115

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The Research Director
Finance and Administration Committee
Parliament House
George Street
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Dear Research Director

Our Company submit this submission in relation to the Workers Compensation Scheme Review and would like to express the following opinions for the research director's consideration.

The Retail Industry (Independent Supermarkets) – constantly under threat from cheap imported product and from countries and companies that have no health and safety procedures let alone compensation for injuries.

Section 5(5) of the Act is particularly relevant to us ***"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"***

The Retail Industry (Independent Supermarkets) find the current system puts us in an anti-competitive position, our stores operate in regional areas where we have to compete directly with the Multi National Supermarkets (Coles, Woolworths) and the differences in the insurance systems is large as they have independent insurance as we are not of size so we fall into the current insurance system.

In the past, employers had access to workers' compensation claim histories and could make informed decisions about the level of risk involved in employing people. Now it is unlawful to make employment decisions based on a worker's claim history and employers in our industry are finding it increasingly difficult to employ seasonal workers while discharging their duty of care not to unreasonably expose workers to risk of injury or illness. Almost all employers will agree that you cannot rely on all workers to honestly declare that they may not be medically suited to the work on offer.

In our industry, retail work often involves heavy lifting and is physically challenging and workers will unwittingly expose themselves to risk of injury and employers to 'negligence'.

We recommend the adoption of the principle in Victoria that employers are not liable for certain injuries if workers fail to declare them when asked, ie; *If it is proved that before commencing employment an employer in writing requested that the worker disclose all pre-existing injuries and diseases, and the worker did not disclose the information, compensation is not payable for any recurrence, aggravation, acceleration, exacerbation or deterioration – s82(7).*

The current scheme leaves our Industry open to abuse by some individuals who, in association with aggressive plaintiff lawyers, sympathetic medical professionals and often conflicting medical opinions, are pursuing opportunistic claims for excessive payouts.

We are not opposed to workers receiving reasonable compensation for work related injuries however the recent proliferation of common law claims is not about reasonable compensation for work injuries, rather, it is about a windfall, something for nothing, and is making businesses in Queensland less competitive. At the end of the day, everyone pays for these claims.

The impact of this is that our members, and indeed many other employers around the State, are paying premiums well in excess what is reasonable. Our Company has experienced an increase in our Work

Cover premium rate in the year 2006/2007 of $76,112.00 to a premium rate of $283,951.55 in the year 2012/2013, this is entirely attributable to an increase in both statutory claims and common law claims in recent years. Both of the common law claims we have had in the past 5 years had under 5% impairment but received substantial payments under the current system, we as a company we have very limited input in the settlements at mediations for the claims.

We recommend that businesses who have good systems in place for Work Health and Safety and conduct both Induction and annual training to have a safe work environment for their employees should be looked at on a rating system by Work Health and Safety so a business who has everything in place for the a safe work environment for their employees have a low rating and businesses that are poor in their safety and training procedures receive a high rating and this then should be relevant as a weighting on the effect on their premiums the next year. The same as the principle for car insurance with the no claim bonus.

We recommend, like many of the employers and employer associations who have made submissions to this review, that there be a 15% threshold on the degree of impairment that a worker suffers before they can pursue a common law claim. We understand that the majority of common law claims, around two thirds, arise from statutory claims where the degree of permanent impairment is 10% or less. We have been informed of one statutory claim where the worker suffered 1% permanent impairment (minor foot injury) and his common law claim was settled in excess of $200K.

We do not accept the argument that thresholds will result in long tail claims as has been proposed by many of the lawyers responding to this review. On our reading of a comparison of schemes (and Victoria which seems most quoted), there seems little difference in the definition of injury or when the entitlement to compensation ends. Perhaps the short tail of claims in Queensland can be attributed to better claim management in this State.

There needs to be stronger checks and balances around settlement of common law matters. All too often we hear about very large settlements, typically to young workers with high 'future economic loss' who allege significant levels of incapacity for work and everyday living, then go on to resume heavy employment in occupations where they have sworn they could not work and been compensated accordingly.

Further to this, the onus on employers is unreasonably high while workers seem to have a disproportionately low level of responsibility for their actions. There needs to be a stronger and real application of the principles of contributory negligence.

Our Company agrees with key points raised in the National Retail Association Submission. These points are relevant to our industry.

Another issue that seems to have been largely overlooked by the respondents to this review is WorkCover Queensland's centralist approach to their business. It appears that WorkCover are intent in centralising all of their business around Brisbane meaning that any employer from Nambour north will soon have no local representation.

The centralist approach has led to the loss of scores of very experienced and committed claim and policy managers in regional areas and has been replaced by inexperienced and apparently overworked super-teams in Brisbane. Further to this, there seems to be little or no claim investigation, the concerns of employers about the veracity of claims are ignored and WorkCover is becoming more and more difficult to work with.

Their policy appears to be to make quick decisions and then assign the claims to case managers who manage the claim to finality as quickly as they reasonably can.

The difficulty with this practice is that WorkCover has no power to rescind claims and if the employer feels strongly enough about the decision, is forced to pursue Review and/or Appeal avenues.

Given a choice, many of our members and many other employers would insure elsewhere.

This brings us to the next area of concern – the Review and Appeal processes.

We understand from Q-COMP's website that Medical assessment tribunals are set up to provide independent, expert medical decisions about injury and impairment sustained by Queensland workers. Q-COMP goes on to state that a referral to the medical assessment tribunals may be required if there are conflicting medical opinions in relation to whether employment has been a significant contributing factor to the injury of whether there is an ongoing incapacity for work as a result of a work injury... and,.. Only an insurer can make a referral to a medical assessment tribunal.

This latter point seems ludicrous to us. If the Medical Assessment Tribunal was established to adjudicate on conflicting medical opinion and work relationship of an injury, the 'independent referee' should also be available to adjudicate on the same medical issues (conflict and work relationship) around Reviews and Appeals.

Plaintiff solicitors can arrange any number of expert opinions to support their client in a Review or Appeal situation but the employer's options are very much more constrained and are forced to further expense pursuing these matters.

Finally, on the methods used to calculate premium, it seems that employers can establish a premium rate equal to 15% of the Industry Rate if they have a sustained good claims record. We understand this takes years to achieve. On the other hand, one claim can result in employer's premium rate doubling in 1 or two years and increase further to 3 or 4 times the industry rate in the 5 year period following the injury

We trust that you will give due consideration to our submissions on behalf of our members and the employers of Queensland.

Please contact me on the number below if I can help you further.

Yours sincerely

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