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The Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

sucrogen™

3 August, 2012

Dear Sir/Madam

Re: Inquiry into the Operation of Qld Workers' Compensation Scheme

Sucrogen Australia Pty Ltd is the largest raw sugar producer in Australia and the largest sugar refinery in Australia and New Zealand. We're the eight largest produce globally – a major player in sugar and renewable energy.

Sucrogen Australia Pty Ltd are self-insured within Queensland with the majority of the business located in the central and northern Queensland regions.

The Queensland scheme provides for self-insurance and it is recognised throughout all Queensland self-insurers, early intervention reduces claims lodgement, durations, costs and common law damages. Due to reduction in these costs, premiums are reduced.

Section 5 of the Act:
The workers' Compensation and Rehabilitation Act establishes a workers' compensation scheme for Queensland—

(a) providing benefits for workers who sustain injury in their employment, for dependants if a worker's injury results in the worker's death, for persons other than workers, and for other benefits; and
(b) encouraging improved health and safety performance by employers.

The main provisions of the scheme provide the following for injuries sustained by workers in their employment—

(a) compensation;
(b) regulation of access to damages;
(c) employers' liability for compensation;
(d) employers' obligation to be covered against liability for compensation and damages either under a WorkCover insurance policy or under a licence as a self-insurer;
(e) management of compensation claims by insurers;
(f) injury management, emphasising rehabilitation of workers particularly for return to work;

It is intended that the scheme should—
(a) maintain a balance between—
(i) providing fair and appropriate benefits for injured workers or dependants and persons other than workers; and
(ii) ensuring reasonable cost levels for employers; and
(b) ensure that injured workers or dependants are treated fairly by insurers; and

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(c) provide for the protection of employers' interests in relation to claims for damages for workers' injuries; and
(d) provide for employers and injured workers to participate in effective return to work programs; and
(da) 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; and
(e) provide for flexible insurance arrangements suited to the particular needs of industry.

(5)Because it is in the State's interests that industry remain locally, nationally and internationally competitive, it is intended that compulsory insurance against injury in employment should not impose too heavy a burden on employers and the community.

SELF INSURANCE ACCESS & RECOMMENDATION:
Sucrogen agree with the provisions of section 5 and firmly believe a competitive and financially stable workers' compensation scheme is the key to maintaining a strong economy in Queensland. The Queensland scheme is currently known as the 'short term' scheme. This scheme provides fair and equitable compensation to all injured workers.

Sucrogen recommend the provisions of the self-insurance entrance are reduced to allow further employers in Queensland access into self-insurance.

The current provisions are:
S.71 Issue or renewal of licence to a single employer (1) The Authority may issue or renew a licence to be a self-insurer to a single employer only if satisfied that—
(a) the number of full-time workers employed in Queensland by the employer is at least 2000; and the employer's occupational health and safety performance is satisfactory; and
(d) the licence will cover all workers, employed in Queensland, of the employer; and
(e) the employer has given the Authority the unconditional bank guarantee or cash deposit required under section 84; and
(f) the employer has the reinsurance cover required under section 86; and
(g) all workplaces of the employer—
(i) are accredited workplaces; or
(ii) if not accredited workplaces—
(A) are adequately serviced by a rehabilitation and return to work coordinator who is in Queensland and employed by the employer under a contract (regardless of whether the contract is a contract of service); and

(B) have workplace rehabilitation policies and procedures; and
(h) the employer is fit and proper to be a self-insurer.

Recommendation
An amendment should be made to reduce the number of full time staff, but no other changes to the provision. By lowering the number of full time employees, the option for further companies to access self-insurance is greater.

We recommend the threshold being reduced to :----------

(1) the number of full-time workers employed in Queensland by the employer is at least 1000; and the employer's occupational health and safety performance is satisfactory; and the guarantee or deposit provision remain the same—

(a) be in favour of WorkCover; and

(b) be the greater of—

i. (i) $5m; or

ii. (ii) 150% of the self-insurer's estimated claims liability

DEFINITION OF INJURY:

The current definition under the Workers' Compensation and Rehabilitation Act 2003 is:
An injury is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.

Injury includes the following—
(a) a disease contracted in the course of employment, whether at or away from the place of employment, if the employment is a significant contributing factor to the
disease;
(b) an aggravation of the following, if the aggravation arises out of, or in the course of, employment and the employment is a significant contributing factor to the aggravation—

(i) a personal injury;

(ii) a disease;

(iii) a medical condition if the condition becomes a personal injury or disease because of the aggravation;
(c) loss of hearing resulting in industrial deafness if the employment is a significant contributing factor to causing the loss of hearing;
(d) death from injury arising out of, or in the course of, employment if the employment is a significant contributing factor to causing the injury;
(e) death from a disease mentioned in paragraph (a), if the employment is a significant contributing factor to the disease;
(f) death from an aggravation mentioned in paragraph (b), if employment is a significant contributing factor to the aggravation

AMENDMENTS:
Sucrogen recommend amendments to this part of the Act, should align with the New South Wales amendments recently advised:

Diseases, Heart Attack and Stroke injuries are only covered by the Scheme if the nature of the employment gave rise to a significantly greater risk of the worker suffering the injury, and

For a disease injury, the workers' employment **must be the main contributing** factor (*example: aggravation of underlying or pre-existing osteoarthritis)*

ENTITLEMENT TO WEEKLY BENEFITS
107B Meaning of amount payable under an industrial instrument
(1) An amount payable, under an industrial instrument, to a worker is—

If a worker is employed in an industry that is seasonal in nature, the amount payable to the worker must reflect the relevant season under the industrial instrument.

As Sucrogen is a seasonal sugar industry, it consists of (2) two seasons, the 'crushing season' and the 'maintenance season'. Sucrogen have many employees who only work during the 'crushing season' which is a period of 26 weeks per year. The nominal dates are 01 June - 31 December of each given year.

Sucrogen have in the past had many injured worker who have worked within the 'crushing season' and sustain an injury just before the cessation date of crushing and their employment and lodge workers' compensation claims. Their injuries are only certified with suitable duties, however as they do not have employment with Sucrogen nor have they attempted to find employment, they are paid wages from the Sucrogen self-insurance unit. These types of claims can linger and be manipulated to run for a period of 26 weeks until the next crushing season commences.

AMENDMENT
The provisions of this section should be amended to state, "If a worker is ***continuously employed, and has been continuously employed for more than 2 consecutive seasons*** in an industry that is seasonal in nature, the amount payable to the worker must reflect the relevant season under the industrial instrument.

ENTITLEMENTS:

150 Total incapacity—workers whose employment is governed by an industrial instrument
(1) The compensation payable to a totally incapacitated worker whose employment is governed by an industrial instrument is, for each week—
(a) for the first 26 weeks of the incapacity, the greater of the following—
(i) 85% of the worker's NEWE
(ii) the amount payable under the worker's industrial instrument

AMENDMENT:
Sucrogen propose this section should change to reflect:

(a) for the first 12 weeks of the incapacity, the greater of the following -
i. 95% of the N.W.E
ii. The amount payable under the workers' industrial instrument

(b) If the workers' injury is more than 15% WPI, the rate of weekly compensation will be for a further 12 weeks remains as s.150(1)(a).

(c) If the workers' injury is less than a 15%WPI, the rate of weekly compensation will be for the further 12 weeks, the greater of –

i. 80% of the N.W.E
ii. The amount payable under the workers' industrial instrument

The same amendment should apply to S151,152,153,154 & 155.

PARTIAL INCAPACITY

166 Partial incapacity

(1) Compensation payable to a partially incapacitated person is a weekly payment under this section.

AMENDMENT:

To be eligible for partial incapacity benefits, the insurer must have a current work capacity report outlining the capacity to work in their normal duties as prescribed by their industrial instrument. Partial payments are only provided to workers who cannot fulfil the industrial instrument prescribed hours of work.

(Example: *if a worker can work their normal shift base hours based on a work capacity report, no partial compensation is paid*)

IRROVOCABLE CHOICE:

186 Worker's disagreement with assessment of permanent impairment

(1) This section applies if—

(a) the worker's degree of permanent impairment has not been assessed by a medical assessment tribunal; and

(b) the worker does not agree with the degree of permanent impairment stated in the notice of assessment.

(2) The worker must advise the insurer within 20 business days after the notice is given (the decision period) that the worker does not agree with the degree of permanent impairment.

(3) The degree of permanent impairment may then be decided only by a medical assessment tribunal.

(4) The insurer must refer the question of degree of permanent impairment to a tribunal for decision

The worker may accept or defer a decision about the offer by giving the insurer written notice within the decision period.

(3) The worker is taken to have deferred the decision if, within the decision period, the worker does not advise the insurer that—

(a) the offer is accepted; or

(b) the worker wants to defer the decision.

(4) If the worker accepts the offer, the insurer must pay the worker the amount of lump sum compensation

AMENDMENT:
It should be added as (4) © if a period of 6 months occurs after the deferral or automatic deferral and decides to accept payment, the matter is out of time and must be re-assessed and determined by the QCOMP Medical Assessment Tribunal.

INDUSTRIAL DEAFNESS:
125 Entitlements for industrial deafness
(1) The worker is entitled to compensation for the industrial deafness under part 10 and sections 211(1)(a) and 219(1) and not under any other provision.
(2) The application for compensation for industrial deafness must be made—

(a) while the claimant is a worker under this Act; or
(b) if the claimant would ordinarily be a worker under this Act but is temporarily unemployed; or
(c) within 12 months after the claimant's formal retirement from employment.

(3) The worker is entitled to compensation for industrial deafness that is attributable to the worker's employment in the State as a worker if the worker—
(a) has been employed in an industry in the State for a period of, or for periods totalling, at least 5 years; and
(b) the employment was at a location, or at locations, where the noise level was a significant contributing factor to the industrial deafness.
(4) The worker is not entitled to lump sum compensation for the first 5% of the worker's diminution of hearing.
(5) The insurer must ask that the worker's degree of permanent impairment resulting from the diminution.

AMENDMENT:
Sucrogen have many employees who commence work with our company and have hearing loss at medical examination and chose not to lodge with WorkCover Qld or previous employer. Within a short time of employment they lodge a claim

Queensland legislation should align with the Western Australian legislation, S74, where apportionment can be granted over insurers.

74. Worker entitled but dispute between insurers
(1) Where a worker is entitled to compensation for a fresh injury or the recurrence of an old injury from an employer but there is a dispute between insurers as to liability to indemnify that employer, the insurer of the employer of the worker at the time of the latest injury or recurrence is liable to indemnify the employer until an arbitrator has otherwise determined.
(1a) An employer or insurer may apply for determination by an arbitrator of a dispute between insurers notwithstanding any term or condition of any policy of insurance providing for some other means of settling disputes.

(2) An arbitrator shall determine which insurer is liable or how liability is to be apportioned and may make such order as the arbitrator thinks proper for the reimbursement of one insurer by another and for the indemnity of the employer in respect of his liability under this Act.

TIME FOR APPLYING:
S131
(1) An application for compensation is valid and enforceable only if the application is lodged by the claimant within 6 months after the entitlement to compensation arises.

AMENDMENT:
(1) An application for compensation is valid and enforceable only if the application is lodged by the claimant within 6 months **after the injury occurs or** when entitlement to compensation arises.

NEW Section/Provision to be added to the Act

PROVISIONAL TREATMENT
When an injury is sustained at the workplace and a workers' compensation application is received, a provisional time frame of 48hours should apply for treatment to be paid by the insurer without admitting any form of liability prior to a decision being made and advised.

This period shall not exceed:-
(i) 48hours from date of injury or
(ii) 48 hours from the first treatment date
(ii) Must not exceed the monetary value of $200.00

Sucrogen Australia Pty Ltd submission addresses the key issues that should consider review. Sucrogen welcomes the opportunity to discuss any matters raised in its submission with the committee or to assist by providing further written clarification where necessary.

Yours faithfully,
Sucrogen Australia Pty Ltd

Patina Pitkin
Manager, Workers' Compensation & Injury Management