

2 August 2012

Michael Crandon MP  
Committee Chair  
Finance and Administration Committee  
Parliament House  
George Street  
Brisbane Q 4000

By email: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

Dear Mr Crandon

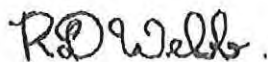
I write on behalf of members of the Australian Manufacturing Workers' Union ("AMWU").

I refer to the *Inquiry into the operation of Queensland's workers' compensation scheme*. Please find **attached** a copy of the AMWU's submission for your consideration.

The AMWU notes that the Queensland Council of Unions ("QCU"), of which the AMWU is an affiliate, is also making a submission with respect to this matter. The AMWU supports and adopts the QCU submission, and asks that it be read in conjunction with our submission.

Please direct all correspondence in relation to this matter to Industrial Officer, Katelyn Allen.

Yours sincerely



Rohan Webb  
Acting State Secretary

032



RECEIVED

02 AUG 2012

Finance and  
Administration Committee

Inquiry into the Operation of Queensland's  
Workers' Compensation Scheme

**AUSTRALIAN MANUFACTURING WORKERS' UNION**



**Submission to the Finance and Administrative Committee**

**August 2012**

**Enquiries:**

Katelyn Allen, AMWU, Industrial Officer

[katelyn.allen@amwu.asn.au](mailto:katelyn.allen@amwu.asn.au)

(07) 3236 2550

## Inquiry into the Operation of Queensland's Workers' Compensation Scheme

### 1. INTRODUCTION

- 1.1 This submission is made on behalf of members of the Australian Manufacturing Workers' Union ("AMWU"). The AMWU, as known on a collective and public basis, is made up of the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (the state registered Union) and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union known as the Australian Manufacturing Workers' Union (AMWU) (the federal registered Union). The AMWU represents over 110,000 members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations in engineering and across diverse industries including food technology and construction. The AMWU has members at all skills/classification from entry level to degree. The AMWU Queensland/NT Branch represents over 17,000 members, with the vast majority employed in Queensland.
- 1.2 The AMWU notes that the manufacturing, construction and transport industries have the highest level of workplace injury and death. On a daily basis, Officers, Officials, delegates and members of the AMWU bear witness to the effect workplace injuries, and regrettably on an all too frequent basis work related death, has on workers and their families within our areas of coverage.
- 1.3 The AMWU welcomes the opportunity to make a submission to the Inquiry into the operation of Queensland's workers' compensation scheme. In this submission, the AMWU has focused on the human face of work-related injuries and illness. Included in this submission are a number of brief case studies from AMWU members. The AMWU's submission focuses on the fact that the workers' compensation scheme in Queensland is financially viable and offers reasonable protection for workers. The AMWU seeks to demonstrate to the Inquiry the need to maintain Queensland's current workers' compensation system.
- 1.4 The AMWU notes that the Queensland Council of Unions ("QCU"), of which the AMWU is an affiliate, will also make a submission to this Inquiry. The AMWU supports and adopts the submission made by the QCU. Accordingly, we ask that this submission be read in conjunction with the submission made by the QCU.
- 1.5 The AMWU further notes that protections for workers injured or made ill as a result of their employment is a fundamentally held principle of members of our Union. Protection of injured and ill workers is also a community held expectation. This is because workers' compensation is a matter that affects every Queenslanders. Any attempt to change or reduce access to statutory or common law compensation for work related injuries and illnesses would be widely opposed and does not fall within the purview of election promises made by the Newman Government.



## Inquiry into the Operation of Queensland's Workers' Compensation Scheme

### 2. SUMMARY

2.1 The Queensland workers' compensation scheme is a financially viable scheme that provides a reasonable level of protection for workers injured or made ill as a result of their employment. Queensland workers are currently protected through a "short-tail" statutory workers' compensation scheme and access to common law<sup>1</sup>.

2.2 The Queensland scheme is vastly superior to the "longer-tail" statutory schemes, prevalent throughout other jurisdictions. Such schemes generally severely limit, and in some cases completely block access to, common law. Queensland's "short-tail" scheme is far superior to "long-tail schemes" due to:

- a) Long-tail schemes "drip feeding" entitlements over a long period of time to injured/ill workers;
- b) The high administration costs for both insurers and employers associated with workers' compensation schemes that provide for claims that literally go on for years;
- c) Injured/sick workers being trapped in a system of benefits results in low return to employment rates, higher levels of secondary psychological injuries, endless appointments with medical practitioners and being caught in a cycle of benefits that inevitably costs the government and insurers more money in the long run; and
- d) The huge cost these schemes have on government, insurers, social services and employers. It is noted that "long-tail schemes" are less cost effective and have resulted in financially insolvent workers' compensation schemes and much higher employer premiums in other jurisdictions. One example is the South Australian Workcover scheme. In South Australia common law claims were abolished over a decade ago. The scheme has a 67% solvency ratio and >\$1b in unfunded liabilities and growing. Moreover, the premiums for employers is more than double those paid by Queensland employers. Full access to common law to achieve finality for injured workers is a fundamental reason for the economic success of the Queensland scheme.

2.3 The AMWU submits that the Queensland scheme over the last decade delivered the lowest premiums in Australia. A scheme that is highly solvent, with low premiums for employers and provides statutory and common law protection for workers is a workable scheme for all stakeholders. Providing appropriate and fair compensation to workers injured and/or made ill through work is a key workplace and human right. It is submitted that the current Queensland scheme offers a fair and proportionate balance to all parties involved in the workers' compensation scheme.

### 3. COMMON LAW

3.1 A workers' compensation scheme that provides reasonable access to common law is a deeply and fundamentally held belief of AMWU members. Restricting or removing access to common law for work related injuries and illnesses is a serious infringement on the rights of working people and their families. It is submitted that the current system of assessing permanent impairment ("PI") within the Queensland workers' compensation scheme does not adequately reflect the true disability suffered by an injured or sick worker. Access to common law however provides a fair and important alternate avenue for injured/ill workers. Common law provides the ability to obtain compensation that accurately reflects the damage and economic loss suffered

---

<sup>1</sup> Common law can be accessed in circumstances whereby a worker has suffered damage as a result of a work related injury or illness caused through negligence.



## Inquiry into the Operation of Queensland's Workers' Compensation Scheme

as a result of the work-related injury or illness. For many workers common law also delivers a sense of justice for a wrong that has been inflicted upon them.

### Case Study 1

Member "x" was a tradesperson working in maintenance in the mining sector. Member "x" slipped on a step after walking through liquid based product that had been negligently spilled on the ground. He suffered a knee injury and was assessed as having a work related impairment of 3.75%. Due to the injury, "x" was unable to perform the inherent requirements of his job - his employment was terminated. Member "x" had worked in the maintenance field in mining for nearly 20 years. He has not been able to return to his trade. The injury had not only significantly impacted upon his work life, but also his family life. His injury has rendered him unable physically play with his children. Member "x" initiated common law damages, and awarded damages reflecting the impact on his career and life. The statutory scheme provided adequate benefits for loss of income and medical care. Without access to common law member "x", however, would have not received compensation for future economic loss related to his inability to return to his trade. The dual system of statutory compensation and access to common law provided appropriate and fair protection for this injured worker.

- 3.2 It is further submitted that the PI assessments undertaken for "work related impairment" are not truly reflective of the impact a work related injury or illness has on wellbeing, health and capacity to work. Workers assessed with a "nil", or 0%, PI assessment made up approximately 25% of common law claims last year. The AMWU submits that the current system provides appropriate protection and access to compensation for injured workers with nil PI assessments through common law.

### Case Study 2

Member "y" was a tradesperson employed in maintenance. Member "y" suffered an injury to his back caused by negligence. As a result of the injury, he can no longer exercise, can only sit for short periods of time, has difficulty getting in and out of a car, and is unable to undertake household maintenance. Member "y" has also suffered a secondary psychological injury due to his physical injury. Despite being assessed with a 0% PI assessment through the statutory scheme, Member "y" was able to pursue a common law claim and received a payment reflecting the impact on his trade and his enjoyment of life.

### Case Study 3

Member "z" had been undertaking his trade for nearly a decade when he injured his knee caused by negligence. As a result of the injury, Member "z" was provided with medical advice to change to sedentary employment. His physical capabilities arising from the injury were thereby incompatible with his trade and he lost his career. In addition to this, Member "z" is now unable to physically play with his children. He is also unable to undertake his treasured hobby of being a handyman. Despite being assessed with a 0% PI assessment, this member was able to conclude his participation in the Workcover scheme by obtaining damages through common law.

Case study 2 and 3 demonstrates the necessity of injured workers being able to access common law. Whilst there are obviously difficulties with the PI assessments through the statutory scheme, in many cases these difficulties are ameliorated through access to common law



## Inquiry into the Operation of Queensland's Workers' Compensation Scheme

damages. There is a clear and often misunderstood distinction between "impairment" and "disability". Impairment assessments, as currently undertaken in Queensland through the *American Medical Association Guides* to determine impairment percentages do not measure "work disability". Eminent doctors, including from the Medical Assessment Tribunal confirmed this during the 2009 stakeholder process. The common law system thankfully does provide the opportunity for compensation to be awarded for work disability.

3.3 The common law scheme that runs parallel with the statutory scheme in Queensland also plays an integral role in improving workplace health and safety. Improvements in workplace health and safety are not only economically beneficial to workers, employers, governments and insurers – but more importantly *reduce* the amount of workers injured and made ill. It is submitted that no price tag can be placed on keeping workers safe. It is submitted that the common law system promotes a safe work environment by:

- Providing valuable lessons for the workforce, management and regulatory bodies arising from common law cases;
- Common law is a major deterrent in relation to unsafe work practices, policies and procedures;
- Common law cases provide and facilitate changes in workplace policies, regulatory frameworks and government policy; and
- Common law drives changes in public education, perception and use of dangerous products such as asbestos and smoking. The AMWU is aware that Workcover Queensland has worked cooperatively with employers with a poor safety record to improve safety standards. This reduces injury rates and then premiums. We support the continuation of that approach to workplace health and safety.

#### 4. THE IMPORTANCE OF JOURNEY CLAIMS

4.1 The AMWU draws to the attention of the Inquiry the importance of journey claims within the Queensland scheme. The decentralised nature of the state means that travel forms a major part of the work day of each Queenslander. In recent times, we have seen a significant increase in the distances travelled by workers in Queensland. The mining boom has created a huge group of employees who Fly In Fly Out ("FIFO") or Drive In Drive Out ("DIDO"). The significant increase in road travel has seen an increase in car accidents, and sadly fatalities, of workers travelling to and from work on regional roads. Long distances coupled with fatigue and hazardous road conditions in regional areas regrettably will and has resulted in workers being involved in accidents during their journey to and from work.

4.2 The Queensland scheme, as with nearly all other schemes in Australia, rightly acknowledges that travel to and from work is recognised area for compensation cover. In addition the benefit of weekly compensation and medical treatment under a statutory claim, workers injured in injury claims are also entitled to rehabilitation. Rehabilitation and return to work is not only vitally important to an injured worker, but also is an important concern for governments, employers and insurers.

4.3 In Queensland, unlike other States, there is no underlying statutory scheme for people injured in motor vehicle accidents. This means that if 'journey claims' are removed from the compensation



## Inquiry into the Operation of Queensland's Workers' Compensation Scheme

scheme workers who are injured in circumstances where there is no 'fault', for example, a fatigued worker coming off night shift who falls asleep at the wheel, will have no coverage at all.

### 5. SELF INSURANCE

5.1 The AMWU submits that the existing self insurance arrangements are sound and appropriately balanced in relation to licensing. The 2000 employees criteria together with the bank guarantee arrangements should not be relaxed.

5.2 The AMWU however wishes to raise concerns in relation to the conflict of interest which exists with employers that self-insure. The AMWU submits that greater regulation must occur in relation to ensuring the self insurance arm of an employer does not inappropriately influence or provide information to other parts of the employer concerning the injured worker. The AMWU has been involved in various matters in which self-insured employers have unlawfully and inappropriately utilised medical records or other documentation relating to workers' compensation claims as a means of terminating and/or damaging the employment of an injured/ill worker. We call on Q Comp to effect greater regulation within self-insured employers to ensure a proper separation exists between the employment relationship and any workers' compensation matters.

### 6. CONCLUSION

6.1 There is no financial or other reason for the Newman Government to make changes to the Queensland workers' compensation scheme. As stated above, the scheme is highly solvent, provides for low premiums, and most importantly offers strong and fair protection for working people. The Union and its members do not believe that the scheme is without its pitfalls. For example, the Union strongly believes that amendments are required to remove the "reasonable management action" defence in respect of psychological and psychiatric injuries. Comparatively speaking however, the Queensland scheme is far superior in relation to the existence of a short-tail statutory scheme and access to common law than other jurisdictions in Australia. We urge that there be no structural changes to the system as the risks for all stakeholders by doing so are well evidenced in other jurisdictions.

6.2 Workers in the manufacturing industry create significant economic benefits for Queensland. The economic contribution our members make, far outweighs the cost of workers' compensation benefits paid to workers in the industry injured or made ill as a result of their employment. Our members, and those other workers employed within the industry, deserve to continue to be covered by a workers' compensation scheme that provides compensation, full access to common law and appropriate rehabilitation. The retention of the current short-tail statutory scheme and common law rights is a fundamentally held belief of all members of the AMWU.

6.3 There is no rational case to argue that the scheme, including the provision of access to common law, needs to be changed. The Inquiry will be aware that when the scheme was scrutinised in 2009, nearly all stakeholders including most employer groups and self insurers expressed the strong view that the scheme was structurally sound and the best in the nation.

## Inquiry into the Operation of Queensland's Workers' Compensation Scheme

Since then Workcover's financial position has actually improved notwithstanding diminished returns from a difficult investment climate nationally and internationally. Queensland's workers' compensation scheme is the envy of other States and Territories.

- 6.4 The AMWU welcomes the opportunity to meet with Inquiry members to advance the points raised within this submission. The AMWU also welcomes the opportunity to organise for the Inquiry to meet with members of our Union, with direct experience of the Queensland workers' compensation scheme, to learn more about how work related injuries and illnesses have affected their lives.

Submission end.