

2 August 2012

Finance and Administration Committee
Parliament House
George St Brisbane
Email fac@parliament.qld.gov.au



Submission to the Finance and Administration Committee on the Inquiry into the operation of Queensland's workers' compensation scheme.

Recommendations

1. We have a good working relationship with Workcover and believe that in general an excellent service is provided within the existing legislation. We see no issue with operation of Workcover itself. We support the 'short tail' system and see no need to change this or align with other states.
2. We consider that the intent of the Act is not being met in two significant areas:
 - 2.1. ***The balance between injured workers being compensated for the injury and the cost of this compensation to the employer.***
 - 2.1.1. Specifically in the areas of proof of injury, timeframe advising the employer of injury.
 - 2.1.2. The current work place should be the major significant contributing factor in accepting a claim
 - 2.1.3. The unreasonable part and recompense that "no win no pay" lawyers have within the system.
 - 2.1.4. The impact of pre-existing injury or simply general "wear and tear" on a body overtime is not being taken into account in measuring the level of incapacity
 - 2.1.5. Return to work programs must be mandatory if appropriately offered for a claim to continue and definitely before Common Law action is taken.
 - 2.1.6. We are concerned about the potential impact of teleworking, solar, passive smoking and also hearing loss claims.
 - 2.2. ***The competitive burden being placed on employers who are proactive in safety initiatives compared with those who are not. The cost of Premium burden should move towards those who are not proactive.***

Background

Colonial Timber Products Pty Ltd trades as Northside Trusses and Frames Pty Ltd which was established in Queensland in 1985. Predominately Northside Trusses and Frames is a medium sized manufacturer of prefabricated timber trusses and wall frames used in the construction of domestic homes and commercial buildings. Current employment is 85 people; the business is based in Brendale. Our efforts in reducing injury in the workplace through equipment and training have had success, with Workcover premiums dropping each of the past three years.

Key Issues

1. Maintain a balance between benefits for injured workers and reasonable costs levels for employers. We consider that this balance has significantly skewed towards workers and not necessarily those injured or seriously injured. The critical issues are:
 - 1.1. For a claim to be accepted, the injury or incapacity must also be proven to be caused by the current occupation and that it is the major significant contributing factor of the incapacity. This is particularly important in Stress related claims.
 - 1.2. The acceptance of an injury is not appropriately scrutinized. The fact that a worker can post date a claim is unreasonable. Proof of injury is their statement, the fact that they were at work that day and that there is a chance that the injury could have happened as described by the employee. The injury or incident should be reported on the day it occurred, this supports a safety conscious business that wants to act on near misses. That is, all incidents should be reported whether injury occurred or not. This allows a proactive approach to eliminate injury in the future. It also eliminates the claim where an employee can walk away from work with no complaints and present the next morning saying they injured themselves at work the day before. At worst a three working day limit should apply.
 - 1.2.1. We had an employee post date a claim some months before he reported the injury. Proof of injury was, was he at work on that day, was he at the location described, could the injury have occurred? The answers were yes, the claim was accepted.
 - 1.2.2. We had an example of a worker who presented with a Workers Compensation claim based on a Doctors initial misdiagnosis. We had to pay for the initial time off work and medical costs until it was diagnosed as an illness (pancreatitis) rather than a back injury.
 - 1.3. While we support a process that applies equity in accessing legal assistance. We do not support the current availability for a worker to develop a Common Law case with the assistance of a "no win no fee" lawyer system. The current process sees the legal system gaining a significant and disproportionate payment as a result of a successful common law

case. This does not meet the Acts intent of a balance. It also means that funds that should be used for improving safety standards can end up in the hands of sections of the legal fraternity. We believe that more control should be applied to this process.

- 1.4. The entry into the Common Law system is too easy for workers and seems to always result in a payout. The impact of precedence in restraining the defence of a claim by Workcover is frustrating. Whilst understanding that this is the legal system we need to short-circuit the entry into Common Law claims. Another frustration is if incapacity doesn't exist or that general "wear and tear" on a body over time is not taken into account in the process. We believe that most people have a base incapacity level without injury and this should be taken into account. Certainly before Common Law is instigated then incapacity must exist. We consider the level of incapacity to be difficult to judge, 5% on one type of worker may have a significantly different impact on another depending on what the incapacity involves and job performed. We believe that this should be between 0% and 15% but this should be determined by a working group who are across all the issues.
- 1.5. If a worker refuses to participate in return to work programs developed in combination with medical practitioners and or Occupational Therapists then access to Common Law should be barred. Their claim and payments should also be suspended until such time as they reasonably participate in a return to work program if offered. We have witnessed employees who have refused to participate in return to work programs progress on to receive Common Law payments. This is clearly in breach of the intent of the Act. This is a further area where "legal advice" creates the imbalance. It is felt that the advice instructs workers not to participate in a return to work program because it may impact on the outcome of a Common Law case. Specifics of the cases mentioned:
 - 1.5.1. The first case involved an alleged knee injury that required minor surgery, the level of damage was reported as age related. A return to work program was developed for the worker in conjunction with his Doctor and our Occupational Therapist. Despite agreement from the employee to attend, he reneged on three occasions. He went on to get a significant Common Law payout.
 - 1.5.2. The second case was a back injury where the worker was provided with an exercise program from a Specialist in which he refused to engage.
- 1.6. While we have a good working relationship with our local Doctor on alternate duty options we have little or no influence at times with employee selected Doctors. We had one example of a Doctor who drew smiley faces on our return to work checklist and provided no reasonable advice on what the worker could or couldn't do if he returned to work. We had another example of an employee telling a Doctor that the tool he used weighed nearly

ten times greater than the actual weight. We believe further education is required with some Doctors on the advantages of return to work programs and the employers should be able to request input and advice.

1.7. Solar claims are of concern despite the fact that we supply hats, long sleeve shirts and sunscreen for all employees working outdoors. We obviously have no control on what workers do out of work hours apart from education programs. We believe this opportunity to claim through Workcover needs to be stopped. We have the same opinion for passive smoking. Hearing loss is different but the workers background should be taken into account and the current work place should be seen as the major significant contributing factor causing the hearing loss before being accepted.

1.8. We don't believe that journey to and from work and recess injuries should be part of the scheme. We are also concerned with injuries also occurring during work related travel. This should come back to the definition of the what contributed to the injury. The employer must be seen as the major significant contributing factor to the injury for a claim to be accepted.

1.9. Another trend of concern is the handling of teleworking – working at home. This is a trend that suits employees, employers and the environment. Twenty percent of our technical staff works from home. We have attempted to clarify the situation through a written policy. Ultimately an injury during working hours as a result of falling over the cat could end up as a Workcover claim. This needs to be addressed once again through the definition of injury with the employer being the major significant contributing factor.

1.10. Without taking any responsibilities away from employers we believe there should be stronger recognition of a situation where a worker has engaged in serious and wilful misconduct that results in an injury. We have seen situations where employees can be trained and signed off on the correct use of equipment but still go outside procedures and sustain an injury.

2. Competitiveness

2.1.1. Our competitiveness is impacted by the lack of incentive in reducing premiums to those who are proactive in reducing incidents. Our Statutory claims for the past 3 years total \$29,692, our Premiums have totalled \$444,627. For 2011-12 our statutory claims are 1.3% of the premium we pay. We would prefer to be allocating this money to new equipment and training for our team. There should be better discounts for those businesses that not only promote safe workplaces but also reduce their claims.

2.1.2. Our WorkCover Industry Classification (149207 - Wooden Structural Fitting & Component Manufacturing) lumps us in with a number of other timber activities which have no relevance to the way we operate. We have around 25% of our workforce in office positions. We have invested in equipment that reduces manual handling considerably but we are still locked into an industry classification that we don't believe is relevant. We consider that our competitiveness is impacted by receiving a greater burden of a sector that has not invested the way that we have.

Yours sincerely
Northside Trusses and Frames



Chris Hay
General Manager