

## Submission to the Education, Employment and Training Committee: *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024*

Committee Secretary

Education, Employment and Training Committee

via email: [eetc@parliament.qld.gov.au](mailto:eetc@parliament.qld.gov.au)

### Introduction

Thank you for the opportunity to make a submission to this review.

Master Builders provided a written submission to the independent review on 3 March 2023, met the reviewers on 8 March 2023, and were an active participant of the Workers' Compensation Regulatory Services' Stakeholder Reference Group, where we made verbal and written submissions.

We are pleased to make this submission to the Committee on this important Bill and would also be willing to submit this and answer questions at a future Public Hearing.

### Explanatory speech

We refer to the Minister's speech introducing the Bill on 17 April 2024.

Master Builders is concerned that this Bill, and specifically the proposed new sections 46B and 228(3), go beyond the Minister's assertion that "*This bill gives effect to legislative recommendations made by the 2023 review of the operation of the Queensland workers compensation scheme*".

### Section 46B – worker information statement

The Bill contains the following new section 46B:

#### ***46B Employer must give worker information statement***

*(1) An employer must, before or as soon as practicable after a worker starts employment, give the worker a statement providing information about the workers' compensation scheme.*

*Maximum penalty—50 penalty units.*

*(2) However, an employer need not give the statement to a worker if the statement has been given to the worker by the employer within the previous 12 months.*

*(3) The statement, and the way in which it is given, must comply with any requirements prescribed by regulation.*

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Master Builders submits that the *2023 Review of the Operation of the Queensland Workers' Compensation Scheme*<sup>1</sup> (the 2023 Review) did not recommend that an employer provide such a statement at the commencement of employment.

The 2023 Review, at Recommendation 37, states:

*... the Regulator should develop a statement of workers' rights and responsibilities in the workers' compensation system, to be distributed in workplaces, on insurer websites and provided to all injured persons on notification of an injury.*

Master Builders is concerned that this new requirement will create an administrative and cost burden on employers without a demonstrable benefit.

### Provision of information

We submit that instead of having the employer provide a written notice at the commencement of employment, the information should be provided by the insurer when the employer reports an injury. That way the injured worker will be made aware of their rights at a time when its relevant to them.

Providing an information statement at employment commencement, when an employee has not suffered an injury, will have no impact on their ability to access the scheme.

It might be argued that some workers may not know they have the right to make a claim for workers compensation, and that providing this statement will ensure they know this right. However this overlooks the fact that the employer has the obligation to report an injury to the insurer (under section 133 of the *Workers' Compensation and Rehabilitation Act 2003*). Providing notification at this time is more appropriate to ensure that they employee is made aware of their rights under the scheme.

Our concern is that providing the information at the commencement of employment runs the risk of the information being lost in the myriad of paperwork that workers receive at this stage, resulting in no benefit for workers, employers, or insurers. All it will achieve is an increase in the cost to employers with the additional administrative burden.

We would however recommend that if an information statement is to be issued, it includes information that the worker should receive from the insurer and understanding on the level of support they will receive as part of the Rehabilitation and Return to Work plan.

### Section 228(3) - employer's obligation to assist or provide rehabilitation

The Bill contains the following new section 228:

*(1) The employer of a worker who has sustained an injury must—*

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<sup>1</sup> [https://www.worksafe.qld.gov.au/\\_\\_data/assets/pdf\\_file/0012/120063/2023-review-operation-Qld-workers-compensation-scheme.pdf](https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0012/120063/2023-review-operation-Qld-workers-compensation-scheme.pdf)

*(a) take the action required by the scheme directions to be taken to assist or provide the worker with rehabilitation during the prescribed period for the worker; and*

*(b) take all other reasonable steps to assist or provide the worker with rehabilitation during the prescribed period for the worker; and*

*(c) cooperate with the insurer by taking all reasonable steps to support the insurer to meet the insurer's obligations under section 220.*

*Maximum penalty—500 penalty units.*

*(2) If the employer forms the opinion that it is not practicable to provide the worker with rehabilitation in the form of a suitable duties program, the employer must give the insurer a written notice stating the evidence relied on to support the opinion.*

*Maximum penalty—100 penalty units.*

*(3) The insurer must, as soon as practicable after receiving the employer's notice—*

*(a) consider the evidence and form the insurer's own opinion; and*

*(b) if the insurer is not satisfied by the evidence provided—*

*(i) inform the employer of that opinion and the reasons for it; and*

*(ii) give the employer a reasonable opportunity to make submissions and provide further evidence.*

*Maximum penalty—100 penalty units*

In relation to the new subsection (3), Master Builders submits that the 2023 Review did not recommend that an employer be subject to penalties based on the opinion of WorkCover or another relevant insurer.

Recommendation 14(b) of the 2023 Review states:

*the insurer take reasonable steps to satisfy itself that no suitable duties are available, and, where appropriate, use the penalty provisions at s 228(1) and s 229 where it is not satisfied*

## **Employers penalised based on opinion**

Master Builders does not support the proposed section 228(3) of the Act as it could result in an employer receiving a penalty based on the opinion of WorkCover or other insurer. This new provision does not require WorkCover or insurer to “take reasonable steps to satisfy itself” and goes beyond that and beyond what was recommended in the 2023 review.

While we support the need for a robust assessment of an employer's ability to provide suitable duties, we do not support that penalties should be issued if an employer has provided a statement that they have no suitable duties, and the insurer disagrees when they complete their own assessment.

Small businesses especially do not have the resources in all cases to have a full understanding of how to look at a task and assess accurately if that task can be altered for a return to work program, or how other tasks can be brought in to build a program. They rely on the support and assistance of the insurer, and in cases where such support is absent and the employer, despite their best efforts, determines that there are no suitable duties, they could be penalised.

Employers instead should be assisted by the insurer on how they can support their injured worker. If an employer resists such assistance a penalty may be appropriate, but a penalty is not appropriate where they come to a determination that the insurer merely disagrees with.

13 May 2024