THE SERVICES UNION

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31 August 2012

Ms Deborah Jeffrey
Research Director
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000



By Email: fac@parliament.qld.gov.au

Dear Ms Jeffrey

**RE: Review of the Queensland Worker's Compensation Scheme**

The Services Union represents around 15,000 members working throughout the State in a variety of industries including:

- Local Government
- Social and Community Services
- Transport including passenger air and rail transport, road, rail and air freight transport; Shipping and Port Operations:
- Clerical and Administrative employees In commerce and industry generally;
- Call Centres and Travel Agencies;
- Electricity Generation, Transmission and Distribution;
- Water Industry;
- Higher Education;
- Business Equipment.

We refer to the terms of reference for this enquiry and note that the committee is to consider the following:

- The performance of the scheme in meeting its objectives under Section 5 of the Act;
- How the Queensland Workers' Compensation Scheme compares to the scheme arrangements in other Australian jurisdictions;
- WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth;
- 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 – 2008;
- Whether the current self insurance arrangements legislated in Queensland continued to be appropriate for the contemporary working environment.

GROUND FLOOR
32 PEEL STREET
SOUTH BRISBANE
QLD 4101

PO BOX 3347
SOUTH BRISBANE
QLD 4101

W theservicesunion.com.au

P 07 3844 5300
F 07 3846 5046

AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION QUEENSLAND (SERVICES AND NORTHERN ADMINISTRATIVE) BRANCH
ABN 86 351 665 653

QUEENSLAND SERVICES, INDUSTRIAL UNION OF EMPLOYEES
ABN 13 540 483 194

TRADING AS
*THE SERVICES UNION*

SECRETARY:
Kathrine Nelson
ASSISTANT SECRETARY:
Jennifer Thomas

We note the referral also requires that in the Committee should also consider and report on implementation of the recommendations of the structural review of institutional and working arrangements in Queensland in the Queensland Workers' Compensation Scheme.

The Services Union is an affiliate of the Queensland Council of Unions ("QCU") and has been involved in discussions with the QCU and other Unions and stakeholders in relation to this review. The Services Union supports and adopts the submissions of the Queensland Council of Unions.

The Services Union welcomes the opportunity to participate in this inquiry into the Queensland Workers' Compensation Scheme. We have a strong and active interest in the safety and welfare of our members and other workers when at work. This concern encompasses not only the prevention of injury and illness to workers in the course of their employment, but also the support and management of those injured or ill workers, who do sustain injury or illness at work. Our interest however, is a balanced interest and we understand and appreciate the importance of commercial viability for the scheme and importantly for business also. Our comments, observations and any recommendations offered herein incorporate a balanced view with the overriding position that if the objects of the Act are achieved then employers and injured workers interests are protected and enhanced.

It is not the intention of this submission to address each of the terms of reference of the enquiry, but rather to make general observations regarding the overall scheme and how it currently meets its legislative objectives.

**Objects**

The objects of the *Workers' Compensation and Rehabilitation Act 2003* ("the Act") are to:

> *".....*
> *(4) 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*
> *(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*
> *(e) 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*
> *(f) 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.*

It is our position that the present scheme already meets all of its objectives of the Act and ought not to be changed in any way at all.

**How does the Queensland scheme compare?**

It is not the intention of The Services Union to restate or re-analyse the statistical and other data addressing the financial viability of the scheme, suffice it to say that our observation is that the Queensland Workers' Compensation Scheme, in its present form, is the only workers compensation scheme in Australia that is fully funded and does not draw from consolidated revenue. It has the highest funding ratio, the highest return to work rates and traditionally, it has maintained the lowest premiums for employers.

We expect that there will be a range of views from the business community in relation to employer premiums focused on the aim of reducing those premiums. Some employers will suggest strongly that workers injured in the course of their employment should not be entitled to bring claims against the employer at all for common law damages; some employers will put forward an argument that the premiums are too high and impact negatively on their ability to be competitive. If those employers who put forward those views advocate and succeed in a major structural change of the current workers' compensations scheme, then experience from interstate teaches us that the outcome for business will be a higher premiums.

The Queensland workers' compensation scheme has traditionally been a strong performer when compared to other states and territories because of its hybrid structure, that is, a combination of "short tail" statutory benefits and full access to common law damages in the event an employer is negligent. The implementation of changes to the Scheme that effectively removes, restricts or reduces compensation entitlements to injured workers, whether that be by the introduction of thresholds for entitlement to common law or even a change in the definition of "worker" or "injury" in the Act, will result in upward pressure on premiums due to increased disputation, uncertainty of outcome and claim duration.

What we observe from the financial and statistical data available, is that Queensland has the strongest funding ratio out of all of the schemes and also has the second lowest average premium rate, currently sitting at $1.45 per $100 of wages. In comparison, South Australia removed common law access, relaxed the criteria for self insurance (allowing more employers to be self-insured) and created a longer tail scheme for payment of statutory benefits with the result that the scheme now has the highest average premium rate, currently at $2.75 per $100 in wages in the country. It is our view that in applying a balanced approach to the overall objectives of the scheme, any change to the structure of the scheme, including the removal or reduction of access to compensation, will result in an outcome that is not desirable for employers or injured workers in Queensland.

**Premiums based on Claims experience – injury prevention and management**

If the aim of this enquiry is to identify ways to reduce employer premiums, then any changes to the scheme should not result in the removal, reduction or restriction of injured worker rights or benefits, including access to common law damages. It is our understanding that an employer's premium experience is based upon their claims experience. Therefore, it makes sense to focus first on the claims experience as a means of reducing premiums. To put it simply: no injuries at work results in no claims being made to the insurer, therefore premiums are kept to a minimum. By providing both a "no fault statutory" scheme and a separate, fault based common law scheme, the Act recognises that some employers do better at providing a safe and healthy work environment than others.

An employer with poor injury prevention and management should not be rewarded with lower premiums. The employer's premium rates take into account the size of the employer, the employer's industry, and their claims experience, including both statutory and common law claims. The more industrial events in a workplace causing injury or illness to its workers, the larger the claims experience and the higher the premiums. Prevention and good return to work management following work injury is the key to lower premiums.

As Mr Tony Hawkins, the CEO of WorkCover Queensland explained to the Committee in the Departmental briefing on 11 July 2012:

> *"Clearly, the intention of an experience based rating formula in premium setting is to reward people with good claims experience...*
>
> *... it would be my fervent desire that WorkCover put itself out of existence by having absolutely no claims. The fact is that that is not a reality. What we have to do is to attack what we can do to make it better.*

*...I think that involves working with all parties involved in Queensland and whole community towards prevention up front. If there is no injury, there is no claim, there is no cost, there is no increase in the cost of the scheme. To what extent can we do that? How do we do that? We're all trying to thrash that out and we are continually working on that with all parties – employers, Unions, Workplace Health and Safety and everybody. I think that is fundamentally where we need to address it. Let us minimise the amount of injuries in the first place. ..."*

The Services Union notes that one of the achievements of the 2010 reforms was to create a greater focus on improved health and safety. Improved health and safety in the workplace should be the fundamental goal of all parties. Common sense tells us that improvements in health and safety in the workplace leads to fewer injuries, which in turn leads to fewer claims made at a statutory level and by extension at a common law claim level. To this degree, the Services Union is a big supporter of the Injury Prevention and Management ("IPaM") Program.

The Services Union recommends the ongoing funding of this program and for WorkCover Queensland, all Self-Insurers and Workplace Health and Safety to continue to work together with this program. Essentially, the program is designed to provide support and assistance to employers who have repeatedly sustained high levels of claims to develop better Workplace Health and Safety outcomes and to improve injury management systems in an effort to reduce the number of injuries at their workplace. This in turn has the flow on effect of reducing their WorkCover premiums.

It is The Services Union's position and recommendation to the Committee that a more balanced focus or approach in ensuring that the performance of the scheme continues to meet all of its objectives under Section 5 of the Act rests entirely with premium incentives and rewards premised in health and safety at the workplace.

The claims experience approach for the setting of employer premiums is a better, more balanced focus for premium reduction than simply removing worker entitlements. Removing, restricting or reducing injured worker entitlements does not reduce the number of accidents in a work place. Removing, restricting or reducing injured worker entitlements does not encourage better workplace health and safety practices. The removal, restriction or reduction of injured worker entitlements merely shifts the costs of healthcare, welfare and rehabilitation onto the community at large, which places more pressure on social welfare public service providers and community and charity organisations.

**Have the 2010 reforms addressed growth in common law claims and claim costs?**

We note that one of the terms of reference is whether the reforms implemented in 2010 have addressed the growth trend in common law claims and claims cost that was evidenced in the scheme in 2007 – 2008. Indisputable evidence to date from the statistics available by WorkCover and Q-Comp and their actuarial reports and projections suggest that not only have the 2010 reforms slowed common law claim growth and cost, but it is expected that they will continue to decline. The legislative changes that commenced in 2010 have, on the available evidence, resulted in a decrease of common law claims. Prevention of injuries in the workplace will result in a further reduction of claims at a statutory claim level and common law claim level.

The 2010 amendments also introduced additional safeguards to enable the employer/insurer to defend and defeat unmeritorious common law claims. The amendments made to the *Workplace Health and Safety Act* in 2010, have made it much easier for an employer to defend these claims.

**Sell insurance arrangements**

We note in the public hearing that there was the suggestion that the threshold for self-insurers be reduced from 2000 employees, with some discussion around the 500 employee figure. The Services Union has concerns about the potential for a conflict of interest where the employer is the insurer as well as the employer. A large number of our members are employed by organisations that are self insured. There needs to be greater scrutiny to ensure that the role of the insurer and the role of the employer remain

separate. It is our experience in dealing with self-insurers that from time to time the information provided to the workers' compensation unit of the employer as a self-insurer. In particular, sensitive and private medical information is used to negatively impact the employment arrangements of the injured worker. Further, our observation is that return to work obligations of the employer and the return to work obligations of the employer as self-insurer are not at times being adequately met. Our observation is that members whose claims are managed through WorkCover Queensland have on the whole, better return to work outcomes than those managed through self-insurance.

The Services Union does not support a reduction of the 2000 employee threshold and it is our view that enabling more employers to be self-insurers would have a negative impact on claims management and return to work outcomes, as well as the financial viability of the current WorkCover scheme. It is also our view that employer premiums would increase substantially if more employers were able to self-insure. The evidence for this rests in the South Australian example, who have the highest proportion of self-insurers and also the highest premiums.

**Other Comments**

It is gleaned from the transcript of the public hearing that there was a discussion regarding limiting worker's access to common law claim by creating a threshold. Again, we reiterate that continued financial viability of the Scheme is better achieved by focusing on premium incentives and rewards through prevention rather than simply removing, restricting or reducing injured worker entitlements.

The Services Union strongly opposes any introduction of a threshold limit for access to common law claims. Should there be consideration of the introduction of a threshold limit for the access of common law claims then The Services Union position is that any threshold should not be measured by a person's permanent impairment as assessed under the AMA Guidelines. To do so ignores the fact that there is no direct relationship between the level of permanent impairment, or work related impairment, and the actual disability suffered by the injured worker. The level of impairment is not reflective of the level of disability suffered or the impact on that person's capacity to continue working in their chosen field. It is The Services Union's position that to determine a person's entitlement to access common law damages based on impairment is arguably unjust, unfair and discriminates against the injured worker on the attribute of their disability.

The Services Union's view is that if injured workers with disability lose access to common law claims, there will be a flow on effect not just to the injured worker and their families, but there will be a cost burden or shift from the Workers' Compensation Scheme to the social services systems. Again, we emphasise that in considering the issue of whether or not a threshold is a just and fair way to proceed, it is essential to remember that the only way a worker can successfully access a common law claim is when the employer has been negligent in the workplace by failing to meet their legal obligation to provide a safe and healthy work environment.

Again, we go back to basics and note that the way to prevent common law claims or to reduce common law claims is to prevent the injury from occurring in the first place. Again, the better focus for continued financial viability of the Scheme into the future is for premium reduction through claims experience rather than simply removing worker entitlements.

**Conclusion**

The current scheme is presently achieving all of its objects under the Workers Compensation and Rehabilitation Act. It provides fair and adequate benefits to injured workers in a sustainable way and it is managed in a way that premiums to employers are not only competitive but very reasonable, the second lowest in the country at present, but traditionally average at the lowest.

Current trends following the 2010 reforms have addressed common law claim growth and cost effectively. The scheme therefore remains fully funded and financially viable and is hands down the best performing scheme in Australia offering up fair and just benefits to injured workers at low cost to employees.

If changes were to be made to the scheme, interstate experience tells us that removing, reducing or restricting injured worker rights and entitlements or allowing more self insurers into the scheme or introducing thresholds will put substantial upward pressure on premiums for employers. The result will inevitably be that the scheme will then become less competitive and more expensive for employers.

The Services Union strongly encourages the continuation and expansion of injury prevention and management as the means by which the scheme can continue to meet all of its objectives.

Yours faithfully

**Kathrine Nelson**
**Secretary**