

# IEUA-QNT SUBMISSION

[17 February 2023]

## Submission: Review of the Queensland Workers' Compensation Scheme

The Independent Education Union - Queensland and Northern Territory Branch (IEU-QNT) welcomes the opportunity to provide feedback regarding the Workers' Compensation Regulatory Services' review of the operation of the Queensland workers' compensation scheme.

### About IEU-QNT

IEU-QNT represents ~16,000 teachers, support staff and ancillary staff in non-government education institutions in Queensland and the Northern Territory and consistently engages in debate concerning industrial issues through Industrial Committee and through its national counterpart, the Independent Education Union of Australia, which receives input from teachers in all States and Territories.

Our union regularly fields enquiries from members who have sustained work-related injuries and a significant element of our work is, therefore, to support these individuals in their return to work and, where applicable, in their pursuit of workers' compensation.

In that context, we support the submission of the Queensland Council of Unions, which was developed in collaboration with its affiliates and draws on case studies from a number of industries, including the education sector.

For the purposes of our submission, we confine our comments to concerns about the changing nature of pre-professional work experience (including the introduction of paid internships) in our industry, and in relation to inequity in the application of new requirements to better manage psychosocial risks in the workplace more generally.

### Response to Discussion Questions

#### **Discussion Question 1: Is the scheme achieving the objects under section 5 of the Act, including balancing fair and appropriate benefits for injured workers, dependents and non-workers and ensuring reasonable costs for employers? If not, why not and what needs to change?**

1. The data presented in the Information Paper [1] suggests that the Queensland scheme operates effectively in terms of providing fair and appropriate benefits for injured workers and ensuring reasonable costs for employers.
2. We would however, suggest that there are some emergent challenges associated with an increased reliance, in particular professions, on interns or other pre-service professionals to supplement the existing workforce.
3. We would also indicate that we have concerns regarding the ability of employers to rely on a defence of 'reasonable management action' when an employee lodges a claim for psychological injury.

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4. The specific issues faced within the education sector are discussed in response to the remaining Discussion Questions, below.

### **Discussion Question 2: 2. Looking ahead, what do you consider to be the emerging issues for the Queensland workers' compensation scheme (e.g., employment trends, new types of jobs, changes in the industry, occupational or injury mix), and how should these emerging issues be addressed?**

5. There is a growing trend, in schools, toward employment of pre-service teachers (initial teacher education students), as paid or unpaid interns, or their admission to the classroom under the Queensland College of Teachers' 'Permission to Teach' provisions [2-5] in order to address staff shortages.
6. This creates ambiguity around responsibility for workers' compensation claims.
7. We note that Section 7 of Schedule 2 of the Act [6] indicates that:

A person (an intern), other than a person mentioned in chapter 1, part 4, division 3, subdivision 1, 2, 3 or 4, is a worker if the person—

  - (a) is performing work for a business or undertaking without payment of wages to gain practical experience in the type of work performed by the business or undertaking, or to seek to obtain a qualification; and
  - (b) would be a worker if the work performed by the person were for the payment of wages.
8. Similarly, Section 8 of Schedule 3 of the Act [6] currently indicates that:

A person is the employer of an intern if—

  - (a) the person is conducting a business or undertaking; and
  - (b) the intern performs work for the person without payment of wages to gain practical experience in the type of work performed by the business or undertaking, or to seek to obtain a qualification; and
  - (c) the intern would be a worker if the work performed by the intern were for the payment of wages.
9. In that context, we note that schemes such as the Queensland Government's Turn to Teaching [7] and Trade to Teach [8] Internships, and the growing reliance on Permission to Teach approvals to address teacher shortages, create new categories of employment that are not necessarily captured in the existing definitions.

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10. We also note that the paid internship and Permission to Teach schemes create a situation where an unqualified, and often inexperienced, employee is left unsupervised, while taking on the full responsibilities of a more qualified and experienced worker.
11. While it might be assumed that status as a paid employee would mean they are covered by the workers' compensation scheme, we have concerns that these workers face elevated vulnerability to risk compared to their fully qualified and more experienced colleagues.
12. Further consideration should be given to the treatment of paid interns, and other categories of worker engaged in pre-professional placements in Queensland schools.

### **Discussion Question 3: What, if anything, should be done to increase the proportion of injured workers returning to work or recovering at work, and/or to reduce the duration of claims? Should different arrangements be put in place for specific industry sectors or injury types (such as psychological injury)?**

13. In relation to the management of workers who make a claim under the workers' compensation scheme, we welcome the introduction of new requirements for employers to better identify and manage psychosocial risks [9, 10].
14. We would however, like to draw attention to psychological injuries arising from actions that are dismissed as reasonable management action.
15. Under the current legislation, it is difficult for injured workers to discharge the burden of proof because, on most occasions, the employer holds the evidence in respect of whether or not their actions were reasonable.
16. We would suggest that, where an employer seeks to defend a claim on the basis that its actions constitute reasonable management action, the legislation should:
  - a. require the employer to discharge this burden; and
  - b. limit any employer defence if a psychological injury has arisen out of the employer's failure to manage psychosocial risks in the workplace.

### **Discussion Question 4: To date Queensland has undertaken significant reforms to both the Act and the scheme to better support workers suffering from psychological injury. In your view, what further practical actions can be taken to improve experience of injured workers in the scheme?**

17. Our union welcomes the introduction of both the subordinate legislation which creates a duty for employers to manage psychosocial risks [9] and the publication of an accompanying Code of Practice [10] as a source of more elaborated guidance for employers.
18. The new requirements of employers appropriately recognise psychosocial risks as having the same significance as physical risks, but we would suggest that there remains scope to extend existing provisions around trauma exposure to all employees.

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19. Although workers in the education industry are not technically first-responders, our records indicate that it is not uncommon for them to be exposed to traumatic and violent events.
20. In the absence of formal recognition that such events are not uncommon in the teaching profession, the existing claims process can be harrowing.
21. Our dialogue with other unions would also suggest that exposure to trauma and violence is not uncommon in a wide range of industries.
22. On that basis, it makes little sense to arbitrarily limit the ability to make a claim based on exposure to trauma to those occupations currently classified as first responders.

### **Discussion Question 5: Is the current claims management process adequate to address the wide breadth of injuries and diseases in the Queensland scheme? What improvements, if any, should be made to the current claims management process?**

23. In responding to this discussion question, we would reiterate points made above, regarding a necessity to expand access to provisions around exposure to trauma to workers who are not currently captured by the definition of 'first responders'.

### **Concluding Comments**

IEU-QNT thanks Workers' Compensation Regulatory Services for the opportunity to provide feedback in response to its Information Paper.

While the Queensland Workers' Compensation scheme is broadly successful in meeting the needs of both employees and employers, we do believe there are some challenges to overcome in relation to changing nature of pre-professional work experience (including paid internships) in our industry, and in relation to provisions around psychosocial hazards.

Specifically, we would suggest that the definition of an intern requires some refinement and that there is scope to recognise that exposure to trauma can occur in occupations that are not currently recognised as 'first responders'.

We would welcome the opportunity to engage in further discussion.



**Terry Burke**

**Branch Secretary**

**Independent Education Union of Australia -Queensland and Northern Territory Branch**

**Friday 17 February 2023**

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### References

1. Workers'\_Compensation\_Regulatory\_Services, *2023 Review of the Operation of the Queensland Workers's Compensation Scheme Information Paper*. 2023, Queensland Government: Brisbane.
2. Queensland\_College\_of\_Teachers, *Principles for Permission to Teach For stakeholders engaging with preservice teachers*. 2022, Queensland College of Teachers: Brisbane.
3. Queensland\_College\_of\_Teachers, *Only approved teachers can teach in prescribed schools Position Paper*. 2018, Queensland College of Teachers: Milton.
4. Queensland\_College\_of\_Teachers, *Permission to Teach Information Statement*. 2017, Queensland College of Teachers: Milton.
5. Queensland\_College\_of\_Teachers, *Permission to Teach Policy*. 2017, Queensland College of Teachers: Milton.
6. *Workers' Compensation and Rehabilitation Act 2003 Current as at 31 October 2022*.
7. Teach\_Queensland. *Turn to Teaching Internship Program*. 2023 [cited 2023 9 February]; Available from: <https://teach.qld.gov.au/scholarships-and-grants/turn-to-teaching-internship-program>.
8. Teach\_Queensland. *Trade to Teach Internship Program (pilot)*. 2023 [cited 2023 9 February]; Available from: <https://teach.qld.gov.au/scholarships-and-grants/trade-to-teach-internship-program>.
9. *Work Health and Safety (Psychosocial Risks) Amendment Regulation 2022 Subordinate Legislation 2022 No. 141 made under the Work Health and Safety Act 2011*.
10. Workplace\_Health\_and\_Safety\_Queensland, *Managing the risk of psychosocial hazards at work Code of Practice*. 2022, Queensland Government: Brisbane.