MASTER ELECTRICIANS AUSTRALIA

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10 August 2015

Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane QLD 4000

Sent via email to: fac@parliament.qld.gov.au

Dear Sir/Madam,

Master Electricians Australia appreciates the opportunity to provide a submission in response to the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*.

Master Electricians Australia (MEA) is a dynamic and modern trade association representing electrical contractors. A driving force in the electrical industry and a major factor in the continued success and security of electrical contractors, MEA is recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. The organisation's website is: www.masterelectricians.com.au.

MEA has been an active contributor to discussions regarding workers compensation and rehabilitation laws in Queensland. Our comments on the changes proposed in the *Amendment Bill* are below.

Common law rights

MEA does have concerns about the removal of the permanent incapacity threshold in order to access common law damages. The threshold was introduced as a means to address employer and industry concerns over workers accessing common law relief in the absence of any permanent injury and in situations where an employee has been able to return to work and resume their duties. Common law claims are mechanism by which the insurance system can assist those employees who are faced with a fundamentally different working career as a result of an injury.

The electrical industry relies for its prosperity on the health and wellbeing of the entire workforce. MEA would never advocate for a workers compensation scheme that denied injured workers their right to compensation however a feature of the Act is a focus on rehabilitation. The permanent incapacity threshold is about setting a benchmark to achieve a balance between outcomes for employees and outcomes for business.

There is an incorrect assumption amongst some employee groups that employers are only interested in their profit margins and care little for the welfare of their workers. It must also be remembered that a significant number of workplace injuries occur as a result of an employee disregarding the employer's safety system, not employer negligence. It is also important to note that, in addition to their legal and moral obligations, employers have a vested interest in

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maintaining a safe work environment and ensuring their employees are protected from injury. Just like their employees, business owners also have families they want to return home to safely at the end of the day.

Objections to this aspect of the 2013 legislation from the legal profession could be perceived as self-serving, given that the threshold reduces the number of claims from which lawyers can make their personal liability claims. According to a report in the Courier Mail on the 17 October 2013, Shine Lawyer had notified the Australian Stock Exchange that the 2013 changes to the permanent incapacity threshold would affect profit by $2.5 million with possible effect in the 2014 – 2015 financial year as well.

All states and territories in Australia have a common law access barrier, with Queensland having one of the lowest access barriers in the country. To revert Queensland back to being the only state in Australia without one, clearly puts Queensland out of step with what is seen as best practice in all other states and territories. It is imperative of all stages within the workcover system that rehabilitation and training be the focal point of the exercise, not the outcome of a common law claim for incapacity.

Based on the above, it would seem reasonable to further investigate the impact of the 2013 changes before making the decision to implement the changes proposed in the *Amendment Bill.*

Access to an individual's claim history

MEA also has concerns about changes proposed in the *Amendment Bill* that would prevent prospective employers from accessing an individual's claim history.

Employers are entitled to have a degree of control over their workers compensation liability. The 2013 amendments permitted employers to access an individual's claim history to allow them to identify if the inherent requirements of the job could lead to an aggravation of a previous injury. This then allows the employer to undertake further investigation into implementing and making reasonable adjustments to the work to allow a particular candidate to take up a position. Employers, through this system, are made aware of a previous injury and can provide instruction and implement systems to ensure that an aggravation does not occur. Restricting an employer's access to this information may increase injuries and illnesses for employees as they may not voluntarily disclose to a prospective employer any injuries arising from work related incidents from previous places of employment. The current legislation achieves a balance between the right of employees to be compensated for work related injuries and the right of employers not to pay the price for injuries they had no knowledge or responsibility for.

Further, an employer must ensure that they appropriately handle these questions and the information when asking about pre-existing injuries and illnesses carried by employees. Any information which reveals a previous medical history that could reasonably impact on the employee's capacity to carry out the inherent requirements of the role would require a medical assessment.

A decision not to offer employment to a prospective employee should be based on the medical information that there is strong likelihood that the work significantly increases the risk that the employee will reinjure themselves. Reverting back to the previous system means that the Workers Compensation scheme achieves a higher risk profile and injures more employees.

We acknowledge concerns about protecting an employee's privacy and the risk of discrimination. However, there are existing protections for prospective employees under the Fair Work Act where employers exercise these powers. Prospective employees are protected by discrimination laws and the general protections provisions of the Fair Work Act. It is unlawful for an employer to treat a prospective employee unfavourably, such as not to offer employment, because of a perception that they are not fit to do the work.

In the Queensland coal industry it is mandatory for every new employee to undertake a medical assessment. For those employers not in the coal industry and who lack the resources to test every prospective employee, the current legislation allows them to limit medical examinations to those who are identified as having a higher risk profile, such as those with relevant previous injuries, depending on the industry the employer is operating in.

Conclusion

Overall, MEA recommends further consideration be given to the proposed changes, including a thorough and impartial assessment of the outcomes achieved through the 2013 amendments. We would be eager to participate in any further discussions to provide an industry perspective on this issue.

Yours sincerely,

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