FINANCE AND ADMINISTRATION COMMITTEE

Members present:

Mr MJ Crandon MP (Chair)
Mr R Gulley MP
Mr IS Kaye MP
Mr CW Pitt 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

TUESDAY, 28 AUGUST 2012

Cairns

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Committee met at 1.40 pm

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

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 to 2008; whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment; and, 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 Legislative Assembly 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. Thank you for your attendance here today. I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the 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. I also request that mobile phones be turned off or switched to silent mode and 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. I ask you that, for the benefit of Hansard, please state your full name and title and the organisation you are representing, if any, when it is your turn to speak. We have a relatively short time this afternoon to hear from all of the individuals and organisations represented here today. So I ask that you 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 for each of you to make an opening statement if you wish to avail yourself of that opportunity.

DUFFY, Mr Christopher, Safety Officer, self-employed

NEIL, Mrs Laura, Member, Australian Lawyers Alliance and Far North Queensland Lawyers Association and North Queensland Legal Association

OSBORNE, Mr Alick, Chief Executive Officer, Tully Sugar Limited

RODD, Ms Rebecca, General Manager, Administration, Reef Magic Cruises Pty Ltd

TRAILL, Stuart, President, Queensland Council of Unions, Cairns

CHAIR: Starting with Mr Duffy, would you like to make an opening statement?

Mr Duffy: No, I do not.

Mrs Neil: Yes, I would. Today I am here representing the interests of three different organisations: the Far North Queensland members of the Australian Lawyers Alliance, the Far North Queensland Lawyers Association and the North Queensland Legal Association. All three of those organisations that I represent support the scheme in its current structure. It is a financially viable scheme. It has the second lowest premiums in the country and, for the 14 years prior to that, the lowest premiums in the country. It delivers fair outcomes to employers and to employees. We believe that the 2010 review has resulted in beneficial changes which have made the scheme more affordable whilst at the same time maintaining access to common law for injured workers.

We strongly submit that impairment thresholds should not be introduced. To do so would take away the focus on the negligent act of the employer. Further, we submit that mechanisms already exist within the scheme to limit access to common law for unmeritorious claims. Take the example of a worker who injures their shoulder and is a labourer and unable to return to work. They might be assessed as having a zero per cent permanent impairment. If they were inhibited in their access to common law by an impairment threshold, that would take away their financial livelihood and would certainly take away a claim in the case of a meritorious worker.

We also submit that journey claims for workers should remain. This is a significant issue in North Queensland, particularly given the number of fly-in fly-out or drive-in drive-out workers in the mining sector in North Queensland. The mining industry contributes significantly to this state's economy. Nearly half of the mining workforce in North Queensland are drive-in or fly-in fly-out workers. Continued access to journey claims under the current scheme is vital in ensuring that the large number of workers in this important sector are not penalised or placed at a higher risk by choosing to work in a remote or rural location, which necessitates longer periods of travel. Any curtailment of current entitlements may disincentivise those workers, potentially having a severe impact on the state's ability to maximise on this resource.

There are some areas where we would advocate for further reform. Improvements to the internal claims management practices within WorkCover should continue. External lawyer panels should be better utilised or expanded upon. Regional services and engagement needs to be reviewed. Services to regional and rural Queensland have declined because it is now an industry based service which has been centralised to Brisbane, and that has had a negative impact upon regional workers. The return to work assist program should be expanded so as to continue to assist with early return to work for injured workers. The industry ratings approach to premiums should be reviewed so that employers with no claims history are not being penalised. There should be continued efforts to reduce work injury rates in Queensland to below national levels. WorkCover should continue to aim to reduce employer premiums and WorkCover should continue to pursue fraudulent claim behaviours.

To summarise, the WorkCover scheme in Queensland continues to have the lowest or the second lowest premiums in the country and has done for the last 15 years. It has been able to achieve this whilst maintaining a short-tail scheme with access to common law. This benefits both employers and employees. It encourages return to work and discourages a welfare mentality.

CHAIR: Thanks very much, Laura. Your time is up. Stuart, would you like to make an opening statement?

Mr Traill: Yes, thank you. Stuart Traill, President of the Cairns QCU and also representing the Electrical Trades Union as the local organiser. The Queensland Council of Unions has made a submission in response to the workers compensation inquiry. We rely on the submissions of the QCU on behalf of Queensland workers and table this response should you not have it here.

The Cairns branch of the QCU, through its many affiliates, wishes to highlight a number of issues raised by workers in this area. Queensland employers pay the lowest premium rate out of all the states. The current funding ratio of WorkCover Queensland is 117 per cent. Queensland is reporting a return-to-work rate of 97 per cent. In 2011 WorkCover Queensland had an employer customer satisfaction rate of 74 per cent and a worker customer satisfaction rate of 84 per cent. Sixty-four per cent of workers compensation claims are finalised in less than four weeks with 84 per cent are finalised in between four to 13 weeks.

The WorkCover scheme is the most cost-effective scheme in Australia for employers. The scheme is fully funded and provides workers with benefits that are reasonable if a worker happens to be injured. The scheme has one of the highest return-to-work outcomes in Australia. There are no financial or other reasons to have the scheme altered in any detrimental way to workers based on the performance of WorkCover Queensland.

I personally would like to raise one example where the WorkCover scheme and access to common law significantly benefited a member of mine, a local Ergon worker up in the Mossman depot. He was, unfortunately, injured while travelling on a remote access track up the back of the Cape Tribulation area. The track had subsided and his truck rolled 80 metres down the cliff. His head was pinned. His workmates had to go down with hacksaws and cut the steering wheel to get him out of there. He suffered a percentage of brain damage as a result of that injury and I had to deal with him through the process. Obviously, he went through the common law process with our lawyers. He eventually had a successful outcome.

Unfortunately, during that case he approached me for assistance because of delays. We referred him to our assistance program called Mates in Construction, which helps with suicide prevention. I had serious concerns about the guy in this example as I knew him and I knew the impacts of the delays. He ultimately received a decent common law payout which provided for him into retirement. I do not wish for that to be diminished in any way. If that individual did not have access to common law, I believe that potentially he could have taken his own life as a result.

CHAIR: Thank you, Stuart.

Mr Osborne: Alick Osborne, I am the CEO of Tully Sugar. Tully Sugar is a major employer in the Tully region with 200 permanent staff and another 100 workers coming in for the seasonal period of the cane crush from June to November. Tully Sugar is a member of the Australian Sugar Milling Council and we support the submission that the Australian Sugar Milling Council has made to the committee.

In particular, I would draw the committee's attention to two areas. The first is the scrutiny of claims being made to WorkCover. At the point of making the claim, the onus is on the employee to provide evidence that the injury has occurred and that it is linked to work. The evidence is usually the opinion of the treating GP. While this is not necessarily an expert opinion of the nature or cause of the injury, it is usually the evidence that the claim succeeds on. That evidence is often based on the GP having taken the employee's word that the injury was work related while a medical expert in workplace injuries may have a significantly different opinion. The Sugar Milling Council and Tully Sugar supports this and submits that it is appropriate to limit WorkCover to claims where employment is the major contributing factor in the injury substantiated by expert workplace injury medical opinion.

The second area within the Sugar Milling Council's submission is that the act requires that workers or prospective workers not be prejudiced in employment because they have sustained injury to which the legislation applies. The fundamental principle of insurance is that the insuree advise the insurer of known risk. This proportion is not available in a prospective employment contract where the employer is excluded from finding out if a prospective employee has a pre-existing injury that may prejudice their ability to safely carry out the work being offered.

This impacts on a business like ours because, if an employee is injured in our workplace, we identify suitable duties or activities that they can safely perform but we are not able to find out out necessarily about employees applying for roles. So we cannot necessarily carry out our responsibilities as an employer to provide an appropriate and safe working environment for a particular employee, and that can lead to further risks down the track and increase the incidence of common law claims and, with that, the possibility of higher expenses to the business including higher WorkCover fees. Our fees have doubled in a five-year period.

CHAIR: Rebecca?

Ms Rodd: I do not wish to present.

CHAIR: Thank you very much for those comments. They will certainly be taken on board as everything is being recorded as we made you aware earlier.

Mr PITT: My two-part question relates to what Laura was suggesting a bit earlier. It is a question for all those appearing today. What do you consider to be the strengths and weaknesses of the existing system in a regional context? In that regard, with particular focus on Cairns and Far North Queensland, are there regionally specific issues relating to the scheme in terms of how it is operating, whether on a macro level or in terms of case management and those sorts of things? As the committee has come to Far North Queensland, I am particularly keen to get a regional perspective from you as to whether there are any issues that exist?

Mrs Neil: Certainly there are a lot of benefits to the scheme that, in addition to state workers, are of particular importance to Cairns and North Queensland workers. The journey claims that I mentioned is one significant issue for North Queensland workers. It would be a significant detriment if that access to journey claims provisions was curtailed. The thresholds issue is a big one I think for local workers as well. There are a lot of people who sustain significant injuries in a local area that, according to the impairment scales and the legislation, might be categorised as a zero per cent impairment or a very minor impairment, under five per cent.

Those injuries can still be quite debilitating and affect that person's ability to earn an income. They might be the sole breadwinner in their family—they might be someone working in the mines—and the taking away of their income is obviously a significant impost not only on their family but also on the community, because if they did not have access to a scheme which can compensate them for the injuries and place the burden of that upon the negligent party then it would fall back to the public purse. That person would then become reliant on Centrelink and other welfare organisations to sustain them, assuming they do not have to face the dire consequence that Stuart was talking about.

On a micro level, certainly we have seen a decline in the standard of service delivery in North Queensland, which is a significant concern. Here in Cairns we previously had a local WorkCover claims officer. That has been centralised to Brisbane. So we no longer have the benefit of people with local knowledge and who are aware of local issues listening to people who are injured up here. It is all centralised to Brisbane. So that is a significant issue that we would like to see reviewed as well.

CHAIR: I might go to Stuart and then Alick and then Rebecca, if you would like to make some comment, and then Christopher.

Mr Traill: I think Laura summed it up.

CHAIR: You are happy with that. Alick?

Mr Osborne: The only comment I would make in relation to the sugar industry is that we are operating a diverse range of equipment and skills of our employees. It is a seasonal business, so we have a significant turnover of those seasonal staff. We take our obligation to train those people and attend to their welfare very seriously. But for the North Queensland area, and the sugar industry in particular, the fact that we have seasonal workers is an additional challenge for employers in this region.

CHAIR: Rebecca?

Ms Rodd: No. The move did not really affect us. We are based in tourism as reef marine operators. It is widespread down the east coast, so it was not an issue for us.

CHAIR: Okay. Christopher?

Mr Duffy: With the investigation process for WorkCover, because they are down in Brisbane and the regional claims are up in North Queensland, it is very hard to liaise with Brisbane in gathering evidence and stuff like that from the employers. I think that is an issue.

CHAIR: Thank you. Do you have a follow-up question?

Mr PITT: I have a follow-up question about journey claims. I think it has been coming through in some of the evidence to this committee that there seems to be some ambiguity around journey claims and what constitutes the journey, whether it is from the home to the workplace or if you stopped off to pick up some groceries on the way home are you still coming home from work? I would be interested to hear any opinions in terms of how that all interrelates. My view has always been that if you are travelling from your house to the workplace and you have to stop off somewhere on the way you are still on your way to work from home. You would not have been out in the first place unless you were going to work. It seems to be a theme that relates to journey claims. I just wondered what people's opinion on that is.

Mrs Neil: I think the scheme at the moment is set up very well to allow for scrutiny of whether it is your regular journey or whether there is a deviation from your journey. So if you have to drop the kids off at school every morning and that is your regular routine, then that would be deemed to be a journey claim, whereas if it is something that is not your usual pattern and you have deviated—maybe stopped at the pub for a drink—then that might seem to be a substantial deviation and those sorts of claims are the ones that may be rejected. So there are certainly mechanisms in place at the moment to assess whether it is a true journey claim or not. It is not simply the case that if you leave in the morning and maybe get to work an hour later when it is a 15-minute journey it is going to be accepted. Those sorts of claims will be scrutinised and there are mechanisms in place which we would submit are sufficient to capture those ones that ought not be accepted.

Ms Rodd: If I may add something there to do with the journey claims where the actual employee or claimant is found to be going against the law—that is, riding a bicycle without an adequate helmet or lighting in the evening. We had a claim where we were found to be fully responsible even though the employee was negligent and operating their bicycle against the law.

CHAIR: Would anyone else like to make a comment on that?

Mr STEWART: I would just be interested to know from the last two years whether you have seen a decrease at all in common law claims coming across all of your desks essentially?

Ms Rodd: Our company has definitely, yes.

Mr STEWART: In the last two years?

CHAIR: A decrease?

Ms Rodd: A decrease, yes.

Mr Osborne: We currently have no common law claims in front of us. That is the first time in a long time. It is a very pleasing result. Our focus has been unambiguously on improving our safety activity and our safety record. We still think that certain common law claims are too easy to push forward—those that are not meritorious. Our best response is to improve our safety record overall, and that is our first focus at all times. We do think though that a minimum injury threshold—and that was in the previous AMC submission in the 2010 committee meetings—is appropriate.

Mr Traill: From my perspective, if a member of ours rings up and says, 'I need some legal advice about a workplace injury,' we will refer them on to our preferred lawyer. I am probably seeing a consistent number of referrals. I suppose the areas I do see where there might be a higher ratio of workers in the workplace raising common law claims are workplaces that consistently ignore their obligations under the workplace health and safety act. With the employers who do the right thing and work with their employees and have return-to-work programs, not so much. I have not seen an increase. But with the ones that consistently ignore their obligations I have.

Mrs Neil: Certainly in terms of inquiries it has remained static. People are still obviously getting injured. But certainly in terms of the common law damages claim which are being taken on there has been a dramatic decrease. The reasons for that are quite clear. The legislation now has significant deterrents for people to bring a common law damages claim. The worker is now responsible for WorkCover's legal costs in the event that the claim is unsuccessful. There are no more claims for breach of the workplace health and safety legislation and also, with the implementation of the Civil Liability Act type damages assessment, the quantum or the value of the claim is lower, so we need to scrutinise a lot more carefully the economic viability of the claims. So certainly there have been a lot fewer claims being brought as a result of those 2010 amendments.

Mr STEWART: I have a follow-up question. It has been noted to us in the past that sometimes the no-win, no-pay lawyers can sometimes encourage claims. I was just wondering whether you would like to comment on that at all.

Mrs Neil: I certainly think that is a myth. The nature of no win, no fee means that the lawyers do not get paid unless the claim is successful. So it is very important that claims be scrutinised so that not only the worker has a successful outcome but also the lawyers get paid. In fact, I think it is a disincentive for people to bring claims. If people could afford to bring their own claims and pay money upfront, they might be more inclined to bring a claim instead of having a lawyer giving actual reasoned advice to say, 'Look, this might not be worthwhile or we don't think you have good prospects.' So I think it works very well in the sense of being able to provide that advice and providing it from an economic point of view as well.

Mr STEWART: Stuart, would you like to make a comment?

Mr Traill: No. That is fine. Laura has nailed that.

Mr GULLEY: I have a question for Stuart. I want to explore the return-to-work process. There is a compulsory and a non-compulsory element to that. Do you find that most employees willingly undertake that? Are there avenues for improvement in the return-to-work process?

Mr Traill: If the primary focus of the return-to-work process is about getting workers back to work into their substantive role as soon as possible, it works—you get acceptance from management; you get acceptance from the employees. If the return-to-work process is about reducing WorkCover premiums as the priority, quite often you do not get buy-in from the employees and there is an element of mistrust and it sometimes does not work. There are a number of employers that we deal with who have fantastic return-to-work programs not only for work related injuries but for personal related injuries. And then there is that bipartisan buy-in to it and it does work. The quicker an employee can return to work and feel that his performance is worthwhile the better it is for everybody. But where the focus is just on reducing the WorkCover premiums it does become a bit of a problem. We have had examples where guys have gone home having been injured at work and the boss runs around and picks them up and drives via the depot to pick up a WorkCover pack, a suitable duties pack, instead of taking them to the doctor first. Get them treated first. Then deal with the return-to-work process. You will get by.

Mr GULLEY: How effective are the allied health workers—as in the doctors, the physios, the OTs—in the return-to-work process?

Mr Traill: They are very helpful. They are genuinely supportive of it. The only drama is that sometimes you will get employers who will shop around. If they do not get the answer they want from, say, somebody who does a functional capacity evaluation, if there is any element of confusion, they will shop around a number of doctors until they get something. As soon as there is any element of risk, employers will sometimes go, 'Hang on.' I am dealing with a case at the moment where a local employer is looking at pushing someone out the door because there is an element of risk. There are other alternative roles that that guy could go into and still be a worthwhile employee, but unfortunately the easy option from the employer is to say, 'Let's get rid of him.'

CHAIR: Would anyone else like to make a comment on that?

Mr Osborne: We view the return-to-work process as being very important as part of our safety and management of our workforce. One of the most important things is being able to communicate with the worker and, if necessary and if appropriate, with the medical staff so that the question of what work can this person do despite the injury or the impairment that they have suffered—what would be an appropriate amount of work or type of work to be done at that time—can be answered. If that discussion is not held early—and some people are quite shy about asking that because they take a deferential view that the medical staff know best about the treatment—then the opportunity to return to work in an appropriate job or fashion can be missed and then things can be dragged out to the detriment of both the employee and the employer.

Mrs Neil: I was just going to make a comment in relation to the internal way these return to works are conducted by WorkCover and that is certainly an area that relates to what I mentioned earlier about the regional presence. Certainly not having local people on the ground has impacted on return to work within the community. We have lost the ability to have people on the ground with that local knowledge.

Mr GULLEY: Is there still an office on the ground up here?

Mrs Neil: There is an office here, but all claims are centralised through Brisbane on an industry basis rather than on a geographical basis. So we could have somebody who is injured here in Cairns, has a claims manager in Brisbane and if they need to return to a host employer—

Mr GULLEY: So why did they go on an industry structure rather than a regional structure?

Mrs Neil: I do not profess to know the full reasoning behind that but it was certainly part of the restructuring after the last review. There was a lot of internal restructuring conducted at that stage and one of the things they came up with was to centralise the claims management process, and that has been a problem. We have lost that local input from people on the ground knowing the local industries, knowing where there might be a host employer available. So that has been an issue. It is something that is affecting North Queensland. So that is something that could be reviewed.

CHAIR: Are there any other comments from anyone else?

Mr KAYE: Stuart, you mentioned the possibility that some employers might push workers back early to avoid penalties, for example. In your experience, is there a particular industry that is more inclined to do that?

Mr Traill: It is generally the larger employers that I suppose do not have the interaction with their employees. The common feedback I get is 'We're just seen as a number. Get us back to work as quickly as possible to minimise WorkCover premiums instead of dealing with the issues.' Generally it is the larger employers that we have problems with.

CHAIR: I am being devil's advocate here, just to see your response and perhaps get comments from others. Generally the larger employers would have the capacity—the facility—to manage a return to work more than a smaller employer. Would you like to comment on that as a possible other angle?

Mr Traill: Personally, I agree totally with you. There is the capacity but, unfortunately, all avenues are not always investigated. I would think an employer that had somebody with a significant amount of experience and skills would not want to lose that skill. But unfortunately, consistently, those sorts of options are not investigated. I could give you one specific example that I am dealing with right now of a guy who has worked in the electricity industry for over 40 years. He is 55 years old. He hurt both of his shoulders in his role as a linesman. It is pretty heavy work, pulling on some long spans of conductor. He has had reconstructions. In the functional capacity evaluation, his own specialist surgeon up here has said, 'Yes, you can fulfil a role in this section.' Through the program they have gone off and found another doctor who did a five-minute assessment and had a look at his medical reports and said, 'No, you pose a risk.'

We all pose a risk at work. My criticism of this employer is that if you followed the same practice of risk assessment by trying to risk assess this employee out—I have to attend a meeting next week to show why he should not be terminated. If they investigated all of those options to minimise the risk, they could implement control measures or give him a job with not as much manual handling. There are alternative roles there. The local managers are happy to have him. There are vacant roles there. They could use their skills there instead of managing them out. Why they manage them out, I do not know.

CHAIR: Just following on from that, then, originally you were talking about the argument that the larger employers were getting employees back into the workforce as quickly as they possibly could and it was all premium based. But what you are now suggesting is that they are bringing them back in with a view to managing them out of the system? Is that what you mean?

Mr Traill: It is a bit of both. I think it is about the fact that the quicker you get them back to work, the quicker you get them off a WorkCover claim. Or if you prevent a WorkCover claim, then that does not impact on the WorkCover premiums. But I also believe that this employer is looking at managing people out to cut costs. It is a government owned corporation looking at cutting costs at the moment.

Mrs Neil: It is that two-phase process. The first step we quite often see is that employers want to avoid the lost-time injury. They want to avoid a WorkCover claim which will then impact their premiums. But if they do then have that WorkCover claim, what Stuart described unfortunately does happen all too often.

Mr KAYE: Rebecca, what is your experience of the quality of WorkCover investigations?

Ms Rodd: I have only ever been exposed to one, so I am not really well enough informed to comment, I am sorry.

Mr Osborne: In terms of my experience with Tully Sugar, I joined the company as CEO during May of this year so I have not dealt with any of the claims, so I cannot speak directly to them.

Mr Traill: Quite often you see too many claims closed out too quickly, without due consideration for all of the issues. That is when we flick those people off to lawyers to represent them.

Mrs Neil: Unfortunately it is varied. The manner in which claims are dealt with is very inconsistent. You can have some claims officers that are very, very good and will bend over backwards to try to help the worker and rehabilitate them back into the workforce retraining. Unfortunately, you have other claims officers who just want to close their claim and get them off the books as quickly as possible. It would be good to see some more consistency in that level of service that is being provided.

Mr Duffy: With our claims we have had good managers so far. There has been no problem. It is just when it goes to civil law. The evidence gathering is where the problem is. Everything is based from Brisbane. The lawyers never see the workplace or anything like that. It is only a case of 'he said', 'she said'. If you can provide the evidence, it is a paper trail. That is about all it gets back to.

Mr PITT: This committee was briefed last week by WorkCover around the calculation of premiums, the way their formulas work. I thought a knew a fair bit about that process until I had this briefing. I was pleasantly surprised that it was actually more robust than I thought it was. That was of comfort. Whilst WorkCover is engaging with industry quite substantially around the premiums process and also having safer workplaces, is there anything that you believe WorkCover could do better, particularly from the industry perspective, working with those peaks and industries broadly to improve the relationships and have safer workplaces?

Mrs Neil: One of the things that springs to mind is rewarding employers who do not have a claims history. At the moment, the information I am getting—I do not personally act for employers, but some of our members do—is that, because it is an industry based premium setting, employers who have a clean claims

history are still being penalised with high premiums. That could potentially be an area for review, to reward employers that do have a clean claims history. Obviously, if they have a clean claims history it is likely that it is because they have put in place systems to do their best to minimise the injuries in the workplace to prevent those claims being made.

CHAIR: As an extension to that, what about someone who has had one or two claims that have forced premiums up? If they were then able to demonstrate that they had implemented systems as a result of now realising the risks, should they also be rewarded for implementing those systems and so forth?

Mrs Neil: I think that is feasible. If I can use the analogy of the legal insurance scheme, there is obviously the general premium-setting process that takes place for indemnity insurance for lawyers, but law firms are rewarded. If they do have lower claims or no claims then their premiums reduce accordingly. I do not see why some similar system could not be looked at for employers as well.

Mr Osborne: On that point, the Sugar Milling Council does make the point in its submission that premiums should be reduced where there is a demonstrated improvement in safety.

Mr Traill: I think that is the key point. It needs to be a demonstrated improvement in safety. If you just have a desktop system or a paper based system, you can have all the systems processes in the world sitting in an office, but if injuries are still occurring leading to WorkCover claims then obviously something is still going wrong. So it would need to be a demonstrated improvement in safety.

CHAIR: Does anyone else want to comment on that?

Ms Rodd: Possibly in naivete on behalf of our company, my director has concerns that there is no form of contributory negligence taken into account when premiums are calculated. I have been with the company only two years. Out of five claims, we have three that were completely the responsibility of the employee. Now we are being penalised in our rate. We are above the industry norm. We are paying a penalty rate of premium and we will do for some time until those claims are removed—for five years, I believe it is. Three of them—one of them was a particularly major claim—were completely the responsibility of the employee but we are being penalised. We have a workplace health and safety officer. We practise very high standards. We induct all our employees. We have manuals left, right and centre for them to adhere to procedures to prevent these kinds of incidents happening.

CHAIR: Rebecca, just on that particular claim that you are referring to, just so we can get a sense for what it is, you are claiming—

Ms Rodd: We had an employee—

CHAIR: Could you give us some detail on that in writing? We do not need names and what have you.

Ms Rodd: It is in the letter I have handed to you today.

CHAIR: That's fine. Okay. Thank you.

Ms Rodd: We just feel it is unfair.

Mr SORENSEN: We have heard in other sessions that some of these WorkCover claims will nearly put some small businesses out of business. What is your feeling on that? Have you had too many claims against you?

Ms Rodd: I have been with this company two years and our premium has doubled in that two years.

Mr SORENSEN: And that is affecting the business?

Ms Rodd: Yes. Apart from other premiums and things, it is an added burden. In the Far North we have been subject to Cyclone Yasi and things like this, so we are seeing premiums increasing dramatically across-the-board. WorkCover is just one of those things.

Mr SORENSEN: Alick, do you think the threshold for self-insurers is okay, or should it be lowered or should it be higher?

Mr Osborne: I will have to come back to you on that one. I do not have enough information on that. It is not something I have explored at this point.

CHAIR: We have not explored the definition of 'worker' here today. What are your views on the definition of 'worker' in relation to WorkCover?

Mrs Neil: I think the definition of 'worker' has been looked at many, many times over the years. It has gone from what it was to a new definition back to what it was. I think the definition that we currently have works well. It really looks at the true nature of the work situation rather than what it is called. The current definition in the legislation is in line with High Court authority, so I think it not only has legislative backing but also has the court's backing as something that fits well with the community—to look at the true nature of the work that is being done and the employment relationship rather than what the employer chooses to call it—or the employee, for that matter, chooses to call it. So I think the definition works well.

Mr GULLEY: My question is for Laura, Stuart and also Alick. Self-insurance is an option for larger entities. At present, most employers and therefore employees in Queensland are covered under the compulsory workers compensation organisation. Can you give me a pro and a con for removing or making available self-insurance to more employers or even fewer employers?

Mrs Neil: Certainly the scheme works reasonably well. One of the benefits of having WorkCover involved as opposed to self-insurers is that, because they deal with so many claims, they have in place policies that are developed in conjunction with other organisations such as the ALA to streamline the process, to make it a cheaper, more affordable process. Some of the difficulties with self-insurers stem from processes and pedantic approaches that may be taken rather than practical approaches. So that is one of the benefits of having a body like WorkCover, who can see the trends in what is happening and sometimes take a more practical approach. I think there is a lot to be said for keeping the guidelines around self-insurers quite controlled.

Mr Osborne: We do not self-insure. As I said to you, Mr Sorensen, it is not one that I have got across in the few months I have been there yet.

CHAIR: Chris, you have put your submission in to us and you have suggested changes at the end. I take it you have a copy of your suggested changes in front of you?

Mr Duffy: Yes.

CHAIR: Would you like to take the opportunity now to expand on what you are saying there? You might read them out first.

Mr Duffy: I can read them out.

CHAIR: Just so everybody knows what we are talking about.

Mr Duffy: 'An injured worker should not be able to change their version of events once the claim has been lodged.' If the version of events can be disproved, the whole claim should be withdrawn. We have had workers who change their sequence of events—what happened, the location and everything—and the claim stills goes through. What is written in the incident report at the time and that they have signed should be what they are judged on and if it is disproved then the claim should be disproved.

'A lawyer should not lodge a common law claim without verifying the injured party's version of events. The role of a lawyer should be to gather evidence then make a claim, not make a claim and then gather evidence from the accused.' That is the way we see it. They lodge the claim and then they get all the evidence from us about the claim. People cut themselves in the workplace with their own negligence and we get done for civil law.

CHAIR: Just before you go on to the third one, would anyone like to comment on those two points before we lose them to our memory?

Mrs Neil: In relation to the first point, changing versions of events, you have got to understand the context in which an incident report is written out. Sometimes the employer fills in the incident report based on what they have been told verbally, so it is a minimised version of what has been told. If you look at a lot of incident reports, there is a box about this big that someone has to write what happened in so they abbreviate it. More often than not it is not necessarily that the version of events has been changed, it is that it has been expanded upon; someone has taken the time to obtain more detail about what has happened so that becomes more detailed as the claim progresses. Certainly if that version of events becomes disproved the claim does fail. It is as simple as that if there is a disproving of what happened.

In relation to the second, common law claims not being lodged without verifying what workers say, I would say that more often than not that does happen. Certainly we need to take our clients at face value, but we certainly do try to obtain whatever information is available to us before a claim is lodged. More often than not when a damages claim is lodged there is the initial period where they are in receipt of statutory benefits and that can go on for some significant period of time. So we do obtain copies of the WorkCover file, the workplace health and safety file and we do speak to witnesses. So a lot of work and information is obtained before the notice of claim for damages is lodged. I would certainly say that that work is done and claims simply are not lodged just on the basis of what the worker is saying.

CHAIR: Would anyone else like to comment on that?

Mr Traill: Just around the time frame with incident reporting, incident reporting could be compiled, whether it is by the employer, the employee or in conjunction between the two, right after a significant incident. Those employees are suffering a significant amount of stress and trauma and then as days go by more and more of the facts start to come back into memory. I would be very concerned about that claim.

Mr Osborne: I think the incident report forms the important establishment of the events that occurred and employees have a responsibility to get the correct version of events on the record as much as employers do.

Mr STEWART: Laura, just a quick question in relation to that. You mentioned that quite often when an employee comes to you they may not be even at that stage of a civil claim just yet but they are still going through the prior process. Would you say that they are already of the mindset that they are not going to get anywhere they want to go so they have already started the civil claim process?

Mrs Neil: Not necessarily. People are interested in knowing their rights and knowing if they do have the potential to bring a common law claim and getting that advice as early as they can. I do not think they already have the mindset. Sometimes they will come and they will be advised that we need to obtain further evidence before making a decision whether to pursue a common law claim. More often than not people who sit in front of me are very reticent about bringing a claim. They are very loyal to their employers and do not want to bring a claim. But their livelihood is being affected, they can no longer provide for their family so they see that they have no further option but to get advice about what options they may have.

Mr Duffy: Can I make a comment to Laura. With the gathering of evidence or verifying the party's version of events, it may be happening in the cities but I come from a country town with a banana industry and we do not know anything about the claim at all until it is lodged. No-one has talked to any witnesses, no-one has talked to anybody at all about the claim. The only way we find out about it is when it comes in the mail. There has been no investigation at all that we know of before we get the claim.

CHAIR: Any further comments on those two points? We will go to the third if not.

Mr KAYE: Just to follow up on that, we were talking before about locally based WorkCover claims officers, would that be a way of perhaps improving that situation you are talking about? If there was somebody with local knowledge investigating matters perhaps they could sort some of these issues out rather than those from Brisbane in terms of the quality of the investigation.

Mr Duffy: I think there should be more evidence gathering before the claim is lodged, that is all. I don't know how he would go, but go out and talk to the employer about the incident or something like that or get more information about the incident before lodging a claim.

CHAIR: Anything else from anyone on those two points? If not we will go on to the third of your suggested changes.

Ms Rodd: I was just going to say that sometimes more attention should be taken of the level of communication or English that the worker has completing the incident report. If they are in fear of form filling and they need assistance it should be given to them. I think guys who are not as correct with their English and the written word may make mistakes on the form and possibly should be guided through that process.

CHAIR: We also have to consider their capacity to read and write as well.

Ms Rodd: Correct, that's right, to actually describe the incident.

Mr Duffy: We have to take that into account in the banana industry because we have a lot of foreign workers, mainly backpackers, so we have got to make sure that we can get someone to translate to make sure everything is done properly.

CHAIR: Those two points have been covered, if everyone is happy with that. We will go on to your third, a judge in a civil law case.

Mr Duffy: 'A judge in a civil law case should not be able to award damages if the claimant cannot prove negligence against the accused'.

CHAIR: Would you like to expand on that?

Mr Duffy: No.

CHAIR: Would anyone like to make some comments on that?

Mrs Neil: We would say that is the law, that a worker does have to prove negligence for their claim to be successful. If a judge finds that there is no negligence the claimant does lose the case. Touching on some of the issues that Rebecca has raised, that is where the issues of contributory negligence also come into play. A judge has to make that determination and can certainly apportion responsibility amongst the worker as well if they are partially at fault. In fact, the reforms in 2010 brought in more stringent statutory legislative requirements to assess liability. So there are quite strict impositions in place already.

CHAIR: Anything from anyone on that? On to that fourth point of yours, Chris.

Mr Duffy: 'Workers who have made more than two claims against their employer should not be given preferential treatment with their claims, instead their claims should be closely scrutinised for fraudulent behaviour'. The ones who have made a couple of claims seem to get the real preferential treatment from WorkCover. They seem to be pushed through, the claims are faster, instead of the other way—to scrutinise the claim more closely. That has been our experience in our workplace.

CHAIR: Any comments from anyone?

Mrs Neil: We support investigation of fraudulent behaviours, but the flipside of that is if there has been more than one claim by that worker against that particular employer then perhaps the employer ought to be investigated as to what behaviours are contributing to that claim. I think there is merit in both sides of that.

Mr Duffy: I meant not the same employer, they have made claims from different employers as they are going around. I mean different employers.

CHAIR: Would anybody else like to come into that?

Mr SORENSEN: I would like to ask a question. I come from a council background where I have seen one person claim for a foot injury time and time again. Do you mean to say that they should be investigated to make sure that they are not doing that to every employer or every council up and down the coast? They can change from one state to another and all the rest of it.

Mr Duffy: That's right, going from one employer to the next and then go on WorkCover and then make a civil law case against them.

Mrs Neil: The only additional comment I would make there is that making a claim is not fun. If you are in receipt of statutory benefits you are getting less income for a start. You are cut down to 85 per cent of your wages. It is a very difficult, trying time for someone financially if they are in receipt of statutory benefits. Going through a common law damages claim, your life is put under the microscope. Fraud claims are investigated. WorkCover does have a fraud investigation unit. Where we see multiple claims for a similar injury it is because the WorkCover scheme allows for aggravation of that particular injury so it is not necessarily indicative of fraudulent behaviour. But as I said at the beginning, we certainly do support investigation of fraudulent behaviours.

CHAIR: If there is no further comment on that from anyone we will go on to your next item which I think is item 5.

Mr Duffy: 'An employee should not be able to make unverified claims against their employer as the onus of proof is on the worker not the employer'. Verified means by documented evidence or by a second party. In the claims we get they throw a lot of mud and see if something will stick on us. The list of claims against us we have to fight against has nothing to do with the claim at all, like not supplying sufficient breaks for a person when the accidents happen at the beginning of the day, the start of the day. There are a heap of claims we have to fight against and they have nothing to do with the incident or anything. They are all unverified.

CHAIR: Anyone else?

Mr PITT: Can I just make a comment on that. I do not know the example you are talking about, but I just wonder whether it could be a cumulative effect of a week or a month's worth of not having regular breaks that lead to an incident happening.

Mr Duffy: No, it has not been that. It seems to be with each case we get that there is a list of things. I call it like throwing mud. They just throw a heap of mud and you have got to fight each one of them.

CHAIR: Are you suggesting that there is a list somewhere and somebody goes through it and says, 'Right, which one of these can we tick off?'

Mr Duffy: I think they have a standard one, yes, and they just send them all in. They get about 12 or 14 claims against you.

Mr PITT: They would have to be, I assume, relevant to the claim and also frivolous nature claims like that would be investigated by WorkCover.

Mr Duffy: They will not be investigated, you have just got to prove against them. The employer has to prove against them, that is all.

Mrs Neil: I would answer that in two ways. First of all you are quite right, a lawyer does have an ethical duty to not put forward frivolous claims. Lawyers in my experience certainly take their ethical duties very seriously. Bearing in mind the rules of evidence though, the worker saying that something happened is evidence of that and it is then for the judge to the determine the validity or otherwise of those claims. The worker does bear the onus of proof and if there are frivolous claims being made then it is for a judge to determine in due course if the worker lacks credibility or if the employer is able to adduce evidence to the contrary. That is what the legal system is all about.

CHAIR: Would anyone else like to make any comments?

Mr Traill: Just to follow on from what Laura said, if there was a claim that employees had not received appropriate breaks and that the incident occurred at the start of the day, obviously it would be up to the employee to prove how that had impacted on the incident. It is up to the employee. You can throw all the mud in the world, but the employee ultimately has to prove that it contributed to the incident.

CHAIR: Are there any other questions from the committee? Are there any other comments from any of you? Would any of you like to make a closing comment?

Mrs Neil: The final point is a comparison to other jurisdictions that do not have the terrific scheme that we have here in Queensland. Jurisdictions such as South Australia, New South Wales and New Zealand, that either have long tail schemes or no access to common law, are in severe financial difficulties. Some of the schemes are bankrupt. We have the best system in the country and it would be disastrous, in our submission, if those sorts of schemes were copied. It would be disastrous for the scheme, disastrous for employers and for employees.

CHAIR: 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 written submissions until Monday, 3 September. Thank you for your attendance today. The committee appreciates your assistance. I declare the briefing closed. Is it the wish of the committee that the evidence given here before it be authorised for publication pursuant to section 50(2) (a) of the Parliament of Queensland Act 2011?

Mr PITT: Yes.

CHAIR: So authorised. Thank you once again for your time.

Committee adjourned at 2.39 pm