Submission to Workers' Compensation Inquiry

Queensland Teachers' Union
21 Graham Street
Milton

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Introduction

1. The Queensland Teachers' Union (QTU) welcomes the opportunity to make a submission in relation to the current review of the Queensland Workers' Compensation System.

2. The QTU has a membership of 43,000 members who are all teachers and school leaders working in state schools across Queensland.

3. A fundamental objective of Queensland workers compensation systems needs to be an equitable, fair and just system of wage replacement, access to medical treatment for workers with work related injuries or illnesses and a mechanism to aid injured workers back to work.

4. Where a worker's income and quality of life is detrimentally altered as a result of their employment, the worker must have a right to redress and an expectation that all will be done to minimise the impact of the work injury on their lives.

5. The existence of workers' compensation legislation in Australia puts people injured at work in a special category, warranting special compensation, compared to private injuries. It is easy to justify the special categorisation of work injuries. Workers have very little control over their working environment. It is appropriate that liability for injuries arising from the work environment, and travel to and from the work environment, is returned to the employer through a system of compulsory insurance.

6. The consequences of excluding individuals from scheme compensation or limiting benefits must be considered. The burden on the state's public health system, for example, for injured workers unable to access workers' compensation benefits would have the effect of transferring to the public the liability for medical and hospitalisation expenses currently funded (or largely funded) by employers through WorkCover insurance.

7. A high priority is placed on worker health through the *Work Health & Safety Act 2011* (Qld). The scheme includes criminal prosecution and fines, payable to Government, for breach. Those fines were recently increased in the new Act. It is inconsistent to impose serious financial penalties on employers who do not provide a safe workplace, without giving appropriate and generous compensation to the person injured in the course of the employer's business.

8. The removal of the private right of action under the *Work Health & Safety Act 2011* has deprived injured workers of a substantial and valid right to compensation. Workers injured by the failure of their employer to comply with their statutory duties now have no right to claim directly for that loss, but the government is entitled to levy the highest ever penalties on the employer.

9. In many cases, return to work assistance is ad hoc or non-existent if the worker does not have an accepted WorkCover claim. The availability of return to work assistance, host placements and suitable duties programs is known to provide a better return to work outcome, thereby reducing the overall costs of both the compensation scheme and lost productivity in business.

10. Workers compensation legislation is beneficial legislation targeted at injured workers. Any amendments to the legislation must be made with this in mind. The legislation was not

established to benefit employers. Any assessment of the legislation must bear in mind this fundamental purpose.

The performance of the Scheme in meeting its objectives under section 5 of the Act

Submission

1. The Queensland workers compensation scheme suffers from an excess of "reform".

2. Concepts such as "reasonable management action", "work related impairment" and "permanent impairment" (which does not take account of disability) are arbitrary and not easily understood by the majority of workers or employers.

3. This contributes to a perception that the worker has not been "treated fairly" [section 5(4)(b)], undermining the objectives.

Psychological and Psychiatric Injuries

4. According to the Queensland workers compensation claims monitoring report published in May 2012 by Q-Comp (the "Q-Comp report"), 60% of all psychological injury claims are rejected. A scheme intended to "provide benefits for workers who sustain injury in their employment" [section 5(1)] does not achieve that intention with such a large rejection rate.

5. The scheme fails to make return to work support available to all injured workers, regardless of whether their claim meets the statutory definition of "injury". We submit an appropriate reform would include providing a return to work support service to workers injured "in the course of their employment", even if work was not a significant contributing factor or if the injury arose from reasonable management action.

6. A return to work service for all workers would ensure the intention of section 5(4) is met: -

   provide for employers and injured workers to participate in effective return to work programs; and

   provide for workers or prospective workers not to be prejudiced in employment because they have sustained injury to which this Act or a former Act applies

Increase in the proportion of claims finalised with a work related impairment of 0%

7. A scheme with a purpose of "providing benefits for workers who sustain injury in their employment" [section 5(1)(a)] should regard increase in the "0" rate of lump sum compensation as not meeting the aims of the scheme.

8. In terms of the overall claims cost, it appears 0% WRI is ultimately more costly because the worker is more likely to proceed to common law. Figure 24 at paragraph 3.14 of the Q-Comp report notes the higher conversion rate of 0% claims to claims for common law damages.

9. The QTU submits this reflects that workers offered even token compensation at the conclusion of their claim are less likely to pursue the claim into common law, suggesting a scheme promoting 0% assessments does not meet the purposes in section 5, either for the benefit of the worker or affordability for the employer.

How the Queensland workers' compensation scheme compares to the scheme arrangements in other Australian jurisdictions

Submission

No comment

WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth

Submission

1. The Report of the Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme reports the Queensland scheme performs relatively well when compared to other state and New Zealand's workers' compensation schemes.

Whether the reforms implemented in 2010 have addressed the growth in common law claims and claims cost that was evidenced in the scheme from 2007-08

Submission

1. The Queensland workers compensation claims monitoring report published in May 2012 by Q-Comp overwhelmingly supports that the 2010 reforms have "addressed the growth" in claims and claim cost.

2. The statistics show the reforms have in fact resulted in a "reduction in claims" and "reduction in average common law cost" [Claims monitoring report, paragraph 2.2].

3. The reduction in claims and claim cost will continue. The 3 year limitation period for common law claims means the cost savings will continue for several years, as pre-reform claims are still able to be lodged until mid-2013. It will be 1-5 years before all pre-reform claims are dealt with. The reduction in claims and claim cost will continue and be enduring.

4. It is submitted the reforms have done more than was necessary and the QTU supports that there is now scope for the improvement in benefits to workers through the statutory phase of the claim.

Whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment

Submission

No comment

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

Submission

In-house medical expertise

1. The worker's treating medical practitioner is in the best position to advise WorkCover on the causes, extent and recovery from an injury. Commitment should be made to using the workers' treating practitioner wherever possible.

2. The usefulness of in-house medical practitioners is limited:

    a. Perception of bias and conflict of interest as employees or paid agents of WorkCover;

    b. Having not examined the worker, cannot add anything new to medical assessment;

    c. Are an expensive way to obtain a summary of medical opinion;

    d. Are given little weight in legal proceedings given their lack of contact with the worker.

Decisions returned to WorkCover for reconsideration

3. "Decisions that are returned for reconsideration has almost doubled in the past five years (from 7 per cent, or 140 claims, in 2005-06 to 13 per cent, or 358 claims, in 2009-10)" (Structural Review).

4. WorkCover has progressively reduced the efforts made to investigate a claim. There is now no investigation phase. The worker is asked to submit documents on which they intend to rely, the employer is asked to comment, and the worker gets a right of reply. This is an appropriate system, and necessary to ensure speedy decision making.

5. However, fundamental aspects of decision making are missed by many (generally inexperienced) decision makers. In many cases, the missing information could easily be gathered if the worker was informed. For example, a medical certificate that does not indicate injury is "consistent with the cause" or does not nominate a cause.

Use of external legal practitioners – for training staff and advising on the law

6. The QTU supports any avenue to provide training to decision makers in WorkCover. Anecdotal evidence shows Q-Comp performs its functions professionally, courteously and impartially. Its officers are well educated and trained to understand the legislation they are applying.

7. In comparison, WorkCover decision makers appear to receive little or inadequate training in the legislation. Their decisions should, but frequently do not, reflect consideration of the definitions in the legislation of injury. They should, but frequently do not, reveal on their face that the decision maker has considered each step in the process to make the decision, by reference to the applicable part of the legislation (ie, identification of the injury, whether work significantly contributes to the injury, whether management action is relevant to the injury and whether management was reasonable).

8. Decisions to reject, for example, a claim by a teacher assaulted by a student on the grounds that:

    a. the management action following the assault was reasonable; or

    b. managing students with difficult behaviour is a normal part of a teachers' employment,

    are not acceptable in a modern workplace and do not correctly interpret the legislation.

9. Well written, well reasoned decisions are more likely to be accepted by workers and not pursued to application for review or appeal stage.

10. More training of WorkCover staff, whether provided by panel lawyers, Q-Comp staff or through some other form of training or supervision, is essential.

Legal representation in common law claims

11. The report makes suggestions about further regulation of legal practitioners and the obligation for further additional documentation to be provided to claimants prior to, during and after a claim for common law damages.

12. There is already in place an extensive system of obligations on lawyers acting speculatively for clients:

    a. *Legal Profession Act,* requiring lawyers to enter into written costs agreements, and proscribing an extensive list of information which must be included in the costs agreement;

    b. Regulation of the proportion of a damages settlement the lawyer can charge the client;

    c. Existing provisions in the *Workers' Compensation & Rehabilitation Act* requiring written notices to be given to the insurer and the client about legal costs (up to, during and after the compulsory conference) and written notice about the costs consequences of offers made at the compulsory conference.

13. Further regulation is unlikely to have any impact on a claimant's decision about whether to commence a common law claim for damages.