



INDEPENDENT EDUCATION UNION OF AUSTRALIA
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31 August 2012

The Research Director
Finance and Administration Committee
Legislative Assembly of Queensland
Parliament House
George Street
Brisbane Qld 4000



By email: fac@parliament.qld.edu.au

Dear Sir/Madam

RE: Review into the Operation of Queensland's Workers' Compensation Scheme

Please find **attached** our submission to the abovementioned Review.

Should you require further information, please direct all queries to our Industrial Officer, Danielle Wilson.

Yours faithfully

TERRY BURKE
BRANCH SECRETARY



**Submission to the
Finance and Administration Committee
Legislative Assembly of Queensland**

**Operation of Queensland's
Workers' Compensation Scheme
2012**

**INDEPENDENT EDUCATION UNION OF AUSTRALIA
QUEENSLAND AND NORTHERN TERRITORY BRANCH**

INTRODUCTION

We would like to thank the Committee for this opportunity to provide our submission into the review of what is an essential and largely effective scheme to compensate Queensland workers who are injured at work.

About Us

The Independent Education Union of Australia. Queensland and Northern Territory Branch has over 16400 members working in Queensland. Our members work in non-government schools, early childhood centres, English language and business colleges and other post secondary non-government educational institutions. Our members are administrators, educators, school support officers, services staff, professional officers, cleaning staff, teacher aides and assistants. Many of our members work in regional and remote areas, including indigenous communities throughout Queensland. As well as the delivery of educational services, our members regularly undertake excursions, co-curricular and extra-curricular activities requiring them to carry out duties and travel outside of their normal working hours. This includes school camps and trips which may require staff to be on duty around the clock, during holidays and on weekends. Many of our members also work in boarding schools and are subject to shift work.

What We Do

In addition to general industrial and professional matters, our Industrial Services Team assists and represents members suffering from work-related injuries. None of our employers are self-insured. We provide non-adversarial assistance for members in lodging claims with WorkCover Queensland, guide members through the return to work and rehabilitation process in conjunction with WorkCover Queensland case managers, prepare Applications for Review to QComp for rejected claims and provide support for members attending the Medical Assessment Tribunal. We also provide direct representation and legal liaison for members at Appeal.

All the submissions to this Review are written from a particular viewpoint, most notably, whatever particular viewpoint they hold in their role as stakeholders within the workers compensation scheme. We are no different, but we have aimed to ensure that our submission is based on the genuine and honest experience of ourselves and our members in working within the scheme.

Injuries in Our Sector

Injuries most common to our members are slips, trips and falls, vocal injuries, post traumatic stress disorders, infectious diseases, injuries associated with lifting heavy weights, repetitive strain injuries, traffic incidents associated with fatigue, and work-related stress.

Claims Lodgement and Dispute

The level of claims disputation among our members has reduced over the last two years. In the 2009/2010 financial year, we directly assisted 142 members with their WorkCover claims/QComp Reviews and assisted 81 members returning to work after a work-related injury. During this period, on average, we took 15 calls per week to

our general enquiries line from members seeking general advice on various aspects of the WorkCover claim process.

In the 2011/2012 financial year, we directly assisted 114 members with their WorkCover claims/QComp Reviews and assisted 63 members returning to work after a work-related injury. During this period, on average, we took 11 calls per week to our general enquiries line from members seeking general advice on various aspects of the WorkCover claim process.

Lodging a claim for Workers Compensation is generally a straightforward process, and we believe improvements in administrative processes, return to work/rehabilitation and compliance over the last two years account for the reduction in enquiries to our office for assistance. Our office statistics coincide with the statistics released by WorkCover Queensland and QComp regarding the improved performance and operation of the scheme, particularly the claims management process.

The Position of our Affiliates

We note that the Queensland Council of Unions has also made a submission to this Review. As an affiliate of the Queensland Council of Unions (QCU), we endorse their submission and ask that our comments be read in conjunction with their submission.

We recognise that our experience will be vastly different to those affiliates who operate in industries other than the education industry. Without diminishing the significant impact of workplace injury on our members, compared to other industries the education industry is largely "self-regulatory" in terms of workplace health and safety risk. This is due to the significant duty of care educational institutions hold to their own communities and to regulation around child protection that must be managed. We acknowledge the very different injuries and experiences of our fellow affiliates, particularly those in the manufacturing and construction industries where the most significant number of serious workplace injuries occur. We ask that our submissions only be considered in the context of our experience within the education industry. Much like the various workers compensation schemes across our nation, it is very difficult to compare our industries when the risks and environments are so very different.

LEGEND

"IEUA-QNT" The Independent Education Union of Australia, Queensland and Northern Territory Branch

"the Act" *Workers Compensation and Rehabilitation Act 2003*

"QCU" Queensland Council of Unions

"WHSQ" Workplace Health and Safety Queensland

ADCQ Anti-Discrimination Commission of Queensland

QIRC Queensland Industrial Relations Commission

IEUA-QNT COMMENTARY ON THE POINTS THE FINANCE AND ADMINISTRATION COMMITTEE IS REQUIRED TO CONSIDER IN THIS REVIEW

1. The performance of the scheme in meeting its objectives under section 5 of the Act

The Objects of the Act provide the foundation upon which the Workers Compensation Scheme runs and it is important that these objects are included in this review. We provide comment based on our experience as follows:

(1) This Act establishes a workers' compensation scheme for Queensland—

(a) providing benefits for workers who sustain injury in their employment, for dependants if a worker's injury results in the worker's death, for persons other than workers, and for other benefits

While the IEUA-QNT would prefer to see enhancements in these benefits to ensure workers are not out of pocket at all as a result of being injured at work, we accept that the current benefit arrangements act as a minimum standard and would be deemed as meeting this objective.

Any diminution in these benefits would cause significant hardship for members suffering from work-related injuries. Not all expenses associated with workplace injury are covered by workers compensation and workers certainly are not compensated to the full extent of the injury. Further to this, some injured workers never regain their prior financial position as they are often unable to resume their primary occupation. The most common complaint we have from members is that while they may receive weekly compensation and have general medical expenses covered, there are other expenses, both direct and indirect which are not covered. Research into motive shows that this, coupled with employer's reluctance to engage in a return to work program are also the main drivers of common law damages claims.¹ Our members have described feeling that they have had to compromise their own, and often their family's, financial interests after suffering an injury, through no fault of their own, during the course of their work.

An example of this is our member who had taken a period of paid parental leave to have a baby:

Upon returning to work after her paid parental leave, our member had a very serious fall in her workplace and suffered a significant concussion. This event has left her with an acquired brain injury for which she is still receiving regular speech therapy, physiotherapy and adjustment to injury counselling. Our member was off work for eight months and, due to the nature of her injury, has only recently been able to commence a graduated return to work with her employer.

¹ Aurbach, Robert (2011), "Claims Administration and Dispute Resolution", *Deakin University Industry Engagement - Centre for Personal Injury*, Queensland Summit Conference Report, pp19-23.

This situation affected her family significantly. Due to her injury she could not be the primary care giver of her baby and so her partner had to access extended unpaid parental leave to become the primary care giver of their child. There was no paid leave available to her partner for this, so the household income was reduced to more than half what it usually was. At the twenty-six week mark, our member's compensation payment was reduced to 75% of her wage and so the household income was further reduced. This made it extremely difficult for this family to manage its household expenses and other financial responsibilities. Prior to our member commencing her return to work, this family was at the point where they were considering relocating to our member's mother's home, just so that they could manage financially. The financial pressure for our member to resume duty was extreme and there is still concern that this could be at the expense of her health. The personal stress our member and her family suffered was immense, given she was also juggling time for treatment to assist in enabling a full return to work and her very new family responsibilities.

Every case is different and we understand that benefits to injured workers must be equitable. Without WorkCover, our member and her family would have been in a significantly worse position. We offer this case to illustrate that the provision of benefits may sound fair and reasonable on paper, but it is not until they are applied in practice that a measure can be made as to exactly how effective they are and whether or not an injured worker is really adequately compensated for the event.

The IEUA-QNT supports the maintenance of current injured worker benefits, with a preference that these be enhanced to ensure workers are compensated to a reasonable standard under the Act and to reduce the likelihood of needing to access common law damages.

(b) encouraging improved health and safety performance by employers.

The IEUA-QNT commends the recent initiatives of WorkCover Queensland, QComp and Workplace Health and Safety Queensland in building relationships with employers and working with employers to improve health and safety standards in Queensland workplaces. This has seen a demonstrable and continuous improvement in health and safety performance. As a result of the collaborative work done in the last two years by these agencies, the IEUA-QNT is satisfied that this object is met. The IEUA-QNT would like to see the continuation of Government investment in all current Workplace Health and Safety Programs so that we will continue to see improvement in standards and the decline in the number of claims lodged, the severity of injury, the length of workers' compensation claims and the number of common law damages applications.

The IEUA-QNT believes that if the Government wishes to see continuing improvement in health and safety and continuing decline in the number of claims lodged, particularly serious injury claims, the investment in collaborative, preventative and educational measures to minimise risk to health and safety must continue.

(2) The main provisions of the scheme provide the following for injuries sustained by workers in their employment—

- (a) compensation;*
- (b) regulation of access to damages;*
- (c) employers' liability for compensation;*
- (d) employers' obligation to be covered against liability for compensation and damages either under a WorkCover insurance policy or under a licence as a self-insurer;*
- (e) management of compensation claims by insurers;*
- (f) injury management, emphasising rehabilitation of workers particularly for return to work;*
- (g) procedures for assessment of injuries by appropriately qualified persons or by independent medical assessment tribunals;*
- (h) rights of review of, and appeal against, decisions made under this Act.*

We believe that all of these objectives are being met under the current legislative arrangements. The IEUA-QNT view on these matters is that each element is being met to its minimum standard.

The IEUA-QNT does not wish to see any reduction in the main provisions within the scheme.

(3) There is some scope for the application of this Act to injuries sustained by persons other than workers, for example—

- (a) under arrangements for specified benefits for specified persons or treatment of specified persons in some respects as workers; and*
- (b) under procedures for assessment of injuries under other Acts by medical assessment tribunals established under this Act.*

The IEUA-QNT believes that all workers within the State of Queensland must be protected from loss resulting from injuries that occur at work. The definition of "worker" within Division 2 of the Act covers all workers in our sector. We do have some employers in our sector who engage in the practice of sham contracting to negate their workers compensation, payroll tax and superannuation obligations. We raise these matters with the appropriate authorities to ensure these practices are investigated and so that they cannot renege on their obligations. Aside from this circumstance, the current definition of worker is broad enough to cover all workers and volunteers in our sector.

The IEUA-QNT membership is not directly affected by these provisions but supports the current definition of "worker".

- (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
 - (da) 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
 - (e) provide for flexible insurance arrangements suited to the particular needs of industry.

In relation to (4)(a) and (b), the IEUA-QNT believes the current scheme demonstrates balance between the benefits provided to employees who suffer from work-related injury and the premium and obligations required of employers.

While we hold an inherent bias in the interest of our members, and would prefer that our members were not out of pocket at all, we are satisfied that the current economic arrangements meet these objectives under the Act.

In terms of (c), we refer to our comments made later in this submission, but it suffices to say that we believe employers' interests are well protected by the current provisions. A common law damages claim will not be successful **unless there is proof of negligence** on behalf of the employer. To restrict or remove access to common law damages will mean that workers will have less protection than any other person in terms of compensation for personal injury just because it happens in what is technically their workplace. Access to damages is necessary for a short tail scheme to work successfully.

It is worth noting that as part of the recent reforms, Queensland excludes damages for gratuitous services and has the tightest damages cap in the country.²

The IEUA-QNT does not wish to see any change to the provisions around access to damages for workers.

In terms of (d), we have very strong views about ensuring capacity for both employers and injured workers to participate in effective return to work programs. Our members injured at work only want one thing - to be back at work, doing what they do and living their life as normal. In any system there will be a very small percentage of policy holders and claimants who practice non-compliance. For our members this would be extremely uncharacteristic. Our member's work is their

² Purse, Kevin (2011) *Provisions of Fair and Competitive Workers' Compensation Legislation*, University of South Australia, p113

identity and once this is disrupted, they do not feel the same until they are back in the workplace.

Educational institutions are usually quite stable, reliable and disciplined environments and, in line with the nature of the work that is delivered, often find it difficult to accept, adopt and manage return to work programs. It does mean a disruption and an adjustment to what is a usually stable environment. However, with the increased encouragement from WorkCover Queensland and the enhanced compliance provisions resulting from the Robin Stewart Compton Review, this attitude is slowly being overcome.

The latest WorkCover Queensland statistics showing a continuing improvement in return to work from 95.3% of claimants in 2010/2011 compared with 98.5% of claimants in 2011/2012³. This is significant, given the return to work rate in 2006/2007 was 87.7% of claimants⁴.

The IEUA-QNT recommends the continuation of the successful tripartite approach to return to work between WHSQ, WorkCover Queensland and QComp.

In terms of (4) (da), we are aware of comment from employers that believe they have the right to know the workers compensation history of a prospective employee.

For an employer to openly admit that they want this information is extremely concerning to the IEUA-QNT. This demonstrates their clear intent to be prejudicial against workers who may have an injury and shows their willingness to discriminate on this basis.

This is unlawful at both a State and Federal level and the IEUA-QNT is strongly opposed to any change to the protections provided to stop employers prejudicing workers and prospective workers because of their work-related injury history.

In relation to (4)(e), the current system of self-insurance provides flexibility for those employers who have the genuine capacity to guarantee their policy in a way that will not put the rest of the scheme at risk. All employers who come under the coverage of the IEUA-QNT rely on WorkCover Queensland for their policy. It concerns us that there is thought to extending self-insurance to smaller, less financial employers, particularly given our experience with a number of smaller employers that we deal with who are currently non-compliant with the Act despite WorkCover Queensland premium price being one of the most competitive in the industry.

It is the view of the IEUA-QNT that no extension be offered in terms of the current self-insurance provisions in the Act.

³ DJAG, QComp, WorkCover Queensland (2012) "Information Paper", *Finance and Administration Committee Inquiry into the operation of Queensland's Workers' Compensation Scheme*, p31

⁴ QComp (2007) *Statistics Report Queensland Workers Compensation Scheme*, p35

(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.

The IEUA-QNT believes this is the most significant object of all. Since 1997, the State Government has worked extremely hard to turn a scheme that was in significant trouble into a scheme that was effective and sustainable in the long term. This meant ensuring injured workers received the assistance and compensation they needed, ensuring that employers complied with their obligations in terms of premiums, managing injured workers and their return to work and ensuring that these objects did not impact detrimentally on the community.

The scheme today is self-funded and fully sustainable. This occurred through much reform and through the making of timely decisions by the relevant Government agencies. This reform was based on need, not ideology and on how best to protect injured workers while minimising any burden on the community.

Employers are required by law to take responsibility for their workplaces and ensure they are free from undue risk to health and safety. From a legislative point of view, this means ensuring there are no physical or psychosocial hazards that could put employees at risk and making sure there are adequate deterrents in place to fulfil these responsibilities. In terms of managing risk, the current workplace health and safety legislation also imposes responsibilities on employees to ensure their own health and safety and that of others around them.

The statistics show a direct correlation between an increase in proactive measures and a decrease in reactive measures⁵ and the reduction of serious injury claims and the duration of claims in Queensland between 2005/2006 and 2009/2010⁶. In the last two years it is clear that significant effort has gone into building the relationship between WHSQ as the workplace health and safety regulator, QComp as the regulator of workers compensation insurer activity, and WorkCover Queensland as the primary, best practice insurer in the scheme. This has seen further considerable inroads into reducing claims, increasing the return to work rate and reducing common law claims. These three organisations must continue to work effectively together if we are to see workplace injury and its associated claims continue to reduce.

It is the view of the IEUA-QNT that to maintain a low premium and ensure that employers and the community are not overly burdened with the result of work-related injury, the work done to prevent injury happening in the first place must continue. Further, due to the scheme being in such a good position nationally, and the likelihood that any changes will only impose a heavier burden on employers and the community, as well as workers, the IEUA-QNT is strongly opposed to any changes to the current benefits and provisions.

⁵ Safework Australia (2011) *Comparative Performance Monitoring Report*, p 20

⁶ Safework Australia (2011) *Comparative Performance Monitoring Report*, pp 8-9

2. How the Queensland workers' compensation scheme compares to the scheme arrangements in other Australian jurisdictions

There is no doubt that the Queensland Workers Compensation Scheme is considered nationally the best practice example. Premiums are kept competitively low, benefits offer at least a minimum standard for workers and, being a short-tailed scheme, the emphasis is on resolving the claim quickly and getting the injured workers back to work as soon as possible. The Queensland scheme also offers access to Common Law for those injured workers who have a legitimate case to pursue.

The Queensland scheme does all this with one of the lowest cost structures. In 2009/2010, Queensland recorded the lowest claimant services cost, dispute resolution cost and regulation cost of all the Australian centralised and hybrid schemes⁷. Further to this, benefits provided direct to claimants were significantly enhanced. It is these factors that keeps the level of common law damages claims low and allows almost all workers to rehabilitate and return to work without being a burden on our community.

We have heard a lot about the uniqueness of the short-tailed scheme in Queensland. Most schemes across Australia are long-tail schemes which have failed to produce any of the results that the Queensland scheme has shown over the last ten years in reducing timeframes for claims, reducing costs of claims and increasing return to work outcomes. Long-tail schemes carry long term, significant liabilities and administrative costs, whereas the short-tail scheme in Queensland is a more effective means of ensuring that time and money is not wasted on claims for either employers or their workers. It offers injured workers options and where the claims have not been resolved to either parties satisfaction, it offers avenues of redress.

When compared to other schemes across Australia, the rate of disputation in the Queensland scheme is one of the lowest at 3% in the 2009/2010 year, second only to Western Australia⁸.

As is the general consensus among employers, employees who have multi-state claims experience, lawyers, health professionals and our affiliates, the IEUA-QNT believe that the Queensland scheme is the most effective of all schemes, when compared to the schemes here in Australia and also in New Zealand.

⁷ DJAG, QComp, WorkCover Queensland (2012) "Information Paper", *Finance and Administration Committee Inquiry into the operation of Queensland's Workers' Compensation Scheme*, p9

⁸ Safework Australia (2011) *Comparative Performance Monitoring Report*, p 38

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

WorkCover Queensland was established in 1997 under a full funding model. The first ten years of WorkCover Queensland proved challenging in managing claims and establishing self-insurance while sustaining the scheme. However, recent statistics indicate that the current scheme is well-managed and fully funded⁹. If the current trends continue in terms of improved health and safety standards in workplaces, reduced statutory and common law claims, better access to rehabilitation services and increased return to work opportunities, there is confidence that the scheme will remain an asset to the Queensland economy.

Even during the height of the global financial crisis, and the more recent natural disasters that have had a devastating effect for Queenslanders personally and across industries, the Queensland economy remained competitive and strong with growth in employment and investment¹⁰. The operation of WorkCover Queensland has not hindered this growth. In fact, given its prime position as the best-practice insurer in what is considered the healthiest scheme in the nation with relatively lower cost premiums and effectiveness as a short tail scheme, it could be argued its existence is attracting this growth.

The IEUA-QNT believes that WorkCover's current and foreseeable future position is sound and, if left unchanged, can only enhance the Queensland economy, competitiveness and employment growth.

⁹ WorkCover Queensland (2011) *A Status Review 1997 to 2011*, p11

¹⁰ Office of Economic and Statistical Research (2011) *Annual Economic Report on the Queensland economy year ended 30 June 2011 2010/2011*, pp3-4, 8-10, 15-17

4. Whether the reforms implemented in 2010 have addressed the growth in common law claims and claims cost that was evidenced in the scheme from 2007-08

Certainly there has been a drop in the number of common law claims since 2010, with there being 4991 in 09/10, compared to the projected claims of 4,400 in 11/12¹¹

Common Law access attracts a number of alternate views, with some of these quite distorted, albeit based most likely on a single experience. Despite some unsubstantiated opinion, common law claims are not "out of control" in Queensland. There is criticism that there is too great a burden on employers in regard to claims, particularly common law claims, but this is clearly not the case when the burden of proof under the Act remains with the worker.¹² Further, the common law process instituted successfully removes claims with no merit.

It is important that our scheme remain equitable and it is very important that workers who suffer injuries as a result of negligence be adequately compensated for their loss.

Section 5 of the *Civil Liability Act 2003* generally excludes access to common law claims to people who are eligible to make a claim for workers' compensation. This is regardless of whether a claim is made or not¹³. This means that if Common Law access under the Act is restricted in any way, it would produce the inequitable situation where someone who is a customer in a shop and suffers an injury in the shop as a result of negligence, can pursue a common law damages claim as a personal injury, but a worker in this same situation would not have the same rights, despite the fact that negligence exists, because it is work-related.

Further, to restrict access to Common Law based on the level of permanent impairment rather than any measure of disability means that it would be assumed that a given level of injury affected every claimant in the same way. This is clearly not true and would unfairly fail to take into consideration the individual affects of an injury on the individual worker.

For example, a person working as a groundsperson who has a back injury that is deemed resolved but continues to suffer pain may not register as having any level of permanent impairment but may be unable to continue working as a groundsperson. This worker may even suffer limited capacity to gain suitable employment or retraining, leading to significant future economic loss.

Along similar lines, a registrations officer (data entry) could suffer a repetitive strain wrist injury that is deemed resolved, but also continues with pain. This person also may not have an injury that is assessed as having any level of permanent impairment but their capacity to continue in their role would be significantly impacted, as would their capacity to undertake any similar administrative work.

¹¹ DJAG, QComp, WorkCover Queensland (2012) "Information Paper", *Finance and Administration Committee Inquiry into the operation of Queensland's Workers' Compensation Scheme*, p26

¹² *Workers Compensation and Rehabilitation Act 2003* Chapter 5 Part 8 Section 305E

¹³ *Civil Liability Act 2003* Chapter 1 Part 2 Section 5

It is important to note that common law claims are not rewards for injured workers. Entitlement exists only where negligence is identified and the aim of damages awarded is to try and restore the worker financially to their pre-injury circumstances.

Much also depends on the willingness of employers in making adjustments to duties so that people can return to work. If people cannot find an income stream after being injured at work, there is no alternative but to explore common law options. The emphasis on early resolution of claims and return to work in the Queensland scheme has led to significant cost savings from a claims cost perspective and in legal costs associated with the pursuit of claims. Equally, where claims proceed, concessions of negligence and early settlement significantly reduces costs to all parties.

Workers assessed at 0% permanent impairment who cannot return to their usual duties can suffer significant losses and each case must be assessed on its merits.

Because the measures introduced in 2010 have shown a significant drop in the number of common law claims made, the IEUA-QNT recommends the continuation of these measures to encourage further reductions in claims and claims costs. The IEUA-QNT strongly opposes any moves to introduce a threshold or restriction on access to common law damages for work-related injuries on the basis that this would prove inequitable within the community and it does not allow each claim to be judged on its merits.

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

As mentioned earlier, the employers that come under our area of coverage all rely on WorkCover Queensland for the workers compensation policy. However, it must be noted that self-Insurers have an obvious self interest, and by their nature are driven by profit, rather than injury management and sustainability.

We are particularly concerned about employers who carry out their own insurance administration or engage the same service provider to carry out their insurance and employment advice functions. There are significant conflicts of interest at play between employee management functions and insurance functions. Any interaction between the two needs to be monitored to ensure employees do not suffer prejudice as a result.

Any extension to the provisions around self-insurance under the Act will have implications for the viability of the scheme. Before any changes are considered, there needs to be credible evidence to show that relaxing these provisions will not affect the position of workers accessing the scheme and will not have a negative impact on the financial soundness of the scheme.

It remains our view that no extension be offered in terms of the current self-insurance provisions in the Act as it has not been demonstrated that this could be in any way beneficial for the scheme.

6. In conducting the inquiry, the committee should also consider and report on implementation of the recommendations of the Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme

The Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme outlined 51 recommendations. Of these, most have been completed, with the exception of:

- Finalising the endorsement of the tripartite agency strategy and seeking involvement from other agencies with WHS regulatory responsibilities and obligations;
- The development of advisory standards in relation to workers compensation operation and self-insurance and associated legislative amendments to the workers' compensation regulatory authority functions (considerations have been drafted);
- Amending decision provisions in the Act to permit WorkCover Queensland to rescind decisions where it is clear relevant information has not been taken into consideration or where obvious mistake exists;
- Implementing administrative measures designed to assist in understanding motive for common law claim initiation and distribution of costs;
- Amending return to work provisions in the Act to ensure it is a primary object, including provisions to enforce compliance with return to work and rehabilitation obligations;
- Reviewing and enhancing the role of rehabilitation coordinators; and
- Strengthening provisions around the reinstatement of employment after injury and adjustment obligations.

All of these matters support the continuation and enhancement of the tripartite agency strategy and keeping return to work as the focus by all stakeholders for reducing injuries, claims and claim costs and are significant in ensuring these goals are met.

This Review was extremely far reaching and looked into the intricacies of the operation of the Queensland scheme. The recommendations did not involve changes to the financial functions of the scheme, instead focussing on the operational deficiencies and ways to enhance the objects the scheme sets out to observe.

The IEUA-QNT is strongly supportive of all measures recommended by the Structural Review that enhance the prevention of injuries and improve the return to work and rehabilitation outcomes for injured workers.

Additional Commentary

There are a number of issues that have been raised in other submissions that we would like to make comment on as it affects our members.

In terms of journey claims, the IEUA-QNT is opposed to any reduction in access to journey claims. Many of our members have joint appointments working regularly in alternate schools as part of their full time equivalent position. Many of our members work evening and night shifts as part of their boarding house duties. Our members are also required to participate in extra-curricular activities after school hours and on weekends, exposing them to risks associated with fatigue. Any reduction in the current access to journey claims will prejudice the work that these members do. Despite comments to the contrary, the costs of journey claims are not significant and do not impact on employer premiums¹⁴. QComp report around 40% of journey claim outlays are refunded through third party recoveries¹⁵.

In terms of psychological claims, as mentioned earlier, with a largely "white collar" membership, the claims our members lodge are often psychological or psychiatric claims. Many of these involve post traumatic disorders resulting from traumatic incidents, but a significant number involve workplace harassment. The IEUA-QNT would welcome any initiative that would provide an avenue of investigation and redress for substantiated claims of workplace harassment.

Workplace harassment is a significant factor in stress-related claims across our sector. With no course of external redress, this is likely to get worse as the workplace and workload pressures on our members intensify. This is an area we foresee as needing significant work. WHSQ are unable to maintain demand for inspections around the risks associated with unaddressed workplace harassment issues. Ideally, we would like to see the establishment of an external jurisdiction, specifically to deal with these matters. The ADCQ or the QIRC could be empowered to look at these issues, or the WHSQ as the regulatory authority could be more adequately resourced and empowered under legislation to undertake this function.

Psychological injuries are second only to asbestos related claims in terms of expense, and assisting in preventing this from happening in the first place would significantly reduce the claims costs on the scheme. The WorkCover Queensland statistics indicate that psychological claims are twice as prevalent in the private sector as in the public¹⁶. The public sector has many best-practice initiatives to encourage positive psychological health at work and cultural sustainability. These preventative measures initiated by WHSQ and employed within departments and agencies have shown demonstrable improvement.¹⁷ Ideally, we would like to see an external specialised jurisdiction to deal with matters of workplace harassment.

¹⁴ WorkCover Queensland (2012) *How Do Claims Influence My Premium?*

<http://www.workcoverqld.com.au/insurance/calculating/how-do-claims-influence-my-premium>

¹⁵ QComp Submission 093 to this Review

¹⁶ Cazier, Laurent (2012) *WorkCover Claim Psychological Injury*, Presentation to QCU Workers Compensation Committee 27 July 2012.

¹⁷ Campbell, Steven and Schultz, Diane (2010) "Resolve at Work" An early intervention model in the Qld Public Sector, Workplace Health and Safety Queensland <http://www.psc.qld.gov.au/library/document/catalogue/appeals/djag-presentation-resolve-at-work.pdf>

In terms of the encouragement of early intervention and injury prevention, the IEUA-QNT is absolutely committed to preventing injury and in getting members back to work as soon as it is practicably possible. The IEUA-QNT encourages any measures to assist in these endeavours.

SUMMARY

While the IEUA-QNT position is that our members should have access to full benefits from the workers compensation scheme, the strength and success of the short tail scheme as run in Queensland is that it is firm but fair, and it at least offers direction and choice for workers who are injured at work. As is, it is sustainable and provides a reasonable balance of benefits to workers, keeps premiums for employers very competitive and minimises any cost impact on the community.

The current scheme is operating from a very financially sound base and is considered by all stakeholders as the best-practice example for the nation. The objects of the Act are being met. Common law claims are reducing and the current self-insurance arrangements are not affecting the viability of the scheme.

In his presentation to the Finance and Administration Committee on 11 July 2012, Tony Hawkins, CEO of WorkCover Queensland, made the following statement in response to how the workers' compensation industry could be improved:

"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. To me, whilst we cannot put every single one of those claims out of the system, we can try to put out as many as we can. I think that involves working with all parties involved in Queensland and the whole community towards prevention upfront. 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 are 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 IEUA-QNT could not agree more. To protect the community from unwieldy and unnecessary expense, the Government must ensure employers comply with their legislated workplace health and safety obligations. The Government must invest in any measure that will prevent injuries and accidents in workplaces. Equally, if injury is unable to be avoided and if the community is not to be burdened by this cost, the Government must ensure that compensation for injured workers is fair, equitable and takes into account particular circumstances of injury, recovery and ongoing incapacity.

***"An ounce of prevention is worth a pound of cure."
- Benjamin Franklin***