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Finance and
Administration Committee

Queensland Nurses' Union

Inquiry into the Operation of Queensland's Workers' Compensation Scheme

**Submission to the Queensland Parliament
Finance and Administration Committee**

August 2012



1.0 Introduction

The QNU thanks the Finance and Administration Committee (the Committee) for providing this opportunity to comment on the operation of Queensland's workers' compensation scheme. Our submission responds to the inquiry's terms of reference and includes a case study in support of our recommendations.

The Queensland economy and its health system relies on its dedicated workforce. As a trade union we represent the industrial and professional interests of our members who provide the care that Queenslanders expect and deserve. We therefore begin our submission with an overview of the QNU and the nursing profession in order to highlight the nature of the work our members undertake when caring for the community.

We emphasise here the critical role that the workers' compensation scheme plays in supporting the nursing workforce. Our members work under considerable physical and emotional stress that places them at risk across a range of workforce injuries and illnesses. Their health and safety is paramount in maintaining and advancing the future wellbeing of the community.

Workers compensation is a vital component of the social wage of the QNU's membership and the management of workers compensation is of particular concern to us. The Queensland workers' compensation scheme has delivered close to the lowest premiums in the country over the last 15 years and reliable coverage for the workforce.

The QNU believes that the existing scheme adequately compensates injured workers and/or their families and should not be altered in way that undermines or undervalues the provisions of this scheme. It is within this context that we address the matters relevant to nurses and nursing work currently under consideration by the Committee.

We ask the Committee to read this submission in conjunction with that of our state peak body, the Queensland Council of Unions (QCU).

2.0 About the QNU

Nurses and midwives¹ are the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNU - the union for nurses and midwives - is the principal health union in Queensland. The QNU covers all categories of workers that make up the nursing workforce in Queensland including registered nurses, registered midwives, enrolled nurses and assistants in nursing who are employed in the public, private and not-for-profit health sectors including aged care.

¹ Throughout this submission the terms 'nurse' and 'nursing' are taken to include 'midwife' and 'midwifery' and refer to all levels of nursing and midwifery including Registered Nurses and Midwives, Enrolled Nurses and Assistants in Nursing.

Our more than 49,000 financial members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses in Queensland are members of the QNU.

3.0 About the Nursing Workforce

Nurses are the most geographically dispersed health professionals in Queensland and indeed Australia, working independently or collaboratively to provide professional and holistic care in a range of circumstances.

Nurses work to promote good health, prevent illness, and provide care for the ill, disabled and dying. Most nurses and midwives work in an area of clinical practice such as medical and surgical, aged care, critical care, perioperative, midwifery, emergency, general practice, community health, mental health, family and child health, rehabilitation and disability, rural and remote health and occupational health and safety.

Nurses advocate for the patient as a whole person within a complex health system. At every site and level of the nurse-patient relationship nurses facilitate and mediate the competing demands of patients, families, carers, the environment at points of immediate care, the system and society to achieve the best possible outcomes. They conduct research into nursing and health related issues and participate in the development of health policy and systems of health care management.

During the course of their employment, nurses may experience exposure to a wide variety of physical, chemical, biological, psychosocial or other hazards (Safe Work Australia, 2008). Within the health and community industry sector, all levels of nursing categories suffer significant numbers of musculoskeletal and traumatic injuries (Workplace Health and Safety Queensland, 2012). This is due to a number of factors including exposure to high risk, hazardous tasks (the manual handling of people) and the age of the nursing workforce. Hazardous manual tasks involve one or more of the following:

- repetitive or sustained force;
- high or sudden force;
- repetitive movement;
- sustained or awkward posture;
- exposure to vibration.

Hazardous manual tasks can contribute to musculoskeletal injuries, which can be permanent and impact on a person's working ability and quality of life, as well as the productivity and economic performance of the company that employs them. Musculoskeletal injuries include:

- muscle strains and sprains;
- ligament or tendon rupture;
- prolapsed intervertebral discs;
- tendonitis of the shoulders and elbows;
- carpal tunnel syndrome (Workplace Health and Safety Queensland, 2012).

The nursing workforce is an ageing one. Between 2005 and 2009, the proportion of employed nurses aged 50 years and over increased from 35.8% to 36.3%. In 2009, the average age of nurses was 44.3 years (Australian Institute of Health and Welfare, 2011). The ageing process and the nature of the work combine to place nurses at a significant risk of workplace illness and injury (Cohen, 2006; National Occupational Health and Safety Council, 2005).

At the same time, there is an impending nursing and midwifery workforce crisis in Queensland and it will seriously affect patient care. With the predicted baby boomer retirement bulge many nurses are expected to retire within the next 5 – 10 years. Australia is likely to experience limitation in the delivery of high quality health services as a consequence of workforce shortages, particularly nurses where a shortfall of 109,000 positions is predicted (Workforce Australia, 2012). With an estimated 2,500 new beds coming on line in Queensland Health between 2006 and 2016 not enough nurses have been allocated to staff them (Queensland Health Workforce Unit, 2007).

Every effort needs to be made to enhance the profession of nursing so that more students enter universities and TAFEs to train. Any moves to compromise the ability of nurses to access a comprehensive workers' compensation scheme will detract from the profession, make it more difficult to recruit and retain a nursing workforce and contribute to already heavy workloads.

The workplace health and safety of nurses is intrinsic to ensuring patient safety. Poor work environments that do not protect nurses from work stress, accidents and injury contribute substantially to nursing turnover, estimated to cost around \$150,000 per nurse (Chan et al., 2004).

Each additional patient allocated to the nursing workload increases the likelihood of patient death (Aiken et al., 2002) patient falls, respiratory infections, and patient complaints (Yang, 2003). Nurses working shifts of 12.5 hours or more are three times more likely to make an error, and working more than 40 hours a week increases the risk of error (Rogers, 2004).

Because nurses work extended, unpredictable hours with a lack of regular breaks they are more likely to experience elevated fatigue levels. Night duty rotations are common, particularly in specialist units where nurses must maintain careful and astute observations of their vulnerable patients. Fatigue can negatively affect nurses' health, quality of performance and thus patient care. The effects of fatigue may be exacerbated for nurses over 40 years of age (Muecke, 2005).

We consider any attempts to alter the scheme by restricting or withdrawing current rights will significantly disadvantage our members and undermine their important contribution to the health of *all* Queenslanders.

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

The Queensland Workers' Compensation scheme has two features that enable it to perform well on a comparative national basis and thereby meet the objectives of Section 5 of the Act. The scheme has a 'short-tail' statutory component that encourages return to work by limiting the period for which an individual may claim weekly benefits and expenses, as well as reasonable access to common law claims. The QNU believes that the scheme must retain these two fundamentals. A statutory aspect of the scheme that must be retained is the ability to lodge a claim for injury that occurs travelling to and from work (journey time).

Statutory Claims - Journey

In 2011, journey claims represented 6% of all claims lodged and this rate has remained stable over the last 10 years. The industries experiencing the highest occurrence of journey claims were health care and social assistance (17%), both of which employ significant numbers of nurses. The total statutory costs of journey claims were approximately 12% of all statutory payments and this has been increasing over the last five years (Q-Comp, 2012).

Queensland's nurses provide continuity of care for patients 24 hours a day, seven days a week. To undertake this vital role, they work according to a continuous shift roster. The majority of full time permanent nurses have no choice but to work some night duty and this leaves them vulnerable to fatigue, the effects of which are well documented². Journey time is therefore an important provision in a large, decentralised state such as Queensland where nurses work in metropolitan, rural, and remote centres.

The Australian Safety and Compensation Council develops national Occupational Health and Safety (OHS) and workers' compensation policy. To inform its decision-making, the ASCC developed the National Hazard Exposure Worker Surveillance Survey to determine the current nature and extent of Australian workers' exposure to selected occupational disease-causing hazards. According to this survey, 38% of health and community services workers experienced tiredness often or all the time. The reporting of pain and fatigue symptoms was highly related to the level of biomechanical demand, an area where nurses have significant exposure (Australian Safety and Compensation Council, 2009). Although the study does not specifically identify nurses within the cohort, it is reasonable to assume that this figure would closely approximate nurses' experience, given their predominance within the health workforce and their pattern of continuous shiftwork.

² See for example Rogers et al. (2004), Muecke (2005) and Dorrian et al. (2008).

Queensland Health data on 'Classified Incidents' i.e. reviewed and/or finalised cases of key risk recorded in the IMS.net database for the financial year 2010-2011 indicates 1102 incidents related to 'journey' (Queensland Health, 2012). This was the fifth highest category. Although the figure relates to all Queensland Health staff, given the large number of nurses in the workforce it could be assumed that they represent a significant proportion of these incidents.

There is a strong link between fatigue levels, errors at work and the commute to and from work. Internationally, there is growing recognition that work-related road traffic crashes resulting in injury or death are a significant public health problem. Fatigue and sleepiness have been consistently associated with increased risk (Robb et al., 2008). A study of Australian nurses found that the primary predictor of extreme drowsiness during the commute occurred following consecutive night shifts. Shift length was also a contributing factor (Dorrian et al., 2008). These findings mirror those of Barger et al. (2005), which found that medical interns who had worked shifts of longer than 24 hours were more than twice as likely to have a crash and five times as likely to have a near miss event than those who worked a shift not of extended duration. These studies demonstrate that extreme fatigue that occurs as a direct result of a health worker's occupation can put the individual and others at risk during the work commute.

The following case study highlights a tragic outcome of extreme fatigue following night duty.

Fatigue Link in West Australian Car Crash Death

In 2008, a 20 year old patient care assistant returning home from a 10 hour hospital night shift was killed when her car veered off the road and crashed. The young woman had been very fatigued as a result of working night shifts.

In handing down his findings at the inquest into her death, the Coroner cited expert evidence that health staff who work shifts are particularly vulnerable to traffic accidents caused by transportation fatigue. The fatigue health workers suffer is often masked by their workplace where there are bright lights and the workers are on their feet. When the workers drive home they are in a very different environment, sitting down and subject to the motion of the vehicle.

The Coroner recommended that the employer put in place policies to address the safety of staff who work night shift, monitor fatigue related crashes involving night shift workers, put in place training programs and review accommodation to ensure health workers have a place to sleep before driving home.

The research and coronial findings presented here draw attention to the effects of fatigue on the safety of nurses and other continuous shiftworkers during the commute. We stress the ongoing need for a sufficient statutory safety net to compensate workers in the event of an accident.

Common Law thresholds

Queensland's dual system of statutory and common law has delivered comparatively low premiums, low disputation levels, low claims management costs and return to work performance. In 2010/2011 WorkCover managed over 92,000 new statutory claims and 3,800 new common law claims (WorkCover Queensland, 2011; Safe Work Australia, 2011).

We strongly oppose the introduction of common law thresholds even for those claims assessed as 0% whole person impairment. The current system permits unlimited access to common law claims and is a fundamental strength of Queensland's system.

The QNU regularly assists members with assessments of work related impairment. In our experience, members who do enter into common law claims have often experienced poor treatment in rehabilitation such that they are no longer able to carry out their duties effectively. Even where impairment is assessed at 0%, some members remain unable to continue in their role as the inherent requirements of nursing work include manual handling.

Analysis of the QNU's own internal data indicates the vast majority of permanent impairment assessments for nurses' injuries are aggravations of pre-existing conditions with 83% assessed as having a work related impairment of 10% or less. Of the remaining 17% of assessments only 4.5% had a work related impairment greater than 15%. Clearly, adopting common law thresholds would exclude most of our members.

Of real concern to the QNU is the loss of common law claims for individuals assessed as having 0% whole person impairment. The QNU has assisted nurses whose employers have terminated their employment after an assessment of 0% work related impairment when the employer has become aware of a pre-existing condition aggravated in the workplace. Quite often a pre-existing condition, particularly those associated with the spine are a result of the ageing process and occur during the manual handling component of a nurse's duties.

Compounding this issue are the provisions of the Q-Comp (2005) *Guidelines for the table of injuries*. PI code 4113 of these guidelines (p. 14) relating to the lumbosacral spine attributes a 0% degree of permanent impairment for 'mild aggravation of pre-existing degenerative disease is lumbosacral spine *with subjective symptoms* (our emphasis), but no significant clinical findings other than degenerative changes on X-ray'. Often our members continue to experience significant pain and loss of mobility despite being assessed as having a 0% permanent impairment.

The following case studies demonstrate why the QNU remains opposed to introducing common law thresholds:

Injured Registered Nurse (RN) assessed at 0% impairment

A 52 year old aged care RN sustained a manual handling injury when a dementia patient attempted to remove themselves from a wheelchair the nurse was pushing. This incident aggravated a thoracic spine degenerative condition in the RN. WorkCover ceased following a 0% impairment assessment. However, the injury meant that the RN was unable to return to work. The RN sought a common law remedy and received \$95,000.

Injured Assistant in Nursing (AIN) assessed at 5% impairment

A 61 year old aged care AIN working in the public sector injured herself while assisting a patient in a reclining chair. The incident aggravated a lumbar spine pre-existing degenerative condition. WorkCover offered \$8,731 following a 5% notice of assessment. The AIN was unable to continue in the (shiftwork) position and therefore experienced loss of earning capacity. The AIN sought a common law remedy and received \$103,536.

The QNU believes that one factor contributing to the increase of common law claims and the quantum of these claims is the return to work outcome. Where employers provide the worker with suitable work, there is less likelihood the worker will seek a common law claim to secure their financial future. In 2011/2012 the year to date return to work rate is 97.1%, up from 93.7% on 2010/2011 (Q-comp, 2012). We also believe that if workers were properly compensated in the first instance, they would not pursue claims under common law.

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

We note the Act states that it is in the State's interests that industry remains competitive. Compulsory insurance against injury in employment should not impose too heavy a burden on employers and the community.

WorkCover insures more than 150,000 employers covering approximately 90 per cent of Queensland workers. Over the last 10 years Workcover has consistently delivered either the lowest or second lowest average premium rate for employers when compared with all other State schemes (Department of Justice and Attorney-General, 2012, p4). The quid pro quo of course is that the Queensland workers' compensation scheme has a 'short tail' in that the weekly benefits cease when one of four possibilities related to capacity to work, duration of the incapacity and maximum allowable benefits occur. The 'short tail' is offset by allowing injured workers to seek damages at common law. So the scheme has a set of characteristics that give it accessibility and overall balance, reasonable cost levels for employers and fair and appropriate benefits for injured workers, dependants or others.

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

The QNU as matters of principle and practice does not support self-insurance arrangements. We believe that the current insurance scheme offered by WorkCover provides the most appropriate arrangements for the contemporary working environment.

7.0 Recommendations

The QNU has made submissions in the past in support of a sustainable and fair worker's compensation scheme. We reiterate our belief in these principles and make the following recommendations:

The QNU recommends that:

1. The Queensland government should not change existing benefits to injured workers and/or their families as they currently provide adequate compensation particularly in relation to journey claims;
2. There are no changes to the main provisions of the Act. Recent changes should be give adequate time to take effect;
3. There are no changes to the area of damages so that injured workers retain unfettered access to common law claims;
4. There is ongoing financial support for QComp's *Return to Work Assist* Program;

5. There is ongoing financial support for WHSQ's and WorkCover's *Injury Prevention and Management Program*;
6. There is significant financial support provided to WHSQ in order to continue its work towards a reduced injury and fatality rate in Queensland in consultation with employer and employee representatives to maintain the balance between proactive and enforcement activities;
7. The workers' compensation premium rate should be set at the breakeven rate with minimal reliance on investment returns in setting this rate;
8. The government maintains a forum for WorkCover, employers and their lawyers to address any ongoing process issues associated with damages claims.

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