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Submission regarding *Workers Compensation and Injury Management Bill* 2021

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Introduction

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The purpose of this paper is to submit [redacted] response regarding the *Workers Compensation and Injury Management Bill* 2021 along with some submissions for further legislative amendment and consideration before the Bill reaches assent.

Provisions of Bill

Section	What is covers	[redacted]	Rationale
6(2)	Definition of personal injury - *A personal injury by accident is an injury from employment if the injury arises out of or in the course of the employment or while the worker is acting under the employer's instructions.*	This provision should be amended to include a requirement that employment is a significant contributing factor to the injury for it to be compensable. This is already seen in 6(3) of the proposed Bill around the definition of disease.	There are already similar provisions contained in other state workers' compensation legislation. (i.e. in NSW, S9A of the Workers' Compensation Act *1987 (WCA)* provides - *no compensation is payable under this Act in respect of an injury (other than a disease injury) unless the employment concerned was a substantial contributing factor to the injury.* In South Australia, S7 of the *Return to Work Act 2014* provides – *an injury arises from employment if in the case of an injury other than a psychiatric injury, the injury arises out of or in the course of employment and the employment was a significant contributing cause of the injury*). The current definition is too wide and not

			consistent with legislation in other states.
29 (1)	Timeframe to determine a claim - *Within 14 days after a claim is given to an insurer or self-insurer, the insurer or self-insurer must give the worker and an insured employer a liability decision notice for the claim* *Subsection 6 – if insurer has not made a decision then it is deemed acceptance*	14 days is not sufficient time to properly investigate a claim. [redacted] submits 20 business days would be more appropriate. [redacted] submits if no decision is made with respect to an injury within the prescribed timeframe, then the acceptance of the injury should be deemed to be disputed.	If a decision can be made before 20 business days it can be made early. This extended timeframe enables employers and insurers a more reasonable time to investigate and respond to a claim and to properly consider a claim and will prevent rushed and incorrect decisions being made. Under the Queensland *Workers' Compensation and Rehabilitation Act* 2003 (WCRA), the insurer is provided 20 business days to make this determination. Further, if a decision is not made within the timeframes, there is usually a complication or lack of information for an acceptance and therefore the injury should be deemed to be disputed. If further information comes to light that would render the decision to be accepted, the insurer should have the ability to reverse such decision.
29(6)	Failing to give a liability decision - *If an insurer or self-insurer fails to give a liability decision notice or deferred decision notice as and when required by this section —* *(a) the insurer or self-insurer is taken to*	[redacted] submits if a decision is not made within the relevant time frame the decision should be a deemed dispute instead of a deemed admission.	The key reason why a decision may be unable to be determined will be if there is a genuine dispute or a lack of evidence to support a claim. The employer should not be penalised in a

	have accepted that the employer is liable to compensate the worker for the injury to which the claim relates; and *(b) in the case of an incapacity claim — the insurer or self-insurer is taken to have accepted that the employer is liable to pay income compensation for incapacity for work*		situation where they have limited (if any) rights of appeal of such decision.
30(3)	Failing to give a liability decision - *If a liability decision notice has not been given before the deemed liability acceptance day —* *(a) the insurer or self-insurer is taken to have accepted that the employer is liable to compensate the worker for the injury to which the claim relates; and* *(b) in the case of an incapacity claim — the insurer or self-insurer is taken to have accepted that the employer is liable to pay income compensation for incapacity for work.*	As above	As above
31	Dispute regarding liability for claim - *If a liability decision notice given by an insurer or self-insurer states that liability for compensation is not accepted, an arbitrator may on application by the worker hear and determine the question of liability.*	There should be an equal provision for an employer to dispute the acceptance of a claim as there is for a worker to dispute the denial of a claim.	There is a similar ability for an employer to dispute the acceptance of the claim in other jurisdiction such as under the *WCRA.*

36(2)	Last employer to take full liability for disease - *Disease compensation may be claimed from the employer who last employed the worker in relevant employment (the last employer) even if there is a question as to which of 2 or more relevant employers is liable to compensate the worker or how that liability is to be apportioned between 2 or more relevant employers.*	It is not equitable for the final employer to bear the entire liability for the disease unless an application is made to the arbitrator. Liability for a disease should only sit with those employers who have exposed the workers to a disease. Each employer in the WA jurisdiction should be liable for the portion of the damages based on their time spent as the employer and the exposure amount (i.e. if the claimant was employed for 10 years in WA with 9 years employed in Mine A and 1 year in Mine B, then mine A should be liable for 90% of the damages and Mine B liable for 10%). There should then be the ability for employers to go to the arbitrator if they disagree with that apportionment.	This will minimise the need for employers to go to arbitration therefore saving cost and time. It is not difficult for an insurer (or multiple insurers as the case may be) to apportion the costs of a claim across different policies. It may be that one insurer agrees to pay the total cost and then seeks reimbursement from the other at the cessation of the claim. This will ensure the costs of a claim is reasonably shared with all employers and insurers across the board.
37 – 45	Status and effect of provisional payments – S44 they are not refundable by the injured worker even if liability is rejected for a claim except if there is a finding of fraud.	Provisional payments are important but should only be made on an "as needs basis" instead of being offered to all workers. Once a claim is accepted, payments can be back dated. Importantly, the scheme should recover such payments if claim is rejected – the current section 44(3) proposes for such payments to only be recovered in the case of fraud.	This will ensure a more just and equitable scheme. The inability of an insurer to recover costs where liability is rejected is likely to drive an uptake on frivolous or non-work related claims being lodged therefore costing employers and insurers significantly. Further, making provisional payments in all circumstances will also drive-up costs. In most cases, workers have access to other benefits such as sick

			leave and public healthcare both of which will be reimbursed if the claim is ultimately accepted.
63 - 67	These sections covers the ability for an insurer to reduce or suspend or discontinue payments (both treatment, rehabilitation and weekly benefits)	There should also be the ability for an insurer to suspend or discontinue payments if a worker is not complying with reasonable treatment requirements unless they have a reasonable excuse (i.e. if a worker is failing to attend physiotherapy and their condition is not improving, payment of benefits should be suspended until they agree to attend such treatment).	This will ensure a more just and equitable scheme which encourages workers to attend and participate in treatment in a reasonable manner therefore recovering and returning to work quicker.
65(2c)	Reducing or discontinuing income compensation if a dispute - *if the worker makes a dispute resolution application within that 21-day period, the employer cannot proceed with the proposed action before the dispute resolution process for the dispute has been finalised as provided by this section*	If there is medical evidence to discontinue benefits, benefits should cease on the 21st day and if there is a dispute, benefits should remain discontinued until such time as the dispute is resolved. If at the resolution of the dispute benefits are to be re-instated, they can be backdated to the date they were suspended.	This will ensure a more just and equitable scheme and prevent additional unnecessary costs being incurred by employers and insurers. The current provision will encourage workers to lodge disputes with all insurer decision to extend their payments therefore costing the scheme significantly in both additional unnecessary payments and in additional disputes being investigated and dealt with.
102(1)	Agreement as to degree of permanent impairment - *worker must —* *(a) have an assessment under Part 4 of the worker's degree of permanent impairment resulting from the injury; and*	The employer should arrange the first assessment and if there is a dispute, the worker should be given the opportunity to have a second assessment.	By having employers and insurers arrange the first assessment this will ensure such assessments are impartial and free from bias and that the assessors are adequately trained and

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	(b) give the employer a copy of the assessment (the original assessment) together with a notice (the permanent impairment notice) in the approved form requesting the employer to indicate whether or not the employer agrees with the assessed degree of permanent impairment.		experienced to conduct these assessments. There is already a similar provision under the WCRA for this to occur.
171	Attendance at medical examinations - *A worker's employer, the employer's insurer or an agent of the insurer must not be present at a medical examination of the worker by the worker's treating medical practitioner or another health professional permitted under the regulations to issue a certificate of capacity for the worker.*	If the worker is agreeable with employer attending the medical appointment, they should be able to. If the worker does not provide consent, the employer is not able to attend due to privacy considerations. The employer already has the right to be updated on and participate with preparing return to work plans. Employers also have the ability to arrange their own medical assessment to assist with return to work or a functional capacity evaluation.	If a worker and employer are both agreeable with attending, this can help facilitate a return to work. The employer is there as a support service to the employee and this engagement can advance return to work outcomes. The act of forbidding employers attending will only drive a wedge between the employer and employee relationship.
184 (1)	Failure to attend an IME - *if a worker contravenes a requirement for a medical examination, an arbitrator may by order (a suspension order) —* *(a) suspend payments of compensation to the worker; and* *(b) suspend the worker's entitlement to take and prosecute*	Benefits should be automatically suspended if a worker fails to attend a medical examination without a reasonable excuse – without the need for an order from the arbitrator. If the worker disagrees with such suspension, they can go to the arbitrator and oppose such decision.	This will ensure workers take their obligation to attend medical assessments seriously. This will also prevent additional costs of bringing matters before arbitration without reason, bearing in mind if the employee has a reasonable excuse for not attending then benefits will continue.

	any proceedings under this Act.		
218 - 223	Both principal and contractor taken to be employers if the employment is in execution of any work by or under the contractor, the work is part of the business of the employer and the injury arises in respect of a premises on which the principal has control over. Principal is jointly and severally liable. Principal can claim indemnity from the employer	These sections should be removed.	A principal should not be liable as an employer for the work undertaken by a contractor.