



Aged Care Employers Self-Insurance

# **Presentation Points to the Queensland Parliament Finance and Administration Inquiry**

## **Into**

### **Operation of Queensland's Workers' Compensation Scheme**

Submission by ACES employers:-  
RSL Care Limited  
The TriCare group of companies  
Sundale Garden Village, Nambour

14 November, 2012

### Common Law

- We note that a number of Inquiry Submissions attempt to create a belief that existing common law legislative provisions minimize unmeritorious and financially unviable claims through what is termed tough liability provisions and tough fraud provisions. Such an assertion is invalid and not borne out in practice. As indicated in the ACES Submission, "It was once the case that common law claims were lodged only in circumstances of more serious injuries where an employer was clearly negligent." The only impediment to many more common laws claims being lodged under the current control regime is that many injured workers who could lodge common law claims are choosing not to do so.
- Under the current "liability" tests that have been progressively developed in precedents over a number of years, all insurers are now forced to pay "go away money" on unmeritorious claims due to it not being commercially viable to defend them.
- It is also asserted in a number of legal Submissions that the full effect of the 2010 changes is not yet evident. History shows that whenever common law becomes an emerging cost issue and Governments react by introducing some changes (even as the Government did in 2010) the aggressiveness of claims lodgements decreases for a period and settlement negotiations become more reasonable, until the "dust settles". Thereafter, claim lodgements expand and negotiations become more difficult.
- In many respects the common law system has become a welfare system where 0% WRI and minor work injuries have become unreasonably costly in terms of damages payments and legal costs.
- Examples exist where workers plead they are unable to rehabilitate and return to work during a common law claim; then after settlement of the claim, they are suddenly cured.
- Common law certainly interferes with one of the main objects of the Act, which is rehabilitation, as there is no incentive for the claimant to recover. Their injury won't get better until they get their settlement because, if they recover, they get less money.

### Journey Claims

- This issue is covered in the ACES Submission.
- The predominant risk concern with journey claims is large non-recoverable payouts over which the employer has no control and which are not work related.
- There are already a proportion of Queensland workers who are not covered for journey claims; e.g. Commonwealth workers. This has been the position for a number of years.

### Eligibility Criteria

- This issue is covered in the ACES Submission.
- Reducing or eliminating the current Full Time Equivalent restrictions is very important in order to provide self-insurance flexibility, choice for employers to self-insure, improved workers compensation insurance competition and the capacity for employers to manage workplace risks much more effectively.