Parliamentary Committees



Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019

Report No. 21, 56th Parliament
Education, Employment and Small Business Committee
October 2019

Education, Employment and Small Business Committee

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Acknowledgements

The committee acknowledges the assistance provided by the Office of Industrial Relations (Department of Education), the Department of Employment, Small Business and Training and the Department of Innovation, Tourism Industry Development and the Commonwealth Games.

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Abbreviations

Ai Group	Australian Industry Group
ALA	Australian Lawyers Alliance
ASIEQ	Association of Self-Insured Employers Qld
DESBT	Department of Small Business and Training
DoE	Department of Education
DITID	Department of Innovation, Tourism Industry Development and the Commonwealth Games.
FET Act	*Further Education and Training Act 2014*
FWA Act	*Fair Work Act 2009* (Cwlth)
FWC	Fair Work Commission
HIA	Housing Industry Association
IEU	Independent Education Union
OIR	Office of Industrial Relations (part of the Department of Education)
Peetz review	Professor David Peetz, *The Operation of the Queensland Workers' Compensation Scheme: Report of the second five-year review of the scheme*, 2018
RRTWC	Rehabilitation and Return To work Coordinator
QOTE	Queensland ordinary time earnings
QLS	Queensland Law Society
SRTO	Supervising Registered Training Organisation
VETE Act	Former *Vocational Education Training and Employment Act 2000*
Workers' Compensation Act	*Workers' Compensation and Rehabilitation Act 2003*
WHS	Workplace health and safety

Chair's foreword

This report presents a summary of the Education, Employment and Small Business Committee's examination of the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019.

The Bill amends the *Workers' Compensation and Rehabilitation Act 2003,* Workers' Compensation and Rehabilitation Regulation 2014*, Further Education and Training Act 2014,* and the *TAFE Queensland Act 2013.* It also repeals the *Commonwealth Games Arrangements Act 2011.*

The *Workers' Compensation and Rehabilitation Act 2003* requires a review of the workers' compensation scheme to be completed at least once every five years. This Bill includes amendments to the Act to implement twelve of the recommendations of the second five-year review, undertaken by Professor David Peetz of the Business School at Griffith University. Relevant recommendations from the Peetz review are listed in an appendix to this report.

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.

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, and officials from the Office of Industrial Relations in the Department of Education, the Department of Employment, Small Business and Training and the Department of Innovation, Tourism Industry Development and the Commonwealth Games.

I commend this report to the House.

Chris Whiting MP

A/Chair

Recommendations

The committee recommends the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019 be passed.

1 Introduction

1.1 Role of the committee

The Education, Employment and Small Business Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- education
- industrial relations
- employment and small business
- training and skills development.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019 (the Bill) was introduced into the Legislative Assembly and referred to the committee on 22 August 2019. The committee was required to report to the Legislative Assembly by 8 October 2019.

1.2 Inquiry process

On 26 August 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Eleven submissions were received.

The committee received a written briefing about the Bill from the Department of Education, the Department of Employment, Small Business and Training and the Department of Innovation, Tourism Industry Development and the Commonwealth Games on 2 September 2019. A copy is published on the committee's web page. The departments provided a further oral briefing on Monday 16 September and responded to committee questions. The transcript of that briefing is on the committee's web page; see Appendix B for a list of officials who briefed the committee.

The committee also received written advice from the departments in response to matters raised in submissions, and further advice after the public hearing and public briefing.

The committee held a public hearing on 16 September 2019 (see Appendix C for a list of witnesses), which was followed by the oral briefing from the departments.

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objectives of the Bill are to:

- amend the *Workers' Compensation and Rehabilitation Act 2003* (Workers' Compensation Act) to implement some of the recommendations of the report of a review undertaken by Professor David Peetz - *The Operation of the Queensland Workers' Compensation Scheme:*

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

Report of the second five-year review of the scheme (the Peetz review)[2]

- amend the *Further Education and Training Act 2014* regarding arrangements for negotiation of training and employment issues between employers, apprentices and trainees. Issues concerning cancellation and suspension, and complaints from apprentices were identified in the Queensland Training Ombudsman report *Review of group training arrangements in Queensland* and in the Training Ombudsman's *2017-18 Annual report*
- make an amendment to the composition of the TAFE Queensland Board, appointed under the *TAFE Queensland Act 2013*, and
- repeal the *Commonwealth Games Arrangements Act 2011*.

Further information about the policy objectives of the Bill is contained in the chapters about examination of the Bill.

1.4 Government Consultation on the Bill

The explanatory notes summarise the consultation undertaken in the development of the Bill.

1.4.1 Workers' Compensation and Rehabilitation Act

Following the Peetz report the government consulted on proposed amendments to the *Workers' Compensation and Rehabilitation Act 2003*. Consultation was undertaken with a Stakeholder Reference Group comprised of unions, employer groups, insurers, allied health representative bodies and the legal community. Consultation included consideration of drafts of the Bill.

The Stakeholder Reference Group included:

> *… WorkCover, the Association of Self-Insured Employers Queensland, the Australian Lawyers' Alliance, the Queensland Law Society, the Housing Industry Association, Master Builders QLD, AiGroup, the Australian Rehabilitation Providers Association, Occupational Therapy Australia, the Australian Workers' Union, the Construction Forestry Maritime Mining Energy Union Construction and Mining Divisions, the Queensland Council of Unions, SDA Queensland, the Bar Association of Queensland, Chamber of Commerce and Industry Queensland and the Consultative Committee for work-related fatalities and serious incidents*.[3]

1.4.2 Further Education and Training Act

A preliminary discussion paper was provided to stakeholders including the Australian Industry Group; those consulted were the Group Training Association of Queensland and Northern Territory, Australian Manufacturing Workers' Union and Electrical Trades Union.

1.4.3 Commonwealth Games Arrangements Act

The City of Gold Coast and Australian Commonwealth Games Association were consulted about the dissolution of GOLDOC and the proposed repeal of the Act.

1.5 Should the Bill be passed?

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

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2 The review report was tabled in the Legislative Assembly in July 2018, see: https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2018/5618T935.pdf

3 Office of Industrial Relations, *Consultation Regulatory Impact Statement: Workers' compensation entitlements for workers in the gig economy and the taxi and limousine industry in Queensland, Workers' Compensation and Rehabilitation Act 2003.* Queensland Government, https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0011/177347/ris-gig-taxi-limo-industries.pdf

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by the departments, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019 be passed.

2 Examination of the Bill – amendments to Workers' Compensation legislation

This section summarises the main policies proposed to be implemented, and discusses issues raised during the committee's examination of the Bill. Most of the submissions received focussed on the issues discussed below.

2.1 Overview

2.1.1 Peetz review of Workers' Compensation and Rehabilitation Act

Section 584A of the Workers' Compensation Act requires the Minister to ensure the operation of the workers' compensation scheme is completed at least every five years; the report of the review must be tabled in the Legislative Assembly. The first review was completed in 2013, and the second review was completed in June and tabled in the Legislative Assembly in July 2018.

The Peetz review made over 50 recommendations, 15 of which require legislative change. The Bill proposes amendments to implement 12 legislative recommendations. Three other recommendations concern the potential extension of workers' compensation coverage to workers in the gig economy. When introducing the Bill the Minister explained those three recommendations would be considered separately.[4] A consultation regulatory impact statement (RIS) was released to seek public feedback on possible inclusion of some gig economy workers in the workers' compensation scheme; submissions on the consultation RIS closed in July 2019.[5]

Appendix A lists the recommendations of the Peetz review that this Bill proposes to implement, and lists the relevant clause numbers in the Bill.

2.1.2 Government response to the Peetz review

The Office of Industrial Relations (OIR) advised the Peetz review recommendations were still being considered as a whole. As noted above, possible workers' compensation coverage for workers in the gig economy has been consulted on via a consultation RIS. The OIR advised it anticipated the government will outline its response to all of the Peetz review recommendations when the RIS process is finalised. In addition, OIR advised that work is underway on a number of administrative actions to implement other Peetz review recommendations.[6]

2.1.3 Amendments to the Workers' Compensation and Rehabilitation Act and Workers' Compensation and Rehabilitation Regulation 2014 other than the Peetz recommendations

In addition to implementation of Peetz review recommendations, the Bill proposes amendments to change lump sum or monetary entitlements from dollar figures to proportions of Queensland Ordinary Time Earnings (QOTE), clarifies the circumstances in which an authorised person may exercise powers, updates terminology for diagnosis of pneumoconiosis, and amends the definition of a terminal condition.

2.1.4 Submitter's views

Of the eleven submissions received by the committee, seven generally supported the proposed changes to the Workers' Compensation Act.[7] Some of those submitters raised specific issues, which

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4 Queensland Parliament, Record of Proceedings, 22 August 2019, p 2477.

5 Office of Industrial Relations, 'Possible extension of workers' Compensation coverage for certain gig economy workers, and bailee taxi and limousine drivers', https://www.oir.qld.gov.au/worksafe/workers-compensation-services/possible-extension-workers-compensation-coverage-certain-gig-economy

6 Public briefing transcript, 16 September 2019, p 6.

7 For example, submissions 1, 2, 3, 4, 5, 6, 9,

are discussed below. The other four submitters[8] raised specific issues and did not comment broadly on whether they supported the proposed amendments; the specific issues raised are also discussed below.

2.2 Prevention activities by WorkCover Queensland

2.2.1 Current funding of injury prevention

Currently, section 481 of the Workers' Compensation Act requires WorkCover to make payments to organisations the Minister considers will help in prevention of injury to workers, along with other matters. Funds are provided to Workplace Health and Safety Queensland (WHSQ), which has legislative responsibility for ensuring workplace health and safety (WHS).

2.2.2 Peetz review findings

The Peetz review considered a suggestion that WorkCover should be able to undertake prevention activities, noting that WorkCover has access to claims data which would enable quick preventive interventions. The review report commented the proposal could result in two agencies (WorkCover and WHSQ) duplicating their prevention work. While the review concluded WHS is more appropriately managed by WHSQ, and WorkCover's priorities should remain focused on premium collection, claims management and rehabilitation initiatives, it considered WorkCover's ability to fund prevention activities should be made legislatively clearer.[9] The review suggested a joint agency steering committee could ensure input and feedback between the agencies on prevention initiatives.

2.2.3 WorkCover's injury prevention functions

Clause 71 inserts a new section 385A which provides that WorkCover may ' fund and provide programs and incentives to encourage improved health and safety performance by employers', and, before doing so, must consult with the regulator under the *Workplace Health and Safety Act 2011* and any other prescribed WHS regulator. Clauses 70 and 71 clarify WorkCover's prevention function, and ensure the existing payments made under section 481 are not limited by the new prevention function.

2.3 Employer expressions of regret, apologies and liability

2.3.1 Background and Peetz review

The Peetz review considered workplace support as a component of injury prevention and management. It reported that consultation revealed some matters where stakeholders considered that awareness among employers could be improved. This included awareness of mental health issues, and prevention, not just treatment, of psychological problems. The review report continued:

> *Related to this is the need to ensure employers are aware of the manner in which, in the absence of adequate workplace support, physical injuries can lead to subsequent complications through additional psychological problems, and the way in which good workplace health can be promoted through good management practice.*

Many employers are hesitant to apologise to workers following a workplace injury, fearing it may be interpreted as an admission of liability. An apology may result in positive outcomes for both workers and employers.[10]

Under the *Civil Liability Act 2003* an apology about a personal injury is not admissible as evidence of fault or liability for injury; however that Act generally does not apply to injuries for which compensation is payable under the Workers' Compensation Act.

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8 Submissions 7, 8, 10, 11,

9 David Peetz, *The Operation of the Queensland Workers' Compensation Scheme: Report of the second five-year review of the scheme,* 2018, p 62.

10 Explanatory notes, p 4.

The Peetz review recommended amendment of the Workers' Compensation Act to exempt apologies provided by employer representatives following a workplace injury from being considered in any assessment of liability. This would address the apparent anomaly between the protection provided by Civil Liability Act and workers' compensation legislation. It would reduce the distress experienced by injured workers, and would likely lead to savings in employer costs.[11]

The review report stated:

> *… there appeared to be significant evidence presented that employer responses to injuries could be very influential in determining whether a common law action was pursued against the employer. If a worker felt that the employer did not care about them, they were more likely to feel aggrieved and sue. This in turn tells us that worker distress is heightened if the employer appears disinterested or unhelpful after an incident. Such distress is likely to compound psychological injury, or even create a psychological complication to an initially purely physical injury.*[12]

2.3.2 Proposed amendments

Clause 69 of the Bill inserts new sections 320A to 320H in the Workers' Compensation Act to allow an individual to express regret or make an apology without it being an admission of liability.

An *expression of regret* in proposed section 320C means 'any oral or written statement expressing regret for the incident to the extent that it does not contain an admission of liability on the part of the individual or someone else'.

An *apology*, in new section 320G means:

> *…an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, whether or not it admits or implies an admission of fault in relation to the matter.*

Under new section 320H, an apology does not constitute an express or implied admission of fault or liability for damages, and is not relevant to the determination of fault or liability for damages. Further, evidence of an apology is not admissible in any civil proceeding as evidence of the fault or liability for damages of the person in relation to the matter.

2.3.3 Concerns about potential use of an expression of regret or apology in criminal proceedings

2.3.3.1 Stakeholder views

The amendments that will enable an employer or their representative to express regret or apologise without it constituting an admission of liability were supported by Shine Lawyers and the Australian Lawyers Alliance. Shine Lawyers commented:

> *It is our experience that where …. the employer informs the injured worker that they regret what happened or apologises for what happened, that the injured worker will have a more positive claims experience and can have a better outcome in terms of any psychiatric or psychological injury. Our view is that this not only has benefits for the injured worker but allows an employer to do the right thing and treat their injured worker with dignity and respect. This no doubt will have other positive impacts for other workers in the workplace.*[13]

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11 Peetz review report, p 70.

12 *The Operation of the Queensland Workers' Compensation Scheme*, p 70.

13 Submission 5, p 5.

Both the Housing Industry Association (HIA) and the Queensland Law Society (QLS) raised the potential implications of an apology or expression of regret in criminal prosecutions. Both stakeholders indicated the issue had been raised during government consultations on the Bill.[14]

The QLS was concerned the proposed amendment does not take account of the potential evidentiary use of an apology in criminal proceedings. In particular, the QLS drew attention to provisions of the *Work Health and Safety Act 2011* which include custodial sentences for industrial manslaughter.

> *In these circumstances it is absolutely essential that legal practitioners advise employers of the risk associated with making an expression of regret or an apology. In our view, once an awareness of this risk is attained, the effect of the policy objective (in seeking to encourage employers to offer sincere apologies to a worker following a workplace injury), may unfortunately likely be diluted.*[15]

2.3.3.2 Consideration of potential use in criminal proceedings

The committee explored the potential use of an apology or expression of regret further with the QLS in its public hearing and with the OIR in the later public briefing.

In its submission and at the public hearing the QLS suggested a possible solution to its concerns about a potential impact on criminal proceedings was an amendment to the *Work Health and Safety Act 2011*. QLS advised the committee: '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.' The QLS confirmed its concern is:

> *… in the criminal sphere, … statements of that nature … 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*.[16]

A different legal standard of proof applies in civil matters (such as a personal injury claim) and in a criminal matter, such as a prosecution for industrial manslaughter. In its comments on submissions, the OIR advised that in the context of criminal prosecutions:

> *Australian courts that have considered this issue … [have] … 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.*[17]

The OIR noted that in the majority of workers' compensation claims, employers are not subject to a criminal proceeding under the Work Health and Safety Act. Approximately 75,000 workers' compensation claims are accepted each year, and about 79 prosecutions under the WHS Act are finalised each year; not all WHS prosecutions arise from a workplace injury.[18]

Further, the OIR advised that the *Work Health and Safety Act 2011* is based on model work health and safety laws developed by Safe Work Australia. If the proposal to amend the WHS Act was to be adopted, 'it would require significant consultation' as Queensland, like most other states and territories, has adopted the model legislation:

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14 HIA submission 11, p 5; QLS in Public hearing transcript, Brisbane, 16 September 2019, p 2.

15 Submission 9, p 2.

16 Public hearing transcript, Brisbane, 16 September 2019, p 5.

17 Department of Education, Correspondence, 13 September 2019, p 2.

18 Department of Education, Correspondence, 13 September 2019, p 2.

> *The harmonisation of work health and safety laws was part of the Council of Australian Governments' National Reform Agenda aiming to reduce regulatory burdens and ensure consistency in the protection of workers' health and safety.*[19]

During the public briefing the OIR advised that guidance materials and advice would be developed about how an expression of regret or apology might impact on further legal action:

> *We will make people aware that in a criminal proceeding it is up to a criminal court to determine that [the statement may be persuasive] but it will be governed by what is in the statement and facts that can be derived out of that statement …*[20]

2.3.3.3 Committee comment

The committee acknowledges the concern raised by submitters. It notes the OIR advice about courts' determination that an apology itself cannot amount to an admission of liability, and that guidance materials will be developed to assist in understanding of the potential impacts of an expression of regret or apology.

2.4 Psychological and psychiatric injury definition

2.4.1 Definition of 'injury'

Section 32 of the Workers' Compensation Act currently defines an 'injury' as one that is a personal injury arising out of, or in the course of, employment if the employment 'is a significant contributing factor to the injury'.

Currently, psychological and psychiatric injuries are defined differently and are an 'injury' for the purpose of the Act only if the employment is 'the major' significant contributing factor to the injury.

If a psychological or psychiatric injury is said to arise from 'reasonable management action', it is excluded from the definition of 'injury'. The exclusion of those injuries is consistent across Australian jurisdictions:

> *… claims for psychological injury are not accepted if they are related to reasonable action taken by the employer in relation to dismissal, retrenchment, transfer, performance appraisal, disciplinary action or deployment.*[21]

2.4.2 Peetz review

2.4.2.1 Characteristics of psychological injury claims

The Peetz review report noted some characteristics of claims for psychological or psychiatric injury, including:

- they represent approximately 4.7 per cent of claims lodged each year
- on average over 63 per cent of claims lodged in relation to psychological injury are not accepted, typically because they arise in the course of reasonable management action
- for accepted claims of psychological and psychiatric injuries the main direct causes include work pressure, exposure to workplace or occupational violence, and work related harassment and/or workplace bullying
- claims take longer to decide due to their nature and complexity (31 working days compared to 6.5 working days to decide physical injuries)

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19 Department of Education, Correspondence, 13 September 2019, p 3.

20 Public briefing transcript, Brisbane, 16 September 2019, p 5.

21 Peetz review, p 41.

- the average duration off work is three times that of physical claims, which in turn impacts on claims cost
- claims represent a significant proportion of disputes and generally take longer to resolve.[22]

2.4.2.2 Changes to definition of 'injury' 1990s to 2013 and rates of claim rejection

The Peetz review report summarised various changes to the definition of psychological or psychiatric 'injury' during the 1990s, and up to 2013. The most recent amendment was to provide that employment is 'the major' significant contributing factor to the psychological or psychiatric injury.

The report noted the rejection rate for psychological or psychiatric injury claims had increased from 61.5 per cent before the 2013 amendments to 64.7 per cent initially, then up to approximately 68 per cent. The rejection rate then gradually reduced. In the twelve months before the Peetz review report, the rejection rate had reduced to 62.1 per cent, marginally above the pre-October 2013 levels when the definition of 'injury' was last amended.

The Peetz review recommended removal of 'the major' significant contributing factor from the definition of a psychological or psychiatric injury. Noting the rejection rate had stabilised, the background to Professor Peetz' recommendation included:

> *The label 'the major' probably has more symbolic value for the parties than its practical impact, which appears small though probably real. On the other hand, there seems no good reasons for Queensland to be out of step with the other jurisdictions in Australia, none of which require work to be 'the major' contributory factor; instead all focus on a 'substantial' or 'significant' contribution from work and include 'reasonable management action'. Accordingly, for consistency's sake it should be removed. The real issues in the handling of psychological and psychiatric injuries lie elsewhere, in the extent to which early inventions can reduce the damage and cost of such injuries.*[23]

2.4.3 Proposed amendment

The Bill (clause 34) proposes to amend the definition of a compensable 'injury' in section 32 of the Workers' Compensation Act to remove references to employment as 'the major' contributing factor. Instead, a person's employment is 'a significant contributing factor' to an injury, irrespective of whether the injury is physical or psychological. The primary amended provision would be:

> *(1) An **injury** is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.*

The Bill does not propose any amendment to the current exclusion of a psychological or psychiatric injury that arises out of, or in the course of, reasonable management action.

2.4.4 Stakeholders comments and departmental advice

2.4.4.1 Removal of employment as 'the major' significant contributing factor

A number of submitters opposed the amendment to section 32 of the Workers' Compensation Act which would remove references to employment as 'the major' significant contributing factor to a psychological or psychiatric injury.

The Ai Group and the Association of Self-Insured Employers Qld (ASIEQ) do not support the amendment to remove the requirement that employment is 'the major' contributing factor to an injury. ASIEQ advocated removal of the amendment and suggested it 'will potentially allow workers

[22] Peetz review, p 40.

[23] Peetz review report, pp 42-43.

compensation coverage for psychiatric and psychological injuries with a tenuous connection to employment.' [24] The Ai Group submitted:

> *… we continue to put forward the view that there often needs to be detailed assessment of psychiatric and psychological injuries to determine entitlement and the input and engagement of employers in this process is crucial.*[25]

ASIEQ also contended that:

> *Legislative definitions of injury in most other states require "more than a significant contribution from employment" and instead "required employment to have the greatest contribution to the injury". This was demonstrated in papers distributed in the SRG process.*[26]

The 'SRG process' mentioned by ASIEQ is the Stakeholder Reference Group convened by government, which was consulted on the legislative amendments arising from the Peetz review.[27]

In its comments on submissions the OIR advised the committee of variations in the rejection rate for psychological claims before and after the 2013 amendments which added a requirement that employment is 'the major' contributing factor to the injury (summarised above in section 2.4.2 about the Peetz review report). The OIR concluded that amending the definition of 'injury' is unlikely to lead to an increase in accepted claims, and advised this is consistent with 2006 research commissioned by the Australian Government. The Philips Fox Review, *Australian workers' compensation law and its application,* concluded the differences in wording across Australian jurisdictions implied different thresholds, but in practice 'rarely make a difference in outcome'.[28]

The OIR also advised:

> *… no other jurisdiction aside from Queensland has disparity between the work-relatedness test between physical and psychological injuries. The amendment is consistent with the approach taken in other jurisdictions in this regard and provides greater equality for workers with psychological or psychiatric injuries.*[29]

2.4.4.2 Reasonable management action

The Independent Education Union (IEU) was concerned that the Bill did not change the exclusion of psychological injuries that arise from reasonable management action. The submission noted the exclusion of psychological injuries that arose from 'reasonable management action' was first introduced in the 1990s. It argued that physical injuries occur as a result of 'reasonable management action', and urged the government to 'set a benchmark for recognition that psychological/psychiatric injuries are no less debilitating than physical injuries, and should be treated in a similar fashion.'[30]

As already noted, all Australian jurisdictions exclude claims for a psychological or psychiatric injury that arises from 'reasonable management action'.

Professor Peetz considered whether insurers unreasonably reject claims for psychological injury that should be accepted. He reported around 88 per cent of the disputes about 'reasonable management action' are because the claim was rejected by the insurer. On review, the reviewer agreed with the insurer's original decision in two-thirds of disputes, and varied the original decision in around 18 per cent. In disputes about other matters, the reviewer agreed with the insurer's original decision in

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24 Submission 10, p 4.

25 Submission 7, p 7.

26 Submission 10, p 5

27 Explanatory notes, p 12

28 Department of Education, correspondence, 13 September 2019, p 19.

29 Department of Education, correspondence, 13 September 2019, p 19.

30 Submission 4.

around half of disputes, and varied the original decision in almost a quarter of cases. 'This suggests that the initial assessment of a claim is more often consistent with the Regulator's interpretation of the legislation'.

Professor Peetz concluded the main issue is what the term 'reasonable management action' means to the Regulator. The Peetz review did not recommend any legislative amendments; instead it recommended OIR develop an information booklet that clearly sets out examples of 'reasonable' and 'unreasonable' action for the acceptance of psychological and psychiatric injury claims.[31]

2.4.4.3 Committee comment

The committee notes the analysis of rejection rates for claims for work-related psychological injury in the Peetz review report. It also notes Queensland is the only Australian jurisdiction that applies a different definition of 'injury' for physical and psychological injuries. Based on this evidence, the committee is satisfied the proposed amendment to the definition of 'injury' in clause 34 is unlikely to result in a significant increase in accepted claims.

In relation to the exclusion of psychological and psychiatric injuries that arise from reasonable management action, the committee notes the IEU's comments and the Peetz review's analysis of the outcomes of disputed decisions about 'reasonable management action'.

2.5 Psychological and psychiatric injury – early intervention

2.5.1 Background and Peetz review

Due to their complexity, decisions on claims for a work-related psychological or psychiatric injury generally take longer than other injuries; in 2017-18 the average time for a decision was 34 working days.[32] The Workers' Compensation Act currently enables payments to be made after a claim has been accepted, which, on the 2017-18 average decision time, would be six or more weeks after a claim is lodged. A worker may be without support and psychological assistance during this time, which may lead to their condition becoming worse.

The Peetz review considered the best approach to claims management and recommended:

> *Early intervention in cases of potential psychological or psychiatric injury should be promoted by requiring insurers (on a 'no prejudice' basis) to cover the costs of treatment for such injuries before liability has been assessed, up to a limit (defined by reference to a time period). These costs would not form part of the experience rating of the relevant employer, if the claim is subsequently rejected.*

In addition, the Peetz review recommended the requirement for 'no prejudice' early intervention on psychological and psychiatric injuries should be evaluated after two years, and include consultation with stakeholders, mental health experts and action groups. [33]

2.5.2 Proposed amendments

Clause 65 inserts proposed new sections 232AA and 232AB which would require an insurer to take all reasonable steps to provide services to support a worker who applies for compensation for a psychiatric or psychological injury arising out of, or in the course of, employment. A number of other consequential amendments are proposed, to ensure consistency of other sections of the Workers' Compensation Act with new sections 232AA and 232AB.[34]

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31 Peetz review, p 43.

32 Department of Education, Departmental brief, 2 September 2019, p 9.

33 Peetz review report, pp 45 – 46.

34 Clauses 47, 52, 59 and 74.

The Bill (proposed section 232AB) limits the services an insurer is required to pay to reasonable costs for medical treatment, nursing, medicines, medical or surgical supplies. The insurer is not required to pay costs of hospitalisation or nursing, medicines, medical or surgical supplies received as a hospital inpatient. The period an insurer is responsible for providing support starts when the worker makes an application for compensation and ends on the day the insurer decides to allow or reject the application. If an application for compensation is allowed, payments made during the period the claim is being decided are taken to be payment of compensation.

OIR advised the new support services provided to workers during the claim determination process of a psychiatric or psychological injury application will commence for all injuries that are sustained on or after assent to the Bill.[35]

The explanatory notes state:

> *A worker's eligibility for support will require a worker to submit a valid application with a medical certificate stating they have been diagnosed with a work-related psychiatric or psychological injury. An insurer will not be required to provide the support services in cases where the injured person is not a worker (for example, the nominated employer can promptly verify that the applicant is not a worker), an injury has not been diagnosed, or the insurer has evidence that the injury is not work-related (for example, the nominated event was a relationship breakdown).*[36]

2.5.3 Stakeholders comments and departmental advice

Six of the eleven submitters specifically supported the new requirements in new sections 232AA and 232AB for insurers to provide reasonable support to workers who make a claim for compensation for a work-related psychological or psychiatric injury while the claim is determined.[37]

The Australian Lawyers Alliance noted the longer time taken for decisions on psychological injury claims and stated:

> *Delays in decision-making may lead to exacerbation of symptoms and delayed rehabilitation. They are often a predictor of poor prospects of recovery and return to work outcomes.*[38]

Shine Lawyers also suggested early intervention is the key to ensuring the best outcome for injured workers. They argue that hospital inpatient treatment costs should not be excluded. Shine Lawyers also submitted that, if a claim is rejected and the injured worker notifies the insurer of their intention to apply for review to the Workers' Compensation Regulator, then the provision of reasonable support services should remain until that process is concluded.[39]

The Ai Group supports the proposed new sections. Its submission noted that the cost of support services will affect calculation of employer premiums only if the claim is accepted, and commended this is crucial to ensure employer acceptance of payment of additional costs of support services.[40] Restaurant and Catering Australia also supported the approach to premium calculations.[41]

The Ai Group recommended:

> *… that WorkCover QLD maintains records of the costs and circumstances of payments made on claims that are subsequently not allowed, to enable the financial impact of this initiative to be*

35 Department of Education, Departmental brief, 2 September 2019, p 10.

36 Explanatory notes, p 25.

37 Submissions 1, 2, 3, 5, 7 and correspondence from the IEU, 16 September 2019

38 Submission 2, p 8.

39 Submission 5, p 4.

40 Submission 7, p 7.

41 Submission 8

properly assessed after 12 months operation.[42]

As noted in section 2.5.1 above, the Peetz review recommended the new early intervention be evaluated after two years.

2.6 Psychological and psychiatric injury - assistance to employers and workplaces

The committee asked the OIR about the assistance available to employers and workplaces to prevent and manage psychological injuries. The committee was advised of the *Mental Health at Work Action Plan 2016-2020* which aims to build industry capacity and confidence to identify and manage work-related psychosocial hazards, and focusses on high risk industries, occupations and injury mechanisms.

A range of resources is available to assist employers. They include a *Mentally Healthy Workplaces Toolkit* that provides practical guidance and support to help workplaces eliminate and minimise risk to psychosocial health and create work environments that are mentally healthy. Workshops are also available to equip frontline managers and supervisors with foundational skills to identify and manage risk to psychosocial health and safety in their team, intervene early to manage signs of stress and distress and support recovery for workers who experience a psychological injury.

The OIR also advised of a number of other initiatives including: partial funding by OIR of *Mates in Construction,* a risk assessment tool, leadership events, a handbook and small business fact sheet, and an independent psychological support service for workers with a psychological injury. The information provided by the OIR is in the department's correspondence dated 18 September 2019, published on the committee's inquiry webpage.

2.7 Rehabilitation and return to work

2.7.1 Peetz review recommendations

Section 5 of the Workers' Compensation Act established the Queensland scheme, one component of which is to 'provide for employers and injured workers to participate in effective return to work programs'.[43] The Act currently provides for the roles and responsibilities of insurers, employers and workers in rehabilitation.

The Peetz review recommended changes to the Workers' Compensation Act about two main components of rehabilitation and return to work:

- ***rehabilitation and return to work co-ordinators*** (RRTWC) in larger organisations should be appropriately qualified, following a transition period, and employers should be obliged to engage a RRTWC[44]
- ***insurer responsibility for rehabilitation and return to work*** should continue even after the entitlement to compensation ceases, to promote a durable return to work; and insurers should be required to assess workers' rehabilitation and return to work needs, and where relevant workers should be referred to accredited return to work programs.[45]

Further detail of the Peetz review findings and recommendations is in the following sections of this report.

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42 Submission 7, p 7.

43 *Workers' Compensation and Rehabilitation Act 2003,* section 5(4)(d).

44 Peetz review recommendations 6.8 and 6.10 (see Appendix A for the recommendations relevant to the Bill)

45 Peetz review recommendations 6.4, 6.5 and 6.6 (as above)

2.7.2 Rehabilitation and return to work coordinators

2.7.2.1 Current requirement to appoint a rehabilitation and return to work coordinator

Section 226 of the Workers Compensation Act currently requires large and high-risk employers (specified in sections 114 and 115 of the Workers Compensation and Rehabilitation Regulation 2014) to appoint an appropriately qualified person to undertake functions of a RRTWC. The current requirement applies to employers with wages of $8,184,800 (equivalent to approximately 100 full-time employees), and employers in high risk industries with wages of $4,092,400 (equivalent to approximately 50 full-time employees).[46]

2.7.2.2 Peetz review findings

The Peetz review report described the role of the RRTWC as important:

> *… in facilitating actions detailed in a rehabilitation and return to work plan and establishing a suitable duties program at the workplace. The RRTWC liaises with the insurer, the injured worker's treating practitioner (where required), manager and the injured worker to assist them to identify suitable duties and strategies to successfully overcome any challenges when returning to the workplace*.[47]

Previously, to perform the role of RRTWC a person must have satisfactorily completed a workplace rehabilitation course and become registered with the Workers' Compensation Regulatory Authority. The Peetz review reported:

> *Several stakeholders throughout the review felt that the skill level of RRTWCs had reduced since the 2013 changes and less emphasis was being placed on this crucial role within employers. Because the Regulator no longer accredits RRTWCs, it has also lost the ability to educate and share industry best practice across the network of coordinators. That said, requiring all RRTWCs to have completed a generic training course did not recognise that workplaces are different and RRTWCs should have training and skills that are relevant to their specific circumstances. Further, it appeared to impose an unnecessary requirement on RRTWCs that already had training or qualifications that exceeded the minimum requirement, such as occupational therapists.*[48]

The review considered there is merit in reintroducing the requirement for RRTWCs to hold appropriate qualifications, but with changes to take account of the problems of the previous system. To address earlier problems the Peetz review proposed:

- a transition period to reintroduce qualification requirements
- credit for relevant courses already undertaken; for some RRTWCs or occupational therapists, this would mean no additional courses would be required
- careful consideration of the curriculum of approved workplace rehabilitation courses.

The review recommendations include a requirement for employers that are obliged to appoint a qualified RRTWC to provide their insurer a list of all RRTWCs they engage, including the workplace, and details of how the person is appropriately qualified for that workplace. Providing the information to the insurer will minimise additional regulatory obligations for employers who are required to engage a RRTWC and have an existing relationship with the insurer. The Regulator could access this information from the insurer, and use it for purposes including providing targeted and tailored communications to RRTWCs to improve their knowledge and ability to fulfil their functions. It could

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46 *Workers' Compensation and Rehabilitation Act 2003,* section 226; Department of Education, correspondence 13 September 2019, p 5.

47 Peetz review report, p 57.

48 Peetz review report, p 58.

also be used for target auditing to validate the appropriateness of RRTWC qualifications and the systems supporting durable return-to-work outcomes.[49]

2.7.3 Proposed amendments

Clause 63 proposes to amend section 226 of the Workers' Compensation Act to implement the recommendations of the Peetz review. An employer who is required to appoint a RRTWC would be required to give the insurer prescribed information within 12 months of appointment of a RRTWC, and when the details change. The details required are the person's name and contact details, details of how the person is appropriately qualified, and details of each workplace the person is appointed as the RRTWC.[50]

Clause 37 proposes to amend section 41, which defines a RRTWC, by adding that a person is taken to be appropriately qualified 'if the person has completed a training course approved by the Regulator'.

2.7.4 Stakeholder views and departmental advice

2.7.4.1 Information about RRTWCs to the insurer

The proposed amendments to provide information about RRTWCs to the insurer were supported by the ALA. However the ALA considered there was no reasonable justification for the lengthy period of 12 months to notify the Regulator. Their submission suggested it was conceivable the RRTWC could have been employed, left and replaced during that time, with the risk that information would be dated and incorrect.[51]

Ai Group's submission stated it was comfortable the reporting requirement is 12 months, allowing it to be linked to the annual premium renewal process.[52] The committee notes the advice from OIR that the annual requirement is intended to reduce any potential administrative burden.

2.7.4.2 Appropriately qualified RRTWCs

Stakeholder views

The Ai Group was concerned the amendment to section 41 (clause 37) would 'lead employers to believe that attendance at specific training courses will be the only way they can demonstrate that the RRTWC is appropriately qualified'. Also, the Ai Group's experience in delivering a one-day course is that introductory training for RRTWCs does not need to be industry specific.[53]

The HIA submission noted the onus would be on employers to demonstrate that a RRTWC is appropriately qualified remains with the employer. HIA expressed concern there would be additional costs in complying with the proposed requirement for RRTWCs. Its submission stated HIA was not aware of any concerns in the residential building industry associated with removal of the requirement for accreditation in 2013. Submissions from both the HIA and the ASIEQ commented that no evidence was published to support the review findings about concerns about the quality of RRTWCs, and the HIA opposed the proposed amendment.[54]

The ASIEQ encouraged a flexible approach by the regulator in the implementation of the amendments, noting that many large employers already have sound training and development strategies for RRTWCs.[55]

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49 Peetz review report, p 58.

50 Proposed section 226(8).

51 Submission 2, p 7.

52 Submission 7, p 5.

53 Submission 7, pp 4 – 5.

54 Submission 10, p 2; submission 11, p 6.

55 Submission 10, p 2.

Advice from OIR

In response to the concerns raised in submissions, the OIR advised sections 41 and 226 of the Workers' Compensation Act currently require RRTWCs appointed by employers to be appropriately qualified.

The Peetz review described reasons for the recommendation that led to the proposed amendment; in addition to stakeholder feedback about the skill level of RRTWCs, it noted:

- difficulties for the Workers' Compensation Regulator in targeting education and sharing industry best practice across the network of RRTWCs
- reduced capacity for regulatory oversight due to the removal of the requirement for employers to notify the Regulator of the identity of the RRTWC and how they were deemed to be appropriately qualified.[56]

In relation to the HIA concerns about increased costs, the OIR advised the proposed amendment does not change the employers' obligation, and 'any costs associated with ensuring that the coordinator is appropriately qualified are costs that he employer will incur regardless of the proposed amendments in the Bill.'[57] The new requirement for employers to provide information about RRTWCs is proposed to be implemented in conjunction with existing annual premium renewals; 'the only additional cost associated with this amendment is a minimal administrative cost of informing their insurer of the coordinator's details on a yearly basis.'[58]

2.7.4.3 Committee comment

The committee notes that the obligation for large employers and those in high-risk industries to appoint appropriately qualified RRTWCs is not a new requirement.

The committee considers the additional requirement for an employer to annually notify the insurer of prescribed details of its RRTWCs at the same time it renews premiums should not impose a significant administrative burden.

2.8 Insurer responsibility for rehabilitation and return to work

2.8.1 Background and Peetz review

Currently an injured worker's entitlement to support with rehabilitation and return to work from the insurer can end before rehabilitation has been achieved, and the need for return to work support has ended. A range of provisions in the current Act cease the entitlement when particular events occur.[59]

The department advised that all insurers have return to work programs, however access to those programs is only mandated for workers who lodge a notice of claim for damages.

The Peetz review considered gaps in return to work and reported there are apparent gaps in the provision of return to work services since the demise of 'Return to Work Assist' which was previously administered by Q-COMP. The review report identified a particular gap:

> *…in relation to insurer responsibilities … after a worker's entitlement to compensation ceases (for example, an injured worker receives their notice of assessment and accepts a lump sum payment and is no longer entitled to compensation but may still not be able to return to work). Insurers already have in place programs of some type to support those who have not returned to work at the end of their statutory claim, and those who are not working when they lodge a*

56 Department of Education, correspondence, 13 September 2019, p 5.

57 Department of Education, correspondence, 13 September 2019, p 6.

58 Department of Education, correspondence, 13 September 2019, p 6.

59 For example, section 119 provides that the entitlement to compensation ends if a damages claim is finalised

common law claim. However, there is no support at all for those who lose their jobs sometime after insurers administratively closed their claim because they had returned to work.[60]

The Peetz review recommended that insurers retain responsibility for a defined period after compensation ceases, to ensure as much as possible that a durable return to work is achieved, or the worker has every reasonable opportunity to achieve a durable return. A further recommendation was to enable a worker to request referral to an accredited return to work program.

In addition, the review recommended insurers be required to assess the rehabilitation and return to work needs of all workers during management of a claim and refer them to an accredited program if assessment identifies a significant risk to the worker's return to work. The review report stated a benefit of this approach would be to ensure the insurer and worker are actively engaged in the return to work program before the entitlement to compensation ceases, which may assist in reducing the rate of secondary psychological injuries and contribute to reduce common law rates.[61]

2.8.2 Proposed amendments

The Peetz review recommendations (summarised above) are proposed to be given effect by primarily by amendments in clauses 61 and 64 of the Bill. Related amendments to existing sections of the Act are in clauses 38, 52, 53, 60, 62 and 75.

The department's briefing stated that to address the identified gap in access to rehabilitation and return to work programs, the amendments will:

- include a mandatory requirement to refer an injured worker to an accredited rehabilitation and return to work program if the worker's entitlement to compensation has ceased and the worker has not returned to work because of the injury
- provide workers with the right to request referral to an accredited rehabilitation and return to work program at any stage during their statutory claim
- place a specific obligation on the employer to take all reasonable steps to assist the insurer under section 228, to complement the enhanced insurer obligations
- remove the exemption for a self-insurer under section 229(3)
- provide that the obligations for insurers to refer a worker to the insurers accredited program will apply only if the worker stopped receiving compensation after assent to the proposed amendment; this provides certainty that further entitlement will not be created for a claim that ceased prior to assent.[62]

2.8.3 Stakeholder views and department's advice

2.8.3.1 Insurer's obligation and rehabilitation and return to work plan

The ALA supports the amendments proposed by clause 61 to improve on and clarify an insurer's obligation to provide rehabilitation and return to work assistance, subject to the following suggestions:

- the amendment to section 220(7) of the Workers' Compensation Act refers to rehabilitation and return to work plans being developed 'in consultation' with treating practitioners; the ALA considers plans should be 'approved by' treating practitioners
- the insurer should be required to provide treating practitioners with details of the proposed plan and the nature of the duties to be performed

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60 Peetz review report, p 54.

61 Peetz review report, p 55.

62 Department of Education, Departmental brief, 2 September 2019, pp 5 – 6.

- a time should be specified for the insurer to refer a worker who requests referral to an accredited rehabilitation and return to work program, and the worker should have the right to choose a program or provider.[63]

On this issue the OIR advised that currently the treating medical practitioner gives initial approval of suitable duties, and a number of parties need to be consulted in the development of a rehabilitation and return to work plan. Approval of a plan by one practitioner would change the nature of the consultation process, and would also extend the time required to develop a rehabilitation and return to work program.[64]

2.8.3.2 Penalty for non-compliance with insurer's responsibility

The QLS noted that a penalty applies if an insurer does not comply with the obligation in proposed section 220(1) to take all reasonable steps to secure rehabilitation. The QLS suggested a penalty should apply to proposed section 220(2)(c) if an insurer does not refer a worker to an accredited rehabilitation and return to work program if the worker has not returned to work because of their injury and has stopped receiving compensation.[65]

The OIR addressed this issue in comments made after the QLS elaborated on the issue during the committee's public hearing. The OIR advised that the proposed amendment to section 220(1) addresses the QLS concerns. An insurer has a duty to provide services to two distinct groups of workers: those who have an entitlement to compensation; and those who are participating in an accredited rehabilitation and return to work program of the insurer. A worker who is participating in an insurer's rehabilitation and return to work program is technically entitled to compensation, regardless of whether payments of other types of compensation have ceased.[66]

2.8.3.3 Employer obligation – reasonable steps to assist or provide rehabilitation

The HIA opposes the obligation proposed in new section 228(1) (clause 64) to introduce a penalty if an employer fails to 'take all reasonable steps to assist or provide the worker with rehabilitation.' The HIA considers the existing legislative provisions (which impose the same obligation, but no penalty is attached) are sufficient.[67]

Advice from the OIR to the committee noted that the Workers' Compensation Act currently requires an insurer to coordinate development and maintenance of a rehabilitation and return to work plan in consultation with the worker, the employer and treating practitioners, but there is no corresponding obligation on the employer to assist the insurer. The Bill closes this loop by requiring the employer to cooperate with the insurer. Also, OIR advised the current Act offers minimal incentive for employers to proactively engage in a worker's rehabilitation and return to work, and addition of a penalty will provide an incentive for employers to fulfil the existing obligations.[68]

2.8.3.4 Worker obligation and limits on insurers and employers obligation

The ASIEQ submission noted that some of its concerns about limits and exclusions to obligations had been addressed during consultation. It raised a number of concerns about amendments in clauses 61 and 64; the main issues raised were:

- responsibility for rehabilitation should not apply where an injured worker has received a lump sum for permanent impairment

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63 Submission 2, pp 6 – 7.

64 Department of Education, correspondence, 13 September 2019, p 11

65 Submission 9, p 2.

66 Department of Education, correspondence, 18 September 2019, pp 1 – 2.

67 Submission 11, p 6.

68 Department of Education, correspondence, 13 September 2019, pp 12 – 13.

- the obligations imposed on insurers and employers disregard the fact that rehabilitation is on occasion hindered by the attitude and motivation of injured workers
- self-insurers have a vested interest in giving workers every opportunity to return to work and commence rehabilitation as soon as possible; the absence of a return to work 'is unlikely to stem from a lack of effort of the self-insurer' and the amendment is unnecessary; strong provisions to encourage workers to participate in rehabilitation would support the aim of ensuring all parties to a claim maximise their rehabilitation endeavours during a claim.

In its advice to the committee, the OIR advised that excluding circumstances where a worker has received a lump sum payment from the obligation to provide rehabilitation services would undermine the intent of the Peetz review recommendations. The review particularly mentioned a gap at the point where entitlement to compensation ceases from accepting a lump sum for permanent impairment.[69]

Proposed section 220(4) sets out circumstances where a worker's entitlement to participate in an accredited rehabilitation and return to work program ends. Those circumstances are:

- the insurer is satisfied the worker is unwilling or unable to participate in the program (for example the worker advises they have decided to retire or cease work, or the worker refuses to participate or does not participate satisfactorily)
- the insurer is satisfied the program is not able to further assist the worker (for example, medical advice indicates further participation will not contribute to durable return to work and the worker's functioning has been maximised)
- the worker receives a payment of damages, a redemption payment, or receives compensation for the injury for five years.[70]

The OIR advised the committee that the injured workers are already required under section 232 of the Workers Compensation Act to satisfactorily participate in rehabilitation as soon as practicable after the injury, for the period for which the worker is entitled to compensation. If a worker fails or refuses to participate without reasonable excuse, the insurer may suspend the worker's entitlement to compensation until the worker satisfactorily participates in rehabilitation.[71] The OIR also referred to the findings of the Peetz review, that there are gaps in the system and some workers at the end of their statutory claim may benefit from access to an accredited return to work program (see section 2.8.1 above).

2.8.4 Notification of injuries to insurer

2.8.4.1 Background and Peetz review

Existing section 133 of the Workers' Compensation Act places a duty on an employer, other than a self-insurer, to notify WorkCover if a worker sustains an injury for which compensation may be payable. The notification must be made as soon as the employer becomes aware of the injury.

During the Peetz review, stakeholders raised the exemption of self-insured employers from this obligation. It was seen by stakeholders 'as an anomaly that enabled self-insurers to avoid their obligations to injured workers.' The review report noted a compulsory reporting requirement to the Regulator would make it easier for the Regulator to investigate allegations of poor behaviour. The review recommended amendment of the Act to require all injuries to be reported to the relevant insurer, with no exemption for self-insurers. The insurer should then pass that information onto the Regulator.[72]

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69 Department of Education, correspondence, 13 September 2019, p 9.

70 clause 61, proposed section 220(4) and explanatory notes, p 24

71 Department of Education, correspondence, 13 September 2019, p 9.

72 Peetz review report, pp 86 – 87.

2.8.4.2 Proposed amendments

Clause 48 proposes to amend section 133 to require all employers to report an injury for which compensation may be payable to the insurer. For self-insurers, the report must be made to the person who is authorised by the employer as self-insurer to make decisions under the Act on claims for compensation.

2.8.4.3 Stakeholder views and OIR advice

The ALA supported the amendment to section 133, and stated the current exclusion of self-insurers from a requirement to report was not justified.[73]

The ASIEQ expressed concern about the efficacy of the proposed amendments, and suggested the broad wording could jeopardise many preventive and early intervention programs, including employee assistance programs, however, further clarifying information was not provided.

In addition ASIEQ suggests the amendments create an illogical requirement for the self-insured employer to report an injury and costs to itself.

The OIR advised the amendment creates consistency in obligations for all employers. Reporting to the persons responsible for deciding on claims ensures adequate separation in reporting arrangements between the employment and the insurance areas of a self-insured employer.[74]

2.8.5 Time to lodge an application for compensation

2.8.5.1 Background and Peetz review

Section 131 of the Workers' Compensation Act currently requires an application for compensation to be made within six months after the entitlement to compensation arises. An Industrial Court of Queensland decision in *Blackwood v Toward* [2015] ICQ 008, changed the test for when a doctor or nurse practitioner has assessed a worker for the purpose of the Workers' Compensation Act. 'The new test requires evidence of an evaluation, conclusion or expression of an opinion by a doctor that the worker has an 'injury' within the meaning of the Act'.[75]

Concerns were raised with the Peetz review that the effect of the decision has been detrimental for workers with a chronic, insidious or psychiatric injury, as many do not claim compensation at the time of diagnosis as they are not then incapacitated. If a claim is made later, after more than six months, it may be rejected as being out of time.

The Peetz review cited an example of a worker whose claim for compensation for black lung disease was rejected due to lodgement out of time. The review decision found that the doctor's diagnosis was almost ten years prior to the claim for compensation, but the treating doctor had never advised of any potential connection with work; on that basis the insurer's decision was overturned.[76]

2.8.5.2 Proposed amendments

Clause 46 amends section 131 to provide further circumstances where the insurer may waive the time limit to lodge an application for compensation. The discretion applies if the worker lodges an application within 20 business days of certification by a doctor, nurse practitioner or dentist that the injury results in incapacity.

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73 Submission 2, p 7.

74 Department of Education, correspondence, 13 September 2019.

75 Peetz review report, p 31.

76 Peetz review report, p 32.

2.9 Coverage for unpaid interns

2.9.1 Background and proposed amendments

Unpaid commercial interns are not currently covered by workers' compensation. The Peetz review considered this gap in coverage and concluded that workers' compensation arrangements should cover interns who are not covered by other insurance arrangements. The review recommended amendment of the Workers' Compensation Act to enable coverage of unpaid commercial interns. 'For the purposes of calculating premiums, employers would be asked to report to WorkCover the number of hours worked by interns who were not covered by other injury compensation insurance. Volunteers for non-profit organisations would not be covered.'[77]

Clauses 39, 78 and 79 of the Bill propose amendments to give effect to this recommendation. Excluded from the workers' compensation coverage are interns who are paid, who would be covered as a worker, and students on placement, who would be covered under the educational institution's insurance. The amendments are proposed to come into effect in July 2020.

Clause 39 provides that WorkCover may charge an additional premium on an employer's policy toward providing for compensation or damages payable for injury to an intern and the costs of administration of the Act in relation to the intern.

2.9.2 Stakeholder views and OIR advice

The Ai Group recognised the importance of employers paying a premium if an intern is covered by worker's compensation. It was concerned about the lack of detail about premium costs and stated it would engage with WorkCover to participate in consultation about setting of a premium.[78]

Restaurant and Catering Australia noted the proposal that the cost of coverage of interns would be borne by employers. While it does not support any increased costs for employers, R&CA said it was reassured by modelling on the impact on business premiums.[79]

The HIA opposed the extension of workers' compensation to unpaid interns, and questioned whether it was necessary. The submission asserts the proposed amendment is unnecessary and is likely to be a direct disincentive for business to take on interns because of the record-keeping that would be required. It also argued the proposal would have a negative effect on university courses that include student placements and suggested the definition of 'intern' in clause 78 was flawed.[80]

The OIR advised that the estimated maximum cost of intern coverage to the scheme would be $140,000 to $185,000; the cost would impact on those employers with unpaid interns and is unlikely to have any overall impact on employers' premiums. The proposed amendments are envisaged to come into effect in July 2020. WorkCover Queensland will work with industry to determine appropriate reporting requirements.

In response to HIA's questions as to why coverage was needed, the OIR explained that the arrangements that are currently made for student placements are not available to unpaid interns, who are not currently covered. The OIR confirmed that an intern who received payment would be covered under existing workers' compensation arrangements.

The OIR also advised that consultation with the Stakeholder Reference Group led to a proposal to define an 'intern' in the way set out in clause 78.

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77 Peetz review report, p 26.

78 Submission 7, p 6.

79 Submission 8.

80 Submission 11, p 6.

2.10 Amendment of the Workers' Compensation and Rehabilitation Regulation 2014

Clauses 81 to 90 amend the Workers' Compensation and Rehabilitation Regulation 2014. Most of the amendments replace current dollar amounts for compensation and damages with the amounts expressed as multiples of QOTE (Queensland Ordinary Time Earnings).

3 Examination of the Bill – amendments to Further Education and Training Act and TAFE Queensland Act

3.1 Overview

The *Further Education and Training Act 2014* (FET Act) provides a legislative framework to allow the parties to a training contract (employers, apprentices and trainees) to directly negotiate key training and employment issues. The FET Act replaced the former Vocational Education Training and Employment Act 2000 (VETE Act).

The explanatory notes state that since the introduction of the FET Act the relationship between an employer and apprentice or trainee is not always equal. The explanatory notes indicate this may result in those who are most vulnerable not being properly equipped or assisted in understanding, navigating or utilising the remedies available to them.[81]

In January 2018, the Queensland Training Ombudsman released the report *Review of group training arrangements in Queensland*.[82] Through stakeholder consultation the Training Ombudsman identified deficiencies in areas such as cancellation practices of Group Training Organisations, and the inappropriate suspension of training contracts instead of stand down.[83] The *Queensland Training Ombudsman 2017–2018 Annual Report* also reported a number of complaints from apprentices whose employment had ceased and training contract cancelled, who may have benefitted from earlier departmental intervention.[84]

Stakeholders including employers, apprentices, training providers and trade union representatives attended four Ministerial Roundtables on Apprenticeships and Traineeships in Queensland held in July and August 2018. The explanatory notes state stakeholders advocated for changes to achieve greater fairness in relation to cancellation, temporary suspension and the delivery mode requirements of training plans.[85] When introducing the Bill the Minister noted the amendments will assist stakeholders to achieve better outcomes in these areas.[86]

Only two of the eleven submissions received by the committee discussed the proposed amendments to the FET Act. In their submission Restaurant and Catering Australia (R&CA) acknowledge the amendments are minor and provide greater flexibility when a dispute arises. R&CA supports the changes proposed by the Bill. The Housing Industry Association (HIA) has raised a number of issues in relation to changes proposed by the Bill which are addressed below.

3.1.1 Amendments to registered training contracts

3.1.1.1 Extending a registered training contract

Section 23 of the FET Act currently provides for extensions to registered training contracts if the nominal term of the contract is to end before the apprentice or trainee who is a party to the contract completes the apprenticeship or traineeship. Clause 5 proposes to amend section 23 to require the signed consent of a parent of the apprentice or trainee if the apprentice or trainee is under 18 years,

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81 Explanatory notes, p 2.

82 Queensland Training Ombudsman, Review of group training arrangements in Queensland, http://trainingombudsman.qld.gov.au/wp-content/uploads/2018/09/Review-of-Group-Training-Arrangements-in-Queensland.pdf

83 Queensland Training Ombudsman, Review of group training arrangements in Queensland, p 21-2.

84 Queensland Training Ombudsman, 2017/18 Annual Report, http://trainingombudsman.qld.gov.au/wp-content/uploads/2018/10/Queensland-Training-Ombudsman-Annual-Report-2017-18.pdf

85 Explanatory notes, p 3.

86 Queensland Parliament, Record of Proceedings, 22 August 2019, p 2478.

unless it is inappropriate in all the circumstances for a parent to sign the application. This brings section 23 in line with other application provisions in the FET Act.[87]

3.1.1.2 Suspension on application by one party

Section 30 of the FET Act currently enables the parties to a registered training contract to apply to the chief executive to suspend the contract for a period not exceeding one year. Clause 7 inserts new sections 32A to 32D enabling one party to a training contract to apply to the chief executive to suspend the contract for up to one year if the party reasonably believes that the other party can not agree to a proposed suspension.

Proposed section 32B provides the chief executive may request further information from the applicant to decide the application. Before a training contract is suspended, new section 32C requires the chief executive give each party a show cause notice unless inappropriate. Where the chief executive proposes to suspend a contract, the party may provide a written response to the proposed suspension.

The departmental briefing states the intention of the amendment is to preserve training contracts that may otherwise be cancelled due to the other party being unable to meet their obligations under the contract. For example, this approach could be used if a party to a contract suffers a medical condition that has left the party in a coma and they are unable to agree to a proposed suspension under section 30.[88]

3.1.1.3 Stakeholder views and department's advice

While the Housing Industry Australia (HIA) supports the suspension of a training contract by one party, it suggests the application timeframes be shortened.[89]

In response to HIA's submission, the DESBT advised the show cause process provides natural justice to the parties.[90] The show cause process can be waived if the chief executive reasonably considers it is not practicable to do so. For example, waiver may be appropriate if the circumstances surrounding the party who can not agree to a proposed suspension are very sensitive, and the issuing of a notice would be deemed insensitive.[91]

3.1.1.4 Temporary suspension of training contract and stand down

Section 30 of the FET Act currently provides for the suspension of a registered training contract by mutual agreement. The explanatory notes assert stakeholders are of the view apprentices or trainees may be pressured to agree to a suspension, rather than stand down, when the training required under a contract can not be provided.[92]

The DESBT's written briefing states the former VETE Act provided for temporary stand down of an apprentice or trainee, which was not included in the FET Act due to links with employment contracts. The stand down provisions available to employers in the *Fair Work Act 2009* (Cwlth) (FWA Act) do not include the availability of training.[93]

Clause 8 inserts proposed section 32E which provides that an employer of an apprentice or trainee may apply to the chief executive to temporarily suspend the registered training contract for a period of no more than 30 days if the employer temporarily is not able to provide the training stated in the

87 Explanatory notes, p 14.

88 Department of Education, Departmental brief, 2 September 2019, pp 17 – 18; Explanatory notes, p 14.

89 Submission 11, p 7.

90 DESBT, correspondence dated 13 September 2019, p 30.

91 DESBT, correspondence dated 13 September 2019, p 30.

92 Explanatory notes, p 2; Department of Education, Departmental brief, 2 September 2019, p 15.

93 Department of Education, Departmental brief, 2 September 2019, p 15.

training plan.[94] If the training contract is temporarily suspended, the employer may stand down the apprentice or trainee unless the employer and the apprentice or trainee agree otherwise.

3.1.1.5 Stakeholder views and department's response

HIA supports in principle the ability to temporarily suspend a training contract to 'stand down' an employee, however their submission notes stand down practices are regulated by the FWA Act. HIA objects to proposals made by clause 8 on the basis the explanatory notes do not make clear whether the intention is to 'override, duplicate or sit in conjunction with the FWA provisions regarding stand down'.[95]

In their response to submissions, the DESBT advised the proposed amendments have been developed taking into account the relevant provisions of the FWA Act. The DESTB advised the FWA Act:

> *… does not override a State law dealing with the suspension or cancellation of a training contract or the employment contract associated with or entered into as part of the training contract (section 1.13 Fair Work Regulations 2009).*[96]

With this in mind, the temporary suspension power only deals with an employment contract entered into as part of the registered training contract.[97]

3.1.1.6 Cancellation of training contract on application by one party

Clause 10 of the Bill (proposed sections 35A to 35D) provides a party to a registered training contract may apply in writing to the chief executive to cancel the contract if the party believes either they, or the other party, can not successfully complete their obligations under the contract. An application must state the reasons for the proposed cancellation, and may include material in support of the application.[98] New section 35A(2) provides cancellation only takes effect seven days after the application is given to the chief executive.

This allows applications for cancellation of a training contract to be considered by the chief executive before employment is terminated. Clause 10 reintroduces a single party cancellation provision previously available under the former VETE Act. The DESBT expects this will open communication lines between the employer, apprentice or trainee and the DESBT, allowing the department opportunity to discuss alternative options with the parties.[99]

3.1.1.7 Amendment of grounds for cancellation

Currently section 36 of the FET Act provides the grounds for cancellation of a registered training contract by the chief executive. In particular, section 36(i) provides that a training contract may cancelled if the employment of the apprentice or trainee by the employer has ceased. In practice, the chief executive cancels the contract when 21 days (the time allowed for an unfair dismissal application) has passed from the date the employment ended, or after any unfair dismissal or similar proceeding in relation to the employment contract is finalised.[100]

Clause 11 amends section 36 to provide that the chief executive may not cancel a training contract under section 36(i) within 21 days after the employment of the apprentice or trainee has ceased to allow for a notice of a contested event.

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94 Department of Education, Departmental brief, 2 September 2019, p 16.

95 Submission 8, p 8.

96 DESBT, correspondence dated 13 September 2019, p 30.

97 DESBT, correspondence dated 13 September 2019, p 30.

98 Explanatory notes, p 16.

99 Department of Education, Departmental brief, 2 September 2019, p14.

100 Department of Education, Departmental brief, 2 September 2019, p 14.

A contested event is defined in new section 58A.

Clause 16 inserts new section 58A(1) which provides a contested event has occurred if an apprentice or trainee:

- makes an application for unfair dismissal
- makes an application for reinstatement
- commences another proceeding contesting the cessation of employment.

Clause 11 also inserts a subsection providing the chief executive must not cancel a registered contract if they receive a notice of a contested event and it has not been finalised.

3.1.1.8 Stakeholders' views and department's response

The HIA objects to amendments in clause 11 that prevent the cancellation of a training contract before 21 days has passed since employment ceased.[101]

In response, the DESBT advised that if an apprentice or trainee exercises their right to contest the termination of their employment, the intention of these amendments is to ensure the training contract remains active until any industrial relations matters are finalised. Where there is a decision not to reinstate the employment of the person who was an apprentice or trainee, the effective date of the cancellation of the training contract will be the date employment ceased.[102]

3.1.1.9 Re-registration of cancelled contract in particular circumstances

The FET Act does not provide for the re-registration of a registered training contract if it has been cancelled, and the apprentice or trainee successfully contests the termination of their employment by having it reinstated by the Industrial Relations Commission.

Clause 13 of the Bill inserts proposed sections 40A to 40D which provide that a registered training contract may be re-registered if the contract was cancelled by the chief executive and the decision in relation to a contested event is to reinstate the employment of the apprentice or trainee.[103] Following notification of a reinstatement decision, the chief executive must reinstate the training contract as soon as practicable and notify the parties.

3.1.1.10 Completion of training contracts

Before a completion certificate can be issued by the chief executive, the Supervising Registered Training Organisation (SRTO) is required to provide a completion agreement, signed by all parties to the training contract, to the chief executive within 10 days of signing. If an SRTO stops operating this may not be possible.

Clause 14 inserts new section 50A, which applies if an SRTO has stopped operating as a registered training organisation before a completion agreement is signed by parties to a training contract. New section 50A would enable the parties to a training contract to apply to the chief executive for the issue of a completion certificate, and provide evidence that all training and assessment has been completed. The chief executive may issue a completion certificate if satisfied the apprentice or trainee has completed all training and assessment.

At the public briefing, the department advised:

> *The new legislation will give us capacity to make a decision around [completion arrangements] based on facts. RTOs, for example, … claim moneys through the department … in the delivery of training and assessment so we can see where they have actually delivered training and*

101 Submission 11, p 7.

102 DESBT, correspondence dated 13 September 2019, p 31.

103 Explanatory notes, p 17.

assessment. We can go and get evidence from the apprentice and trainee and the employer around that assessment. If there is a statement of attainment … that covers the competencies that have been issued by the RTO but we do not have the completion agreement, we can then make a decision around completion rather than cancellation, going to another training contract and completing under another RTO. That really is a time-consuming matter and puts stress on both the employer and the apprentice.[104]

3.1.1.11 Training plans for apprentices or trainees

Currently, training plans for apprentices or trainees must be negotiated, and agreed to, by all parties to the plan including the employer, apprentice or trainee and the SRTO. In their written brief, the DESBT state that stakeholders have expressed concern that apprentices and trainees may not have the latitude to negotiate the training plan if the employer and SRTO do not actively include the apprentice or trainee in the negotiation process.[105] The DESBT advise this could impact the apprentice's or trainee's ability to make progress due to an inappropriate mode of delivery of training and assessment under the training plan.[106]

Clause 22 inserts new subdivisions 4 to 6 (proposed sections 82A to 82H) to allow for changes to the mode of delivery of a training plan for an apprentice or trainee. New subdivision 4 provides a training plan can be changed on application to the chief executive by one party to the training contract. If satisfied under new subdivision 5, the chief executive can also change a training plan if it is necessary to assist a trainee or apprentice in completing the training. Proposed subdivision 6 provides the SRTO must take all reasonable steps to ensure any changes made to a training plan are complied with by the parties.

3.1.1.12 Supervising registered training organisations and employer resource assessment

Clause 17 inserts new section 66A which requires SRTO's must complete an employer resource assessment when negotiating the training plan with the employer and apprentice or trainee. Proposed section 66A(2) provides the employer resource assessment must be regularly reviewed and, if necessary, revised during the period of the training plan. Proposed section 66A(2)(c) requires a SRTO to provide the most recent employer resource assessment to the chief executive on request. New section 66A provides for a maximum of 80 penalty units if an SRTO contravenes requirements under the section.

3.1.1.13 Stakeholder views and department's advice

The HIA's submission states the explanatory notes provide little evidence that an employer resource assessment 'report' is necessary. The HIA also objects to the penalty provisions that apply under new section 66A if a SRTO fails to comply. [107]

In response to the issue raised by HIA, the DESBT advised the introduction of an employer resource assessment is to clarify a SRTO's existing obligations under sections 17(5)(f)(ii) and 67 of the Act to prepare a training plan.[108] Preparing a training plan includes an assessment of the employer's capacity to provide, or arrange to provide, the range of work, facilities and supervision required under the training plan.

The DESBT advises that SRTO's funded by the department's 'User Choice Program' are currently required to develop, revise, regularly review and produce for audit, an employer resource assessment in order to receive funding for training and assessment completed under a training plan. Clause 17 is

104 Public hearing transcript, Brisbane, 16 September 2019, pp 10-11.

105 Department of Education, Departmental brief, 2 September 2019, p 16.

106 Department of Education, Departmental brief, 2 September 2019, p 16.

107 DESBT, correspondence dated 13 September 2019, p 32.

108 DESBT, correspondence dated 13 September 2019, p 32.

intended to ensure the integrity of the broader apprenticeship and traineeship system, not just those funded under the User Choice Program.[109]

3.2 Other amendments

3.2.1 TAFE Queensland Act – composition of TAFE Queensland Board

The Bill amends the composition of the TAFE Queensland Board to improve cultural capability and support its work in meeting the needs of diverse communities, including Aboriginal and Torres Strait Islander students and communities.[110] Section 12 of the *TAFE Queensland Act 2013* currently provides for a board of seven to nine members. Clause 29 amends section 12 to require at least one board member be an Aboriginal person or a Torres Strait Islander.

3.2.1.1 Stakeholder views

The Queensland Law Society supports the steps being taken to promote cultural diversity on government boards and in this regard supports the amendment proposed by clause 29.[111] Other submitters did not comment on the amendment.

3.2.1.2 Committee comment

The committee notes the amendment to require at least one member of the TAFE Queensland Board to be an Aboriginal person or a Torres Strait Islander, and supports the amendment to improve the diversity of representation.

3.2.2 Commonwealth Games Arrangements Act 2011

Clause 91 repeals the *Commonwealth Games Arrangement Act 2011.* At the committee's public briefing the Department of Innovation, Tourism Industry Development and the Commonwealth Games (DITID) confirmed that there was no previously set timeframe for repeal of the Act.

The organising body, GOLDOC, was wound up on 31 December 2018 and administrative matters transferred to DITID, which is the successor in law to GOLDOC. The remaining contingency funding has been returned to consolidated revenue, and DITID will continue to deal with any residual issues that arise. In response to questions DITID confirmed there are no outstanding disputes.[112]

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109 DESBT, correspondence dated 13 September 2019, p 32.

110 Explanatory notes, p 3.

111 Submission 9, p 3.

112 Public briefing transcript, Brisbane, 16 September 2019

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

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

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

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

4.1.1.1 Penalties

The level of penalties has the potential to impact on rights and liberties. New penalties of 50 penalty units ($6,672.50) are proposed for the Workers Compensation Act, and one new penalty proposed for the FTE Act is 80 penalty units ($10,676). The penalties are commensurate with other penalties in those Acts, and would apply to offences by an insurer, or employer, or a supervising registered training organisation. None of the penalties would apply to individuals.

The committee is satisfied that the penalties have sufficient regard to the rights and liberties of individuals.

4.1.1.2 Suspension of training contract on the application of one party

Clause 7 proposes new sections 32A to 32D in the FTE Act to provide for an application for suspension of a registered training contract for up to one year, by one party to the contract, where one party can not agree to a proposed suspension. The application must provide information, including the reasons why the applicant believes the other party can not agree to the suspension.

The explanatory notes give an example of the potential use of proposed section 32C as a person who is a party to the training contract who is in a coma, and therefore can not agree to suspension of the training contract.

A show cause process is set out in proposed section 32C and the chief executive has discretion not to provide a show cause to a party if the chief executive reasonably considers it is not practicable. Where the chief executive does not provide a show cause notice, a party to the contract will not receive reasons for the decision nor an opportunity to respond.

Ordinarily the absence of a show cause process may deny a person their right to natural justice. However in this instance there does not appear to be any party who would suffer a detriment as a result of suspension of a training contract. The DESBT advised the intention of a party applying would be to preserve the training contract that may otherwise be cancelled to the other party being unable to meet their obligations under the contract. Consequently it is a potential benefit, rather than a loss of rights, to the party whose circumstances mean they can not agree to suspension of the training contract.[113]

The committee is satisfied that clause 7 has sufficient regard to individual rights and liberties

[113] Department of Education, Departmental brief, 2 September 2019, p 17.

4.1.2 Explanatory notes

Part 4 of the Legislative Standards Act 1992 relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

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

Appendix A – Recommendations of Peetz review of the operation of the workers' compensation system implemented by the Bill

Review recommendations	Clauses in Bill
Recommendation 3.2: The Act should be amended to enable coverage of unpaid commercial interns, with exemptions for interns already covered by injury insurance arrangements (including student internships undertaken as part of a course). For the purposes of calculating premiums, employers would be asked to report to WorkCover the number of hours worked by interns who were not covered by other injury compensation insurance. Volunteers for non-profit organisations would not be covered.	39, 78, 79
Recommendation 4.1: The Parliament should amend the Act to give insurers the discretion to accept a claim lodged	46, 51
Recommendation 5.1: The current definition of injury for psychiatric or psychological disorders in the Act should be revised to remove 'the major' as a qualifier for work's 'significant contribution' to the injury, to bring Queensland into line with other jurisdictions.	34
Recommendation 5.4: Early intervention in cases of potential psychological or psychiatric injury should be promoted by requiring insurers (on a 'no prejudice' basis) to cover the costs of treatment for such injuries before liability has been assessed, up to a limit (defined by reference to a time period). These costs would not form part of the experience rating of the relevant employer, if the claim is subsequently rejected.	47, 52, 59, 65, 74
Recommendation 6.4: The Act should be amended to specify that an insurer retains responsibility for rehabilitation and return to work even after the entitlement to compensation ceases for a defined period, to ensure as much as possible that the worker either achieves or has had every reasonable opportunity to achieve a durable return to work.	38, 52, 53, 60 – 62, 64, 75
Recommendation 6.5: Insurers should be required to assess the rehabilitation and return to work needs of all workers during the management of a claim and refer them to the accredited program if the assessment identifies a significant risk to the worker's return to work. However, decisions such as these (or any other by the insurer) should be made on the basis of human judgement by staff of the insurer, and not purely on the basis of algorithmic outcomes. An insurer should also be required to refer an injured worker to an accredited RTW program if, at the end of entitlement to compensation, the worker has not achieved a return to work. The entitlement to participate in the program should continue until the worker achieves a durable return to work or the insurer decides that either: the worker is not reasonably participating in the accredited program; or further participation will not reasonably contribute to achieving a durable return to work.	
Recommendation 6.6: Workers should have a right to request a referral to an accredited return-to-work program.	
Recommendation 6.8: The requirement that rehabilitation and return to work coordinators in larger organisations be appropriately qualified should be reintroduced, but with a transition period, partial or full credit for prior relevant training, and consideration given to the inclusion of industry-specific modules in the accredited training.	37 & 63
Recommendation 6.10: The Act should be amended to oblige employers that are required to engage a rehabilitation and return to work coordinators (RRTWC) to provide a list of all RRTWCs engaged by the employer, and include in this list the RRTWC contact details and the workplace/s they have responsibility for. This	

Review recommendations	Clauses in Bill
information should be available to the Workers' Compensation Regulator and insurers for the purposes of educating and supporting these officers, and validating requirements.	
Recommendation 7.2: The Act should be amended to make clear WorkCover's ability to fund prevention initiatives.	70 – 72, & 85
Recommendation 7.12: The Act should be amended to exempt apologies provided by employer representatives following a workplace injury from being considered in any assessment of liability.	69
Recommendation 9.3: The Act should be amended to require all injuries to be reported to the relevant Insurer, with no exemption for self-insurers. The insurer should then pass that information to the Regulator.	40, 42, 48, 49

Appendix B - Submitters

Sub #	Submitter
001	Queensland Teachers' Union
002	Australian Lawyers Alliance
003	Australian Manufacturing Workers' Union
004	Independent Education Union, Queensland and Northern Territory Branch
005	Shine Lawyers
006	Queensland Nurses and Midwives' Union
007	Australian Industry Group
008	Restaurant and Catering Australia
009	Queensland Law Society
010	Association of Self-Insured Employers of Queensland
011	Housing Industry Association Limited

Appendix C – Officials at public departmental briefing

Office of Industrial Relations, Department of Education

- Craig Allen, Deputy-Director General
- Janene Hillhouse, Executive Director, Workers' Compensation Policy & Services
- Ben Christiansen, A/Director, Workers' Compensation Policy

Department of Employment, Small Business and Training

- Stephen Koch, A/Deputy Director-General, Engagement
- Wayne Stephens, Queensland Apprenticeship & Trainee Office

Department of Innovation, Tourism Industry Development and the Commonwealth Games

- Mike Goodman, Director, Office of the Commonwealth Games

Appendix D – Witnesses at public hearing

Queensland Law Society

- Michael Garbett, Chair, Accident Compensation &Tort Law Committee
- Luke Murphy, Deputy Chair, Accident Compensation &Tort Law Committee
- Kerryn Sampson, Policy Solicitor

Australian Lawyers Alliance

- Greg Spinda, Queensland President

Independent Education Union

- Danielle Wilson, Industrial Officer
- Adele Schmidt, Research Officer