

Your ref: 11.12.485
Our ref: MEX-12-714

055

3 August 2012

Mr Michael Crandon MP
Chair
Finance and Administration Committee
Parliament House
Alice and George Streets
Brisbane Qld 4000



Dear Mr Crandon

Thank you for your correspondence dated 13 July 2012 providing Queensland Rail Limited (Queensland Rail) the opportunity to present a submission in relation to the Finance and Administration Committee's Inquiry into the operation of Queensland's Workers' Compensation Scheme.

I am pleased to attach our submission for the Committee's consideration.

Should the Committee have any questions in relation to the submission, please contact Ms Alison Crosby, Queensland Rail's General Manager Insurance and Claims on 3072 5522.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Benstead".

Jim Benstead
Acting Chief Executive Officer

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SUBMISSION**Finance and Administration Committee****Inquiry into the operation of Queensland's workers' compensation scheme****August 2012****General**

One of the main objectives of the *Workers' Compensation and Rehabilitation Act 2003* is to maintain the balance between providing fair and appropriate benefits for injured workers or dependents and ensuring reasonable cost levels for employers. This is outlined in Section 5(4) (a) (1&2) of the Act.

Issue 1 Journey and Recess Claims

The scheme provides compensation for journey claims between the workers' home and work and recess claims, which occur away from the workplace.

Employers have no control over the risks that workers are exposed to in regard to these claims.

Journey claims are excluded in Victoria, West Australia and Tasmania. New South Wales, South Australia and the Commonwealth provide only limited coverage.

Recommendation:

We recommend removing Workers' Compensation coverage for:

- journey claims between the worker's home and place of employment; and
- recess claims that occur away from the workplace (except where the employer has specifically sanctioned the recess activity).

The Kennedy Inquiry in 1996 recommended the above changes but the recommendations were not implemented.

Issue 2 Solar Claims

There has been an increase in work-related solar claims in recent times. A concern with compensable latent onset injury for solar claims is that they always include significant non work-related exposure.

The current Act did not contemplate these types of claims and no other jurisdiction has yet in place a particular approach.

Recommendation:

We recommend that solar related claims be managed with similar provisions that relate to Industrial Deafness claims. This would recognise their latent onset and clarify that liability is only for exposure as a "worker" in Queensland, and limiting entitlement to say 12 months after retirement.

Issue 3 Appeals

A further concern is where a Q-Comp review decision is under appeal by Queensland Rail. However, as a self-insurer, Queensland Rail still has to pay the claimant compensation from the date our decision is overturned.

This appears to be contrary to general legal principles where the need to pay is stayed until the appeal process is finalised.

It is recommended that the payment of compensation is not required until the Appeal process has been finalised.

Further, from a procedural aspect, employers unlike workers do not have the right of appearance at Hearings.

Recommendation

We recommend the Act be amended to give employers the same right of appearance at Hearings without the need for leave to be obtained from the Court.

Issue 4 Common Law claims

The following comment is made in relation to whether the reforms implemented in 2010 have addressed the growth in Common Law claims and claim costs that were evidenced in the Scheme from 2007 – 08.

The above changes to the Act are recommended with a view to maintaining the balance between providing fair and appropriate benefits for injured workers or dependents and ensuring reasonable cost levels for employers.

Amendments made to the compensation act in 2010 were designed to reduce the number of Common Law claims being lodged and the costs of these claims. Amendments include the following:

- aligned the Workers' Compensation Scheme with the *Civil Liabilities Act 2003* with respect to liability (duty of care), contributory negligence and caps on general damages (pain & suffering) and damages for economic loss; and
- courts may award costs against plaintiff's, whose claims are dismissed.

The *Workplace Health and Safety Act 1995* was also amended in 2010 to provide that no provision of that Act creates a civil cause of action based on a contravention of the provision.

Data from both Q-Comp and WorkCover Queensland suggests the 2010 legislative amendments have had an effect on reducing Common Law claim costs. However, due to the small number of Common Law claims received by Queensland Rail in relation to the scheme overall, it is felt it is too early to determine the impact of any changes to the Act.

A further way of possibly reducing Common Law claims would be to introduce a permanent impairment threshold before workers can make a Common Law claim.

The Workers' Compensation scheme presently allows access to Common Law to all workers who have sustained an injury as defined by the Act and can prove negligence against an employer.

Queensland and the ACT are the only jurisdictions that have unlimited access to Common Law.

The unlimited access to Common Law offsets the 'short tail' nature of the scheme, which allows workers to access Common Law to receive damages to meet their future needs arising from a disability.

Recommendation

We recommend caution, as any limitation on access to common law could move the statutory scheme towards a long tail scheme.