in the legislation or via regulation see section 2.1.2.1.

The arguments for immediately including gig workers within the scheme, included:

- the need for immediate clarity and certainty over who is and is not covered by the scheme[66]
- the potential delays caused by the speed of the federal process with the issuing of an MSO potentially taking years to be approved and likely longer to come into force[67]
- the fact that different types of gig-economy workers (e.g. food delivery drivers versus passenger transport drivers) might be covered by different FWC determinations which could create divides between workers and a patchwork of coverage[68]
- making a collective agreement registered with the FWC a determinant of whether the Queensland Government considers proceeding with including gig workers in the scheme creates a perverse incentive for gig platforms not to engage in collective bargaining.[69]

According to Maurice Blackburn Lawyers, delays to including gig workers in the scheme would thus neither benefit workers, who would be left under-covered, nor 'traditional employers' who would continue to face an uneven playing field with gig platforms.[70]

66 ALA, submission 2, p 5.

67 TWUQ, submission 15, p 5.

68 TWUQ, submission 15, p 5.

69 TWUQ, submission 15, p 5.

70 Maurice Blackburn Lawyers, submission 7, pp 3-7.

As Maurice Blackburn Lawyers continued:

> Contrary to the ideal of Queensland playing a national leadership role in ensuring all workers have access to the same protections when injured at work, in effect the Bill unnecessarily abdicates the rights of Queensland workers to decision makers at the federal level.[71]

Sharing similar concerns, the ALA proposed the following amendment to clause 24:

> Amendment of section 11 (Who is a worker)
>
> (1) A **worker** is –
>
> …
>
> (b) a person who is
>
> (i) an employee-like worker, or road transport employee-like worker, under the Fair Work Act 2009 (Cwlth) to whom a minimum standards order, minimum standards guidelines or a collective agreement applies under that Act, chapter 3A; *or*
>
> (ii) prescribed by regulation to be a worker because they are engaged to perform *work in the same or similar circumstances to a person mentioned in subparagraph (i) whether or not an instrument mentioned in subparagraph (i) applies.*

ALA's proposed amendment was supported by the TWUQ and Maurice Blackburn Lawyers. Similarly, Hireup suggested that the government follow the approach of Western Australia, where certain types of work is covered by workers' compensation, such as National Disability Insurance Scheme support, regardless of the way in which workers are engaged.[72]

While they did not comment on the approach of the above submitters, the QCU shared concerns around the speed at which gig workers could be introduced into the scheme. The QCU noted that the FWC consultation processes (including possible hearings) and subsequent Queensland regulatory impact analysis and consultation might mean that 'even after their legal status as an 'employee-like' worker has been determined, their standing in the scheme will remain uncertain for many months, if not years'.[73] As a result, the QCU and Maurice Blackburn Lawyers recommended that the government commence the regulatory impact analysis as soon as possible by monitoring proceedings in the FWC and gathering the relevant information to inform the analysis.[74]

In its departmental response to submission, the OIR argued that it would be inappropriate for the Queensland Government to automatically include coverage of gig workers following a determination by the FWC.[75] This is because it would not allow the government to consider such matters as the scheme's sustainability and whether the MSO itself contained terms related to insurance. Equally, the OIR noted that automatic inclusion following a determination by the FWC would give neither industry nor WorkCover itself time to transition. Regarding the ALA's proposed amendment, the OIR noted that it could broaden the scope of the Bill to include 'cohorts that are not currently known or able to be accurately qualified'.[76] In addition, it would create the risk that scheme would be inconsistent with

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71 QCU, submission 13, p 21.

72 Submission, 17, p 14.

73 QCU, submission 13, p 21.

74 Maurice Blackburn Lawyers, submission 7, p 3.

75 OIR, department response to submissions 1 to 15, p 14.

76 OIR, department response to submissions 1 to 15, p 15.

the determinations of the FWC and create significant uncertainty for digital platforms.[77] The OIR did not respond to the suggestion that the regulatory impact analysis be conducted concurrently with the work of the FWC.

In contrast, the Ai Group, BCQ and the gig platforms who provided submissions were opposed to the proposed measure.[78] The reasons for this included that:

- it is necessary to first understand the operation of the amendments to the Fair Work Act in relation to gig workers and for Safe Work Australia to complete their examination of the primary duty of care model in the context of modern work arrangements[79]
- there is potential for the creation of unnecessary obligations on gig platforms as the FWC has the capacity to create an MSO that includes platform insurance obligations[80]
- there is the potential that a broad range of contractors who are not in the gig-economy may be captured by the changes[81]
- the Decision IAS acknowledged issues related to multi-apping, setting of wages, coverage of work-related injuries and common law access when it came to extending workers' compensation coverages to gig workers.[82]

In regard to the final point, Uber stated that:

> No public policy case has been made for putting forward this amendment before addressing the major challenges identified by the Government. This is poor public policy making, and it provides no certainty for businesses wanting to continue to grow and invest in Queensland.[83]

In response, the OIR advised:

- The proposed amendment will not automatically extend workers' compensation scheme coverage and will only occur following the FWC making a MSO, minimum standards guideline, or registering a collective agreement.[84]
- Should a collective agreement, MSO or minimum standards guideline provide for insurance arrangements for gig workers that are broadly comparable or equivalent to entitlement under the scheme, the government may choose not to extend coverage to a cohort.[85]
- The Bill provides the government with flexibility to respond to determinations of the FWC and to monitor developments at the federal level to determine if other groups of vulnerable workers should be covered by the scheme.[86]

77 OIR, department response to submissions 1 to 15, p 15.

78 Ai Group, submission 16, pp 4-7; BCQ, submission 10, pp 6-7; DoorDash, submission 6, pp 3-6; Uber, submission 9, pp 3-13; Menulog, submission 14, pp 4-8.

79 BCQ, submission 10, p 6.

80 Menulog, submission 14, p 5

81 Ai Group, submission 16, p 8.

82 Uber, submission 9, p 8.

83 Uber, submission 9, p 8.

84 OIR, department response to submissions 1 to 15, p 11.

85 OIR, department response to submissions 1 to 15, p 9.

86 OIR, department response to submissions 16 and 17, pp 9-10.

- Should the FWC make the relevant instrument and should the Queensland Government consider exercising its regulation power, it would still be obliged to conduct a further regulatory impact analysis which would include consultation with industry.[87]

Committee comment

We recognise the concerns of both those who argue that gig workers be included in the scheme more quickly and those who argue more time is needed for work at the Commonwealth level to be completed. However, we believe that the Bill as currently drafted strikes the correct balance. The Bill will enable the Queensland Government to assess the shape and scope of action at the federal level and respond to that action in a timely manner. This will help ensure that gig workers receive the workers' compensation cover and support they need while at the same time allowing gig platforms to operate in a nationally consistent regulatory environment.

2.1.2.1 Potential issue of fundamental legislative principles

The proposed amendments seek to expand the meanings of 'worker' and 'employer' by reference to Commonwealth legislation, that is, the Fair Work Act, combined with the making of a regulation. This represents a delegation of legislative power. According to the explanatory notes, under the Bill, coverage of a worker in the scheme is not automatic if an MSO, minimum standards guideline has been made by the FWC for regulated workers or a collective agreement applies:

> Instead, once a minimum standards order, minimum standards guideline or a collective agreement applies it is then open to the government to consider if a regulation should be made. In making this decision it would be appropriate to consider the terms included in a minimum standards order (which can include insurance); any current insurance arrangements that might already exist and how they compare to entitlements in the scheme; impacts on sustainability of the scheme; business administrative and compliance costs; regulatory burden; and impacts on the relevant industry. It is noted these issues would need to be considered as part of separate regulatory impact analysis and would be subject to further public consultation.[88]

Additional to these regulatory safeguards, the explanatory notes seek to justify the delegation by stating that the proposed regulation-making power will be subject to Parliamentary scrutiny, as subordinate legislation prescribing workers and employers will be able to be subject to a disallowance motion under section 50 of the *Statutory Instruments Act 1992*.[89]

QLS stated that altering the definition of worker by regulation rather than an act of Parliament fails to have sufficient regard for the institution of Parliament and therefore would breach fundamental legislative principles:

> To allow for one of the fundamental concepts that underpins the very reason why the statute was enacted to be capable of amendment by a minister, without proper accountability to the Parliament and the Queensland public, is simply wrong. It must not be permitted. The definition of worker is one of the pillars on which this statute is based and Parliament must be accountable and responsible for determining who is covered by the statute as it puts at risk the entire scheme which this statute provides.[90]

However, QCU stated:

> when you set clear parameters for who would and would not be deemed to be a worker covered or not covered, the gig companies can then take those parameters and slightly change how they engage these workers to say that they are not covered by it, which then moves into other legal battles.[91]

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87 OIR, department response to submissions 1 to 15, p 12.

88 Explanatory notes, pp 8-9.

89 Explanatory notes, p 11.

90 Submission 12, pp 4-5.

91 Jared Abbott, Assistant General Secretary, QCU, public hearing transcript, Brisbane, 20 May 2024, p 27.

In response to QLS's concern, the Department of State Development and Infrastructure (department) stated that the delegation of legislative power was 'considered appropriate and justifiable as the provisions are beneficial in nature and the head of power is sufficiently defined and narrow in its application':[92]

> The Bill sets clear parameters of who will qualify as a 'worker' or 'employer' (i.e., persons covered by a minimum standards order, minimum standards guideline or collective agreement). This head of power ensures that any changes to the scope in the WCR Regulation are moderated against the express criteria defined by the WCR Act.[93]

The department acknowledged the complex nature of the potential coverage of regulated workers but that the approach taken in the Bill is not unusual in the WCR Act, other legislation or other jurisdictions. Furthermore, the department argued that this approach ensures the government could respond quickly to federal decisions and keep pace with the changing nature of work, particularly in the gig economy. The department emphasised the safeguards in place that ensure regulations are subject to the scrutiny of the Legislative Assembly and disallowance motions, as well as being subject to regulatory impact analysis.[94]

Committee comment

We note that the Bill's approach to expanding the meanings of 'worker' and 'employer' is intended to provide flexibility for the Queensland Government to clarify the workers' compensation status of gig workers as informed by consideration of the legal status of gig workers nationally. We support the view that this will also assist in helping the government to keep pace with the ever-changing nature of gig work in the regulatory environment. We also note that there will be safeguards to address the potential breach of fundamental legislative principles, including that the State will need to decide to make a regulation in any given circumstances (which will be subject to Parliamentary scrutiny and disallowance). Given the intention of the provisions to support gig workers who are 'employee-like' and currently have 'reduced workplace entitlements and protections including workers' compensation coverage',[95] we are satisfied that the proposed amendments are adequately justified and that it is appropriate for these terms to be, in part, subject to definition through subordinate legislation.

2.1.3 Presumed diseases, qualifying periods and 'day work' for firefighters

The Bill seeks to extend the list of diseases that it is presumed a firefighter acquired at work (presumed diseases) from 12 to 22. Among these additional presumed diseases are primary site liver cancer, primary site lung cancer and primary site skin cancer. The Bill also proposes to alter how the qualifying period for firefighters to access this presumed diseases provision is calculated.[96]

The proposed extension of the list of presumed diseases was welcomed by UFUQ and QCU.[97] In particular, the QCU commended the government for:

> …ensuring that Queensland's firefighters receive the fairest and most appropriate benefits in the country with respect to deemed diseases coverage. The amendment positions Queensland as a world leader in best practice.[98]

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92 Department of State Development and Infrastructure, correspondence dated 22 May 2024, p 3.

93 Department of State Development and Infrastructure, correspondence dated 22 May 2024, p 3.

94 Department of State Development and Infrastructure, correspondence dated 22 May 2024, pp 3, 4.

95 Explanatory notes, p 11.

96 Explanatory notes, p 6.

97 UFUQ, submission 5, p 2.

98 Submission 12, p 8.

Both organisations also welcomed the proposed changes to the calculation of qualifying periods for presumed diseases which will include aspects of 'day work' where a firefighter attends a fire but is not directly involved in 'putting the wet stuff on the hot stuff'.[99] Nonetheless, in relation to qualifying periods, UFUQ and QCU were concerned that the Bill does not address situations when firefighters have taken leave for over 12 months and thus will not meet the threshold of performing 'relevant duties' during the qualifying period.[100] QCU notes that this will likely 'disproportionately affect women firefighters' access to the presumptive pathway as they are more likely to take extended maternity-related leave'.[101]

In response, the OIR advised:

- There are no specific restrictions on access to workers' compensation for firefighters on extended leave, and firefighters can also apply under the standard pathway for workers' compensation.
- The current provisions and proposed amendments for qualifying periods are based on the principles of exposure and latency. As such, a firefighter on a period of extended leave beyond a year will not have been exposed to hazards in that year.
- Similar concerns were raised during the 2023 Review into the WCR Act which recommended that qualifying periods for new diseases, and the issue of treatment of extended leave, be referred to the Special Commissioner, Equity and Diversity for consideration.

Committee comment

Like submitters to the inquiry, we applaud the Queensland Government for extending the range of diseases for firefighters that are presumed to have been work related. We also support the changes to qualification periods, so those firefighters engaged in 'day work' have their potential exposure recognised.

We note the Department of State Development and Infrastructure's unwillingness to examine the issue of extended leave until it has been considered by the Special Commissioner, Equity and Diversity. We are concerned that no timetable has been established for that consideration and encourage the department to provide an update on the timeframe as soon as possible.

2.1.4 Employer must not take action to avoid compensation process

Clause 29 inserts a new offence provision (section 36A) that prohibits an employer from giving a benefit or causing detriment to a person for the substantial reason of influencing an injured worker to refrain from making an application for compensation or pursuing an entitlement to compensation for their injury. The aim of this provision is to prevent employers from either replacing or circumventing the workers' compensation scheme, for example, by offering a lump sum alternative to submitting a compensation claim.[102]

The proposed new offence provision was welcomed by the Shop, Distributive and Allied Employees' Association, Queensland Branch (SDA) and QCU.[103] QCU explained that, as well as benefitting vulnerable Queenslanders who may find themselves in insecure work and therefore more likely to be persuaded out of making a claim, the proposed amendment would also improve return to work outcomes:

99 Submission 5, p 3.

100 Submission 5, pp 4-5.

101 Submission 13, p 22.

102 Explanatory notes, p 20.

103 SDA, submission 8, p 3; QCU, submission 13, p 9.

> Put simply, workers who are concerned about making a claim have poorer return to work outcomes. The amendment recognises this and attempts to positively influence return to work outcomes by changing employer conduct which is the very cause of many workers' concerns about making a claim. [104]

The Ai Group, however, expressed a concern that the new provision might unnecessarily penalise an employer who is not engaging in so-called 'claim suppression' but is genuinely wishing to support their employee.[105] As Ai Group explained:

> Often we find with our members that they may have workers who have an injury but they are reluctant to put in a claim. They do not want to be part of the workers compensation scheme, so the employer in goodwill, even though they should not do it as the legislation is written, will pay the worker maybe a week or two of payment for compensation and they may pay some medical bills. It is not actively because they are trying to avoid paying premiums or suppress claims. They often do not understand those obligations and just want to help the worker who does not want to go through that claims process.[106]

In response, the OIR explained that the provision will only be contravened 'if a benefit or detriment provided by the employer was for the substantial purpose of influencing the worker not to make a claim'.[107] Additionally, as the proposed provision is an offence, the prosecution will need to meet the criminal standard of proof (beyond reasonable doubt).[108]

2.1.5 Worker information statement

Clause 29 inserts a new offence provision (section 46B) that requires an employer to give a worker a statement providing information about the scheme before or as soon as practicable after the worker starts employment. The statement and the way in which it is given must comply with any requirements prescribed by regulation. Consistent with this, amendments to the WCR Regulation under clause 64 of the Bill provide for the statement to be approved and published by the Regulator and prescribe minimum content requirements. An employer is only required to give a statement to a worker before or as soon as practicable after a worker starts employment. This requirement applies unless the worker received the statement in the previous 12 months.[109]

Several employer representatives were concerned the new requirement to provide a worker information statement would create an administrative and cost burden for employers without any demonstrable benefit, noting that not providing a statement may incur a penalty. While Master Builders provided advice that a range of information is already provided by employers to employees at the commencement of employment, including employment terms and conditions, safety procedures and employee entitlements,[110] these submitters suggested that the insurer should be responsible for providing the information statement to an injured worker after an application for compensation is lodged.[111]

The Ai Group was concerned that an employer, particularly if they have not engaged in the scheme previously, may not know what their obligations are in relation to providing employees with

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104 Submission 13, p 9.

105 Ai Group, submission 16, p 8.

106 Ai Group, public hearing, Brisbane, 20 May 2024, p 31.

107 OIR, department response to submission 16 and 17, p 13.

108 OIR, department response to submission 16 and 17, p 13.

109 Explanatory notes, pp 20-21.

110 Craig Dearling, General Manager, Workforce Services, Master Builders Queensland, public hearing transcript, Brisbane, 20 May 2024, p 8.

111 Business Chamber Queensland, submission 10, p 7; Master Builders, submission 4, p 2. See also, Craig Dearling, General Manager, Workforce Services, Master Builders Queensland, public hearing transcript, Brisbane, 20 May 2024, p 7.

information about the scheme and that advice on this could be provided with premium notices every year.[112]

However, the SDA and QCU supported the amendments with QCU stating that employees being informed of their rights assists them to access workers' compensation if needed and keep them engaged in the process in terms of their RRTW plan.[113] QCU supported providing the information when a claim is lodged *as well as* at the time of commencement of employment.[114]

The OIR advised that the approach taken in the Bill is similar to the provision of Fair Work Information Statements used by national system employers in the federal industrial relations system whereby employers must give each employee a statement, prepared by the Fair Work Ombudsman, that addresses basic employment law rights and concepts including minimum employment standards and entitlements. In support of providing the statement at the commencement of employment, the OIR argued that it:

- increases awareness of rights
- ensures the worker has knowledge of their rights and obligations in the workers' compensation process prior to a workplace injury
- that at the time of an injury, a worker has increased vulnerability and may find it more difficult to learn about their rights in the scheme
- provides time for the worker to seek clarification or further information prior to any injury.[115]

Committee comment

We note that business groups were concerned that requiring an employer to provide information about the workers' compensation scheme before or as soon as practicable after the worker starts employment would create an administrative and cost burden for businesses. We note these submitters have suggested that insurers instead provide the information to the injured worker once a claim is lodged. In this regard, we note the Bill takes a similar approach to that of Fair Work Information Statements where employers use a template that is prepared by the Fair Work Ombudsman. We are of the view that employers using a template to advise employees about the workers' compensation scheme would not increase administration or costs for an employer. Furthermore, we note that a range of information is already provided to employees at the commencement of their employment. It is our view that the benefits of incorporating the worker's information statement into this information pack at the commencement of employment far outweigh the negligible administrative burden it would place on employers. We support the Department of State Development and Infrastructure's assertion that it would increase employees' awareness of their rights, which is particularly important for young workers and those workers who either may not have any knowledge of the scheme or have had no contact with the scheme previously.

There was also concern that employers may not be aware of their obligations, which means they could receive a penalty if they, unknowingly, do not comply with the requirement. In this regard, we encourage the department to conduct an education campaign with employer groups and investigate options for ensuring employers are made aware of their obligations should the Bill pass.

[112] Tracey Browne, Manager, National WHS and Workers' Compensation Policy and Membership Services, Ai Group, public hearing transcript, Brisbane, p 29.

[113] Submission 13, p 11.

[114] Nate Tosh, Legislation and Policy Officer, QCU, public hearing transcript, Brisbane, 20 May 2024, p 26.

[115] OIR, department response to submission 1 to 15, p 28.

2.1.6 Steps for rehabilitation and return to work

Clause 41 inserts new section 221 (Steps for rehabilitation and return to work – rehabilitation and return to work plan) and new section 221AA (Steps for rehabilitation and return to work – provider of rehabilitation services). According to the explanatory notes, the amendment builds on existing RRTW planning requirements by introducing a new requirement for RRTW plans to be in place within 10 business days after the worker's application for compensation is allowed. In recognition that not all relevant information may be available to prepare a comprehensive plan for the worker within 10 business days, plans must be kept under review and modified as further information becomes available, the worker's progress against the plan is assessed, and decisions are made. Additionally, plans must be prepared and reviewed in consultation with the worker, the employer and registered persons to the extent that it is reasonably practicable to do so.[116]

2.1.6.1 Clarity on who is responsible for updating the RRTW plan

Several submitters expressed support for the amendments that would, according to QCU, enshrine new rights for workers and and contribute 'to increasing workers' empowerment in the return to work process by providing greater control, autonomy, and consultation regarding return to work decisions and planning'.[117] QCU, however, stated section 221(3) (what an insurer must do in relation to the RRTW plan) could be drafted more clearly so the Bill states who is reviewing the worker's progress against an RRTW plan. Further, QCU stated that the Bill should require RRTW plans to be reviewed and modified according to current medical information. Lastly, QCU and UFUQ stated the Bill should be amended to require union representatives to be consulted about RRTW plans.[118]

The OIR addressed concerns in relation to who would review the RRTW plan by advising that the obligation to ensure an RRTW plan is in place rests with the insurer, not the employer. The OIR also addressed concerns regarding the ability to review and modify RRTW work plans according to current medical information:

> The Bill provides flexibility for the initial RRTW plan that is developed within 10 business days to be modified as further information becomes available and developments arises. Relevant information and developments would include new information about the worker's condition, prognosis and proposed treatment plan.[119]

The OIR did not directly address the recommendation that insurers be required to consult with union representatives; however, the OIR confirmed that when an RRTW plan is modified, the insurer has to consult with the employer and that it would not be open to or appropriate for an employer to disregard the plan and adopt their own approach as doing so would be a contravention of their general obligation to provide or assist rehabilitation. The OIR noted that the RRTW planning provisions in the Bill (section 221) 'were developed following a rigorous drafting process with Parliamentary Counsel and are informed by Parliamentary Counsel's advice about the level of detail appropriate for inclusion in the Bill'.[120]

2.1.6.2 10 business day timeframe for written RRTW plan

QLS was concerned that this provision would not allow sufficient time to properly consult the worker, their employer and their treating practitioner. Furthermore, in legislating this timeframe, QLS contended that this could result in some insurers using template plans to ensure compliance so as to avoid a penalty rather than focusing on a meaningful way forward.[121] In response, the OIR stated the

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116 Explanatory notes, p 23.

117 SDA, submission 3, p 3; QCU, submission 13, pp 13-14.

118 QCU, submission 13, pp 24, 25, 26; UFUQ, submission 5, pp 5, 6.

119 OIR, department response to submission 1 to 15, p 25.

120 OIR, department response to submission 1 to 15, p 25.

121 Submission 12, p 4.

Bill provides flexibility for the plan to be modified. The purpose of allowing flexibility, according to the OIR, is to ensure an RRTW plan 'is a living document to be updated as the worker's recovery progresses'. The OIR stated that the timeframe is to ensure that an RRTW plan is in place as soon as possible, noting that the level of detail will be dependent on the worker's injury.[122]

QCU did not support the inclusion of the words 'to the extent that it is reasonably practicable to do so' in relation to consulting with relevant parties when preparing and reviewing RRTW plans.[123] In this regard, the explanatory notes provide the example that the timing of consultation with a worker on their RRTW plan may depend on medical advice provided by a doctor or whether they are an inpatient.[124]

Committee comment

We are satisfied that the Bill's requirement for rehabilitation and return to work plans to be in place within 10 business days after the worker's application for compensation is allowed strikes a balance between having a plan in place as soon as practicable to support an injured worker while also providing flexibility to update the plan as new information and developments arise during the worker's recovery. We also note that in preparing and reviewing the RRTW plans, insurers are required to consult with the worker, employer and registered persons to the extent that it is reasonably practicable to do so. While it may not always be possible to consult extensively with an injured worker within the 10 business day timeframe depending on their medical situation, the flexibility to later review and modify the plan would address this concern. Consultation is required when plans are reviewed and modified.

2.1.7 Employer's obligation to assist or provide rehabilitation

Clause 42 replaces the requirement in existing section 228 (Employer's obligation to assist or provide rehabilitation) of the WCR Act for rehabilitation to be of a suitable standard with a requirement that employers take all reasonable steps required by scheme directions to assist or provide the worker with rehabilitation during the prescribed period for the worker. The current standard for rehabilitation (contained in guidelines made under regulation 116 of the WCR Regulation) will be transitioned to scheme directions and will remain mandatory for employers to comply with. The maximum penalty for non-compliance will increase from 50 to 500 penalty units to ensure internal consistency with other penalties in the WCR Act and provide an appropriate deterrent to offending.[125]

Master Builders did not support the provision as they were concerned it could result in an employer receiving a penalty when an insurer, after completing their own assessment, disagreed with an employer's statement that they had no suitable duties for an injured worker.[126] BCQ held a similar view, stating that 'to place those considerations in written format, open to scrutiny from parties who do not know or understand the workplace diminishes the ability of an employer to reach positions that are reasonable and considered'.[127]

In contrast, UFUQ and QCU supported the increase in penalties in relation to an employer's obligation to assist or provide rehabilitation.[128] However, both unions queried how the provision would be enforced. In this regard, the unions recommended that the Bill prescribe an obligation on insurers to reasonably consider exercising their power under section 229 to require an employer to pay a penalty for non-compliance, as well as prescribing a duty on insurers to report non-compliance to the

122 OIR, department response to submission 1 to 15, pp 24, 25.

123 Submission 13, pp 25, 26.

124 Explanatory notes, p 23.

125 Explanatory notes, p 23.

126 Submission 4, pp 3, 4.

127 Submission 10, p 9.

128 Submission 5, p 6; submission 13, p 10.

Regulator and other reporting measures. QCU also recommended that the Bill be amended to include a description of the steps taken or inquiries made to identify what suitable duties may be available.[129]

In response to Master Builders and BCQ, the OIR advised:

- the offence provision in section 228(3) does not apply to employers (it applies to insurers)
- the Bill does not expand an employer's existing RRTW obligation
- the WCR Act currently requires that if an employer considers it is not practicable to provide the workers with suitable duties, the employer must give the insurer written evidence that it is not practicable.[130]

The OIR concluded by stating that the only substantive change is that the Bill introduces an offence if an employer fails to provide evidence in support of its opinion that providing a suitable duties program is impracticable. In other words, the offence applies if the employer fails to provide any evidence at all. Significantly, in addressing concerns of employer groups, the penalty does not relate to the insurer's opinion on evidence that is provided, which is addressed by section 229.[131]

In response to enforcement, OIR advised that section 229 of the WCR Act provides an existing power to penalise employers who fail to take reasonable steps to assist or provide rehabilitation, including suitable duties programs. According to the OIR, Parliamentary Counsel advised that the operation of section 229 covers the concerns raised.

In regard to insurers notifying the Regulator of potential offending by an employer, OIR advised that clause 53 of the Bill establishes a framework for such reporting – refer to section 2.1.11. In addition, the WCR Regulation may further prescribe how an insurer is to give information to the Regulator (or to WorkCover, where applicable). The OIR advised that consultation will be undertaken prior to the making of a regulation.[132]

Committee comment

We are satisfied with the response from the Office of Industrial Relations addressing concerns about an employer's obligation to assist or provide rehabilitation: the offence does not apply to employers but rather insurers, and the Bill is not expanding the existing RRTW obligations, including that an employer is already required to provide written evidence to an insurer if they do not consider it practicable to provide the worker with suitable duties. The amendment that impacts employers is the new offence regarding failure to provide any evidence in support of their opinion that providing a suitable duties program is impracticable. This penalty does not relate to the insurer's opinion of that evidence.

2.1.8 Minimising risk of psychological harm

Clause 46 inserts a new Part 5B (Minimising risk of psychological harm) into Chapter 4 of the WCR Act. This includes two new provisions intended to minimise the risk of secondary psychiatric or psychological injury claims. The provision (section 232AC) applies if an insurer allows an application for compensation for a physical injury sustained by a worker. It requires the insurer to take all reasonable steps to minimise the risk of the worker sustaining a psychiatric or psychological injury arising from the physical injury; this also includes providing reasonable services. The insurer's obligation continues until the worker's entitlement to compensation ends. Section 232AD (Extent of liability for fees and costs) requires the insurer to pay fees and costs for medical treatment or other

[129] Submission 13, pp 28, 29; submission 5, p 6.

[130] OIR, department response to submission 1 to 15, p 26.

[131] OIR, department response to submission 1 to 15, p 26.

[132] OIR, department response to submission 1 to 15, p 27.

services provided under section 232AC as accepted by the insurer to be reasonable having regard to the relevant table of costs, or otherwise as approved by the insurer.[133]

Unions supported the amendments, with the SDA noting that psychological trauma can be a result of experiencing negative psychological reactions to an initial physical injury, abuse from a customer, or an employee feeling a lack of support from management when reporting an incident and/or when navigating the workers' compensation claim process.[134] QCU considered more could be done 'to prevent a worker from experiencing the negative psychological reactions which hinder return to work and promote the positive psychological reactions which enable return to work'.[135] In this regard, both QCU and UFUQ suggested the Bill include examples of 'reasonable services' that must be provided to a worker to ensure clear guidance exists on the intent of the amendment, e.g. adjustment to injury counselling.[136]

In response, the OIR noted the examples of what 'reasonable services' under the Bill may include but are not limited to including adjustment to injury counselling, workplace facilitated discussions, or support from a psychologist or a rehabilitation counsellor. A code of practice will be developed to support insurers to meet the obligation to take all reasonable steps to minimise the risk in consultation with key stakeholders and informed by best practice research and expert advice. The OIR further advised that the code will outline practical steps to be taken by insurers and is likely to include details of what is considered 'reasonable services'.[137]

Committee comment

Like submitters, we support the introduction of new provisions that aim to minimise the risk of secondary psychiatric or psychological injury claims. We note that some submitters seek the inclusion of examples of 'reasonable services' in the Bill. However, we note that a code of practice will be developed to support insurers with their obligations and that the code is likely to include more details of what would constitute 'reasonable services', an approach we support for the flexibility it provides to ensure that services reflect contemporary best practice and advice.

2.1.9 Scheme directions and codes of practice

Scheme directions

The Bill proposes that the Regulator may, with the approval of the Minister, make scheme directions:[138]

- required or permitted to be made by a provision of the Act
- providing for matters prescribed by regulation.[139]

133 Explanatory notes, p 24.

134 Submission 8, p 3; Justin Power, Branch Secretary, SDA, public hearing transcript, 20 May 2024, Brisbane, p 21.

135 Submission 13, pp 29-30.

136 Submission 13, p 30; submission 5, p 7.

137 OIR, department response to submissions 1 to 15, pp 21, 22.

138 The Bill includes a new scheme direction provision (clause 49) which enables the Workers' Compensation Regulator to set mandatory standards in prescribed circumstances by making scheme directions to support the Workers' Compensation Regulator's enforcement functions. Existing prescribed legislative standards and guidelines will be transitioned to a scheme direction including the Guideline for the Evaluation of Permanent Impairment and the Guidelines for Standard for Rehabilitation for employers. Explanatory notes, p 3.

139 Clause 49 (Act inserts s 329A(1)).

The explanatory notes state that existing prescribed legislative standards and guidelines, such as the Guideline for the Evaluation of Permanent Impairment and the Guidelines for Standard for Rehabilitation for Employers, will be transitioned to a scheme direction.[140]

Additionally, the proposed amendments provide that:

- in securing the worker's rehabilitation and early return to suitable duties, the insurer must ensure that each provider of workplace rehabilitation services meets the requirements prescribed by the scheme directions,[141] along with meeting any new or changed requirements as soon as practicable[142]
- the employer of a worker who has sustained an injury must, among other things, take the action required by the scheme directions to assist or provide the worker with rehabilitation.[143]

Codes of practice

The Bill proposes that the Minister may make codes of practice[144] under the WCR Act, which may:[145]

- state action to be taken by an insurer, employer or other person in performing functions, exercising powers or complying with obligations under the WCR Act[146]
- prescribe 'reasonable steps' for a 'reasonable steps offence'.[147]

Unions were supportive of the provisions but sought additional amendments:

- The Bill should be amended so scheme directions are subject to review at least once every 5 years in order that they remain contemporary and reflect evidence-informed best practice. Or, the Guidelines should be transferred to a code of practice, so they are subject to the regularly review prescribed at section 486A(5).[148]

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140 Explanatory notes, p 3.

141 Under the Bill, the scheme directions may prescribe requirements for providers of workplace rehabilitation services relating to service delivery and competency and professional standards. Bill, cl 41 (Act inserts s 221AA(1)-(2)).

142 Clause 41 (Act inserts s 221AA(3)).

143 During the prescribed period for the worker. Bill, cl 42 (Act replaces 228(1)).

144 The Bill also expands existing code of practice provisions (clause 50) which are currently limited to insurer claims management to allow coverage of matters such as RRTW for employers or other persons with an obligation under the WCR Act. Codes of practice may prescribe steps to be taken by a person to comply with an offence provision that requires 'reasonable steps' to be taken, including an insurer's duty to take all reasonable steps to secure the rehabilitation and early return to suitable duties of workers (section 220), an employer's duty to take all reasonable steps to assist or provide rehabilitation (section 228), a host employer's duty to cooperate with a labour hire provider (new section 229A), and an insurer's obligation to provide reasonable support services for workers who make a psychiatric or psychological injury claim (section 232AB). Explanatory notes, pp 3-4.

145 Clause 50 (Act inserts s 486A(1)-(3)).

146 For example, action in relation to training and development for claims managers or other staff or contractors, referring workers to early support services for psychiatric or psychological injuries, or managing complaints against providers of workplace rehabilitation services or employers.

147 These provisions include an insurer's duty to take all reasonable steps to secure the rehabilitation and early return to suitable duties of workers (existing s 220), an employer's duty to take all reasonable steps to assist or provide rehabilitation (existing s 228), a host employer's duty to cooperate with a labour hire provider (new s 229A), and an insurer's obligation to provide reasonable support services for workers who make a psychiatric or psychological injury claim (s 232AC).

148 QCU, submission 13, pp 31, 32; UFUQ, submission 5, p 8.

The OIR noted that while the Bill retains the requirement for a code of practice to be reviewed at least once every 5 years, the requirement does not apply to scheme directions. The OIR advised that the issue was not raised during stakeholder consultation on the development of the Bill, but that review of scheme directions would be 'able to be facilitated administratively'.[149]

Committee comment

We note the advice of the Office of Industrial Relations that the regular review of scheme directions was not raised during consultation on the draft Bill. While the OIR has not committed to amending the Bill to address the concerns of stakeholders, it has indicated that regular reviews of scheme directions could be facilitated administratively rather than by means of legislation. We note, however, that should the Bill pass, there is no guarantee that regular reviews of scheme directions will occur to ensure their content and approach is contemporaneous. As such, we encourage the OIR and Department of State Development and Infrastructure to inform stakeholders during the implementation of the Bill of its plans to review scheme directions.

2.1.9.1 Potential issues of fundamental legislative principles – delegation of legislative power

In relation to the making of scheme directions and codes of practice, the committee considered whether the Bill has sufficient regard to the institution of Parliament on the matter of the delegation of legislative power only in appropriate cases and to appropriate persons.[150]

Although the explanatory notes do not address the proposed scheme direction amendments in terms of their consistency with fundamental legislative principles, they do acknowledge that the power to make scheme directions will enable the Regulator to set mandatory standards in prescribed circumstances to support the Regulator's enforcement functions.[151] Seeking to provide the Regulator with such power represents a delegation of legislative power to the Regulator. In summary, scheme directions will require insurers, employers and providers of workplace rehabilitation services to undertake specified matters. These delegations, which appear broad in scope, will have impacts on individuals, including workers who are recovering from an injury.

According to the explanatory notes, the proposed amendments also seek to expand the WCR Act's existing code of practice provisions, which are currently limited to insurer claims management, to allow coverage of matters such as rehabilitation and return to work for employers.[152] In doing so, the Bill proposes to delegate legislative power to the Minister. The proposed amendments provide examples of what may be included in a code of practice, but the examples form part of a non-exhaustive list. It appears that the scope to make codes of practice is broad in nature and will impact individuals, including workers who are recovering from an injury.

The Bill provides that scheme directions and codes of practice are exempt subordinate legislation.[153] According to the department, this would provide an appropriate safeguard as subordinate legislation must be tabled within 14 sitting days of being notified and is subject to disallowance and able to be considered and reported on by a parliamentary committee. The department also advised that the making of a scheme direction or code of practice will be subject to further safeguards under

149 OIR, department response to submissions 1 to 15, p 23.

150 LSA, s 4(4)(a), (b).

151 Explanatory notes, p 3.

152 Or other persons with an obligation under the Act, such as, host employers. Explanatory notes, p 3.

153 Bill cl 49 (Act inserts ss 329A(2), 486A(4)). Exempt legislation refers to subordinate legislation that is exempt from being drafted by the Office of the Queensland Parliamentary Council: Department of Premier and Cabinet, *Legislation Handbook*, January 2020, section 6.2.

Queensland Government policy, which would require any scheme direction to be subject to a regulatory impact analysis process, including consultation with affected stakeholders.[154]

Committee comment

We note the department's justifications in relation to the delegation of power, including that a scheme direction or code of practice will be subject to a regulatory impact analysis and consultation process with affected stakeholders. We also note the department's advice that scheme directions and codes of practice will be made exempt subordinate legislation and therefore subject to tabling in the Legislative Assembly, disallowance and committee scrutiny. We also note that although published in the Queensland Government Gazette, it does not appear there are any other requirements to publish scheme directions or codes of conduct.

However, we are satisfied that in relation to the making of scheme directions and codes of practice, the Bill has sufficient regard to the institution of Parliament.

2.1.10 WorkCover's power to penalise non-compliance with section 146A

The Bill inserts a new provision (clause 35) to compel employers to provide wage information within 5 business days of the insurer's request to ensure prompt calculation of weekly compensation entitlements, with penalties for non-compliance.[155] QCU is supportive of the provision as it would ensure injured workers receive more timely wage replacement benefits. However, QCU was concerned about compliance and recommended the Bill be amended to require WorkCover to reasonably consider exercising its power to prescribe a penalty on employers under new section 146A.[156]

The OIR stated that ensuring consistency of powers across the WCR Act was important, noting that WorkCover's penalty powers in section 146A are broadly consistent with its other powers in the WCR Act. The OIR argued that the powers are designed to give WorkCover discretion as to whether to impose a penalty in a particular case. The purpose of this approach is to enable WorkCover to recoup the costs of taking action that should otherwise have been taken by a non-compliant employer, rather than being punitive in nature.[157]

2.1.11 Duty to report

New section 537A within new Part 3 consolidates existing reporting requirements in section 325Y (Insurer's duty to report non-compliance) and section 536 (Duty to report fraud or false or misleading information or documents) into a single provision. It makes minor changes to tests for reporting by requiring reporting entities to inform the Regulator or WorkCover (as applicable) if they form a reasonable belief that a reportable offence is being or has been committed. A regulation may prescribe additional reportable offences and how and when information must be given to the Regulator or WorkCover.[158]

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154 Department of State Development and Infrastructure, correspondence dated 22 May 2023, p 5.

155 Explanatory notes, pp 8, 21: New section 146A requires WorkCover to request information necessary to calculate a worker's weekly compensation entitlement from the worker's employer before or immediately after allowing the worker's application for compensation. An employer who fails to comply without a reasonable excuse will commit an offence (with a maximum penalty of 300 penalty units) and may be required to pay a penalty to WorkCover where WorkCover pays the worker's basic weekly (default) payments under new section 146B. The employer may apply to WorkCover to waive or reduce a penalty and may have WorkCover's decision reviewed by the Workers' Compensation Regulator under Chapter 13.

156 Submission 13, pp 24, 25.

157 Office of Industrial Relations, response to submissions 1 to 15, p 32.

158 Explanatory notes, p 25.

QCU was concerned that the Bill failed to implement the intent of recommendation 31 of the 2023 Review: to impose a duty on insurers to report employer non-compliance to the Regulator. QCU argued that while the Bill prescribes a duty on insurers to report offences, 'it simply consolidates into one provision the offences in the Act that currently include a duty to report (none of which relate to employer offences)', and therefore called for the Bill to prescribe all reportable employer offences.[159]

The OIR addressed QCU's concerns stating that the Bill would provide for WorkCover (and all insurers) to report additional employer offences by prescribing other offences by regulation, which would provide a mechanism to respond to QCU's issues. The OIR advised that scheme stakeholders would be consulted in the development of the regulation for the duty to report and noted that any party is already able to report an offence to the Regulator.[160]

Several submitters were also concerned that the requirement for insurers to report suspected offending to the Regulator could potentially delay compliance if insurers immediately refer the matter to the Regulator. Additionally, there were questions whether the increase in reporting requirements would increase demand for the resources of the Regulator, particularly for issues that some submitters considered could be readily addressed by the self-insurer or WorkCover.[161] To increase compliance, Ai Group submitted that the provision should include a requirement for the insurer, prior to reporting suspected offending to the Regulator, to demonstrate that they have previously:

- advised the offending party of their legal obligations in relation to the matter
- provided guidance on how to comply
- allowed an appropriate time for the offending party to comply
- warned the offending party of their obligation to report the offence to the Regulator
- advised the offending party of the potential action the Regulator may take in relation to the matter.[162]

While not directly addressing Ai Group's proposed additional requirements for insurers, the OIR provided its reasons for consolidating existing reporting obligations for suspected offences in the WCR Act and ensuring additional reportable offences can be prescribed by regulation: it would increase flexibility and reduce the administrative burden from individual reporting; allow for certain offences, particularly those that are administrative in nature, to be reported in batches such as monthly reporting; and enable consideration to be given to the circumstances in which offences should be reported, an approach that would allow the Regulator to consult with insurers on the offences to be prescribed.[163]

The OIR acknowledged that the expanded duty to report provisions would impact on the Regulator's workload, and resourcing requirements would be considered as part of the implementation plan for the Bill.[164]

2.1.12 Compliance notices

New provisions under clause 53 provide a framework for the issuing of compliance notices (similar to improvement notices under the *Work Health and Safety Act 2011*) for contraventions of the WCR Act

159 Submission 13, p 34.

160 Office of Industrial Relations, response to submissions 1 to 15, p 23.

161 Ai Group, submission 16, p 10; Queensland Law Society, submission 12, p 5.

162 Ai Group, submission 16, p 10.

163 OIR, department response to submissions 16 and 17, p 14.

164 OIR, department response to submissions 16 and 17, p 15.

with an offence for not complying with a compliance notice. Notices will be subject to internal review by the Regulator and appeal by the Queensland Industrial Relations Commission (QIRC).[165]

QCU opposed provisions in the Bill that stay the operation of a compliance notice while a review or appeal of the notice is on foot.[166] The OIR advised that the ability to stay the operation of a compliance notice is to ensure fairness to the recipient of the notice during the conduct of the review or appeal. Otherwise, notice recipients would be required to action matters that are under review or appeal (even if the notice is ultimately set aside) or would commit an offence for failing to comply with the notice. The OIR further argued that the Bill balances this by enabling the QIRC to lift the stay on the operation of a compliance notice if satisfied it is in the interests of justice to do so – either on its own initiative or on the application of the Regulator. It was noted that the issue was not raised in stakeholder consultation on the development of the Bill.[167]

2.1.13 New and increased penalties

The Bill establishes a range of new offences with penalties and increases the penalties currently applicable to existing offences.

There was some commentary on the significant increases to maximum penalties to an employer, with one submitter noting some of the increases are 10-fold. The Ai Group provided the example of the current offence related to an employer's obligation to assist or provide rehabilitation (section 228) having a maximum penalty of 50 penalty units ($7,740), and the Bill amending this penalty to 500 penalty units ($77,400).[168] While acknowledging that compliance is important to the worker and employer (to ensure the ongoing financial viability of the scheme), these submitters argued that employers are not always aware of their legal obligations in relation to workers' compensation, particularly for small to medium organisations that have perhaps not been recently exposed to the processes of a workers' compensation claim. Submitters called for a comprehensive awareness and education program that highlighted the new obligations and related maximum penalties.[169]

The OIR advised that the implementation of the Bill will be supported by targeted education and communication initiatives and also noted that industry groups such as Ai Group will have a role in educating businesses if the Bill is passed.[170]

2.1.13.1 Potential issue of fundamental legislative principle – penalties should be proportionate and consistent within legislation

The committee considered whether the proposed increases to maximum penalties for a range of existing offences and the creation of new offences have sufficient regard to the rights and liberties of individuals under the LSA in that a penalty should be proportionate to the offence and penalties within legislation should be consistent.

In relation to proportionality, once increased, these offences will attract maximum penalties ranging from 300 penalty units ($46,440) to 1,000 penalty units ($154,800). Although these maximum penalties are consistent with the existing range of maximum penalties for the WCR Act's current offences, that is, from 10 penalty units ($1,548) to 1,000 penalty units ($154,800), the percentage increase in some of the maximum penalties (the greatest being 1,900 per cent) represent significant increases.

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165 Explanatory notes, p 7.

166 Submission 13, p 35.

167 OIR, department response to submissions 1 to 15, p 24.

168 Submission 16, p 9.

169 Submission 16, pp 9, 10.

170 OIR, department response to submissions 16 and 17, p 13.

In response to the committee seeking further information, the department advised that it had undertaken 'extensive analysis to inform the penalty values proposed for the new offences, and the increases proposed to existing offences', and that it had consulted with the Department of Justice and Attorney-General in relation to the proposed penalty values.[171]

The department explained that the increases to penalty unit values for certain existing offences would 'resolve internal inconsistencies within the WCR Act arising from disproportionately low penalty unit values that undermine the importance and deterrent value of the offences', providing the following example:

> For example, failure to comply with an insurer's rehabilitation obligation under section 220 or an employer's rehabilitation obligation under section 228 attracts a maximum penalty of only 50 penalty units – one of the lowest penalty unit values in the WCR Act. These provisions are the primary mechanism for securing the rehabilitation of injured workers in the scheme, which is a key object of the scheme (see section 5(2)(f)). By contrast, other offences which are ancillary to the operation of the scheme, such as claims farming offences (see chapter 6B), attract a far higher penalties of up to 300 penalty units.[172]

The department added that the proposed increases also addressed concerns from the 2023 Review about Queensland's RRTW performance compared to other jurisdictions and community expectations about the enforcement of workers' compensation offences. The department also noted:

- the penalty values for offences in the WCR Act were set in 2003 when the Act was developed and have not been updated
- the penalty unit values in the WCR Act are maximum limits, and courts may impose lesser penalties.[173]

In relation to consistency, in terms of the new offences generally, the Bill's proposed maximum penalties are consistent with the existing range of maximum penalties for offences in the Act, which range from 10 penalty units ($1,548) to 1,000 penalty units ($154,800).

Committee comment

We are satisfied with the department's explanation for the Bill's proposed increases to maximum penalties for a range of existing offences, which have not been updated in over 20 years, and the creation of new offences which will have their penalty values aligned with the increased penalties for existing offences. We support the view that the increased penalty values will support compliance with requirements under the WCR Act, which may positively impact Queensland's RRTW performance. We note that the court will have the ability to impose lesser penalties if deemed appropriate. We also note that the new offences generally are consistent with the existing range of maximum offences in the WCR Act.

In this regard, we consider the proposed increased penalties for existing offences and the proposed new offences are appropriate, reasonable, proportionate and consistent in the circumstances, such that they have sufficient regard to fundamental legislative principles.

[171] Department of Statement Development and Infrastructure, correspondence dated 22 May 2024, Attachment 1, p 2. The department provided a copy of the analysis as part of this correspondence.

[172] Department of Statement Development and Infrastructure, correspondence dated 22 May 2024, Attachment 1, p 2.

[173] Department of Statement Development and Infrastructure, correspondence dated 22 May 2024, Attachment 1, pp 2, 3.

2.1.14 Definition of 'workplace' – compatibility with the *Human Rights Act 2019*

Clause 61 amends the existing definition of 'workplace' to clarify that an authorised person may at any time enter a place that is, or that the authorised person reasonably suspects is, a place of business of an insurer.

Clause 61 was considered in relation to its compatibility with section 25 of the HRA: that is, the right not to have a person's home unlawfully or arbitrarily interfered with. There are existing safeguards in sections 518(3) and 519(2) of the WCR Act, and an express limitation in section 525 on entry into places used solely for residential purposes. In relation to clause 61, the limitation in section 525 does not apply to a place used for both residential and work purposes and therefore does not appear to be a safeguard against the exercise of the entry power into a person's home if it is also a home from which they work. The concern is whether the existing limitation is sufficient to protect against the entry power resulting in an arbitrary interference with a place in which a person both lives and works.

The department clarified that the purpose of the amendment to include a place of business of an insurer is to support the new compliance notice framework introduced by the Bill by clarifying that an authorised person may enter the place of business of an insurer, or suspected place of business of an insurer to perform a function under the WCR Act.[174]

The department advised that the amendment does not amend the other existing components of the definition of a 'workplace' and does not make any changes relevant to entry to residential premises.[175] The department also confirmed that as:

> the amendments are limited to entry on insurer places of business, and do not affect existing powers to enter, it is not considered that the amendment itself engages human rights. [176]

Committee comment

We note the department's advice that the Bill does not amend the existing components of a 'workplace' but will authorise entry into a place of business of an insurer. The existing limitation on entry into places used solely for residential purposes will remain. We note a principal place of business is the location from which a company operates its business. For an insurer, this is unlikely to be a person's place of residence, and for this reason we are satisfied that clause 61 is compatible with the *Human Rights Act 2019.*

2.1.15 Other concerns

2.1.15.1 Coverage of student nurses and midwives

QNMU was concerned that student nurses and midwives who, on practical placement and performing some tasks that would normally be done by a nurse or midwife, may be exposed to the same occupational risks, including psychosocial risks. QNMU noted that students do not fall under the provisions of the WCR Act which deem 'unpaid interns' to be 'workers' for the purposes of workers compensation, which means 'there is a gap in mandatory workers' compensation for students on placement. Although QNMU did not have statistics on the number of injuries of students in this regard, as universities and training organisations 'report incidents through internal mechanisms and do not publish this data', QNMU considered the lack of coverage for students undertaking the same duties to be 'a critical issue that requires further attention'.[177]

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174 Department of State Development and Infrastructure, correspondence dated 22 May 2024, Attachment 1, p 1.

175 Department of State Development and Infrastructure, correspondence dated 22 May 2024, Attachment 1, p 1.

176 Department of State Development and Infrastructure, correspondence dated 22 May 2024, Attachment 1, p 1.

177 Submission 11, p 5; QNMU, response to question taken on notice, public hearing, 20 May 2024, p 1.

The OIR noted that the 2023 Review recommended the WCR Act be amended to ensure tertiary students are covered by workers' compensation insurance while in placements required for their studies or where those placements are performing functions benefiting the organisations for which they are working (recommendation 28). The Queensland Government responded to this recommendation as 'under consideration' as more time was needed to understand the scheme and industry impacts of extending coverage to the tertiary student cohort. The OIR advised that it was on this basis, that the recommendation was not addressed by the Bill.[178]

Committee comment

We recognise the Queensland Government has already indicated it will be considering further coverage of tertiary students by workers' compensation insurance, noting that the government is considering this recommendation of the 2023 Review.

We encourage the government to assess the impacts of extending coverage to the tertiary student cohort.

2.1.15.2 Reporting of injuries

SDA submitted that an employer is currently only required to report potential injuries to their insurer when the injury is viewed as compensable under a claim and therefore the WCR Act should require all potential injury claims to be reportable, whether there has been a medical assessment or otherwise.[179] The OIR noted that the issue was not considered during the 2023 Review. However, the OIR advised that all employers must report injuries sustained by workers for which workers' compensation may be payable by their workers' compensation insurer regardless of whether the worker makes a claim for workers' compensation and even where they do not consider the injury is compensable.[180]

2.2 Amendments to the *Industrial Relations Act 2016*

2.2.1 Superannuation contributions

Clause 9 inserts new chapter 2, part 3, division 13A (Superannuation contributions) in the Queensland Employment Standards. New section 127A creates an employment standard which introduces a requirement for employers to make contributions to a superannuation fund for the benefit of an employee so as to avoid liability to pay the superannuation guarantee charge under the *Superannuation Guarantee Charge Act 1992* (Cth) in relation to the employee. The addition of section 127B reduces the employer's liability to the extent of the superannuation charge payment that has been made in accordance with the *Superannuation Guarantee Charge Act 1992* (Cth) and the employee is a benefitting employee, and the Commissioner of Taxation is required to pay, or otherwise deal with, a shortfall component for the benefit of the employee.[181]

Submissions that commented on amendments regarding superannuation contributions were supportive.[182] However, while supportive, QNMU queried why the Bill does not mirror the federal Fair Work Act in providing civil remedies provisions.[183] The OIR advised that the IR Act (section 394 and section 475) includes a range of remedies and mechanisms for recovering unpaid superannuation, with an offence (maximum 40 penalty units which may be charged in one or more complaints or for

178 Office of Industrial Relations, response to submission 1 to 15, p 32.

179 Submission 8, p 2.

180 Office of Industrial Relations, response to submission 1 to 15, p 33.

181 Explanatory notes, p 18.

182 Submissions 3, 8, 11 and 12.

183 Submission 11, p 5.

one or more periods). The IR Act (Schedule 3) also includes a civil remedy provision in relation to a breach of a modern award and all modern awards include a superannuation clause.[184]

2.2.2 Flexible parental leave

Clause 8 (under section 87B of the IR Act) increases the number of unpaid flexible parental leave days from 30 to 100 and provides additional flexibility around when they can be taken, such as late-term pregnancy.[185] Submissions that commented on amendments regarding flexible parental leave were supportive.[186] For example, QNMU stated that the amendments would 'make a positive contribution to better supporting parents to balance care and work arrangements'.[187] QNMU, however, also stated the framework could be strengthened to better reflect the recent changes of the Fair Work Act as it may not be practicable for an employee to give 4 weeks' notice of their intention to take leave especially if an employee needs to take late-term pregnancy leave. QNMU suggested the Bill should reflect the provisions of the federal Fair Work Act which include a clause that notice must be given 4 weeks before the day or if that is not practicable then as soon as practicable (which may be a time after the leave has started).[188]

The OIR responded by noting that the availability of late term pregnancy leave would not limit a pregnant employee from accessing special pregnancy-related leave and sick leave under section 85, or other leave entitlements prescribed by the Queensland Employment Standards – which may be more suitable for their circumstances as late-term pregnancy leave is unpaid leave. In the cases of these types of leave, a pregnant employee would not have to give sufficient notice as would be prescribed under clause 7.[189] The OIR added:

> The proposed amendment would be a minimum statutory requirement and in practice an employer could exercise some discretion in relation to this leave on a case-by-case basis, as employers do with many kinds of leave to support their employees' lives outside of the workplace.[190]

2.2.3 Small claims threshold

Clauses 10 to 12 increase the 'small claims' threshold for unpaid wages claims from $50,000 to $100,000 to reflect the new $100,000 threshold for small claims under the federal Fair Work Act.[191]

Submissions that commented on the proposed increase to the 'small claims' threshold for unpaid wages claims to $100,000 were generally supportive.[192] However, the Local Government Association of Queensland (LGAQ) was of the view that the increase might lead to more claims, which would be costly and time consuming for councils, many of whom are financially unstable. LGAQ was also concerned how proceedings will be impacted since the QIRC is not bound by rules of evidence.[193]

Several unions stated the Bill could better reflect the Fair Work Act by mirroring the language of that Act to prescribe 'a higher amount' may apply 'if a higher amount is prescribed by the regulations'.[194]

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184 OIR, department response to submissions 1 to 15, p 2.

185 Explanatory notes, p 9.

186 Submissions 3, 8, 11 and 12.

187 Submission 11, p 5.

188 Submission 11, p 6.

189 OIR, department response to submissions 1 to 15, p 2.

190 OIR, department response to submissions 1 to 15, p 2.

191 Explanatory notes, p 9.

192 Submissions 2, 12 and 13.

193 Submission 2, p 2.

194 QCU, submission 13, pp 36-37; QNMU, submission 11, p 6.

The OIR advised that the purpose of the Bill's amendments is to align with the threshold for the small claims wage recovery jurisdiction under the Fair Work Act. No changes are proposed to the application process and evidence to support the application. Addressing concerns regarding the QIRC not being bound by rules of evidence and costs associated with claims for councils, the OIR noted that a presidential member may, either before or after the start of a hearing, remit the application to a magistrate if the presidential member considers the application could be more conveniently heard by a magistrate, having regard to, for example, costs or the difficulty or expense of producing witnesses. The OIR did not directly address concerns that the threshold increase could lead to an increase in the number of claims.[195]

In regard to the proposal for a regulation provision to be included in the Bill to provide for a higher amount, the OIR noted that the increase from $50,000 to $100,000 is a significant increase, and it is not anticipated there would be a need to increase the threshold again for some time.[196]

2.2.4 Appeal pathways

The Bill proposes amendments to align the appeal pathway for full bench decisions of the QIRC if constituted with at least one member who is a presidential member (defined as President, Vice President or Deputy President). These appeals are proposed to proceed to the Queensland Court of Appeal (QCA) consistent with other appeal pathways in Queensland.[197]

Submitters had several concerns with these amendments:

- the likely increase in the volume of appeals being heard by the QCA and that an increase in workload may lead to delays[198]
- the potential for increased costs and challenges associated with appellants not being familiar with the Court of Appeal's processes[199]
- insufficient regard to the special nature of industrial relation tribunals that are 'primary laypersons tribunals that are designed to allow ordinary working people access on a relative cost-free basis'[200]
- increase in costs for appellants due to filing fees in the QCA[201]
- diminishing of representational rights of appellants as it may potentially prevent union representatives from appearing.[202]

195 OIR, department response to submissions 1 to 15, p 3.

196 OIR, department response to submissions 1 to 15, p 3.

197 Explanatory notes, p 9; refer to clause 13 of the Bill. Currently, only full bench decisions where the President was sitting proceed to the Court of Appeal, and for all other full bench decisions, the President can hear the appeal in the Industrial Court of Queensland – QLS, submission 12, p 2.

198 QLS, submission 12, p 2.

199 QLS, submission 12, p 2.

200 QCU, submission 13, p 37. NB: UQFU and QNMU supported QCU's comments on appeals pathways.

201 QCU, submission 13, p 37.

202 QCU, submission 13, p 37.

QCU noted that the current appeal arrangements were drafted after 'extensive consultation with all stakeholders', and they should not be changed without 'significant stakeholder consultation and not by way of miscellaneous amendment to a Bill dealing with entirely other subject matters'.[203]

If the amendments are to proceed, QLS recommended that information be provided to impacted parties with sufficient time to allow them to consider options before appeal periods expire and consideration be given to the impact on the resources of the QCA.[204]

The OIR responded to concerns regarding consultation, legal representation and costs. Regarding the lack of consultation on the amendments, the OIR considered consultation was not needed as the changes are 'technical in nature and aligned with the original policy intent'.[205] On the point of legal representation, the OIR stated that as appeals are generally legally complex, parties would generally benefit from leave being available for legal representation.[206] The OIR noted:

> IR Act sections 529 and 530 provide that an industrial tribunal (which includes the QCA) may give leave for a party to be represented (e.g. there is no automatic right to be represented by a lawyer, and a party may be represented by anyone with leave).[207]

The OIR also reasoned that the amendments are appropriate in that processes and appeal pathways should be aligned with the broader Queensland justice system's hierarchical arrangements for consistency and clarity.[208]

Finally, on concerns that the amendments would increase costs for appellants, the OIR advised:

> In both ICQ and QCA costs may be awarded. The QCA is a costs jurisdiction with the court having powers to order that one party pay the legal costs of another party. The IR Act provides for the QIRC and ICQ that parties must bear their own costs, however costs can be ordered where an application was vexatiously done or without reasonable cause, or where a matter was proceeded with where there were no reasonable prospects of success.[209]

Committee comment

We note the response from the Office of Industrial Relations in relation to the proposed amendments to appeal pathways and concerns about consultation on the amendments, the potential for increased costs to appellants and the workload of the Queensland Court of Appeal, and the impact on representational rights.

On the point of consultation, we note that the OIR considers the amendments to be technical in nature and appropriate in that they would align the appeal pathways with the broader Queensland justice system, for the purpose of enhancing consistency and clarity. However, we are concerned that the amendments may not be technical in nature. Submissions from the QNMU, QCU and QLS have highlighted possible unintended consequences from the proposed amendment to the appeal pathways for full bench decision of the QIRC if constituted with at least one member who is a presidential member. We consider that further consultation is required to fully explore the issues raised.

203 Submission 13, p 39.

204 Submission 12, p 2.

205 OIR, department response to submissions 1 to 15, p 4.

206 OIR, department response to submissions 1 to 15, p 4.

207 OIR, department response to submissions 1 to 15, p 4.

208 OIR, department response to submissions 1 to 15, p 4.

209 OIR, department response to submissions 1 to 15, p 4.

Recommendation 2

The committee recommends further consultation be undertaken with stakeholders on proposed amendments to the *Industrial Relations Act 2016* relating specifically to the appeal pathways for full bench decisions of the Queensland Industrial Relations Commission.

2.3 Amendments to the *Labour Hire Licensing Act 2017*

2.3.1 Electronic service of documents

The Bill proposes to amend the LHL Act to promote contemporary operational practices by facilitating electronic service of documents (email) under the LHL Act, or in a manner prescribed by regulation, which is aligned with contemporary service methods, operational efficiencies and industry expectations.[210]

While not opposed to the amendments to allow for the serving of notices via electronic service, LGAQ stated that the primary mode for delivery of notices should be by mail or in person where possible, noting the internet issues in regional and rural areas.[211]

The OIR advised that expanding the service of documents 'combats against existing delays with postal services, and reduces the issues that Queensland's broad geographical landscape poses to the timely service of documents and notices'. Furthermore, the OIR noted that labour hire providers, in supplying their email addresses, would be aware of their responsibility to regularly check emails to ensure information is received in a timely manner.[212]

[210] Explanatory notes, p 19.

[211] Submission 3, p 3.

[212] OIR, department response to submissions 1 to 15, p 4.

[212] OIR, department response to submissions 1 to 15, p 6.

Appendix A – Submitters

Sub #	Submitter
1	Consultative Committee for Work-related Fatalities and Serious Incidents
2	Australian Lawyers Alliance
3	Local Government Association of Queensland
4	Master Builders Queensland
5	United FireFighters' Union Queensland
6	DoorDash Australia
7	Maurice Blackburn Lawyers
8	Shop, Distributive and Allied Employees' Association, Queensland Branch
9	Uber Australia
10	Business Chamber Queensland
11	Queensland Nurses and Midwives' Union
12	Queensland Law Society
13	Queensland Council of Unions
14	Menulog Pty Ltd
15	Transport Workers' Union
16	Ai Group
17	Hireup
18	Confidential

Appendix B – Officials at public departmental briefing

Department of State Development and Infrastructure

- Janene Hillhouse, Executive Director, Workers' Compensation Regulatory Services
- Bradley Bick, Director, Workers' Compensation Policy
- Cameron Jang, Manager, Workers' Compensation Policy
- Rhett Moxham, Director, Industrial Relations

Appendix C – Witnesses at public hearing

Queensland Nurses and Midwives' Union of Employees

- Sarah Beaman, Secretary
- Ashleigh Pawsey, Research and Policy Officer

Queensland Law Society

- Hayley Stubbings, QLS Legal Policy - Special Counsel
- Luke Murphy, Deputy Chair, QLS Accident Compensation and Tort Law Committee

Master Builders Queensland

- Craig Dearling, General Manager – Workforce Services

Hireup

- Jordan O'Reilly, Co-founder and Executive Director

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

- John Oliver, State Secretary

Australian Lawyers Alliance

- Sarah Grace, President, Queensland Branch Committee

Maurice Blackburn Lawyers

- Patrick Turner, Principal Lawyer

Shop, Distributive and Allied Employees' Association, Queensland Branch

- Justin Power, Branch Secretary

Transport Workers' Union – Queensland

- Joshua Millroy, Director of Organising

Queensland Council of Unions

- Jared Abbott, Assistant General Secretary
- Nate Tosh, Legislation and Policy Officer

Australian Industry Group

- Brent Ferguson, Head of National Workplace Relations Policy
- Tracey Browne, Manager, National WHS and Workers' Compensation Policy and Membership Services

Appendix D – Abbreviations and acronyms

Abbreviation/acronym	Definition
2023 Review	2023 Review of the Operation of the Queensland Workers' Compensation Scheme
apps	applications
Ai Group	Australian Industry Group
ALA	Australian Lawyers Alliance
BCQ	Business Chamber Queensland
committee	Education, Employment, Training and Skills Committee
Decision IAS	Decision Impact Analysis Statement
department	Department of State Development and Infrastructure
DoorDash	DoorDash Australia
Fair Work Act	*Fair Work Act 2009* (Cth)
FWC	Fair Work Commission
HRA	*Human Rights Act 2019*
ICQ	Industrial Court of Queensland
IR Act	*Industrial Relations Act 2016*
LHL Act	*Labour Hire Licensing Act 2017*
LSA	*Legislative Standards Act 1992*
LGAQ	Local Government Association of Queensland
Master Builders	Master Builders Queensland
MSO	minimum standards order
OIR	Office of Industrial Relations
QCA	Queensland Court of Appeal
QCU	Queensland Council of Unions
QIRC	Queensland Industrial Relations Commission

QLS	Queensland Law Society
Relevant FWC determination	minimum standards order, minimum standards guideline or collective agreement
RRTW	rehabilitation and return-to-work
Regulator	Workers' Compensation Regulator
scheme	Queensland Workers' Compensation Scheme
SDA	Shop, Distributive and Allied Employees' Association, Queensland Branch
TWUQ	Transport Workers' Union – Queensland
Uber	Uber Australia
UFUQ	United Firefighters Union Queensland
WorkCover	WorkCover Queensland
WCRS	Worker's Compensation Regulatory Services
WCR Act/Act	*Workers' Compensation and Rehabilitation Act 2003*

Statement of Reservation

Statement of Reservation

LNP SOR Workers Compensation Bill 2024

The LNP is committed to the WorkCover system and ensuring our workplaces are safe.

We note the concerns raised in the submissions and public hearings by businesses and business representative bodies, including:

- possible implementation complexities for gig economy businesses;
- challenges in complying with return to work programs for recovering workers;
- defining who is a worker and when exactly they are engaged in work;
- the provision of information statements to commencing workers;
- preferring to defer this legislative action pending a standard nationwide approach; and
- proceeding with legislation before the details of minimum service orders (MSOs), minimum standards guidelines (MSGs) and collective agreements are known.

We acknowledge these concerns, and are always sensitive to the economic and cost-of-living impacts of proposals for regulatory change.

Apart from our overarching concern for the protection and interests of Queensland workers, we do not want a group of businesses to be advantaged at the expense of all other employers who are obliged to participate in the work cover system.

We are satisfied that, on the balance of public interests, the bill is necessary and appropriate and should be passed.

Mr James Lister MP
Deputy Chair
Member for Southern Downs
7 June 2024

Mr Darren Zanow MP
Member for Ipswich West
7 June 2024