FINANCE AND ADMINISTRATION COMMITTEE

Members present:

Mr MJ Crandon MP (Chair)
Mr R Gulley MP
Mr IS Kaye MP
Mr TS Mulherin MP
Mrs FK Ostapovitch MP
Mr EJ Sorensen MP
Mr MA Stewart MP

Staff present:

Ms D Jeffrey (Research Director)

PUBLIC BRIEFING—INQUIRY INTO THE OPERATION OF THE QUEENSLAND WORKERS COMPENSATION SCHEME

TRANSCRIPT OF PROCEEDINGS

MONDAY, 27 AUGUST 2012

Mackay

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Committee met at 1.50 pm

CHAIR: Good afternoon, ladies and gentlemen. I declare this public forum of the Finance and Administration Committee's inquiry into the operation of the Queensland workers compensation scheme open. I am Michael Crandon, the chair of the committee and the member for Coomera. The other members of the committee here today are Mr Reg Gulley MP, member for Murrumba; Mr Ian Kaye MP, member for Greenslopes; Mr Tim Mulherin MP, member for Mackay; Mrs Freya Ostapovitch MP, member for Stretton; Mr Ted Sorensen MP, member for Hervey Bay; and Mr Mark Stewart MP, member for Sunnybank. The members for the committee who are unavailable to attend the meeting today are Mr Curtis Pitt MP, the deputy chair and member for Mulgrave.

The purpose of this forum is to receive information from stakeholders about the motion which was referred to the committee on 7 June 2012. In particular, the committee is required to consider the performance of the scheme in meeting its objectives under section 5 of the act; how the Queensland workers compensation scheme compares to the scheme arrangements in other Australian jurisdictions; WorkCover's current and future financial position and its impact on the Queensland economy, the state's competitiveness and employment growth; whether the reforms implemented in 2010 have addressed the growth in common law claims and claims cost that was evidenced in the scheme from 2007-08; whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment; in conducting the inquiry, the committee should also consider and report on implementation of the recommendations of the Structural Review of Institutional and Working Arrangements in Queensland's Workers Compensation Scheme.

This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. I remind all of those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in proceedings. In this regard I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. Could I also request that mobile phones be turned off or switched to silent mode? I remind you that no calls are to be taken inside the hearing room.

We are running this hearing as a round table forum to facilitate discussion. However, only members of the committee can put questions to witnesses. If you wish to raise issues for discussion, I ask you to direct your comments through me. You have been provided with a copy of the instructions for witnesses so we will take those as read. Hansard will record the proceedings and you will be provided with a transcript. We have a relatively short time this afternoon to hear from all of the individuals and organisations represented here today, so can I ask you to keep your answers and comments as brief as possible and try not to repeat what others have already said. The committee will allow a maximum of three minutes from each of you to make an opening statement if you wish to avail yourself of that opportunity.

GILBERT, Ms Julieanne, Delegate, Queensland Council of Unions, Mackay Branch

GLANVILLE, Mr John, Owner/Employer, Auto Corner Proprietary Limited

HEIDEMAN, Ms Donna, Financial Controller, Auto Corner Proprietary Limited

KEMP, Mr Andrew, Business Owner/Director, Kemp Meats Pty Ltd

LAMBLEY, Mr Ian, Group Business Manager, Auto Corner Proprietary Limited

WORSLEY, Mr Craig, Partner of Taylors Solicitors for Australian Lawyers Alliance

CHAIR: Thank you for your interest in this hearing. Who would like to begin with an opening statement?

Mr Glanville: Thank you, Mr Crandon. I want to thank the committee for the opportunity to be here today and talk about this. I want to put our position that as an employer we are not about trying to dissolve or weaken the workers compensation scheme insofar as it should protect workers from legitimate claims. The issues that we have as an organisation, and I think that a lot of other employers have at the moment, is the viability or lack thereof of the current system and the ability of people to take advantage of it with claims that you would have to question as being anything but frivolous. I do not understand the legal system but I do understand from WorkCover's perspective that once something goes to common law they find it almost impossible to try to defend it. Therefore, we find ourselves in positions where claims that you

would have to find at least questionable being settled out of court for sums which are exorbitant. I have given the committee a copy of our submission and you can see from our submission that there is certainly a pattern there. We have 300 staff. Many of those staff are highly qualified. Some of those staff are lower qualified labour, and the system would seem to be that the bulk of our major claims are short tenure, unqualified or low-qualified people.

The claims that we find we are questioning ourselves fairly significantly seem to be settled out of court for an enormous amount of money. I would also add that even though we are a large and successful company the latest premium, which is not in that submission for your notation, is now discounted to $607,000 for one year's premium. That is an awful lot of money for somebody to find. I am happy as a dealer principal to have to contend with all of the things that the marketplace can throw at me and that the labour force can throw at me, but I would ask that you look at something so that businesses can try to run their business without things like this that are beyond their control.

Personally my opinion is the problem is that common law is too open and too available to people. With due deference to my colleagues here who are from the law, I think the system is also taken advantage of by this no win, no claim system that is happening in Queensland. What were deferentially called ambulance chasers in the United States are now here and it is in a terrible state I think.

CHAIR: Thank you. Who else would like to make an opening statement?

Mr Kemp: Mine is pretty similar to John's really. In the last two years we have had the same. Our premiums have increased from $26,000 to $112,000 so it has made us unviable to operate anymore. We have a small processing plant out of town and we supply local product to the butchers in town. With common law claims it is basically the same. These no win, no pay law suits are what I think is pushing common law claims. We have one at the moment that is going to court in the next few weeks. He is looking at half a million dollars for a tiny cut to his thumb. I just do not believe it is worth it. He got paid $7,000 as a payout figure and then he went for a common law claim. His opinion that he expressed to me—and this is the second claim he has had with me—is that it will not affect me. I do not know where that comes from—whether that comes from the law or law firms or what—but he said, 'It will not affect you; I'm going for a common law claim.' It has made us unviable to operate. If we cannot operate, that will be 13 jobs in the local district gone.

CHAIR: Thank you. Is that where you would like to leave things?

Mr KEMPTON: Yes.

Mr Worsley: I am representing the Australian Lawyers Alliance. I would like to thank the committee for the opportunity to speak. With regard to what my two friends have already stated, it is always very difficult to respond to case-specific examples without knowing the facts upon which they are based. It is one thing claiming a certain amount of money. It is certainly a completely different thing as to what they end up getting. WorkCover and other self-insurers are probably best placed to work out exactly what they are doing and what they are paying out. Some of this claims experience I assume is based upon experience prior to the amendments that came in on 1 July 2010. I am sure the committee is well and truly aware of the submissions that have been lodged by the Australian Lawyers Alliance and I do not propose to go through those. They extend to some 28 pages with a lot of statistical information.

What I would like to deal with mainly is the possibility that it might be thought reasonable to introduce thresholds based upon the level of a person's impairment in terms of access to common law. I do not think that it can seriously be argued by anyone who has a reasonable understanding of how impairments are carried out that an impairment level in any way reflects what a person's actual disability is in terms of the type of work that they can perform. The concern that we have is that, if a threshold were to be introduced using an impairment basis, it would discriminate very unfairly against workers in heavier type occupations and industries. It also discriminates against age. Perhaps the easiest example I can give is that of an 18-year-old concert pianist and a 65-year-old labourer who both lose their left pinkie fingers. It can quite easily be seen by anyone, I think, that the impact of that injury is very different on each of them in terms of their future working life. However, in terms of impairment they have exactly the same impairment level. It does not take into account what we as normal, caring, human beings would see as important. It would in my view be very arbitrary. A lot of my work involves workers in the mining industry—

CHAIR: Before we go into that, we have run out of time for your introduction but you will have some opportunity to use some examples as we ask questions.

Ms Gilbert: I am an organiser with the Queensland Teachers Union and today I am here representing the local Queensland Council of Unions branch and the associated affiliates to that branch. We support the Queensland Council of Unions' submission that was made essentially from Brisbane. I have a copy here in case you do not have one that I can table. Our submission is on behalf of workers in Queensland. Some of the points that I would like to raise with you in support of our submission today is that Queensland employers pay the lowest premiums out of all the states into the workers compensation scheme. The current ratio of funding is 111 per cent. Queensland is reporting a return to work of 97 per cent, which is a very high return to work percentage.

In 2011 WorkCover Queensland had an employer customer satisfaction rate of 74 per cent and worker satisfaction rate of 84 per cent. Sixty four-per cent of all workers compensation claims are finalised in less than four weeks, with 84 per cent finalised between four and 13 weeks. We believe that the

WorkCover scheme is the most cost effective for Australian employers. It is fully funded and it provides workers with benefits that are reasonable for a worker if they happen to become injured in their workplace. It also has one of the highest return to work rates, which is a good thing for Queensland business and Queensland workers.

There is no financial or other reason to have the scheme altered in any detrimental way to workers based on the performance of WorkCover Queensland so far. I would like to add a little anecdote and this covers a bit of what the other gentlemen were saying about common law. With the work that I do with my members, I would like to give you a scenario of how a worker went through the common law path because of her knees. She was a single teacher aged in her 50s. Because of the rate of separation and divorces, unfortunately she found herself in the situation that she was single. You do not always end up with the big nest egg that you have when there is a couple together so she had to take out a huge mortgage on a new home unit.

She suffered an injury at work due to stress and she had, for a short time, some workers compensation benefits. Because of the short-tail scenario that we have with workers comp, that did not get her completely ready for work. She accessed a successful common law case. The result of this common law case meant that she was able to retain her home, she was able to keep paying her mortgage. If she became homeless that would have added to the stress that she was already suffering, so with the compensation that was paid for her injury she was able to retain her home and she was able to access further medical rehabilitation. The money that she was awarded actually enabled her to become well. She did not have a lot of frivolous, out there having a high old time.

CHAIR: Okay. Can we just leave it at that and go on from there. We will run out of time on that introduction.

Ms Gilbert: Okay.

CHAIR: The concept here is that committee members have a number of questions that we would like to ask. Questions might also come up as a result of answers that you give. I would like to ask your local member to open the questioning.

Mr MULHERIN: Thanks, Michael. John Glanville, you were talking about the claims that you have had in more recent times. You had a fairly good record up until 2009 with not many claims. You were below your industry's rating. Why do you think the situation changed? You kept referring to people who are low skilled. Does that have anything to do with the claims, do you think?

Mr Glanville: Low skill and short tenure, I was saying, Tim. I certainly do not want to suggest that everybody who is in a labouring or low skilled type job has questionable scruples. What I am saying is that they are in different circumstances to somebody who is earning a greater income. We, in fact, had no claims up until 2009. We have not had any significant shift that I am aware of, other than our size, our growth, in our attitudes to the workplace. Our local WorkCover rep has actually said that we have an excellent reputation and we are, in fact, an exemplary workplace. I said, 'That is not what the premium suggests'.

I would suggest to you, just for the record, we are talking about a trade's assistant, a detailer, a detailer—those are the sorts of people who we have been getting the claims from—parts storeman, pre-delivery fitter. Those sorts of people are probably not in our higher paid jobs. It would be me guessing, but I suspect that maybe people like that who are not in a high paid job hear that there is a way to try to make some money out of a frivolous claim, maybe that is the way they go. I am the first to suggest that I come from a position of bias in assessing claims as frivolous, but I am not a stupid man. I can tell you that with the claims that have gone through, we were so naive as an organisation with the first couple that went through that we thought it was humorous that they were even claiming common law. We soon learned that it was not funny when we saw the sort of payouts that they were getting.

I cannot really give you a definitive answer on why all of a sudden we are getting these claims, but that is just the way that it has transpired. I think Andrew Kemp has had the same sort of experience, where he had no claims, no claims, no claims and then all of a sudden something changed in the landscape. As employers we are probably not focused on what is happening in the world of law or those sorts of things, or in the world of parliament for that matter. Something has happened where all of a sudden people have decided that it is worthwhile to go out and make a common law claim. There is certainly a lot more marketing from the law industry and suggesting to people, 'Maybe you should go out and we'll get you a payout'. I am not at all a fan of the concept of no win, no pay. I think that is a terrible way to approach things. It is almost like saying, 'Let's go and have a bet at the races and see what happens'.

Mr MULHERIN: John, just with your induction process, I imagine that you have workplace health and safety policies in place that you induct your employees into when it comes to lifting. If something is over a certain weight, they get another worker to help or they get a hoist to lift a toolbox or whatever. Do you have regular workplace health and safety meetings amongst the staff where that is rammed home?

Mr Glanville: We have toolbox meetings. We do have a formal induction process. Back in 2004-05, we probably were not as formal about it as we now found ourselves needing to be. I do not think that what we have done has made us a dramatically safer place to work. I think it has just made us more aware of the process we need to put in place. Maybe some of that is a good thing. Our workplace health and safety

officer is here, in the public stand. I think that that has made us all more aware, but if the smallest thing happens at work now we shut the place down like a swat team, which is overreaction quite frankly, but it is just the way we have decided to try to respond to it.

CHAIR: Tim, I was going to ask Craig if he would like to respond to some of that, before we went on to Andrew, perhaps.

Mr Worsely: As I said, it is always difficult to try to respond without knowing all the facts of the matter.

CHAIR: Let's not talk specifics. General comments were being made by John, not in favour of the—

Mr Worsely: I think there were claims about spurious claims. My response to that is that that is something that WorkCover needs to deal with when the claims are made. My own personal experience of late, within the last two years, is that WorkCover has been fighting them a lot harder in my view and that was aided by a change in the law, which I appreciate my friends are not aware of. In my view, the previous state of the law has only arisen out of a particular case which I will not bore anyone with, but that was ridiculous. It did not have balance and it was not fair to employers. That operated for a period and it was closed off.

The other issue which I think touches upon my friends' concerns about no win, no fee is the fact that, up until those changes were made, if a client lost there was no cost penalty to them. In other words, WorkCover could take it all the way through to trial and win and spend a lot of money on it, but were not entitled to recover those costs off the worker. That has been changed as well. I think that that was certainly a change for the better. I would be the first to accept that the state of the law, as it then was, promoted speculation in terms of a client who comes to see me and says that something occurred in such and such a way. As a lawyer it is not my job to say, 'Hey, you're lying'. I have to operate on what I am being told and quite often that can be very different to what my friend says. Where you have a situation like the law was about that particular case and where there is no cost penalty, you are inviting speculation. That has changed. As I understand it, actual claims intimation and conversion to common law has reduced somewhat, although unfortunately not with my friends' experience of it. However, there are ways and means and perhaps we do become wiser.

We are also employers and we recently had a workers compensation claim. One of the things at the moment is that WorkCover introduced a situation where doctors could lodge the claim directly from the medical practice. That was brought in in order to ensure that people got rehabilitation quicker. My own personal view of that was that all it did was increase the amount of claims being lodged and, therefore, the possibility that they were going to be converted to common law claims. There has not been as much of an increase in return to work as had been hoped when it was brought in. My friends might not be aware, but doctors were actually given a dollar incentive to lodge the claims from their office. It was not a great deal, but there was an amount obviously for their administration costs. You are only inviting more claims. I would not say that they are spurious, but there is an administration cost to WorkCover and the employer in dealing with them from there on. We recently had that experience ourselves.

The no win, no fee issue is that at the moment that is not allowed to be said on television at all or in any actual media. It can be on the website of individual firms, as I understand it.

CHAIR: Posters on the side of the road?

Mr Worsely: No, it is not allowed on that as far as I am aware. We are certainly not doing that. I think some firms nibble around the edges in terms of how they promote it, and I think one way is by not mentioning personal injuries, but I do not think you have to be too like Einstein to work out what it is on about. Perhaps that is an area that can be addressed.

There is one thing that I would like to raise and I can give you an example. You have a 30-year-old worker with kids and a mortgage, as you would at that time in your life. He is working as an underground miner. He might have been there for, say, 10 years. He injures his shoulder, but by the time WorkCover deals with the matter he has a full range of motion, which means that he can move his arms to all points of the compass, but he is not able, because of the pain, to keep his arm up above shoulder height for any length. Effectively, he can no longer work as an underground coal miner, even though he has been given a zero per cent impairment level because he has that. Basically, he is out of a job once that occurs. If you introduce a threshold on that, he is on the employment dustbin as far as that is concerned.

What I have seen with self insurers, and I do not know what submissions have been made about this, but they have the advantage of retraining, reskilling and redeploying workers in those circumstances. There is a very real financial incentive for them to do that, because they are keeping the total claims cost down. As I understand it at the moment, and I am not exactly sure on the figures, with an individual employer for a claim their premium is not affected once the total claims cost gets above—is it $200,000?

CHAIR: $150,000.

Mr Worsely: Above $150,000. In our experience, we have coal miners who are earning $150,000 or $160,000 gross a year. Quite obviously, even if they do not bring a common law claim, there are many of those just on statutory claims that will get to that level. That affects the employer's premium to that point, but beyond that there is no incentive on an employer to redeploy or reskill that person to put them into another position, whereas a self insurer has that advantage.

CHAIR: We might just stop, Craig. Perhaps there has been some interest raised in asking some questions. Reg, do you have any question?

Mr GULLEY: Yes, I have a question for John. For the first couple of claims that went through, and the investigation—

CHAIR: Sorry, Reg, can I stop you for a minute. For the record, would you like to say the name of that case that you were referring to?

Mr Worsely: You are probably going to embarrass me by me not knowing the name.

CHAIR: Okay.

Mr Worsely: It had to do with the Workplace Health and Safety Act. Under the Workplace Health and Safety Act, it had a provision that basically really almost reversed the onus of proof in that the employer had to effectively try to say that they had a safe system of work in place, which is completely against how our system normally operates.

CHAIR: Sorry Reg, I just wanted to see if we could get that on the record.

Mr GULLEY: John, in those cases that you put into your written submission, what was the investigation process of those claims?

Mr Glanville: The very first case of common law that we had was in 2005. My group business manager, Ian Lambley, who is one of the senior managers in the company, actually witnessed the incident. We went along, again totally naive because we had never had a claim before, thinking that we were going to have this conversation and then we were going to eventually end up in court and have to go and give evidence, et cetera. When we said, 'Okay, we think this is a frivolous claim', WorkCover said, 'We don't care what you think; we're here to negotiate a settlement and we're only here to talk about the amount'. Ian was never ever called about that particular case.

I would say to you that I do not really know that I blame WorkCover as much as the process of the system, in that their mindset is, 'If it goes to common law, we cannot fight it, we cannot afford it'. They believe that they will be behind the eight ball financially. We have found the local WorkCover people to be quite supportive of us, but I would be less than honest if I said I know what their process really is, Reg, in any great detail. I just know that our understanding of the process was well short of what it probably needed to be, because we went there thinking that that was when the process started only to find out that that was when the process was finishing.

Mr GULLEY: To me, it does not sound like there is a thorough investigation process of each case?

CHAIR: I suppose we have to keep in mind that that was 2005, as well. We have received other witness evidence that suggests that there are some major changes.

Mr Glanville: I could not say that that would be a fair criticism of WorkCover, generally. Perhaps in that case it was. If I could, through the chair, Craig, I do not know you know that well but I will call you 'my friend' because you seem to think I am yours.

Mr Worsely: My wife and your wife are friends.

Mr Glanville: Our first case, the guy fell off the step washing a Land Cruiser, so you are talking about that high. When you are going to wash the roof of a Land Cruiser you cannot be on the ground unless you are somebody who plays basketball or something like that. We still have a problem with trying to work out how we get around that problem, but believe me we are trying to work out how you can make that safe. We bought steps and all the rest of it. But in reality they can slip off the step as well. He sprained his ankle. That is the incident that Ian saw. WorkCover settled for $9,987. He was then assessed to have had a 25 per cent incapacity and due to the accident he stated that he had adjustment disorder, he was unable to work, he had hypersensitivity of his right ankle—I can live with that—he was unable to participate in social activities, sexual impotence, low libido, difficulty sleeping, uncontrollable mood swings and developed an alcohol and marijuana abuse disorder. That is in the claim. I find difficulty in relating one to the other. I am not going to bore the group at all, but there is a lot of that sort of information in our submission.

Mr KAYE: I have a particular interest in the return to work programs. From an employer's point of view—I will start with you, John—do you find that there is pressure on you to try to get people back to work as quick as you can to try to avoid any penalties?

Mr Glanville: There is certainly an inclination to want to get them back to work. I would have to say that probably our underlying motivation is if we can get them back to work in some capacity it probably makes us feel there is less likely going to be a common law claim. I do not know that our motivation is really quite as honourable as it should be. We certainly would not bring anybody back to work in a circumstance where it put them at risk. The sorts of people we have had injured, it is difficult to find something that is light duties for somebody who is a car detailer or something like that. They sit in the office and file papers. My financial controller, Donna Heideman, has been involved in a lot of that with Lynette. I do not know that we have had a great deal of success. Some of them refuse to come back to work, don't they?

Mrs Heideman: Yes. I think internally as an organisation we are much more motivated to get them back to work than WorkCover puts pressure on us.

Mr KAYE: Do you find that you have access to effective return to work programs? Do you have the support there to enable you to do that?

Mr Glanville: Possibly again that is a question better asked of Lynette or Donna.

Mrs Heideman: We have had differences between what one person will say to us and another. An occupational therapist might say one thing, a doctor might say another, that type of thing, but generally speaking we seem to be able to manage to get them back to work.

Mr Kemp: All of ours have had case managers from WorkCover and have got them back to work as quickly as they possibly can through physiotherapy or whatever. We haven't had any trouble with that part of it really. They have all come back to work. Even this last case, he came back to work and left on his own accord. That is what really annoys me. Then he puts in this big claim.

Mr MULHERIN: Craig, you were saying about the self insurers, the way they manage claims.

Mr Worsley: I suppose I could deal with the first issue raised about investigation generally. I only deal with two major self insurers in the mining area mainly. They tend to investigate the claims a lot more thoroughly than what WorkCover Queensland do. They have a lot more paperwork documented in that. That may be to an extent because they are really interviewing themselves and there is always that advantage they have that they have the local knowledge as to what is going on. One very large international miner engages an investigator which is obviously well beyond the resources of my friend here—I will keep calling you a friend. I appreciate that that is the case, but WorkCover Queensland, the way it currently investigates them, and I think this is to get the turnover—get the matter decided and get it finished—is that they will ring the worker and get their version on the telephone and they will ring someone from the employer to get their version. It is not always the person on the job they probably should be speaking to at the employer's to find out what happened on the floor. Then they will make a decision based upon what they are told on the telephone often with the benefit of the medical advice that is there. In my view. I think that that can lead to mistakes; some matters being accepted when they probably shouldn't be. There is a threshold point. If you don't have an injury accepted you cannot bring a common law claim. In a situation where the employer thinks that it may be a spurious claim, there are a lot of advantages in tackling the matter at the very outset of the claim and ensuring it is properly investigated and putting what they can into why they believe it is not. They do have a right of review against any decision made by WorkCover where they go to Q-Comp, but there may not be a lot of understanding or communication of those rights for some employers.

Mr KAYE: Is the lack of investigation perhaps a regional thing?

Mr Worsley: No. We are dealing constantly with WorkCover's offices in Brisbane if anything with the move away from regional handling of the claims, which in my opinion has a number of disadvantages, the most important of which is lack of local knowledge. If you are investigating it, by not being able to go down and see John down there and having a look what it happened it is very difficult to get in your mind as a claims officer, you have never worked in any sort of labouring occupation, a good understanding of what they are talking about. In my view, taking it away from the regions, outside of the economic disadvantages it introduces, you are losing that local knowledge.

Mr Stewart: I am keen to know if since 2010 John or Andrew have seen an increase in common law, has it been steady or has there been a decrease?

Mr Glanville: I would say it has been steady. We have had no claims and we have been basically averaging one a year. Our most recent one, which has not gone into that submission you have there, was half a million dollars awarded to a guy who popped a hole in his hand. Other than that we have not had any since him. You are always wary when you have got somebody who has even had some minor WorkCover claim. Obviously they have always got the right to go to common law afterwards. The fact that somebody is told they have no claim does not mean that is the end of it. I do not know whether that has helped us. As I have said, we are absolutely paranoid about it at the moment. I do not know that it is necessarily under the guise of being safer, although that might be a bit of an offshoot of it, it is just that we are trying to get the process right.

Mr Kemp: We have definitely had an increase in the last three years.

Mr Stewart: Do you think there is anything that you can see to try to reduce the common law claims from your side?

CHAIR: Just as a follow on from what Mark has just asked you, Workers' Compensation, do they have case workers come out and look at your situation, assist, give advice, that type of thing?

Mr Kemp: No, it is all done from Brisbane.

Mr Glanville: We have a local representative here in Mackay.

CHAIR: Who comes out and gives you a hand, has a look around, you might want to do this, you might want to do that. Donna, that is the case?

Mrs Heideman: A couple of times.

CHAIR: But, Andrew, you are not aware of that?

Mr Kemp: That is what I said to this lady the other day, I said, 'You don't understand the industry that you are talking about.'

CHAIR: So there is a local, but that local person does not seem to have it covered. So there is something there.

Mr MULHERIN: So, Craig, on one hand WorkCover have local case managers. Where do you see the deficiency in that when under the previous system you talk about the claims manager not being the return to work manager?

Mr Worsley: Previously in Mackay I think we had the whole gambit. If you are a local employer like Mr Glanville's organisation it would be dealt with go to whoa here. I do not think there are enough benefits. There is a carrot and a stick approach from WorkCover—sorry, there is not, there is mainly the stick in terms of attacking their premiums. I think if WorkCover were to go out to a particular worksite with a bit of a claims history and say, 'Look, we have brought an ergonomics expert to have a look at your systems and where these things are going wrong', and the employer is prepared to make changes or put capital into things, there has to be a benefit back to the employer in terms of their premiums. If they have been savaged with a particular accident and they are seen to be doing something about it, then there needs to be a benefit. The same goes for the thing I said before about not redeploying or re-skilling. I have a myriad of examples where if the employer redeployed them they would have saved WorkCover half a million dollars or more that self insurers save themselves, but what is the incentive for them to do it? There isn't any. Whereas if they redeployed them why isn't there some benefit to the employer by saying, 'Well, look we applaud the re-skilling, the redeploying, and we are going to give you some benefit back to make that reality.' At the end of the day Q-Comp can have all of the awards they like about best rehabilitator and all the rest of it. We run our own business as well, but at the end of the day it is the bottom line that counts, not whether you get some award.

CHAIR: Craig, do you normally represent claimants or businesses?

Mr Worsley: To answer your question, both, and that is the difference between us and some of the larger firms that might be doing various things, but we act for both.

CHAIR: As a percentage?

Mr Worsley: Probably about 60. In terms of acting for employers, we are not defending them, we do commercial work, but we do commercial work for a lot of mining contractors and that sort of thing. My own brother, for example, has 100 employees as a contractor.

CHAIR: I am talking about workers' compensation claims.

Mr Worsley: Solely for plaintiffs/claimants, but in a lot of other large firms that do this type of work they have very little other work that they do whereas in the regions we tend to—

CHAIR: Yes, I understand.

Mr MULHERIN: John, just with your experience, when WorkCover claimants saw you about incidents that occurred, did they give any advice or recommendations to get some experts in? With the fellow who fell off the side of a car while washing the car, did they bring in an ergonomics expert?

Mr Glanville: No, they did not, but they actually put us in touch with Angela Bailey in that region. We had a lady come in anyway. She was not put to us by WorkCover, she was put to us by another employer. But anyway, no, they have not come out and done so much of that, I do not think, Lyn, have they? But we have certainly done a lot of that stuff ourselves, Tim. Again, I am not here to lambast WorkCover.

Mr MULHERIN: It is important to get an understanding. You have got the example of the self insurer who brings experts in to work with the employer on getting people returned to work, particularly if they cannot work in the calling they were originally employed in, but they also invest in trying to improve the workplace by changed management or physical changes to the workplace.

Mr Glanville: They certainly haven't done any of that.

Mr MULHERIN: Just one final question to Craig. When a claim went to common law and it was managed locally, you are saying that now because it is managed out of Brisbane with a central panel that all that knowledge of that industry at a local level is lost and that works both to the detriment of the employer and the employee.

Mr Worsley: To be accurate, common law has always largely been dealt with centrally in Brisbane, but the statutory side of it was dealt with completely here. You were able to liaise with people here early on in the claim to get a bit of an idea about what is going on. In days gone past we did act for employers and WorkCover Queensland and we had one particular example of acting for a defendant where we knew the woman, through other information, had a previous claim and had not disclosed it. We found out through other sources just because of local knowledge and she was done for perjury in the end.

Mrs OSTAPOVITCH: Mr Glanville and Mr Kemp, you have obviously considered this issue at great length. What would you do to change things? I would be interested to hear Mr Worsely's opinion on that as well?

Mr Glanville: I am not sure that I really have the qualifications to give you a complete answer on that, but what I would say is that I know that there will be people who will think that as an employer all I am really worried about is trying to improve the bottom line and save myself some premium, but I am a very

committed employer as far as my personnel go. I do accept that employers have a responsibility to provide a safe workplace and I do accept that they have a responsibility to help either rehabilitate or, in a worse case scenario, compensate somebody who has been injured in the workplace.

In an ideal world, I think there would be something to be said for some blame apportionment when injuries happen. If somebody wants to go and staple their hand to a wall in the workplace, it is still WorkCover. I mean, the reality is that the gap between theory and practice is enormous. You cannot really put systems in place to protect everybody from every eventuality, including stupidity. You can train them, you can induct them—you can do everything you want—but there is always the potential that they are going to hurt themselves. What I do know is that we need a system that is going to care for the employer and the employee in such a way that it is not taken advantage of.

I see the common law issue as the issue. What Craig just said made some sense to me. That is, WorkCover can come out and look at our place of employment and say, 'You are a model employer,' and I say, 'Have a look at that. That would suggest that that is not true.' They said, 'You run rings around most of the employment places we see.' I said, 'That would suggest that is not true.' They have no capacity to give any consideration to anything other than a calculation. So if I have been stupid enough, unlucky enough or whatever else to employ people who have taken advantage of the system then that calculation still dictates how much we are going to pay, regardless of our record or regardless of anything we put in place.

I know legislation and systems. It is very hard to put something in place that gives anybody the latitude to make a decision other than a straight-out calculation, but what I can say is that my circumstance is difficult with a $607,000 premium. That will not send us broke, but it will put a big hole in the bottom line. I feel for people like Andrew and smaller businessmen—a $112,000 premium for a man who employs 13 people. That is ridiculous. This will not send me broke. It could send companies like that broke.

Mr Kemp: I agree with what John says. I mean, we run our business as a family business and treat employees as our family just about. It makes it hard for us when we start getting premiums like this. It is unviable to operate anymore. If someone hurts themselves, that is what it is for. That is what I understand, but when it becomes claims that are out of our hands, we just cannot bear it. That is it. It stresses us out.

CHAIR: I think the question from Freya was: what would you do to change it?

Mr Kemp: I think as far as the premiums go, why is there so much variation in what people pay? The mining industry, I believe, was two per cent. Mine is 14.85 per cent. John's was 1.8 per cent of his gross wage. That is why my premium is where it is for how many people I employ. I think it needs to be either underwritten with some other sort of—public liability insurance for $20 million costs $5,000, so why is my premium for that sort of cover so high?

CHAIR: Just as a follow-on from Freya's question, have they discussed with you the concept of capping of premiums and what have you?

Mr Kemp: No.

CHAIR: Nobody has ever had that discussion?

Mr Kemp: No. If I have another common law claim, that will push up my premium next year. It does not affect it for this year but for the next financial year it will go higher again.

Mr Glanville: They have spoken about capping to me, but it has not occurred.

CHAIR: Okay.

Mr MULHERIN: Craig, with common law claims—

CHAIR: Just before you go on, Tim, sorry. Freya asked for a final.

Mr Worsley: As I understand it—I do not have the actuarial figures—at the moment the system is fully funded and has the cheapest average premiums in the whole of Australia. I think any further changes that are going to alter that situation are only going to hurt employers further in increased premiums. The fact of the matter is: if you start introducing thresholds for common law, as has happened in every other state in Australia, you end up with some form of long-tail scheme. Having a long-tail scheme—in other words, having someone on benefits forever and a day—is not in the individual's interests, psychologically or otherwise, to be a long-term effective welfare recipient, and it comes out in huge amounts of claims. New Zealand is an example. They have a no-fault system. But the premiums are just horrendous, and it costs the community there.

Mrs OSTAPOVITCH: Don't we also have that in Queensland, though? We have a no-fault—

Mr Worsley: In terms of workers compensation, you have to show that the injury has arisen out of or in the course of your employment, yes, but it is a very short-tail scheme and it is dovetailed into the common law system so that, effectively, we get them off that no-fault system very quickly and then it is basically whether they can establish a case and indeed whether that case is commercially viable. If someone comes in to me and has a cut hand, with the new changes in terms of how much the claim is worth—it might be worth $1,000—I am going to tell them, in terms of the actual damage done to their hand, that unless it is actually going to impair their ability to undertake their work in the long term it is not viable to bring a claim forward, even if it is the most outstanding negligence case ever.

Mr MULHERIN: Craig, just with common law claims, when the judge determines the quantum to be paid to the injured worker, can he or she discount that quantum based on contributory negligence by the employee?

Mr Worsley: Certainly. That is written into the legislation about contributory negligence. It is pretty hard to legislate to say that in any given circumstance you are going to cop 30 per cent. They do it in part with motor vehicles, so if you have a blood alcohol concentration in excess of .05 you immediately get a reduction in your entitlement of X. Say, for example, you are the passenger in a motor vehicle and the driver is negligent. If the driver is over .05 you get a 25 per cent reduction immediately and then it can work its way up to a full 100 per cent, depending on what happened. So there are cases of that. But in the work situation it would be extremely difficult to do that. But it does have provisions in there to say that the court can order that the claim be reduced by a particular percentage by the degree to which they contributed to it.

Mr MULHERIN: That gets back to when it goes to trial. They would look at what is documented in the workplace about workplace procedures and so forth.

Mr Worsley: Definitely. The court has to take that into account. Toyota have a system of work and this worker was present when they were told about how to lift and they have gone about and lifted incorrectly. They may well lose altogether or alternatively have a substantial portion taken off. But like all things, you have to have a documented system. You have to have an attendance record to say, 'That bloke was there that day.'

Mr Glanville: Could I also just point out, though, that that is on the basis that it goes to trial, and they seldom do.

Mr MULHERIN: I have a brother who employs 100 in the construction industry, so I am well aware of the issues. I just wanted to get that bit of information out.

Mr SORENSEN: Andrew, I have a meat processor in Hervey Bay who has suffered the same fate that you have. Another problem he has is the downturn in the economy with the tourism industry. As you know, you have to recommend how much wages you are going to pay for the next year. Because of a claim and the downturn, he had to reduce his workforce by half but the premium stayed at the same level for the next 12 months and he only gets reimbursed after that.

Mr Kemp: Ours was the same.

Mr SORENSEN: The way I understand it, it knocks your business around both ways. How do you get around that sort of thing?

Mr Kemp: We could not. We even got Ted to try to help us.

Mr SORENSEN: It is a difficult situation, especially in the meat industry. Do you have to have a form every day to tell people how to use a knife and all the rest of it? I have seen that in the gas and drilling industry.

CHAIR: Ted, is there a question in this?

Mr SORENSEN: That was the question. How do you get around those sorts of things? How do you reduce those premiums when you have lost half of your employees?

Mr Kemp: I do not know. You cannot, really. Once it is set, we pay it monthly. So ours will be, starting 1 September, $12,000 a month for nine months.

Mr SORENSEN: If you lose half of your employees, you should be able to reduce that.

Mr Kemp: That is right. You should be able to, but you cannot.

Mr GULLEY: I have a question for Craig about the self-insurance arrangements and who can and who cannot. You have already identified the positive for self-insurers who can then case-manage to their level of decision. What are the other positives of self-insurance and do you know of any negatives to self-insurance?

Mr Worsley: In terms of negatives, I am probably not placed—from my perspective I do not know what the negatives are. It is really an administrative issue with different people you are dealing with. I do not think that is what your question is directed at.

Mr GULLEY: I am trying to find out what are the pros and cons of individual businesses with self-insurance but also for the remaining system.

Mr Worsley: Self-insurers become self-insurers because they have the resources to do that. At some point in time they have looked at their figures and actuarial figures and weighed up what they are going to have to pay in premiums to WorkCover if they are on that system as against how they can design themselves and they themselves see a benefit in redeploying and case-managing it.

Mr GULLEY: Do you have an opinion on 2,000, 1,000, five?

CHAIR: How many people?

Mr GULLEY: Do you have an opinion on that?

Mr Worsley: No. I would not be placed to answer that.

Mrs OSTAPOVITCH: Julieanne, just listening to the plight of employers—perhaps you understand what they are going through already—is this something new to you? And do you understand what they are up against? At the end of the day, we are hearing that perhaps companies are going to go broke and there will be people unemployed, which I am sure nobody wants to see happen. What is your opinion on that? What are your thoughts on that?

Ms Gilbert: My experience with injured workers is that they want to get back to work and they do need to have a form of support so that they can get back to work. So the system that we have now supports workers to get them back into the workforce, because they do not stop having the same dependants that they have, with families and mortgages and all the rest of it. The system needs to support both sides. I do hear what the employers are saying, but we do need to support the employees. It is unfortunate that John has had some workers who have tried to take advantage of the system. My experience has not been that. The workers that I deal with want to be at work and they want to be bringing in an income because it is not nice to be unwell and not working. The system works well for the workers that I deal with.

Mr Glanville: Could I just say in closing: the other thing that I think the committee needs to think about—I do not know how you fix this—is the medical fraternity side of it. Our experience is that if somebody goes along to a doctor and says, 'I have this problem. I want a certificate,' they will get it, because the medical fraternity is frightened to death of potential litigation. I do not know how you address that issue but, again, it is another part of the whole combination.

CHAIR: Thanks for that. The time allocated for this public forum has expired. If members require any further information we will contact you. I would also like to remind everyone that the committee will continue to accept witness submissions until Monday, 3 September 2012. Thank you for your attendance today. The committee appreciates your assistance. I declare this briefing closed.

Committee adjourned at 2.52 pm