QUEENSLAND TRUCKING ASSOCIATION LTD
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E-MAILED
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3rd September 2012

Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Committee,

Re: Inquiry into the Operation of Queensland's Workers' Compensation Scheme

QTA Ltd provides the following submission to highlight improvements that we feel can be made to the current WorkCover Scheme/Legislation that, in our view would not only reduce the impact of premiums on employers but would also provide substantial savings to WorkCover. We submit that our views nonetheless deliver equity and balance.

Queensland Trucking Association Ltd (QTA) established in 1907 as the Masters Carriers Association of Brisbane has represented the views of employers in the road freight/trucking industry since that time. We are recognised by Government as the pre-eminent spokes group for the industry in Queensland. Our membership extends State wide and operates throughout all elements of the freight task, consisting of urban, regional and long distance operators, small family owned businesses through to the major listed transport companies.

The Association submission has been approved by its Executive Committee.

The Association wishes to acknowledge that the Queensland Workers' Compensation Scheme operates relatively successfully on a comparative basis with similar schemes in other jurisdictions. Queensland has maintained its premiums to the point of being the second lowest in the country. A feature is the "reward for effort" for employers who maintain excellent safety standards and therefore limited claims experience.

We note that WorkCover's financial position, notwithstanding the effects of the Global Financial Crisis on investment returns is much improved on most other jurisdictions.

It is the view of QTA Ltd that an appropriate goal for WorkCover Queensland is to again achieve a position of Queensland having the lowest premiums in Australia but with Statutory Benefits providing genuine compensation to employees for injury suffered and loss of earnings.

QTA Ltd has consulted with a number of Industry/Employer Associations in relation to their consideration of the Finance and Administration Committee Information Paper published to assist the Inquiry on the Operation of the Queensland's Workers' Compensation Scheme.

QTA Ltd has actively consulted with the Chamber of Commerce and Industry of Queensland in the preparation of their submission. QTA Ltd fully endorses the views expressed in that submission and adopts them for our own other than where enhanced or emphasised in the paragraphs that follow.

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QTA Ltd provides to its members active assistance and advocacy in the field of Employment Law. In particular we take a proactive stance in advancing workplace health and safety standards in our industry and regularly support individual members as they manage their response to Workers' Compensation claims filed by employees. It is that exposure and experience, over a long period combined with specific conversations with members about the current review that leads us to make the following comments.

Elements of the existing scheme which most commonly lead to legitimate employer angst in relation to the existing scheme provisions are the following:

- Standard of proof that an injury occurred in the workplace and while employed with the current Employer/Policy Holder.
- The admission of claims by employees arising from the "alleged" aggravation of pre existing injury.
- That the current employment status/workplace give rise to and be the major contributing factor contributing to a claim.
- The definition of a worker extending to sub-contractors and the need to manage the scheme with a definition which is consistent with Federal and State Taxation Legislation.
- The impact of journey "to and from" work claims and the rationale for acceptance of such claims.
- The need to increase employee responsibility in the workplace, or to put it another way, greater recognition of contributory negligence by the employee (including serious and wilful misconduct).
- The very significant impact of the outcomes of Common Law payments to injured workers on an employer's premiums. In this regard employers feel "left out of" the negotiation process leading to significant "settlement" of Common Law claims to avoid Trial.

It is the experience of QTA Ltd that by far the greatest concern to Employers/Policy Holders in our industry is the adverse impact of Common Law claims on premiums. *Attached to this submission is a two page commentary completed by a significant employer in our industry.* This employer, regionally based has a significant capital investment in heavy vehicles and other equipment reflecting a sizable number of employees, therefore a significant investment into that community in which it is based.

The identity of the company is not revealed. However one can read into the submission that this is a company which works very proactively in its management of on road and off road safety standards. Nonetheless a number of "settled" Common Law claims in recent times have resulted in a skyrocketing of this company's premiums. It is the plea from this company, and its family ownership, that considerable attention be paid to a number of issues which QTA Ltd has outlined in the dot points above as a means of controlling the escalating Common Law payments.

The company responsible for producing the attachment, and the Queensland Trucking Association Ltd, firmly are of the view that there needs to be introduced a threshold for access of Statutory Claims progressing to Common Law. QTA Ltd shares the view held by many of its members that large personal injury firms, promoting "no win no fee" services are encouraging action for Common Law damages for minor injuries. We strongly urge the Committee to consider a threshold of up to 15 percent in order to address a problem that if left unchecked will have serious adverse economic impact not only on employers/policy holders but also on the scheme itself.

We note that WorkCover schemes, howsoever called in other jurisdictions, have in recent times been drawn to the necessity for the introduction of impairment threshold prior to qualifying for Common Law claim.

We urge the Committee to and where necessary, restore the employer balance to the scheme in order that it remain in a stable financial position capable of delivering benefit to those most in need. We make the following suggestions for consideration by way of outcome of your review.

- That a greater focus be placed on the investigation of the veracity of claims with appropriate weight being given to employer views and responses.
- That there be a clear onus of proof that the injury occurred in the workplace.
- That the legislation be drafted so as to remove the temptation for employees or those who advise them, to "give it a go" with a WorkCover claim "as of right". This may be achieved by improved enforcement compliance and investigative practice.
- That employer's have availability of WorkCover history in relation to employees. "Serial offenders" are a fact of life and employers who pay the premium must be provided with adequate protection.
- That the review consider the appointment of an Independent Review Ombudsman, to allow employers and employees an opportunity to test the decision making of the WorkCover Authority. Such a process might allow for aggrieved parties to access a simplified and inexpensive process of review of the administrative and statutory decisions of WorkCover, as an alternative to the circumstances which give rise to a Q-Comp arbitration.

SUMMARY

While we acknowledge and confirm our opening statement that Queensland has a WorkCover Scheme second to none in the country, it is not without fault and clearly the data demonstrates that the greatest adverse impact financially is felt by the minority of employers in the scheme. We submit that there are genuine legislative changes which can be made to address the issues raised without adversely impacting on those genuinely in need, the injured worker.

We trust that the Committee considers our view by including our comments in your deliberations. The Association is willing to actively participate in any step which follows your Inquiry and indeed willing to personally appear before your Committee to provide any additional comment you might consider necessary.

Yours Sincerely

Peter Garske
Chief Executive Officer
Queensland Trucking Association Ltd

BURDEN OF COMMON LAW CLAIMS

We accept the way in which WorkCover calculate their premiums based on wages and claims history, and how they have managed claims. We have an excellent working relationship with WorkCover to the point that we were selected to participate in a WorkCover marketing exercise reflecting our diligence with rehabilitation and return to work. WorkCover have told us that we are supportive in all the right ways with return to work and consequently excellent outcomes achieved.

Although we have an excellent working relationship with WorkCover and have reasonably successful claim outcomes we are still experiencing soaring premium costs. In the 2010/2011 financial year our premium was $227,690.00 based on actual wages of $8,216,435.00 for the 2009/2010 financial year and estimated wages of $9,500,000.00 for the 2010/2011 financial year. The premium for the 2011/2012 year pretty much doubled to $464,117.87 based on actual wages of $9,603,908.00 for the 2010/2011 financial year and estimated wages of $10,200,000.00 for the 2011/2012 financial year. This financial year (2012/2013) the premium is forecast to increase to an exorbitant $767,287.75 based on actual wages of $10,354,330.00 for the 2011/2012 financial year and estimated wages of $10,720,000.00 for the 2012/2013 financial year.

It is our view that the main reason these costs are escalating is because of the effect that Lump Sum Payments and Common Law Claims have in the Premium calculations. We have undertaken a simulation exercise for this current financial year using current wages but zero impact from claims history. The calculation reveals that the premium, with zero claims history would be $182,628.60. Our Premium, as identified in the previous paragraph for the 2011/12 year is $464,117.87.

We example the Lump Sum effect as follows: A 66 years old company employee sustained an undisplaced fracture to his radial styloid and subsequently developed complex regional pain syndrome. Due to the complex regional pain syndrome, it made it very difficult to rehabilitate the employee back to his full pre-injury position. He was deployed to drive a forklift for short periods of time on light duties, which seemed to improve his symptoms/injury.

Due to mechanical failure for a short period the forklift was unable to be used and accordingly we were unable to facilitate light duties. During this time it seemed that the employee's symptoms/injury deteriorated slightly. Subsequently it was deemed that his injury was stable and stationary and accordingly he was assessed for permanent impairment. Allow me to stress that the employee was 66 years of age, he was able to drive his own car and could drive a forklift for part hours per week. Subsequently he was offered a lump sum of $148,542.60 *and*, because his impairment was assessed as greater than 50% he was offered an additional lump sum of $152,761.00 which totaled $388,697.89. We acknowledge that only $175,000.00 of the payment impacts on our Premium.

In our view, access to Common Law unfairly impacts on the employer's annual premium. A prime example is that of an employee who slips on a vehicle step and injures his left shoulder. This type of injury/incident is clearly work related and accordingly compensated in terms of the Statutory Provisions of the Scheme. In this example WorkCover payments ceased. We therefore assume that the previously existing injury has no ongoing affect on the employee's ability to work.

In this example, the employee also incurred a right shoulder injury which was assessed for permanent impairment. WorkCover determined that there was no impairment attributable to that injury. However this process provided the employee with access to Common Law. The employee filed a Common Law Application in respect of injuries to both shoulders. By this time, this employee was now working as a driver for another company. Nonetheless, his Common Law Claim was successful and settled for approximately $200,000.00.

In yet another example, we had an employee who settled a Common Law Claim arising from injury but within a short period of time returned to a driving role in his privately owned truck.

It is unreasonable, in our view, that an employee can access Common Law when a claim is either ceased or assessed by WorkCover as having no impairment, whilst continuing to work. We question the circumstances which allow an employee to work in the same or similar occupation after compensation for lost earnings into the future.

Yet another example of what we say is a flaw in the legislation, is outlined as follows: we acquired a truck from another transport company which ceased trading. We employed the driver of that vehicle. The employee had previously driven the truck many times and consequently entered and exited the truck many times before even commencing work with our company. We inducted the employee appropriately and he was given the proper instruction on entering and exiting the truck even though he had previous experience with driving the truck.

We attended a pre-trial meeting and discussed all the facts listed above. We were advised that even if it was a new truck and all steps are manufactured to Australian Standards, our company should have completed a risk assessment on the truck and identified that as there is a rounded edge on the step that it is reasonable to assume that they could be a slipping hazard. We find it incongruous that there might be an expectation that employers in the industry are exposed to liability when we purchase a vehicle manufactured to Australian Standards.

We are aware that WorkCover is in the process of lodging an appeal in a judgment by the District Court finding of employer liability in a similar case, and awarding damages of $225,000.00 as compensation for injuries suffered.

We acknowledge that for every claim that settles for over $175,000.00, only that $175,000.00 impacts on the premium. However, at the end of the day a limited number of Common Law Claims settled for payments from $20,000.00 to $175,000.00 will significantly impact on an employer's premium.

If access to Common Law Claims are restricted to injured workers with a minimum of 15% impairment, which we understand to be the position in a number of other State jurisdictions, costs to the Fund and Employers will be significantly reduced while maintaining adequate protection by way of compensation for the injured worker.

PREMIUMS ON SUPERANNUATION CONTRIBUTIONS

Finally we submit that it is inequitable to include in the Declaration of Wages Superannuation Contributions paid to an employee, for the purposes of the calculation of the WorkCover Premium. However, when weekly wages are paid by WorkCover on a Statutory Claim the SGL payment is not paid on behalf of the employee.

ANNUAL LEAVE

It is our view that the Act should make clear that an employer is not liable for Annual Leave payment to an employee who is in receipt of WorkCover benefit under the Statutory Scheme.

SUMMARY

We trust that the Government Committee of Review will favorably consider our suggestions so that a more fair and reasonable system can be put into practice for all parties involved.