EDUCATION, EMPLOYMENT AND SMALL BUSINESS COMMITTEE

Members present:

Ms LM Linard MP (Chair)
Mr N Dametto MP
Mr MP Healy MP
Mr BM Saunders MP
Mrs JA Stuckey MP
Mrs SM Wilson MP

Staff present:

Ms S Cawcutt (Committee Secretary)
Ms A Beem (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE WORKERS' COMPENSATION AND REHABILITATION AND OTHER LEGISLATION AMENDMENT BILL 2019

TRANSCRIPT OF PROCEEDINGS

MONDAY, 16 SEPTEMBER 2019

Brisbane

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The committee met at 10.37 am.

CHAIR: Good morning. I now declare open this public hearing and public briefing for the Education, Employment and Small Business Committee's inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019. I would like to acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past, present and emerging. My name is Leanne Linard. I am the member for Nudgee and the chair of the committee. With me today are Mrs Jann Stuckey, the deputy chair and member for Currumbin; Mr Bruce Saunders, the member for Maryborough; Mrs Simone Wilson, the member for Pumicestone; Mr Michael Healy, the member for Cairns; and Mr Nick Dametto, the member for Hinchinbrook. The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website.

The purpose of this public hearing and public briefing is to hear evidence from stakeholders who made submissions as part of the committee's inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019. The committee will also hear from and ask questions of officials from the Office of Industrial Relations, the Department of Employment, Small Business and Training, and possibly the Department of Innovation, Tourism Industry Development and the Commonwealth Games.

The bill was referred to the committee on 22 August this year. The committee will examine the policies that the bill gives effect to and the application of fundamental legislative principles set out in the Legislative Standards Act 1992. The committee must report to the parliament by 8 October 2019. The program for today's hearing has been published on the committee's web page and there are printed copies available from committee staff. This morning the committee authorised the publication of two documents prepared by the departments involved in this bill: an initial briefing on the bill and a response to issues raised in submissions. Arrangements were made to provide those documents to witnesses at the earliest possible time this morning, so you are receiving those now and you have them electronically. I am sorry that we could not provide those with a little bit more time for you to read them.

GARBETT, Mr Michael, Chair, Accident Compensation/Tort Law Committee, Queensland Law Society

MURPHY, Mr Luke, Deputy Chair, Accident Compensation/Tort Law Committee, Queensland Law Society

SAMPSON, Ms Kerryn, Policy Solicitor, Queensland Law Society

CHAIR: Thank you very much for the written submission you provided to the committee and thank you for making the time to come this morning to speak to that submission and answer any questions. Michael, I am guessing that you will be providing the opening statement. Then we will open for questions.

Mr Garbett: Thank you for inviting the Queensland Law Society to appear at this public hearing on the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019. The society is the peak professional body for the state's legal practitioners and we have 13,000 members whom we represent, educate and support. In carrying out our central ethos of advocating for good law and good lawyers, the society proffers views that are truly representative of its member practitioners. The society is an independent, apolitical body upon which the government and parliament can rely to provide advice that promotes good, evidence based law and policy. The society's submission to this inquiry is limited to addressing the proposed amendments to the Workers' Compensation and Rehabilitation Act, although we note that steps are being taken to promote cultural diversity with the proposed amendments to the TAFE Queensland Act which we support.

In relation to the subject bill, the Law Society is largely supportive of the changes to the Workers' Compensation and Rehabilitation Act, which aims to improve the processes for injured workers in Queensland. We would particularly like to take this opportunity to thank the Office of Industrial Relations for inviting the society to take part in a number of consultations in the draft stages for the bill.

Just briefly, the Law Society supports the proposed amendments. In particular, we would like to acknowledge the amendment to section 32 of the legislation to remove the requirement that for a psychiatric or psychological disorder employment is the major significant contribution to the injury; clause 36, which amends section 39A of the legislation to remove the requirement that the condition for terminal conditions is expected to terminate the worker's life within two years after the terminal nature of the condition is diagnosed; and clause 78, which is intended to set out that unpaid interns become workers for the purpose of the act.

We have three key concerns in relation to the proposed legislation which I will briefly address. Firstly, the need to ensure that the penalty provision of 50 penalty units proposed in section 220(1) for insurers, who must take all reasonable steps to secure the rehabilitation and return to suitable duties, also clearly extends to workers who have stopped receiving compensation, have not returned to work and have not yet been referred to an accredited rehabilitation and return-to-work program. The second concern is the unintended consequence of excluding expressions of regret and apologies from admission in a civil proceeding. In that regard, whilst we certainly understand the policy intention, the society's view is that the potential tendering of expressions of regret or apologies in related criminal proceedings, particularly under the Work Health and Safety Act, means that legal practitioners must advise their clients of the risk. This is likely to impact negatively on the policy objective. We have suggested that a similar amendment might need to be made to the Work Health and Safety Act.

The final concern is with the widening scope of power to require information or documents with the proposed amendment in section 532C. The amendment widens the investigative power from any offence to any contravention. The society has included some amended drafting for consideration by the committee in this regard. We are more than happy to field any questions that the committee may have.

CHAIR: Thank you very much for that brief opening statement. I appreciate your opening comments about the Queensland Law Society and what you do. You always make submissions to parliament so you are very well known to our committees and we thank you for the expertise that you bring. I invite the deputy chair to open for questions, if you would like.

Mrs STUCKEY: Thank you. I thought that you would—

CHAIR: I have some, Deputy Chair, but I am going to let you go.

Mrs STUCKEY: Again, welcome. It is always great to have feedback from you. I refer to page 2 of the submission, which relates to clause 61 and the unpaid interns and notes reservations about the unintended consequences. You probably have not had a chance to read the department's response to that yet. I wonder how you feel and whether that satisfies your concerns.

Mr Murphy: Sorry, was it page 2 of the society's submission?

Mrs STUCKEY: Page 2 of your submission.

Ms Sampson: Do you mean reservations in relation to expressions of regret and apologies?

CHAIR: I think the deputy chair meant clause 78 as it relates to interns rather than clause 61.

Mrs STUCKEY: Sorry, have I got 61 wrong?

Mr Murphy: Yes, 78.

Mrs STUCKEY: Yes. I thought I had the right one. It is about the unintended consequences of the proposal to exempt expressions of regret and apologies.

CHAIR: Sorry, Deputy Chair, I thought you meant interns.

Mr Murphy: Would you like me to address what the concerns are in some detail?

Mrs STUCKEY: I am interested to see the department's response to that and whether that satisfied your concerns.

Mr Murphy: In terms of the department's response, at the six various stakeholder reference group meetings we had raised this issue. My understanding, without having considered the response that has just been handed to us, is that the department's response did address the concern. We fully support the objective of what is trying to be achieved and we understand the benefits that can flow

from effectively open communication between employees and employers on an ongoing basis. We do, however, have a very fundamental concern that an admission or a statement of regret under this legislation will be exempt in terms of an admission of liability for a claim.

However, the circumstances—and this is where we see a difference of some significance from the Civil Liability Act—in a workplace injury, particularly a severe one, is that there can be a criminal prosecution under the workplace health and safety legislation and now, with the manslaughter amendments that have in recent years been incorporated, very severe penalties can come from such a prosecution. It is that admission or statement of regret that can be used in those prosecutions. Whilst they would not be seen as a finding of liability, they can be considered of some persuasive value.

What we see as being a possible solution is an amendment to the Workplace Health and Safety Act itself to exempt them. That, we feel, would be consistent with the objective that is hopefully being achieved; otherwise, we feel there will be an absolute obligation on our members to be advising employers that if they make such a statement they need to be conscious of how it can be used. Our concern there is that will defeat and dilute the objective of what is trying to be achieved.

Mrs STUCKEY: I understand those concerns. I want to go back to the unpaid interns aspect as well. I am interested to hear further comments on that.

Mr Murphy: We support the inclusion of unpaid interns for cover. We think that someone who sustains an injury as a result of being in a workplace should not be excluded from being able to have their rehabilitation and their medical expenses funded simply because they were unpaid. It is that which we understand is the primary objective that is being addressed by the amendment. It has been and was acknowledged at the stakeholders reference group by the WorkCover representatives that it is not something that would put the financial viability of the scheme under threat. There are a number of stories out there where students on work experience and university students trying to get a start in a particular calling sustain an injury and there is no cover there for them.

Mrs STUCKEY: Having experienced unpaid interns in another side of medical work that I have been involved in, I concur with a couple of the submitters that there is the chance that people may not continue to take those interns, particularly the smaller businesses. Do you have a comment about that?

Mr Murphy: The concern being as a result a potential increase in their WorkCover premium?

Mrs STUCKEY: An added piece of red tape, yes, and obviously the cost of the premium.

Mr Murphy: My first concern in response to that is that in order for the cost to be a significant cost it would need to be a severe injury. Our concern would be for someone who sustains a severe injury to not be covered and to be left on the public health system for support; it is a question of the balance. Our concern would be that people who sustain an injury that has long-term consequences for their future possibly are not able to secure that immediate, intensive rehabilitation and treatment. That ultimately may come back as a greater cost to the employer through a public liability claim, because if it is not going to be covered by WorkCover it is likely to result in a claim under the Personal Injuries Proceedings Act, and you would have premium reassessment under that act as well. I think it is that balancing exercise. The best outcome which underpins a number of the other amendments that are made here is that early intensive treatment and endeavour to return.

Mrs STUCKEY: Coming from a medical background, I understand that and I have seen many workers compensation cases over the years. In this instance, if there was an injury on the way to work, which is potentially one of the most serious ones, would that be captured as well?

Mr Murphy: It would be captured, but usually the journey claims would then not have an expense to the scheme because any compulsory third-party insurance claim that arises out of it results in a complete refund to the statutory workers compensation scheme.

Mrs STUCKEY: Thank you for clarifying that.

Mr HEALY: Your submission questions why a penalty does not apply to the new section 220(2)(c), which requires an insurer to refer a worker to rehabilitation and a back-to-work program. Given the expectations of this requirement in section 220(3), do you think it would be feasible to impose a penalty?

Mr Murphy: The concern is really one of consistency within section 220 in that there is a penalty imposed very early on in the section, in 220(1). Our concern was that there is not the same penalty where the worker no longer has an entitlement to compensation. The submission is really

addressing an inconsistency that you do not want to have a loophole that someone may be able to exploit by not having any penalty provision that dilutes the prospect of what is the objective; namely, even in circumstances where a worker has ceased their entitlement to compensation there is this ongoing incentive to try to get the injured worker to return to work. Does that address your question?

Mr HEALY: Yes, it does.

Mr DAMETTO: Firstly, thank you very much for coming along and addressing the committee today. My question is around the inclusion of mental health injuries in the proposed bill, that they be treated just like any physical injury. What concerns me about this—and I understand workers compensation is doing this with the best of intentions—is that I have worked in many different industries where I have seen people fake injuries. We have all heard about it. How do we propose to ensure that we are not seeing people faking a mental health injury and attributing it to a work related incident when going through this new process if this bill is passed?

Mr Murphy: The concern that you have expressed is obviously one that is very commonly expressed. I will answer the question in this way. The society's position is that the removal of the qualifier of 'most significant contributing factor' and replacing it with 'a significant contributing factor' will not permit a greater number of questionable claims being applied. There is also then in the definition of 'pure psychological injury' an additional requirement that the injury must develop as a result of a breach of reasonable management action on the part of the employer. By their very nature, psychological applications require more intensive investigation, which indeed has given rise to some of the subsequent issues about the time in making decisions. It is not only an investigation of what has occurred in the workplace in which the applicant has identified stressors that have contributed to it; it is also an investigation of medical history.

I do not know that this amendment will broaden or increase the risk of more questionable claims, and there are safety mechanisms in the legislation and the investigative process that is undertaken that enable that to be filtered down. The society would not be bold enough to suggest it is perfect. However, from the society's point of view it is a very effective means, particularly when there is this question of there having to be more than reasonable management action.

Mr DAMETTO: The only thing that concerns me is that, where we stand at the moment, if somebody says they were hurt at work, all of a sudden the onus is on the employer to prove it did not happen at work. Are we going to go to a process where part of your conditions of work are that, as well as undergoing a medical, you have to undergo a psychological report before you start?

Mr Murphy: That often is the process now.

Mr HEALY: It does happen.

Mr Murphy: With all due respect, I am not sure that it is right to say that the onus is on the employer to prove it did not occur. If the amendment is adopted, the onus actually remains on the applicant to show that it was a psychological injury to which work was a significant contributing factor. It is not uncommon for the rejection of claims to be on the basis that that has not been established or, indeed, that, having looked at the stressors and WorkCover having investigated the circumstances, it amounts to reasonable management action. The applicant then has the right of review and in that right of review, an appeal to the WorkCover regulator, it is the applicant's obligation to prove that the decision is, in fact, incorrect.

Mr DAMETTO: Thank you very much for clarifying that. I appreciate it.

CHAIR: Luke, I want to come back to a point that you made earlier and to follow on from the deputy chair's questioning in regard to clause 69, which is about expressions of regret and apologies. I appreciate that you have not had a chance to read in depth the response from the department. I suspect that it is not necessarily a surprise, because you have been involved in the process and would have raised this earlier. I believe you made that comment. In their response on page 2 they say—

> Australian courts that have considered this issue in the context of prosecutions and found that an apology cannot amount to an admission of liability because this is a determination for the court to make in accordance with the relevant legal standard. Facts contained in an apology can be taken into account by a court when it is considering whether the legal standard is established.

The issue you are raising is about establishing the legal test of causation as it relates to industrial manslaughter under section 34C. Can you please explain what you feel would be the answer to address that issue while also being able to give effect to the spirit of the recommendation that came out of the review?

Mr Murphy: I preface this by saying that I am not a criminal lawyer. In the preparation of our submission, the Accident Compensation/Tort Law Committee did consult with the Criminal Law Committee. We completely agree that the statement on its own will not amount to and will not be found to be an admission.

CHAIR: Yes, understood.

Mr Murphy: However, in the criminal sphere, it is that statements of that nature—

CHAIR: Are persuasive, yes.

Mr Murphy:—are persuasive and will be, quite rightly, tendered before the court and then considered by a jury or the arbiter of fact as to what value and what evidentiary value can be put on that statement. From a legal point of view, when advising an employer who has a potential exposure you would have to be saying to them, 'You shouldn't make a statement.' I am not sure that that fully addresses your question.

CHAIR: It partially addresses my question. I appreciate that that would be the advice that a lawyer would give their client in the matter, but did you at any point in consultation with the department tender what you felt to be a possible way to still give effect to the recommendation under the review but also deal with that matter from a criminal point of view? I think you commented earlier that you felt it may require an amendment to the WHS Act, but then the department has also come back and said in respect of the Work Health and Safety Act that that is an act based on harmonisation nationally. I wonder if you had already done that work and perhaps proffered a potential drafting solution.

Mr Murphy: No, we have not done that work. We were struggling to come up with an alternative. That submission came on the morning of the last stakeholders reference group, so it was only included in our response to that meeting and then in the final submission. We have not explored in any greater detail—we are more than happy to do so. The actual concept of that as being a potential way out was suggested to us by one of the established and senior practitioners who practises in that area. In his view, it was something that he thought would receive broad support from both a union perspective and an employer perspective, and his practice covers both. It was that that was the catalyst for us to make the submission. No, we have not explored it in greater detail.

CHAIR: I could not see an easy way through, but you are far more learned in this respect. That is why obviously we value that feedback in making recommendations or otherwise about the drafting of the bill. That is all I have. Thank you for coming and assisting us.

Mrs STUCKEY: Given that you have only just seen the response from the department, would it be appropriate for the committee to ask you to write with any further insights?

CHAIR: Of course, that is always welcome.

Mrs STUCKEY: I would be very keen to see how you accept some of those responses, especially regarding potential FLPs and a couple of those things.

Mr Garbett: We would welcome that opportunity.

Mrs STUCKEY: It is quite a large document and we received it late on Friday night.

CHAIR: Because parliament always has an excess of time—that is, never—you have until 5 pm on Wednesday. Given that I am sure you have nothing else happening, could you just prioritise that? Thank you, Deputy Chair. That is a very good point.

Mrs STUCKEY: I would appreciate your feedback.

CHAIR: It would be by 5 pm on Wednesday, 18 September. Thank you so much for coming.

Mr Garbett: Thank you for the opportunity.

SPINDA, Mr Greg, Queensland President, Australian Lawyers Alliance

CHAIR: Thank you for your written submission. I invite you to make a brief opening statement and then we will open for questions.

Mr Spinda: Thank you, Chair and committee. The ALA welcomes the opportunity to comment on this bill and is very appreciative to the OIR for the stakeholder reference group discussions that have led us here today. Subject to some minor points, the ALA is supportive of the amendments being proposed. The amendments to the Workers' Compensation and Rehabilitation Act are fair, reasonable and balanced.

Queensland has the strongest, best-performing workers compensation scheme in Australia, while also maintaining a short tail scheme with access to common law damages. Average premium rates are $1.20 and the scheme's funding ratio is approximately 181 per cent. Therefore, it is time that the scheme provides further support for Queensland workers who are injured in the course of their employment. That is fair. The proposed amendments are estimated to cost approximately $18.6 million per annum, which is barely 1½ per cent of the approximately $1.2 billion in benefits paid out in the financial year 2018. That is reasonable.

The amendments do not impose any substantial red tape or unsustainable administrative or financial burden on employers. In fact, one of the core amendments, the provision of early psychological intervention support services, has been designed so it is not considered in an employer's experience based risk premium if the claim is ultimately rejected, yet the amendments provide much needed further support for injured workers. That is balanced.

Of significance is clause 61, which seeks to improve an insurer's obligations around rehabilitation and return to work. ALA members daily see the devastating impact of workplace injuries on workers and their families. Strengthening rehabilitation and return-to-work outcomes will improve people's lives and their livelihoods, as well as their productivity for the economy. To do so, however, rehabilitation and return-to-work programs must be meaningful and they must be approved by well-informed treating practitioners. The ALA commends the government for proposing fair, reasonable and balanced amendments. I welcome any questions.

CHAIR: Thank you for your opening statement. We will now open for questions. I have a couple on the basis of your submission and I will draw you to the particular paragraphs. I am sure you have a copy in front of you to make it easier.

Mr Spinda: Yes.

CHAIR: Firstly, going to paragraph 21, in respect of clause 46, I would be interested if you could extrapolate that. How has it been working in practice and how do you think the bill will essentially improve that? You have succinctly addressed that in paragraphs 20 and 21, but I am interested in your experiences to date.

Mr Spinda: This is in relation to the time for making an application for compensation. One of the critical issues in any compensation scheme is the stigma attached to an individual lodging a compensation for a personal injury. Far too often the stigma is something that prevents an individual from wanting to apply and many people, particularly workers who are injured, just want to get on with life. No-one enjoys being on WorkCover. No-one enjoys being injured. When they are on WorkCover they are not receiving their full earnings; they are receiving a percentage of their pre-injury earnings. They have mortgages to pay and they have bills to pay. No-one wants to be on WorkCover. Everyone wants to get back to work.

In practice, what our members see a lot is that, many weeks or months later, the individual suddenly realises, 'This is not sustainable; I can't do it.' The alternative, which I myself have seen in practice quite a lot, is when people come to me and the first question I ask is, 'How much money have you spent on treatment so far?' We are talking thousands of dollars in treatment within the first few weeks, because that is a critical component post injury. I think this amendment will allow workers not to have to stress about the fact that their application will be rejected simply because they have not lodged their application for compensation within 20 business days of the injury happening. The amendment will allow them to lodge the application within 20 business days of being declared partially or totally incapacitated and that is wholly fair, I think.

CHAIR: For me, two points jumped out from your submission. The first is stigma. Obviously that is deeply disappointing, as we have a scheme because when workers are injured they should have a safety net and they should be supported. No-one likes to get injured and, as you say, lose that productivity and also sometimes the ability to support their families outside of work, as well as work.

It is disappointing, but I appreciate you calling out what is an honest issue. The other is that some of these injuries, I would suspect, do not present immediately either. Sometimes it is something that presents later or is exacerbated by time, particularly in regard to psychological injury. Is that fair to say?

Mr Spinda: That is absolutely fair to say. Psychological injuries are insidious conditions. I think they are probably worse than physical injury. Everyone can see a physical injury on an X-ray or an MRI or in other forms. Psychological injuries are, as the committee has earlier alluded to, very difficult conditions. They are often on the background of the fact that we are human and we have other stressors in our life. However, psychological conditions are ones that make it even harder for an individual. Once you are suffering from depression, stress or anxiety, you are not going to be wanting to relive what happened to you and you are not going to want to go through a bureaucratic process. Often we find that it is months later and often at the urging of family members or their own doctor who is saying, 'You really need to get onto WorkCover. You need to get this support.'

CHAIR: Of course, it does not necessarily directly address PTSD, which does present some time outside of these time lines from a traumatic event.

Mr Spinda: That is correct, absolutely.

CHAIR: On paragraph 29, in respect of rehabilitation and return to work, again I am very interested to hear about your experiences and the experiences of lawyers within the alliance as to what you are seeing happen.

Mr Spinda: One of the things that we are seeing happen in practice with rehabilitation and return-to-work programs is that WorkCover will send an individual to a rehabilitation service provider. A rehabilitation plan will be developed. The plan gets sent to the employer. Often the injured worker does not even see the plan and is never given access to the plan. Sometimes it is purely a mistake.

What also happens often when I am reviewing WorkCover files, in particular, is that there will be about four or five different versions of the plan, with minor amendments here or there. Then one plan is signed by the doctor, one plan is signed by the injured worker, one plan is signed by the worker. there is another plan that is not signed by anyone, and in fact it is the plan that is not signed by anyone that is actually being implemented at the time.

I was just very quickly on my phone looking at the OIR's response on this particular issue. The ALA does not wish to introduce some other bureaucratic process or take away the collaborative approach to rehabilitation and return to work. What we would like to see is that collaboration actually occurring, because it is not actually occurring. There are stilted conversations between the stakeholders. There needs to be one plan, signed by everyone. It is not a big undertaking in today's society with electronic communication. The plan needs to be one where the treating practitioner in particular understands the work that the individual is doing.

What we are often seeing with our members is that treating practitioners do not actually understand what the injured worker is doing at work. Often, it is only when the lawyer gets involved and we write to the treating practitioner or call them up and say, 'Do you realise that this is what their job involves? Have you seen the position description?,' and often the answer is, 'No, I had no idea.' There needs to be better communication between insurers and the treating practitioners so that those rehabilitation and return-to-work plans are effective. However, they also need to be meaningful. You cannot take a 50-year-old gentleman who finished grade 10 schooling and has no administrative skills and plonk him in an office to do filing work. The work needs to be meaningful.

CHAIR: Is that an issue of policy or practice?

Mr Spinda: I think both policy and practice. The reality is that practice takes shape through policy and policy needs to have overarching responsibility to make sure that WorkCover as well as the self-insurers are adhering to a meaningful rehabilitation plan.

Mrs STUCKEY: I was interested in paragraph 30 of your submission, which probably goes a little further with the rehabilitation and return-to-work plans being developed in consultation with the treating practitioners. Do you find that most of these people have a treating practitioner?

Mr Spinda: Yes.

Mrs STUCKEY: Would you say that that practitioner consults with the other parts to the rehabilitation process which can be spread out?

Mr Spinda: That is a very valid question. The short answer is that it is probably very difficult because all professionals are very time poor, including my medical colleagues. I think the way that WorkCover and self-insurers can get around this issue is by email communication. On the files that I

am seeing coming through where there is a strong rehabilitation and return-to-work plan developed there is often a chain of email communication already, rather than necessarily having teleconferences or anything like that which can often be difficult to time. I do not see any reason that communication cannot happen over the course of a couple of days for those programs to be properly consulted on.

Mrs STUCKEY: As I have said many times, I live on the border so you have state acts that can be very different. When you have somebody who perhaps lives in Queensland but works in New South Wales or vice versa, that whole care plan and return to work can be extremely difficult. Are you able to shed any light on that?

Mr Spinda: Cross-border issues?

Mrs STUCKEY: Yes.

Mr Spinda: I have in the past represented people who have lived at the Tweed—near the border.

Mrs STUCKEY: That is the area I am speaking about.

Mr Spinda: I have not really had major issues arise from that, I must say. I think the main thing is ensuring the worker is contacting their treating practitioner regularly. More important in this whole consultation process with rehabilitation and return to work is the communication between the insurers and the treating providers. I really do think in today's society it is a matter of just email communication. It is as simple as that. Ideally telephone conferences are good. We are seeing that happen quite a lot. On a lot of WorkCover files you do see communication happening with treating providers, but that communication is not very strong yet. I think there is a lot of scope to develop that.

Mrs STUCKEY: Part of the reason I raise that is the difficulty that it presents. If you have people who require physio and their physio happens to be over the border but their GP is in Queensland—and I am speaking very close to home here—I would hate to see those relationships broken. We all know that the injured person's faith in their practitioners, or whoever is assisting them, is an important part of the success of their rehabilitation.

Mr Spinda: Absolutely. I think that professional relationship will actually strengthen by making sure that we have a policy across the board for WorkCover and all self-insurers to adhere to in terms of communicating with treating practitioners. I think such a policy will allow for better bonds between professionals.

Mr SAUNDERS: Have any of your members seen a spike in psychological injuries at work due to social media and some of the toxic workplaces that we know we have in our community?

Mr Spinda: I have to say that I have not looked at numbers in terms of WorkCover statistics. In terms of practice, I think psychological injury claims are very common. I am not sure I would say that there has been a spike. Certainly in my personal practice I would not say I have seen any spike in psychological injury claims. It would be a matter of having a look at the WorkCover statistics over the last two or three financial years to really determine that point.

Mr SAUNDERS: As we know, they are very hard to prove. This will change it. You talked about there being no communication about the work plan between the treating practitioner, WorkCover and the person who was injured at work. You talk about email improving communication. A lot of older workers do not have email or the capacity to do it. I am talking about timber workers and people like that who have worked in the timber industry all their life. They find out that they have been injured at work and they put them in a well-known hardware store. It does not get them back to work. Do you think we will overcome that with this legislation? Do you think we can get the workers back to work quicker?

Mr Spinda: The legislation is one element of the policy around this. The second element is the rehabilitation and return-to-work programs. Like I mentioned earlier, it is key to have communication with the treating practitioners and, as we said in the ALA submission, that the treating practitioners get full access to relevant documents—that is, position descriptions, any physiotherapy or other reports they may have seen. I think they need to be fully informed to be making a determination as to whether that rehabilitation plan will be suitable. That is one element to it.

The second element to it, which I appreciate WorkCover Queensland is working on currently, is actually looking at their rehabilitation and return-to-work program and making sure that program is running far more efficiently, far more effectively and far more fluidly and is informed by all the key stakeholders. I would encourage the self-insurers to learn from WorkCover in terms of that return-to-work and rehabilitation program they are working on at the moment. That is critical. If we want workers back to work quickly then that is the way to do it.

Mr HEALY: I have more of an observation. I am not a lawyer. I come from a marine tourism background. I notice in relation to the discussion about rehabilitation and return to work, clause 61, you have covered off the practicalities of it. I commend you on your submissions. The challenges are so simple they become complicated trying to apply process. It is a little bit like knowledge is knowing tomato is a fruit and wisdom is not putting it in the fruit salad. I think the way you have covered it is terrific. We need more of those simple applications. I think you have covered that in nine. Good submission and I liked what you said.

CHAIR: You can take that as feedback.

Mrs STUCKEY: Once you have had a chance to look at the response from the department could you let us know whether you are satisfied with those responses or whether there are still some issues?

Mr Spinda: Absolutely.

CHAIR: Could you supply that by Wednesday at 5 pm?

Mr Spinda: Not a problem.

CHAIR: We appreciate your time.

SCHMIDT, Ms Adele, Research Officer, Independent Education Union

WILSON, Ms Danielle, Industrial Officer, Independent Education Union

CHAIR: I welcome witnesses from the Independent Education Union. Thank you for your submission. Would you like to make an opening statement? Then we will open for questions.

Ms Wilson: We thank the committee for the opportunity to attend today and offer our feedback. As indicated in our submission, we do broadly support the proposed amendments to the Workers' Compensation and Rehabilitation Act. We commend the government on thinking a little outside the square on some of these issues because they are very important for injured workers. We can see some benefits for injured workers and employers.

In respect of the proposed amendments to the legislation, we would like to talk specifically around the status of psychological or psychiatric injuries suffered on the job. The reason is that that is the area of workers compensation that we deal with mostly in our sector. The current laws, we feel, treat these injuries quite inequitably and they have for quite some time—over 20 years. For the most part, the scheme is a no-fault scheme. When it comes to psychological and psychiatric injuries the burden of proof for injured workers is so much harder than for physical injuries because of the type of injury it is and because the claims are further complicated by needing to address those exclusionary provisions that exist in the act around reasonable management action.

Our position is a little controversial, but we feel it has posed direct discrimination between applicants applying for workers compensation. It does further stigmatise issues around mental health in the mind of the community. We feel that it says 'we do not see you, we do not believe you, we do not support you'. Although we are not fully across what happens in other jurisdictions, we know that this situation is certainly not unique to Queensland. In fact, we know that the reasonable management action provisions—exclusionary provisions—exist in every other jurisdiction.

We have also seen in recent years an extension of this idea around what I call the reasonable management action hurdle to other areas of insurance, such as income protection. We are now finding that members who miss out on workers compensation face a similar level of scrutiny with other insurers when they try to apply for salary continuance or income protection as a backup.

Both anecdotally and statistically, we are told that workers are suffering from a much higher degree of working related stress than at any time in the past. We believe that is a part of the type of community we live in now and the kind of society we have. Things are moving so much faster and people are generally under a lot more pressure. At the same time, improvements in safe systems of work have actually lowered the incidences of physical injuries. Where we have seen improvements in safe systems of work we have seen a lowering of the number of claims. In that vein there are a number of initiatives that Workplace Health and Safety Queensland is putting in place targeting those areas of staff wellbeing and workplace stress. Just like physical injuries, even where there is a focus on prevention of these types of injuries it does not stop them from happening. They still happen.

In terms of making sure that workers are adequately compensated for workplace injury, we actually believe that our system fails our workers if they are suffering from a work related psychological or psychiatric injury. An insurer may well agree that a worker has suffered a personal injury and they may well agree that employment was a significant contributing factor, but unless the injured worker can prove that either management action had nothing to do with their injury or that management's actions were unreasonable the act obliges a rejection of that claim. This unfairly penalises an injured worker purely because of the type of injury they suffer.

There have been many opportunities over the years to reconsider the way we assess psychological and psychiatric injuries. We absolutely welcome the current consideration being given to commence a program of early intervention while the claim is being assessed. We understand from medical experts that this is crucial to recovery from psychological and psychiatric injuries. Early intervention is more likely to lead to successful returns to work. That is the aim of the game. We need to get people back to work.

We could if we dared also lead the way to correct the imbalance in the way our legislation treats these injuries in the first place. We could ensure that all workers are fully covered for work related injury, regardless of the type of injury they suffer. Our very simple solution is to remove section 35 of the act, but we understand that that is an incredibly complex operation. In an ideal world that would be great. We know that there would be quite a lot of opposition from employer groups, because the approval of further claims realistically could cause an increase in their premium. However, we would argue that employers would save money—certainly, the money that they spend on defending these claims—and they would benefit far greater from the existing investment that they have already put

into those workers if injured workers are able to be supported adequately by our compensation scheme and able to get back to work more quickly. By focusing on the premium cost, I feel that we are again discriminating against workers with psychological and psychiatric injuries and we are telling them that they are just not worth it.

If we are not quite that brave, an alternative could be to change the burden of proof for these particular injuries. It is difficult for workers to prove when management action is unreasonable. An employer can make a statement that their action has been reasonable and there is no legislative need for them to back up that statement. Insurers do not undertake investigations to determine whether injured workers were treated fairly by their employers in the exercise of management action. If this aspect of psychological and psychiatric claim assessment were put on the employer to demonstrate, this would go a long way to helping injured workers at a time when they are at their most vulnerable.

When workers compensation is not available to injured workers and they either do not have income protection or, in the event that they have it, they cannot access it, it increases the pressure on our public health and social services. These services provide a bare skeleton of support for injured workers, but they do not provide the level of support that is needed for someone to recover successfully and return to duty so that they can continue their contribution to our community.

Finally, I would say that we really should be aiming for a system that treats all injured workers equitably and does not discriminate between them based on the type of injury they have. Ideally, we would like to see the removal of section 32(5) from the act so that psychological injuries and psychiatric injuries are assessed the same as all other injuries and no exclusionary provisions apply. Thank you.

CHAIR: Thank you very much. We will open with questions from the deputy chair.

Mrs STUCKEY: Thank you both for coming along and thank you for your submission as well which, as you have outlined today, focuses on one main aspect that seems to be of concern to you. Given that the Peetz report was tabled over 14 months ago, have you had any consultation, as was suggested should occur in those recommendations?

Ms Wilson: I do not believe that we did participate in consultation. We did some joint work with the Queensland Teachers' Union through our solicitors.

Mrs STUCKEY: That is post the report?

Ms Wilson: I would need to check on that for you.

Mrs STUCKEY: Would you mind? It is just that the report was tabled back in June last year. I was reading in there about that. This whole area of psychological and psychiatric claim is obviously warranted, but it is also potentially something, as you have said, of society's own creation. We are living in a more stressful society. That would also mean that the employer is under the same stresses of that society. Do you contend that there will be more psychological and psychiatric claims than there are at present? Are you able to give a percentage of how many of those claims that have come forward in the past couple of years—or however long you have been involved—have been more along the psychological and psychiatric line, although I understand that in many cases they are both?

Ms Wilson: Yes. In terms of the amount of psychological injury we are seeing, we are definitely seeing a rise in it. Our members are predominantly in the tertiary sector, where we have school officers and educators in school environments. There are a multitude of pressures that they are under. Workload intensification is probably one of the biggest issues in our sector. We have employers who are not recognising that as readily as they should be. To answer your question, I do. Unless employers address the workload intensification of educators in our sector, we will see a continuing rise in stress related claims.

In terms of the percentage, of the people coming to us—no joke—98 per cent are dealing with psychological injuries. I noted in the statistics when we were looking at this that there were around 4,400 claims for psychological injuries put in in the 2017-18 year. Around 2,996 had decisions on them. That means that we have a shortfall of around 1,400 claims that are either being withdrawn or sitting there as reports only but there is nothing happening with them. Out of the nearly 3,000 claims that go in, 62 per cent of those are rejected and a significant majority of the rejections—I think it was around 93 per cent—were on the basis of reasonable management action.

There are areas that employers are very good at addressing. For example, they can be quite good in dealing with situations where our members might be exposed to workplace violence—attacks from students, attacks from parents and those sorts of things that can cause that post-traumatic type of injury. Where our employers, unfortunately, are not able to really provide the support they need to our members is in those areas that are the unseen things—that workload that is building up, that

constant pressure that is building up just from the everyday work of what happens in a school. Until those things are addressed, we are not going to see a decrease in the number of claims coming through.

Mrs STUCKEY: As politicians we read and share a lot of concerns about the increase in the number of physical assaults on our teachers in our classrooms and angry parents and children throwing projectiles and all sorts of things. We understand that there is an increase. Thank you.

Ms Wilson: No worries. Thank you.

Mr SAUNDERS: You just touched on a favourite subject of mine. Today we are seeing the workload of educators in the private and public sectors increasing. Has the union seen any policy coming through from private educators to help teachers with these workload stresses to minimise the psychological effect on them? Some of them are working up to 60 or 70 hours a week. We know that. That is documented. Are there any programs put in place? They would help cut down on the WorkCover claims also.

Ms Wilson: In short, no. We have a couple of enterprise agreements with some of our bigger sectors where there are aspirational goals around workload and workplace stress, but we have found it very difficult to get employers to meet that commitment. We are going through a round of bargaining at the moment with our largest sector where they are point-blank refusing to acknowledge that workload intensification is an issue for our members.

We get a lot of lip-service, if you like. A lot of schools do not have policies around what is reasonable use of email, for example. They do not have policies around how best to manage parents. There is a lot of reactivity in dealing with issues arising from parental complaints. Schools in our sector do not always respond to that effectively, because they have a range of interests that they are trying to mind. We see a lot of psychological injuries come from that, where our members do not feel supported at the school level because they are conscious that there is a level of support for parents as well that they feel is maybe not in their best interests. In short, there is nothing concrete enough that makes a difference to the lives of our workers in schools.

Mr SAUNDERS: Is there any evidence where educators have been pressured—

CHAIR: Is this relevant to the bill?

Mr SAUNDERS: I am talking about the psychological injuries—to drop their claims because it is not good for the school cohort or the image of the school? Is there any evidence of that?

Ms Wilson: No. I just thinking of the cases that I have dealt with over the years. I do not think we have really had pressure put on our members to drop claims. We have had heavily defended claims. Employers definitely defend their claims very strongly, because they know that the cost is going to be quite high and also it is their reputation at stake when you are dealing with things like management action. An employer does not want to be seen to be acting unreasonably, so they are certainly going to defend their reputation. In that aspect we have a fairly good attitude from our employers that if members are injured at work they should be lodging claims.

Mr DAMETTO: Thank you, Ms Wilson and Ms Schmidt, for coming along today and sharing some time with us to brief the committee and go through your submission. You were just saying that 98 per cent of claims coming across your desk at the moment are for psychological injury. That is quite alarming when we are talking about educators. If that were occurring in any other industry—if there were back claims in the mining and construction industry, where I am from, people would be asking, 'What is going on out there? We need to be using more lifting aids, more forklifts, more cranes. What is going on?' It is very alarming. That is a statement from me. My question is: when people are going through a personal injury claim with psychological injuries, are you finding that those people who have been successful through that claim are having trouble finding future employment in other roles?

Ms Wilson: If they make a successful return to work, it is very beneficial to them. It is almost like 'what does not kill you makes you stronger'. Where our members make a successful return to work, we have seen our members get on with their lives quite well. The difficulty would come where they cannot return to that workplace for a reason, and sometimes that can be part of the injury—that they may never work effectively in that workplace again. All of our employers are covered by WorkCover and WorkCover runs very good host employment programs. We have seen a lot of our members go through those host employment programs. They are very successful and help members get back to work, even if they cannot go back to their own workplace.

We see some members who never return to work. I would say that a majority of those would be older workers. Teaching is an ageing profession. We have a lot of teachers in their 50s who may find it difficult to go back to a teaching role. We see people almost change the course of their career if they are affected by an injury that they cannot get over.

Mr DAMETTO: As I was saying earlier, I come from the mining and construction industry. You will never be able to prove that companies black-list people, but I know people who have had a back injury and have a successful workers compensation claim where they then find it very hard to gain future employment with other companies. Thank you for clarifying that for me.

Ms Wilson: That is okay. I think there are protections under the law that prevent our employers from necessarily getting access to the kind of information that might lead to that. There are some protections from that. The other thing that I would like to say in regard to that 98 per cent is that we only see claims when members are in trouble. It is only where they are having difficulty with their claims process or their claim is rejected that we see them. Just because the natural rejection rate of psychological injuries is high, that is why we are seeing them so high.

Mr DAMETTO: Thank you very much for clarifying that.

CHAIR: Thank you. I appreciate your clarifying point that the data is skewed somewhat in that regard, and that is the nature of your role in the sector, so thank you very much for being there when they get to that point. My question to you is also with regard to psychological and psychiatric injuries, and again your information will be skewed on the basis that they are getting to you at quite a critical point where they have probably been knocked back. Do you feel that early intervention and psychological support or treatment as the claim progressed would have maybe altered the outcome for some of these individuals?

Ms Wilson: Yes. You can never say for sure, but we know that the medical evidence says that early intervention is key and we know that if you suffer from a psychological injury your time away from work is the longest out of all injuries. One of the first things we do with our members is say, 'You have to talk to your doctor and really get hold of the medical support that you need,' whether that is seeing a psychologist or a psychiatrist, but getting in early to address the very acute feelings that they are having, because we have seen that—only anecdotally with our members—that put them a step forward when it comes to their recovery. The provisions covering the early intervention treatment during the course of the claim are absolutely going to benefit injured workers through the course of their claim. If we get to a point where those claims are ultimately not accepted, I think that investment will still be very worthwhile and will really pay off and it will help those injured workers deal with that decision far more effectively than they are currently dealing with it.

CHAIR: You made the observation that you are obviously dealing with often older workers by nature of the ageing workforce, but has it been your experience that when employees are coming to you with a psychological claim that that has been in the majority as a result of a traumatic event or has it been cumulative, and of course it is even harder to prove that that is a work stressor rather than a life stressor?

Ms Wilson: More often than not it is the build-up. It will be something that has taken place over weeks, months and sometimes over years. There has been a gradual build-up of things happening and events in the workplace. We also get those where people are exposed to quite a traumatic and very acute event, but they may not come back for a couple of months. They go into teacher mode and they deal with it, but then it might take a while for that injury to actually show up. It also takes a while for them to present, because it is an occupation where people feel they should be able to deal with these things. There are probably a few factors in there, but I would definitely say that most of the claims that we deal with are over-the-course-of-time claims.

CHAIR: Danielle, is it your view—similar to those who have spoken before you—that the amendments proposed in the bill about extending the time that a worker may bring a claim in that regard will be beneficial?

Ms Wilson: Absolutely, yes. I probably should have written a little bit more to that, but we can see that there would be a lot of advantages for our members being able to have just that little bit more flexibility in bringing their claims forward. Instead of us giving them the bad news about the six-month component, it will be good to be able to offer them advice around a bit more flexibility in terms of the time applying, yes.

CHAIR: Thank you so much. I thank you both for coming today. Thank you for your written submission. You took a question on notice with regard to consultation and I ask you to please provide your response in written form to our secretariat by 5 pm on Wednesday.

Ms Wilson: Certainly.

CHAIR: If there is any further feedback or comments you wish to make in response to the department's response to submissions that you received a copy of electronically and in printed form today, then we would also happily receive that by 5 pm on Wednesday.

Ms Wilson: That is great.

CHAIR: Thank you both again.

The committee adjourned at 11.48 am.