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The Research Director
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

31 August 2012

Dear Sir / Madam

Re: Inquiry into the operation of Queensland's workers' compensation scheme

Hyne & Son is a privately owned forest products company that for over 125 years has played a strong role in the development of the Queensland timber industry. The company employ 650 people directly, as well as supporting a large number of related contractors and subcontractors. We also operate business units in New South Wales, Victoria and the ACT.

We welcome the opportunity to make a submission to the Finance and Administration Committee (the Committee) on the operation of the Queensland's workers' compensation scheme.

Overall, Hyne considers that the Queensland WorkCover Scheme (the Scheme) performs well when compared with other schemes within Australia. However that is not to say the Scheme cannot be improved. Of particular concern is access to common law where there is nil permanent impairment identified, and the current definition of workplace injury.

Hyne's attached submission provides a number of key points for consideration by the Committee, along with background and information to support each point. Hyne would welcome the opportunity to discuss these points with the committee or provide further clarification where requested.

If you wish to discuss this submission further please contact me directly on [redacted]

Yours sincerely

David Murtagh

Risk Manager, Hyne

Recommendations

1. *Hyne supports the current workers' compensation arrangements regarding statutory claims compensation (short tail) and does not support any move to align these with other states or introduce long tail statutory compensation.*
2. *Hyne recommends review of the current method of utilising common law costs in year four and five of a claims history within the premium calculation. Claims history used in premium calculation should be limited to three years to reflect a business's short-term health and safety performance.*
3. *Hyne believes that access to common law for lesser injuries is a major burden of the current worker's compensation scheme and recommends that a whole person impairment (WPI) threshold of 15% be introduced to common law claims.*
4. *Involvement in a claim by plaintiff lawyers should be restricted until after the injury has been declared stationary and stable. Their involvement prior to this point in most instances seems to have a detrimental impact on a worker's recovery.*
5. *Hyne believes that the definition of an injury is critical to the balanced function of the workers' compensation system, and recommends that the definition be modified to reflect the workplace as being the major contributing factor to an injury before the employer becoming liable for workers compensation.*
6. *Hyne recommends that workers be required to notify employers of any incident leading to an injury claim on the day of the incident, or where an injury only becomes evident after the fact, as soon as practicable.*
7. *All claims should be subject to improved verification of injury causes, and non-medical information relevant to the claims should be given reasonable weighting in claims determination, and the decision to accept a claim not made solely on medical opinion.*
8. *Hyne recommends that workplace initiatives be recognised when establishing WorkCover premiums, and that claims costs in year one and two are more heavily weighted than years three through five. Further Hyne believe the current approach of including common law costs (year four and five) in premium calculation should be reviewed and an alternative method of using statutory costs and assigned damages costs, ie permanent impairment entitlement be utilised.*
9. *In the event that a whole person impairment threshold is not introduced, then Hyne recommends that a permanent impairment assessment automatically occur once the injury is assessed as stationary and stable, and associated damages paid automatically.*

Background

Hyne acknowledge that the stated purpose of the workers' compensation scheme is, *to provide injured workers (or their dependants) with fair and reasonable benefits at the lowest possible premium to employers, balanced in a way that maintains scheme viability.*

Finding the balance between support for injured workers, encouraging reasonable rehabilitation and return to work, and minimising the cost of any scheme to business and the community is always difficult. However Hyne believes that the current scheme fails to deliver on its objectives, and modification is required. In particular, the current arrangements do not adequately assess the validity of injury claims, and favour costly litigation.

In addition, efforts to reduce both injury frequency and cost of claims seem to have little or no bearing on premium cost imposed on business. Hyne believes it has been extremely proactive in both reducing injury rates and the cost of statutory claims, yet ever-increasing WorkCover premiums do not reflect these improvements.

Table 1 provides a summary of the changes to Hyne's injury frequency, claims costs, wages and premium costs between 2007/2008 and 2011/2012.

Table 1: Hyne's Workers Compensation Performance 2007-2012

Number of Statutory Claims	Cost of Statutory Claims	Wages	Premium
69% reduction	67% reduction	14% reduction	**72% increase**

Of primary concern to Hyne is how a company that has reduced both the number and cost of statutory claims by almost seventy percent over a five year period, with an overall reduction in wages during this time of fourteen percent, can be required to pay seventy-two percent higher premiums, if the scheme is balanced, with the aim of providing the "lowest possible premiums".

For the Scheme to be effective it must support injured employees, but also reward employers for improved management of occupational health and safety and related injury costs. The current calculation of premium does not make adequate allowance for improved workplace safety performance. With the ever-increasing cost of common law claims and the long-term impact these claims have on premium costs there is currently a poor correlation between improved workplace health and safety management and premium rates.

Queensland's workers' compensation arrangements

The Queensland's workers' compensation arrangements of a 'short tail' system appear to serve both Queensland workers and businesses well. The short tail statutory payments mean that workers receive certainty and due compensation within a reasonable timeframe, without overburdening the scheme with long tail payments. However the current utilization of common law costs in year four and five for premium calculation does not reward employers for improving health and safety management and should be reconsidered.

Hyne sees no need to align the Queensland scheme with other jurisdictions.

1. *Hyne supports the current workers' compensation arrangements regarding statutory claims compensation (short tail) and does not support any move to align these with other states or introduce long tail statutory compensation.*
2. *Hyne recommends review of the current method of utilising common law costs in year four and five of a claims history within the premium calculation. Claims history used in premium calculation should be limited to three years to reflect a business's short-term health and safety performance.*

Common Law Claims

Hyne has no issue with supporting due compensation for workplace injuries, and recognises that where there has been negligence by an employer, resulting in ongoing permanent impairment, an injured worker should have appropriate recourse to common law. However the current unlimited access to common law is at odds with the stated purpose of the scheme.

Hyne believe the current system unduly influences employees to take common law action against employers, promotes a litigious approach to injury management, and ultimately costs employees jobs, and increases WorkCover premiums, adding further expense to Queensland businesses.

Any common law claim lodged almost invariably leads to a payout to the claimant. WorkCover has shown a strong reluctance to take common law claims to court, almost universally offering a settlement, regardless of the scant evidence provided by the worker to support their position.

Hyne's involvement in compulsory conferences confirm that despite there being nil permanent impairment in many instances, settlements are always made in the favour of the worker.

Example

Worker claimed she injured her arm performing light manual tasks. Worker had a history of reporting various and varied minor injuries so she could be moved to 'alternative duties'. After multiple investigations over a period of 18 months of ongoing minor complaints of 'arm soreness', no actual injury cause could be found. It appeared that whenever the worker was given certain tasks she did not want to do, she would report a soft tissue strain or discomfort to her arm.

Finally the site raised these concerns with the worker. At this point the worker sourced another treating medical practitioner and was diagnosed with a tennis elbow injury. The site disputed this injury but WorkCover accepted the claim as it 'was possible' she injured herself at work as she performed light manual handling.

At no time during this period was impairment identified, and no injury other than minor discomfort was present, yet the claim progressed to a point where she was no longer employable.

A common law claim was instigated and settled at compulsory conference for $250,000, even though there was no permanent impairment assessed.

The stated aim of the scheme is "*to provide injured workers with fair and reasonable benefits".*

Hyne question how the current system is providing fair and reasonable benefit when a worker with an assessed impairment of zero percent can access common law and in all probability settle via compulsory conference for a six-figure amount as above.

The structural review of WorkCover, undertaken in 2010, has had little or no positive impact on common law claims. In fact the exact opposite has occurred.

- Hyne averaged two common law claims per year during 2007-2009.
- For the period 2010, we have eight common law claims confirmed.

Of the eight common law claims noted for 2010, four of these have zero impairment, but will invariably settle in coming months with substantial damages payments.

3. *Hyne believes that access to common law for lesser injuries is a major burden of the current worker's compensation scheme and recommends that a whole person impairment (WPI) threshold of 15% be introduced to common law claims.*

Involvement of plaintiff lawyers in injury management

Hyne have a number of examples where workers participating in workplace rehabilitation programs are showing ongoing recovery from injury and increasing their work participation, until involvement of plaintiff lawyers when all forward progress ceases, and the worker's capability for performing or attending work suddenly decreases. This is invariably followed by a common law claim. The worker's reduced participation in work is clearly at the instruction of lawyers, with a view to demonstrating incapacity and increasing the common law settlement amount. This is clearly not in the interests of business or the long-term recovery and employability of the worker.

This approach, which the current system encourages, runs counter to one of the aims of the Worker's Compensation and Rehabilitation Act, which is to support the return of the injured party to pre-injury duties.

4. *Involvement in a claim by plaintiff lawyers should be restricted until after the injury has been declared stationary and stable. Their involvement prior to this point in most instances seems to have a detrimental impact on a worker's recovery.*

The definition of an injury

Hyne believes that changes in 1999 to the definition of an injury from being "the significant contributing factor" to "a significant contributing factor" inappropriately expands the opportunity to attribute unrelated injuries to the workplace. There is no test in the Act to define what is deemed to be "significant", and Hyne believes that for an injury to be attributed to a workplace that it should be the major contributing factor.

Hyne have numerous examples of pre-existing injuries arising from outside of work, and degenerative injuries where the business becomes liable for compensation when no actual injury has occurred at work.

The current definition of an injury is significantly flawed and provides access to compensation for injuries that have very slight or distant causal relationships to work.

Examples

A worker badly injuries his shoulder playing sport, reports to work some months later, lifts a few pieces of product that weigh less than 2KG, and reports shoulder pain in a first aid report. No lost time. The worker subsequently has a significant car accident, which causes damage to the same shoulder. Somehow the specialist was able to identify the work (lifting a few light boards) some weeks prior to the car accident as "a contributing factor" and as such the injury was work related. This claim was accepted and went to common law.

A worker drives a well maintained forklift on level concrete with no pot holes or bumps. He complains of a sore back. He attends a doctor who diagnoses that he has two degenerative diseases in his spine which are the main reason for his pain and ongoing back issues. However as he sits at work and he felt some pain at work, than work is "a significant contributing factor" and as such it is work related. This employee will remain off work indefinitely as his back continues to deteriorate, unrelated to work, yet his absence from work and all associated medical costs are being funded under the workers compensation scheme for a medical condition that has no relationship to the work he does.

A worker takes time off (annual leave) to renovate his house (painting, building, etc). Within days of his return to work, he starts complaining of sore shoulders, alleging that working above head height (at work) is causing the pain. An investigation shows that the worker does not perform work above his head, but he is given alternative duties for a couple of weeks to assist with his recovery. He then reports he slipped at work (no witnesses) and landed on his hands which hurt his shoulders again. A week later he reports that while moving his trailer at home, he aggravated his sore shoulder and wants to see a doctor. A WorkCover claim is initiated, but rejected as the aggravation was social and the work injury minor. On his return to work (with a full clearance from his doctor), the worker claims he tripped at work, landing on his hands and injuring the same shoulder. Again no witnesses, but WorkCover accepts the claim as work could have been **A** contributing factor to the injury. Worker has a shoulder operation, spends months in rehabilitation, makes a full recovery and eventually leaves the site to go work in the mines –no common law claim as yet. Other workers informally report that the worker told them that he originally injured his shoulders lifting ceiling panels while renovating at home, but they refused to provide witness statements.

5. *Hyne believes that the definition of an injury is critical to the balanced function of the workers' compensation system, and recommends that the definition be modified to reflect the workplace as being the major contributing factor to an injury before the employer becoming liable for workers compensation.*

Reporting and proof of injuries

The WorkCover system at present has no statutory requirements for an employee to notify the employer about an alleged incident that led to a WorkCover claim. As a result, a worker can claim an injury without notifying an employer for many days or weeks after the alleged incident. There should be a statutory requirement for an employee to report the lodgement of a WorkCover claim to their employee and in doing so stipulate the nature and causation of injury. This allows timely investigation and any associated risks can be proactively managed to minimise the chance of the incident being repeated.

Early reporting of an incident not only ensures that the workplace can properly manage the injury and address any risks of the injury being repeated, it also allows for verification that the incident actually occurred, and that it occurred at work. It also promotes the earliest possible return through an appropriate managed workplace rehabilitation program.

There is similarly only limited scrutiny of injury claims. Even the most basic issues are frequently not verified, such as whether the worker was actually present at work on the day of the alleged incident, whether the injury could reasonably have occurred as described, or whether the injury is properly diagnosed in the first place.

In assessing a claims validity or if work is a significant contributing factor, it seems clear that there is far too much emphasis placed on a general medical practitioner's opinion about the causal factors of an injury – said practitioner having likely no knowledge of the workplace - as opposed to other information provided, for example by an employer. Often the only information a treating practitioner has is that provided by the employee, with no knowledge of the workplace, the type of work undertaken, performance history of the employee, other workplace issues, social issues etc. Little of this other non-medical information which is readily available to WorkCover if requested, seems to have any bearing on the claims determination process, and even when this evidence is provided by the employer to refute an employee's version of events it is seemingly discounted based on "medical opinion". Hyne believe there must be improved assessment of all relevant factors relating to an injury claim prior to determination, including more emphasis on workplace factors.

Reviewing some of the most basic elements of a claimed injury before the claim proceeds may currently be a requirement of the claims acceptance process, but in reality scrutiny prior to claims acceptance appears poor, and unevenly weighted to the employee's version of the event as described to the treating medical practitioner.

6. *Hyne recommends that workers be required to notify employers of any incident leading to an injury claim on the day of the incident, or where an injury only becomes evident after the fact, as soon as practicable.*

7. *All claims should be subject to improved verification of injury causes, and non-medical information relevant to the claim given reasonable weighting in claims determination, and the decision to accept a claim not made solely on medical opinion.*

Employer initiatives and WorkCover premiums

Industry regularly raises concerns that employer initiatives are not duly recognised by WorkCover in the premium calculation model. Despite investing considerably in improved workplace safety, businesses are tied to industry rates and a five year claims history. Improved recognition of individual business's WH&S initiatives is required when setting premiums, in particular a stronger weighting to recent history, for example year one and two of claims statutory history, would more accurately reflect WH&S performance. The data provided in Table 1, page 3 shows the significant work undertaken by Hyne to reduce both the number and cost of statutory claims, yet our premiums have increased significantly.

Hyne, as previously stated, does not support the inclusion of common law costs from years four and five when determining a business's premium. Workplaces are highly responsive to any incidents, generally introducing a range of measures to improve safety in the event of a workplace injury. These improvements generally lead to an immediate improvement in the health and safety outcomes for a business, and as such should be duly recognised in associated premiums.

8. *Hyne recommends that workplace initiatives be recognised when establishing WorkCover premiums, and that claims costs in year one and two are more heavily weighted than years three through five. Further Hyne believe the current approach of including common law costs (year four and five) in premium calculation should be reviewed and an alternative method of using statutory costs and assigned damages costs, ie permanent impairment entitlement be utilised.*

Notice of Permanent Impairment

The issuing of a permanent impairment notice frequently becomes a trigger point for common law proceedings. This is a result of the worker having to request an assessment, and then having to decide on accepting a statutory damages payout or taking a common law action. In many cases employees appear unaware of the need to request a permanent impairment certificate and do not take advantage of the benefit available.

In the event that a whole person impairment threshold is not introduced, then Hyne recommends that a permanent impairment assessment automatically occur once the injury is assessed as stationary and stable. Associated damages should be a standard part of the system. This would ensure that permanently impaired workers have access to appropriate payment, eliminates uncertainty about the entitlement to benefits and would reduce the propensity for common law action.

9. *In the event that a whole person impairment threshold is not introduced, then Hyne recommends that a permanent impairment assessment automatically occur once the injury is assessed as stationary and stable, and associated damages paid automatically.*