

EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

REPORT No. 3

on the

WORKERS' COMPENSATION AND REHABILITATION AND OTHER
LEGISLATION AMENDMENT BILL 2020

QUEENSLAND GOVERNMENT RESPONSE

Queensland Legislative Assembly	
Number: 57217617.	
 11 MAY 2021	Tabled <input checked="" type="checkbox"/>
	By Leave <input type="checkbox"/>
Clerk's Signature: <i>G.H.</i>	

INTRODUCTION

On 26 November 2020, the Workers' Compensation and Other Legislation Amendment Bill 2020 (the Bill) was introduced into Parliament. The Bill is identical to the Bill of the same name introduced on 12 August 2020, which lapsed with the dissolution of the 56th Parliament by proclamation on 6 October 2020.

After its introduction, the Bill was referred to the Education, Employment and Training Committee (the Committee), with a report back date of 12 February 2021.

On 12 February 2021, the Committee tabled its report (No. 3) in relation to the Bill.

The Queensland Government response to the recommendations made by the Committee is provided below.

RESPONSE TO RECOMMENDATIONS

Recommendation 1

The Committee recommends the Bill be passed.

Government response

The Government thanks the Committee for its consideration of the Bill and notes the Committee's recommendation that the Bill be passed.

Recommendation 2

The Committee recommends the Bill be amended to provide the presumption of injury for post-traumatic stress disorder (PTSD) to the following workers who are required to perform first responder duties as part of their employment:

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

Government response

The Government acknowledges the lived experiences of all workers facing traumatic incidents at work and thanks the workers, unions and organisations who shared these difficult and traumatic experiences as part of the public consultation.

The Government supports clarifying the inclusion of mines rescue team members and local government workers as these workers were always intended to be captured by the Bill. The Government proposes to amend the Bill to ensure clarification is provided in relation to inclusion of the aforementioned workers.

The Government does not support amending the Bill to further expand its scope but commits to reviewing at-risk occupations identified in the public submissions as part of a 12-month review, if the Bill is passed.

In developing the Bill, the Government consulted extensively with first responder stakeholders, including unions, employers and the medical profession. The scope of the Bill has been carefully considered, using an evidence-based approach using workers' compensation claim data, published literature, as well as the guidance and outcomes from recent reviews into first responder mental health, such as Beyond Blue's report, *Answering the Call*, and the 2019 Senate Committee Inquiry into first responder mental health. In addition, the scope of the Bill is balanced with providing presumptive coverage to those workers most at risk of cumulative exposure to trauma and developing PTSD and ensuring the ongoing financial sustainability of the scheme.

The scope of the Bill was also developed considering the existing legislative framework and to align with Safe Work Australia's criteria for deemed diseases:

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

The Government notes that all workers with trauma-related psychological injuries are not disadvantaged under this Bill. Queensland workers are currently able to make a workers' compensation claim for any work-related injury, including PTSD and other psychological injuries. The Bill as proposed does not impact upon these rights.

Recommendation 3

The Committee recommends that the planned review of the presumptive legislation introduced by the Bill to be conducted 12 months after commencement should consider additional occupations highlighted by submitters to this inquiry for inclusion in presumptive legislation, and that the Minister for Education, Minister for Industrial Relations and Minister for Racing (the Minister) table a report on the outcome of the review for the information of the Legislative Assembly.

Government response

The Government supports the recommendation for a review to be conducted 12 months after commencement in relation to additional occupations highlighted by submitters.

The planned 12-month review will allow experience with the scheme to develop and assist in examining the effectiveness of these laws in addition to evaluating the appropriateness of the scope where other similar occupations may be justifiable.

The Office of Industrial Relations will conduct this review through a stakeholder consultation process and the review will be informed by:

- workers' compensation claim data, including improved data capture from insurers to analyse the utilisation of the presumptive pathway and its effectiveness;
- updates from other workers' compensation schemes with presumptive laws, such as Tasmania and the Northern Territory;
- the Safe Work Australia criteria for deemed diseases (as above);
- reviewing submissions, academic literature and empirical-based evidence to identify any other at risk cohorts of workers or relevant volunteers for potential inclusion; and
- extensive consultation with insurers, employers and unions about the lived experiences of workers at-risk of exposure to work-related trauma.

Consideration will be given to the appropriate way to report the outcomes of the review in consultation with the Minister and further action if necessary.

In addition to the 12-month review, there is a legislative requirement to review the operation of the workers' compensation scheme every five years, which will include these presumptive laws if adopted. The next five-year review report must be tabled in Parliament in 2023.

Recommendation 4

The Committee recommends the planned review of the presumptive legislation introduced by the Bill consider the inclusion of other psychological injuries.

Government response

The Government recognises there are a range of potential mental health injuries which may occur in the aftermath of a traumatic incident, including depression, anxiety, acute stress disorder, adjustment disorder, and PTSD. All of these injuries are currently eligible for compensation in the scheme if employment is a significant contributing factor to the injury, and the injury has not arisen as a result of reasonable management action undertaken in a reasonable way. The requirement to establish a causal link between injury and employment is consistent across all Australian jurisdictions.

Queensland's scheme supports all workers with psychological injuries by providing immediate access to early intervention psychological treatment and support as soon as a worker lodges their claim and until claim determination. Services available through early intervention include general practitioner appointments; counselling or psychology sessions; psychiatry appointments; medication relating to the condition; mediation services and some hospital costs.

The Government does not support this recommendation.

The medical evidence considered to support a PTSD diagnosis provides a clear connection to either a particular event or cumulative exposure to trauma due to the type of work undertaken by a first responder. The Bill has been drafted to reflect this evidence, and is aligned with the diagnostic criteria for PTSD in the Diagnostic and Statistical Manual (Fifth Edition) (DSM-5), to provide the consistency and rigour associated with presumptive legislation.

In contrast, a review of the academic literature in Safe Work Australia's commissioned report, *Deemed Diseases in Australia* (2015), notes the causal connection between other psychological injuries and work-related stressors are not as clear and can be impacted by personal factors. Conditions such as anxiety, depression and stress arising from non-occupational causes are common, which can lead to difficulty for clinicians and insurers in identifying the causative stressors and establishing the contribution of work-related exposures on the development of these psychological injuries. Depression, for example, affects one in seven Australians and can have a range of contributing factors; for example, genetics, illness, ageing, and major life changes, such as relationship breakdowns, financial problems, and childbirth. Expanding presumptive coverage to other psychological injuries where the causal connection is not clear could place significant pressure on the financial sustainability of the scheme and is beyond the existing policy scope for this Bill.

Providing presumptive coverage to PTSD for a cohort of workers who, by the nature of their duties, are all too often exposed to traumatic incidents, maintains the evidential rigour required to determine a workers' compensation claim while also ensuring clarity and certainty for the scheme and stakeholders. This approach also aligns with the approach taken by Tasmania and the Northern Territory.

Importantly, workers with trauma-related psychological injuries other than PTSD are not disadvantaged under this Bill. Queensland workers are able to claim for any work-related injury, including psychological injuries. For injuries that occurred on or after 30 October 2019 the scheme also supports workers with psychological injuries by providing access to early intervention psychological treatment and support as soon as they lodge their claim until claim determination. During this period insurers can assist with coordinating early psychological services like general practitioner appointments; counselling or psychology sessions; psychiatry appointments; medication relating to the condition; mediation services and some hospital costs.

Recommendation 5

The Committee recommends the planned review of the presumptive legislation introduced by the Bill consider the appropriateness of the use of the DSM-5 for diagnosis of PTSD.

Government response

The Government does not support this recommendation.

The Government notes the submission of the Royal Australian and New Zealand College of Psychiatrists (RANZCP) which states there are limitations to the use of the diagnostic manuals and, while useful for supporting diagnoses, clinicians must still exercise their clinical judgement to diagnose a worker with consideration of their history and after conducting a mental state examination.

The requirement to use the DSM-5 for a diagnosis under the Bill is to ensure consistency and rigour when determining if the presumptive pathway applies and importantly, does not limit clinicians undertaking further assessment or exercising their clinical judgement when reaching a diagnosis.

The DSM-5 is developed by the American Psychiatric Association in consultation with international experts in mental health disorders. The DSM-5 is an important tool used internationally by trained clinicians, such as psychiatrists and researchers, to assist to diagnose and classify mental health injuries. The DSM-5's classification system is widely recognised internationally in clinical settings as providing a set of symptoms and comments that have been agreed by experts for defining the limits of categories contained within it.

Any issues or concerns with using this diagnostic tool for setting a baseline for eligibility for the presumptive pathway can be raised by stakeholders as part of the next five-year review into the workers' compensation scheme. The next five-year review report must be tabled in Parliament in 2023.

Recommendation 6

The Committee recommends the Minister consider including examples for the terms 'extreme' and 'repeated' in proposed new section 36EC(1)(b) in clause 3 of the Bill.

Government response

The Government does not support this recommendation.

The Bill includes clear and relevant examples of the occupations and nature of duties which include extreme or repeated exposure to trauma. Providing further examples of 'extreme' and 'repeated' may make the Bill less beneficial by unintentionally limiting the scope of presumptive coverage.

The use of terms 'extreme' and 'repeated' were chosen to align with the diagnostic criteria for PTSD in the DSM-5. The DSM-5 provides examples of extreme or repeated traumatic incidents, some of which are reflected in the examples of duties provided in the Bill (e.g., first responders collecting human remains and police officers repeatedly exposed to details of child abuse). A specialist psychiatrist will use their clinical judgement to determine whether the traumatic incidents experienced by the worker meet the necessary threshold for diagnosing PTSD. It is also noted these words have ordinary meanings, which are well understood and are not considered to be ambiguous in the context of the Bill.

As the experience with the scheme develops for these presumptive provisions, should further clarification be required, this a matter that can be raised by stakeholders as part of the next five-year review into the workers' compensation scheme. The next five-year review report must be tabled in Parliament in 2023.

Recommendation 7

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

Government response

The Queensland Government does not support this recommendation.

Prescribing the specific first responder occupations and eligible employees is a delegation of legislative power, however, the Bill is beneficial in nature and it is considered appropriate and justifiable the specific persons deemed first responders and eligible employees be prescribed by Regulation under a suitable and defined head of power in the Act. It is important to note the Bill was subject to the Government's rigorous Cabinet and drafting processes, including through the Office of the Queensland Parliamentary Counsel, regarding the appropriate delegation of legislative power during the drafting phase of the Bill.

The approach taken in the Bill is not unusual. The Regulation currently prescribes a number of matters integral for claims, such as requirements for determining eligibility for serious personal injuries or awarding lump sum compensation. The approach also does not differ from other regulations which prescribe a particular cohort of persons for eligibility, such as prescribing suitable persons to provide custody or guardianship under the *Child Protection Regulation 2011* or prescribing individuals who are not workers under the *Labour Hire Licensing Regulation 2018*.

Importantly, the Bill provides clear parameters of who will qualify as a 'first responder' (e.g. a worker or relevant volunteer who responds to time critical, often life-threatening incidents) or an 'eligible employee'. This head of power ensures that any changes to the scope in the Regulation are moderated against the explicit criteria defined by the Act.

Prescribing in this manner is a balanced approach to provide necessary legislative clarity in the Act for insurers to determine those within scope of the provisions, yet providing flexibility to ensure the legislation can:

- keep pace with the changing nature of work, noting that burgeoning industries, new or amended job roles and titles, and machinery of government changes are common; and
- ensure like-for-like roles are accommodated when there is supporting empirical evidence.

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