



03 August 2012

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Mr Michael Crandon, MP  
Chair  
Finance and Administration Committee  
Queensland Parliament  
Parliament House  
George Street  
BRISBANE QLD 4000



Dear Mr Crandon

Thank you for the opportunity to make submissions in relation to the Committee's inquiry into the operation of the Queensland workers' compensation scheme. The Queensland Hotels Association Union of Employers is pleased to make a submission, which is attached.

This submission has been endorsed by the State Board of the Queensland Hotels Association.

Please do not hesitate to contact me should you require clarification or expansion on any of the issues raised.

Yours sincerely

A handwritten signature in black ink, appearing to be 'T.H. McGuire', written over a horizontal line.

T.H. McGuire  
President

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**QHA SUBMISSION TO THE INQUIRY INTO  
THE OPERATION OF QUEENSLAND'S  
WORKERS' COMPENSATION SCHEME BY  
THE *FINANCE AND ADMINISTRATION*  
*COMMITTEE* OF THE  
QUEENSLAND PARLIAMENT**

## **QHA SUBMISSION TO THE *FINANCE AND ADMINISTRATION COMMITTEE* INQUIRY INTO THE QUEENSLAND WORKERS' COMPENSATION SCHEME**

### **Introduction**

The Queensland Hotels Association Union of Employers (QHA) is the peak industry body for Queensland's hotels, taverns and accommodation hotels. QHA membership is in two categories representing trading hotels and accommodation hotels. Around 750 QHA members consist of pub-style businesses, with around 120 further QHA members being accommodation providers comprising typically the major four and five star accommodation hotels and resorts in all parts of the State. The QHA is also a branch of the Australian Hotels Association, and provides services and representation on behalf of its members in the State of Queensland and with the Commonwealth, who are licensed providers of hospitality, entertainment, and accommodation.

Licensed businesses make an important and enduring contribution to the Queensland and national economies, and to a range of key revenue and social areas including job creation, training for young people and low-skilled persons, taxation, charitable contributions, and indirect job and business stimulus through industry stakeholder businesses. Of significance is that the hotel industry is one of the few industries in the nation where the female component of the workforce is larger than the male component with approximately 535 of the hotel workforce being female. A 2009 PricewaterhouseCoopers report into the hotel industry concluded that Queensland hotels employ 38,000 people directly, with a further 55,000 employed indirectly. (Note 1). The report also found that, in the absence of the hotel sector, national household consumption would contract by an estimated \$3.5 billion.

Generally, all hotel businesses in the State subscribe to WorkCover Queensland insurance. The only exception to this are three large hotel/hospitality groups which subscribe to approved group self-insurance schemes, including subsidiary hotel groups of Woolworths and Coles.

This submission will make observations and recommendations in relation to principal workers' compensation issues for the hotel and accommodation industries and respond to each of the points raised in the Committee's letter of invitation.

### **Discussion Point 1 - The scheme's performance in meeting its objectives under section 5 of the *Workers Compensation and Rehabilitation Act 2003*.**

The objectives enunciated in Section 5 can be summarized as being to provide benefits and compensation to injured workers and promote health & safety measures from employers whilst balancing this requirement with both the cost of

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Note 1 : PricewaterhouseCoopers Report (2009), Australian Hotels: More than just a drink and a flutter. An overview of the Australian hotel industry. Page iv



the scheme and the requirements of industry to remain commercially competitive. This means maintaining an effective, affordable and efficient insurance and compensation scheme in which both workers and employers have confidence. The QHA and its members are of the view that the Queensland WorkCover Scheme effectively meets the objectives set in section 5. As a generalization, the Queensland Workers Compensation Scheme appears to be operating relatively successfully, with the second-lowest premiums in the country and maintaining a modest competitive advantage over other states and territories. In the period since the 2010 reforms, the number and growth rate of common law claims has been in modest decline although there is further scope for improvement. WorkCover's financial position is also sound, despite the effects of the global financial crisis on investment returns, with a resulting modest negative impact on premium rates for employers. Taken as a whole, the QHA is of the view that the existing objectives of the scheme's regulation, and the scheme itself, are appropriate, and are generally being met.

#### **Discussion Point 2 – how the Queensland scheme compares to scheme arrangements in other Australian jurisdictions.**

The Queensland workers' compensation scheme compares favourably with insurance, compensation, administration, and return-to-work arrangements and provisions in other States. The following areas of positive performance engender confidence in the scheme, relative to other States:

- The Queensland scheme's sound financial footing and prospects;
- An appropriate balance and relationship between compensation, return to work services, and promotion of effective workplace safety in Queensland businesses;
- Improved return to work programs and performance over time; and
- Stability and predictability in premium rates; and
- The responsiveness of the scheme and WorkCover Queensland in relation to trend issues, review recommendations, and unexpected events such as change in the investment or regulatory environment.

#### **Discussion Point 3 – WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth.**

Neither the QHA nor the author of this submission has the detailed knowledge to comment with authority on this question. However, and as a generalization, the existence of an effective, respected, transparent, and operationally and financially sound workers' compensation scheme is a fundamental contributor to workplace and economic confidence in the State of Queensland and its institutions. More pointedly, the absence of such a scheme or the existence of a financially-troubled or unviable scheme would retard the state economy, and economic growth prospects of a state economy. The QHA has confidence in the governance of Queensland's WorkCover scheme and its financial position. This confidence is underpinned by the steady improvement in the level of the scheme's solvency, which is now up to 119% despite recent disruption to



investment returns, and on-track to reach its objective of 120% provision in the medium term. There exists a symbiotic and successful relationship between WorkCover Queensland and the Queensland Investment Corporation (QIC) which further engenders confidence in the scheme's financial position and sustainability. At the risk of stating the obvious, ongoing sound financial performance is fundamental to the scheme retaining the confidence and support of business and employers. The most obvious way that this confidence can be maintained is through the setting of a reasonable, predicable and transparent premium rate which is anchored in reasonable benefits, claims and administrative costs.

**Discussion Point 4 – whether the reforms implemented in 2010 have addressed the growth in common law claims and claims costs that was evidenced in the scheme in 2007 – 08.**

Apart from the Australian Capital Territory, Queensland is the only State jurisdiction which offers both a statutory claims path and a common law claims path. A majority of Queensland employers are puzzled as to why Queensland remains the odd man out. Employers' concerns are exacerbated by the apparent high settlement cost of individual common law claims (compared to statutory claims) and the relatively high legal costs associated with individual common law claims. Whilst there are rational reasons for Queensland's retention of the common law option, it may be worth considering a specific information program aimed at better educating stakeholders as to why this is so, and what the overall benefits to the scheme are in retaining access to common law claims.

The legislative and process changes adopted from 2010 do appear to be having effect in moderating both the number and cost of common law claims, both of which have declined modestly in 2011 and YTD 2012. However, it is considered that only two years of modest decline precludes a conclusive decision as to whether the 2010 changes have resulted in a sustainable framework for common law claims. It is encouraging to see that both claim cost and per claim legal costs have moderated somewhat as a consequence of improved vigilance and process by WorkCover including changes in the settlement strategy, better legal risk management, improved legal panel management, and efforts aimed at earlier finalization of common law claims.

Notwithstanding, Queensland employers including hotel businesses remain apprehensive about the retention of the common law path due to the ongoing high rate of claims, high cost of individual claims and the associated legal costs, and the potential for future breakout, compared to statutory claims. Employers would be comforted by the Committee examining all suggested mechanisms aimed at containing common law claims costs, including but not limited to:

Whilst not definitive, it is recommended that the following measures be considered to further improve the management and sustainability of Queensland's WorkCover common law claims system:



- Consideration of the development and implementation of a common law threshold. The rationale for a threshold relates to philosophical objections to accessing common law relief where the injured worker does not receive a permanent injury, or where the injured worker has returned to the same workplace. Government should consider regulating for a common law threshold with a working group established to determine at what level the threshold should be introduced (in the range 0-15 per cent). It should be noted that during the 2009-10 review, WorkCover Queensland suggested the implementation of a threshold at 10 per cent.
- Adversarial lawyers – currently, lawyers and law firms cannot act in common law claims for a claimant, and also act for WorkCover. As a natural and understandable consequence, ‘leading’ practitioners tend to follow the money and consistently act for the claimant. This situation creates a dilemma for WorkCover in terms of the effective legal and tactical management of common law claims, and the ongoing management of settlement expectations. This situation is amplified by the growth of a common law ‘industry’ accompanied by growing legal costs per claim, an increased tendency for claimants to pursue common law claims, and a trend for claimants to seek common law benefits sooner after injury than previously.
- Advertising and generating expectations - we have all seen and heard ‘no win no fee’ advertising for compensation claims. Whilst the QHA and its members are not aware of the inter-action of advertising and claim trends, it has been suggested by compensation insiders that one way to curb growth in common law applications is to limit or ban advertising of the ‘no win, no fee’ variety. If such limitation is legally enforceable, it could be worthy of consideration.

**Discussion Point 5 – whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment.**

From 2010 to the current time, the QHA has been examining the feasibility of applying for a self-insurance licence for the hospitality sector under Queensland’s current group self-insurance provisions. Although such an application is not likely to eventuate, the Association’s considerations have not been adversely impacted by the Queensland regulatory environment for self-insurance. Without prejudicing other submissions on the topic, the QHA is of the view that both the threshold requirements (2,000) and the wider regulatory environment around self-insurance arrangements are appropriate for individual business and group self-insurance arrangements, noting the adverse impact that wholesale adoption of self-insurance schemes is likely to have on Queensland’s WorkCover Scheme.

## OTHER AREAS OF CONCERN TO THE HOTEL INDUSTRY AND BUSINESS GENERALLY:

The following general points are raised for the Committee's consideration as suggested options for iterative improvement to the WorkCover Scheme:

- **Timely application by individual claimants** – Employers seek ongoing improvements to obligations for individual claimants to establish that an injury occurred in the workplace and that all claims to be lodged within a reasonable time frame. There is a standing need for more responsibility to be placed on workers to report injuries that occur within the workplace and pre-existing injuries within a reasonable time frame.
- **Definition of Worker** - The definition of 'worker' should be reflective of the definition of 'worker' in federal and state tax legislation to avoid confusion and simultaneous claims involving the liabilities of contractors and sub-contractor under workers compensation legislation.
- **Uniformity across jurisdictions** – we submit that there exists no case for jurisdictional uniformity. It is the QHA's view that any such harmonisation increases the risk of premiums increasing and Queensland's competitive advantage being diminished.
- **Stress claims** - It is recommended that for stress and psychological claims to be successful, the workplace must be the significant contributing factor causing injury. General Practitioners need to be further and better educated about the standard of psychological examination and the definition of what constitutes an injury for the purposes of a WorkCover claim. Specialist medical advice and certificates must be sought and assessed to support all stress claims and psychological claims
- **Increased employee responsibility and obligation in the workplace** – In respect of the matter of contributory negligence, the hotel industry supports stronger enforcement and protections for employers under section 130 of the *Workers Compensation and Rehabilitation Act 2003* as it relates to the serious and wilful misconduct of a worker that results in an injury. As a general rule, employers endorse a positive obligation on the worker to cooperate with claims processes and return to work initiatives.
- **Competition in the Workers Compensation insurance scheme** – the QHA does not support further deregulation of the workers compensation insurance market. To underpin its strength and viability, we support the case for WorkCover retaining its monopoly position in the Queensland workers compensation insurance market (in conjunction with self-insurance).

## Conclusion

Queensland has a successful, fully funded, viable and generally effective workers compensation scheme in the form of WorkCover Queensland. The scheme is supported by an appropriate regulatory framework and a suitably structured and responsive administration. WorkCover Queensland has a commendable track record of customer service, return-to-work performance, and responsiveness to government, industry, and market inputs.

Apart from the Australian Capital Territory, Queensland is the only State jurisdiction which offers both a statutory claims path and a common law claims path. A majority of employers are puzzled why this is so, and concerned at the trend towards very high individual common law claims settlement amounts and the growing number of such claims, despite recent moderate abatement. Although there is emerging evidence that changes adopted from 2010 may be having some effect in moderating both the number and cost of common law claims, Queensland employers including hotel businesses remain apprehensive about the retention of the common law path due to the ongoing high rate of claims, high cost of individual claims and the associated legal costs, and the potential for future breakout, compared to statutory claims. Employers would be comforted by the Committee examining all suggested mechanisms aimed at containing common law claims costs, including but not limited to development and implementation of a common law threshold and further development of an 'adversarial' law panel wherein legal practitioners are empowered to act for both the applicant and WorkCover Queensland on a case by case basis.

We thank the Committee for the opportunity to contribute to its Inquiry, and would be pleased to expand on any points raised in this submission, as required.

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