SUBMISSION TO THE FINANCE AND ADMINISTRATION COMMITTEE INTO THE OPERATION OF QUEENSLAND'S WORKERS' COMPENSATION SCHEME

SUBMISSION BY: CARAVAN PARKS ASSOCIATION OF QUEENSLAND INC

"WITHOUT PREJUDICE"

INTRODUCTION

Section 5 of the Workers Compensation & Rehabilitation Act requires that the scheme "*it is intended that compulsory insurance against injury in employment should not impose too heavy a burden on employers and the community*". This is not what our industry is finding.

ISSUES

Overall, the issue is insurance premiums and the effect the cost of these premiums are having on small businesses around the State. When claims are made, premiums sky rocket and when operating a small business, it is not sustainable.

The duration and associated costs of a claim unfairly impacts on the employer's premiums when: -

- The employer's premiums are increased if claims are not effectively managed by Work Cover or the medical practitioner leading to lengthy and costly claims for simple ailments.
- The duration of the claims is increased by long waiting periods between specialists and other health providers;
- The duration of the claim is affected by the diagnostic ability of the medical practitioner; and
- Pre existing conditions are often not taken into account until the claim is well underway but the employer still bears the cost.

The doctor attending to the employee decides whether to submit a Work Cover claim based solely on what the employee tells them without consultation with the employer and without any insight into the specific work environment or procedures.

Small businesses that have a staff base of twenty (20) or less are disadvantaged. The businesses put in place policies, procedures, inductions and constant training however this has no impact in the way claims are dealt with nor does it affect premium costs.

EVIDENCE

The park we provide as an example on this occasion allocates every Wednesday to a half day of training within the park, engaged Workplace Health & Safety Officers to come into the park, create policies, procedures, evaluations etc, and this same park has had no claims with the exception of the following two (2) instances.

In one case, an employee with a pre-existing injury was employed without providing information that he suffered the commonly referred to, "tennis elbow". This employee was employed as a yardman and his position required mowing of lawns, trimming of trees, general maintenance etc. He claimed the work he was undertaking at the park had exasperated his injury and a Common Law case was lodged, resulting in a lump sum payment.

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As this pre-existing injury was not known to the employer, no preventative methods could have been undertaken to prevent any exasperation of the injury. It was later identified that the employee had made previous claims at previous workplaces for the same injury. This employee was identified subsequently as a serial claimer. Shortly after this claim was paid out, a second incident in the park occurred.

An employee in the park who previously had an operation on their back claimed to slip in a style of accommodation while refreshing linen supplies. The person claimed they slipped due to wet weather and water present on the floor from the previous occupants leaving tracks on the floor. The park operators had provided this employee with full training which covered situations such as wet weather. The training provided instructed that during wet weather, preventative measures should be used including, for instance, that towels must be laid on the floor to prevent the occurrence of slippages.

Even so, the employer was able to prove that the cabin had not been occupied in the period they were claiming and further was able to provide weather reports showing that it had not rained in the area. On both occasions their story changed to allow for the findings in the investigation. This claim has just closed after four (4) years of trauma to the employers and as a result of the lawyer's fees accumulated over the years, they received very little. Meanwhile in the four (4) years leading up to the trial, the employer found their premiums increased from $6,000 to $26,000.

In both cases, the employee had an existing injury and the employer had no knowledge of the existing injury until the claim was lodged.

At a different park, a male commenced employment as a public area cleaner. He was provided with full induction and training, by a senior employee and further provided with personal protective equipment. He was required to provide his own boots. After seven (7) weeks working at the park, he advised his skin was irritated and subsequently was instructed to go to the doctor by the employer, and a Work Cover claim was initiated. It was identified that this male suffered from psoriasis and the boots he was wearing had holes in the soles. Subsequently the chemicals irritated his skin causing the skin condition to become aggravated. It was later identified this male was previously employed at a supermarket and had to cease employment at this business due to the chemicals aggravating his skin condition. Through negotiations, the employer managed to bring the claim down to $100,000. Subsequently, the premiums on their insurance immediately jumped an extra $18,000 for the next year and $15,000 since that year. Although the employer provided adequate training and provided the PPE, seven (7) weeks after this employee commenced work, due to a pre existing condition and his negligence in not wearing sealed boots, he was awarded $100,000.

RECOMMENDATIONS

The 0% rate for impairment ensures that any person can make a common law claim and receive compensation when they have nil impairment. It is recommended that a percent be incorporated, in line with other states of 10-15%.

A guideline/template should be created by use of a working group that business can follow to assist in the prevention of workplace incidents as small businesses are not required nor can they afford the employment of a Workplace Health & Safety Officer. To have an external body come in to create the policies etc, is a costly endeavour and as it stands serves to often do little in respect of reducing premiums or reducing risk of liability. At present, there are no Government initiatives or funding for small business to be able to access industry specific templates/guidelines. This is vital and currently lacking. Small businesses do not have the resources, funds available or time to invest in creating their own adequate guidelines/templates.

Workplace training and initiatives etc should be acknowledged and considered when deciding premiums. There should be an expiry date on past claims to reduce premiums. Businesses with strong policies and initiatives should be identified and their hard work recognised. Businesses that have shown enterprise by taking steps to protect their employees through induction, extensive training and implementation of policies for example should be provided with acknowledgement of this by Work Cover, perhaps in the form of a

certificate which they can display at their business premises. Other businesses could then identify these successful businesses and turn to them for advice/information etc.

Law firms spend large sums of money advertising, "No Win, No Pay" and abuse the system that is in place for protection of not only the employee, but the employer. Lawyers should be restricted and not be able to lodge claims without first gathering evidence to support and identify legitimate claims. As it stands, lawyers will lodge a claim, and then commence collecting evidence, if any, while in the meantime, businesses are left to deal with the stress of these claims being lodged as well as the cost associated with fighting the claims. In some cases, the lawyers do this without even the employee's knowledge just to ensure that if there is an opportunity for compensation, the paperwork is in place. The lawyers have nothing to lose, only the employers.

A recommendation would be that a screening process be created that would allow for employers to check for serial claimers through an application to a government agency (access to Work Cover work claims history).

A disclosure statement should be completed by the employee at the time of employment identifying any existing injury to prevent the employee entering into a position that might jeopardise the safety and wellbeing of the employee as well as protecting the employer from liability. Any concern regarding discrimination would be settled as the employee should not be applying for a position that they cannot physically undertake. This method would ensure that the employer did not unknowingly hire a person and place them in a job role whereby their safety could be jeopardised.

Throughout the claims process, the employee should not be able to change their statement if it is disproved.

If adequate training etc has been provided, a fault % should be decided in respect of compensation payments. Eg. Thorough training etc provided, employee fault percentage = 70%. Employer fault percentage = 30% and payments made according to percentage fault level.

Doctor should not hand out Work Cover certificate unless the employee supplies a copy of the incident report supplied by the employer and doctors and other specialists should be required to consult with a business when considering/developing a return to work strategy.

Before a claimant can proceed Common Law, a tribunal of doctors should be consulted to provide an assessment before the costs of a trial commences.

If a case is being investigated by QComp, any payments or treatments should be suspended immediately. Where a case is dismissed following the investigation, the claimant must pay back any expenses already paid to them.

OTHER MATTERS

On a separate occasion, Work Cover encouraged the employer to go the District Court concerning a claim made against them as the prospects were good. Due to the commercial risk to the operation and the reputation, the employers withdrew. At the time, an accommodation agreement with a major company was in place in the park and the attention from the matter had a serious risk of putting the agreement in jeopardy.

It is our experience that many small businesses in our industry are encouraged by Work Cover to fight the claims however in a large majority of the cases, the employer backs down due to the media attention and the subsequent impact on their business.

It is worth noting that all reports we have received from operators in our industry advice that the staff at Work Cover at all times are helpful, courteous and obliging, working towards the best solution to their client.

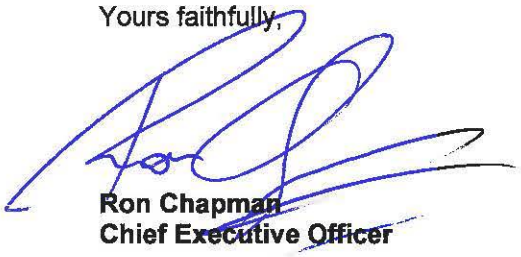
CONCLUSION

The current scheme is not sustainable to small business. The revamp of this scheme is well overdue. The stress left on the employer is enormous, left to feel as though they could have done more and left to feel negligent while in the meantime, their business and reputation is left on the line.

We support the review of the scheme and believe compensation should be paid in genuine claim circumstances. The misuse of the system however is having major impact on businesses that cannot afford to meet the constant increase in the premiums.

If you require further information or wish to discuss the contents of this submission, please contact Kristy Ponting on (07) 3862 1833.

Yours faithfully,



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