

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing, make this statement of compatibility with respect to the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (Bill).

In my opinion, the Bill is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

Amendments to the Workers' Compensation and Rehabilitation Act 2003

The *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) requires the responsible Minister to ensure a review of the scheme's operation is completed every five years. The 2023 scheme review (2023 Review) was undertaken by independent reviewers, Ms Glenys Fisher and Emeritus Professor David Peetz. The review report was tabled in the Queensland Legislative Assembly on 4 October 2023.

The 2023 Review found the scheme is strong and no major reform is required. It made 54 recommendations including 26 legislatively based recommendations. The government has accepted or accepted in principle the majority of these recommendations.

The Bill implements accepted legislative recommendations arising from the 2023 Review. These amendments are designed to address emerging trends and issues identified in the review report which have the potential to impact the performance and viability of the scheme. The Bill amends the WCR Act to:

- implement the Government's preferred approach as outlined in the *Decision Impact Analysis Statement in relation to regulatory proposals to extend workers' compensation coverage to gig workers and bailee taxi and limousine drivers* (Decision IAS) by providing flexibility for the scheme to clarify the status of gig workers once there is clarity on the legal status of gig workers following commencement of the reforms in the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*;
- provide greater protections for firefighters by expanding the list of deemed diseases which are presumed to be work-related if sustained by a firefighter and clarify the treatment of 'day work rotation' is included in the calculation for the minimum qualifying periods;
- prohibit employers from giving a benefit or causing detriment to influence an injured worker not to make an application for compensation;

- require information about the scheme be given to workers and employers to improve their ability to understand their respective rights and responsibilities and navigate the scheme;
- ensure timely provision of wage information from employers by allowing insurers to compel information necessary to calculate a worker's weekly compensation entitlement within 5 business days of the insurer's request, with penalties for non-compliance;
- provide quicker access to compensation by requiring insurers to make a basic weekly payment to workers while waiting for information necessary to calculate the worker's actual compensation entitlement;
- ensure a rehabilitation and return to work (RRTW) plan for a worker is prepared within 10 business days after a worker's claim is accepted;
- ensure providers of workplace rehabilitation services meet prescribed service delivery, competency and professional standards to ensure transparent and uniform standards;
- enhance a worker's participation in rehabilitation decisions by providing for choice of rehabilitation provider where they are dissatisfied with the initial provider selected by the insurer;
- promote increased scrutiny of the availability of suitable duties by requiring insurers to form their own opinion about whether it is practicable for an employer to provide suitable duties;
- require host employers to cooperate with the labour hire provider by taking all reasonable steps to support the provider to meet its rehabilitation obligations for an injured labour hire worker;
- clarify an insurer is required to take all reasonable steps to minimise the risk of a psychological and psychiatric injury arising from a physical injury following acceptance of a claim until the claim is finalised;
- provide a head of power to prescribe the necessary qualifications, training and experience for medical specialists who conduct permanent impairment assessments for the scheme as part of a broader governance framework to ensure appropriate training and ongoing due diligence checks for these medical specialists;
- providing specific rights that an injured worker can choose their treating doctor and not have their employer or insurer present during their treatment and be able to seek advice from other parties such as a registered industrial organisation or a lawyer;
- support the Workers' Compensation Regulator's enforcement functions by enabling it to set mandatory standards in limited circumstances by making scheme directions;
- expand the matters about which a code of practice may be made beyond insurer claims management to matters for employers and other persons such as RRTW obligations for employers;
- provide a framework for the issuing of compliance notices (similar to improvement notices under the *Work Health and Safety Act 2011* (WHS Act)) for contraventions of the WCR

Act with an offence for not complying with a compliance notice. This enhances the regulatory tools available to the Workers' Compensation Regulator and supports securing compliance without commencing a prosecution; and

- expand the duty of insurers to report employer suspected offending to the Workers' Compensation Regulator, with reprisal protections for individuals who make a report.

The Bill also revises specific penalties to address very low penalties for key obligations and internal inconsistencies within the WCR Act in addition to other minor technical and consequential amendments.

Amendments to the Industrial Relations Act 2016 and Labour Hire Licensing Act 2017

Amendments proposed to the *Industrial Relations Act 2016* (IR Act) provide for national consistency and to better align Queensland appeals pathways, and to the *Labour Hire Licensing Act 2017* (LHL Act) to ensure it remains contemporary and compatible with human rights.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

I have considered each of the rights protected by part 2 of the HR Act. In my opinion, the human rights that are relevant to the Bill are:

- right to life (section 16);
- right to property (section 24);
- right to privacy and reputation (section 25);
- right to liberty and security of person (section 29);
- right to a fair hearing (section 31);
- rights in criminal proceedings (section 32); and
- right to health services (section 37).

Promoting and enhancing human rights

Amendments to the Workers' Compensation and Rehabilitation Act 2003

The Bill generally supports and promotes human rights. In particular, the Bill promotes the right to health services by:

- ensuring periods when a firefighter is exposed to substances used in or hazards arising from extinguishing, controlling or preventing the spread of fires are counted in determining whether the firefighter's injury is presumed to be work-related (amendments to section 36E);
- expanding the list of specified diseases presumed to be work-related, enabling eligible firefighters with these diseases to access compensation quicker (amendments to schedule 4A);
- ensuring information statements are provided to employers and workers so they are informed of their rights and responsibilities under the workers' compensation system (new sections 46B and 132AA);
- prohibiting employers from providing a benefit or causing detriment to workers to influence them not to apply for compensation (new section 46A); and

- requiring workers' compensation insurers to provide support to workers who make a claim for psychiatric or psychological injury to minimise the risk of a secondary psychiatric or psychological injury developing (new chapter 4, part 5B).

The Bill also promotes the right to privacy by inserting explicit rights of workers in relation to medical treatment. This includes the right of an injured worker to choose their treating doctor and not have their employer or insurer present during their treatment (new section 208B).

Amendments to the Industrial Relations Act 2016

The Bill promotes the human right to a fair hearing through amendments to the IR Act by streamlining the appeal pathway for full bench decisions that include a presidential member of the Queensland Industrial Relations Commission (QIRC) directly to the Queensland Court of Appeal (QCA). This ensures these appeals are appropriately heard by the QCA consistent with other appeal pathways in Queensland's justice system.

Amendments to the Labour Hire Licensing Act 2017

The Bill also supports and promotes the right to a fair hearing and rights in criminal proceedings through an amendment to the LHL Act to repeal section 69(4), which ensures the privilege against self-incrimination is maintained.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Amendments to the Workers' Compensation and Rehabilitation Act 2003

Right to property (section 24, HR Act)

(a) the nature of the right

The right to property encompasses the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property but does not include a right to compensation if a person is deprived of their property.

Property includes real and personal property, for example land, chattels and money, including contractual rights, leases, shares, patents and debts. The term 'deprived' is not defined by the HR Act. However, deprivation in this sense is considered to include the substantial reduction of a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it, or deriving profits from it). The concept of arbitrariness in the context of the right to property carries a meaning of capriciousness, unpredictability, injustice, and unreasonableness, in the sense of not being proportionate to the legitimate aim sought.

The right to property is relevant to new section 46A, which specifically prohibits an employer from giving a benefit or causing detriment if the reason is to influence a worker not to make an application for compensation or pursue an entitlement for compensation for the injury. This offence provision may limit the right to property by restricting the use by employers of financial resources in the private resolution of compensation related matters with their employees.

The right to property is also relevant to new section 221AA, which will require workers' compensation insurers to ensure each provider of workplace rehabilitation services meets service delivery, competency and professional standards requirements set by the Workers' Compensation Regulator. It is intended that these standards be developed separately to the Bill at a later stage and therefore the new section will not be operational until this occurs. Once the new section is operational, it may limit the right to property by depriving individuals providing rehabilitation services of the ability to earn income should they not meet the standards contemplated by the amendment.

The right to property is also relevant to new sections 46A, 46B, 132AA, 146B, 146C, 229A, 232AC, 537F and amended section 228, as the Bill creates new offences for contravening these provisions.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation imposed by section 46A is to deter employers from circumventing the workers' compensation scheme by influencing injured workers not to make a claim. The amendment is consistent with a free and democratic society based on human dignity, equality and freedom as it supports injured workers to access their statutory entitlements and benefits under the WCR Act.

The purpose of the limitation imposed by section 221AA is to support the rehabilitation of injured workers by setting mandatory performance and service delivery standards for workplace rehabilitation providers. Currently, the delivery of rehabilitation services is governed exclusively by contractual arrangements between workplace rehabilitation providers and workers' compensation insurers. The amendment would ensure the delivery of these services is underpinned by transparent and uniform legislative standards.

It is intended that these standards align with the nationally endorsed *Head of Workers' Compensation Authorities' Principles of Practice for Workplace Rehabilitation Providers*. It is noted these principles are already applied administratively through the contractual arrangements between rehabilitation providers and workers' compensation insurers.

The amendment is consistent with a free and democratic society based on human dignity, equality and freedom as it supports injured workers to be rehabilitated and safely returned to work.

The purpose of the potential general limitation on the right to property imposed by the new offences introduced by new sections 46A, 46B, 132AA, 146B, 146C, 229A, 232AC, 537F and amended section 228 is to support compliance and enforcement.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The potential limitation on the right to property in section 46A arises from restricting an employer's ability to give a benefit to a worker to resolve compensation matters privately. The new offence provision aligns with the scheme's objective (section 5) of providing benefits to workers who sustain a work-related injury and encouraging improved health and safety performance by employers.

The potential limitation on workplace rehabilitation providers in section 221AA arises from the setting of standards. Accordingly, there is a direct relationship between the purpose of the amendment and the limitation to be imposed. The purpose of the amendment cannot be achieved other than by setting standards (see below) and therefore the setting of standards (and any limitation on human rights that follows) is essential to achieving the purpose.

The potential limitation on the right to property in new sections 46A, 46B, 132AA, 146B, 146C, 229A, 232AC, 537F and amended section 228 arises from the imposition of new offences. The limitation achieves the purpose of criminalising contraventions of these provisions to support compliance and enforcement.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no less restrictive and reasonably available ways to achieve the purpose of section 46A. This provision is necessary to deter employers from circumventing the scheme and to protect the rights and entitlements of injured workers.

There are no less restrictive and reasonably available ways to achieve the purpose of section 221AA (i.e., to set uniform and transparent service delivery and competency standards for rehabilitation providers). The purpose can only be achieved by setting minimum standards which workplace rehabilitation providers must meet to provide a rehabilitation services within the Queensland scheme. Any attempt to set standards carries the potential to limit a rehabilitation provider's right to property under the HR Act.

There are no less restrictive and reasonably available ways to achieve the purpose of the new penalties introduced in new sections 46A, 46B, 132AA, 146B, 146C, 229A, 232AC, 537F and amended section 228. The penalties are necessary to adequately support compliance with corresponding obligations and enable the Regulator to take enforcement action.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation.

Taking into account the nature and extent of the limitation on the right to property, the objectives of the scheme and Bill to provide benefits to workers who sustain an injury in their employment outweighs the potential limitations on the right to property.

Section 46A will benefit workers by deterring employers from influencing workers not to access statutory workers' compensation entitlements by applying for compensation.

The new penalties introduced by sections 46A, 46B, 132AA, 146B, 146C, 229A, 232AC, 537F will have benefits in deterring offending that impacts injured workers and the integrity of the scheme, and will and enable enforcement action in instances of non-compliance.

Section 221AA will support RRTW processes and outcomes for injured workers by ensuring they receive rehabilitation services from a provider that meets legislatively based nationally endorsed standards. This will have benefits for injured workers, employers and the scheme. The 2023 Review identified Queensland's RRTW performance (relative to other Australian jurisdictions) as a key issue facing the workers' compensation scheme and these standards present an appropriate way to address this. Importantly, the extent of the limitation is expected

to be minor as most workplace rehabilitation providers are currently subject to service delivery standards under contracts with WorkCover. Further, development of the standards will be informed by separate consultation with stakeholders including workplace rehabilitation providers.

(f) any other relevant factors

Nil.

Right to privacy and reputation (section 25, HR Act)

(g) the nature of the right

A person has a right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked. The scope of the right to privacy is broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. An interference with the right to privacy is permissible provided it is not arbitrary or unlawful. Arbitrariness can be defined in a human rights context as meaning capricious, unpredictable, unjust, or unreasonable in the sense of not being proportionate to the legitimate policy objective.

The right to privacy is relevant to new section 146A as the provisions require an insurer to obtain relevant information about a worker's wages for the purpose of calculating the worker's weekly compensation entitlement, grant the insurer the power to request this information from the worker's employer within a set timeframe, and introduce penalties for employer non-compliance with the insurer's request.

(h) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of new sections 146A and 146B is to ensure workers' compensation insurers obtain the information they require to calculate an incapacitated worker's weekly compensation entitlement and commence paying this compensation as soon as practicable after allowing the worker's claim. The purpose of new section 146A is to ensure WorkCover compels employers to provide such information. The provisions are consistent with a free and democratic society based on human dignity, equality and freedom as they are designed to ensure injured workers are not deprived income due to delays by their employer in providing wage information necessary to calculate their weekly compensation entitlement.

(i) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The potential limitation on the right to privacy arises from the new requirement for WorkCover to compel the employer to provide the information necessary for the insurer to calculate the weekly compensation entitlement of an injured worker, and the new penalties for non-compliance with WorkCover's request without a reasonable excuse. The purpose of the limitation is to ensure that workers receive their correct rate of weekly compensation in a timely manner. The limitation helps to achieve the purpose of the provision by requiring WorkCover to request relevant information from the employer immediately after accepting the worker's

claim for compensation and imposing a timeframe of five business days for the employer's provision of the information.

(j) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no less restrictive and reasonably available ways to ensure employers provide wage information in a timely manner. This is because it is not possible for an insurer to calculate (and commence paying) an incapacitated worker's weekly compensation entitlement under the WCR Act without having access to the worker's wage information. Alternative approaches would involve employers being encouraged or requested to provide information voluntarily without a penalty for failing to do so. These approaches do not ensure wage information is provided in a timely manner and therefore are not reasonably available ways of achieving the purpose of the Bill.

(k) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation.

The benefit of section 146B is that injured workers will receive the correct rate of weekly compensation in a timely manner, which may alleviate actual or potential financial distress. The potential limitation of the right to privacy is limited to wage information which the worker's employer already holds, which has been requested by the insurer to calculate the worker's actual entitlement to compensation and commence paying this compensation. It is also noted a worker's wage information is protected personal information under the *Information Privacy Act 2009*, and as such WorkCover's collection and handling of such information must be fair, lawful, and limited to the extent that it is relevant to performing their functions and/or providing a service to the claimant.

Considering these factors, it is considered the benefit brought by the new provision outweighs any potential limitation on the right to privacy arising from the exercise of WorkCover's information gathering powers.

(l) any other relevant factors

Nil.

Conclusion

In my opinion, the Workers' Compensation and Rehabilitation Amendment and Other Legislation Bill 2024 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the *Human Rights Act 2019*.

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