AUSTRALIAN Prawn Farmers ASSOCIATION

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03 SEP 2012
Finance and Administration Committee

The Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane QLD 4000
fac@parliament.qld.gov.au

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

Dear Research Director

The Australian Prawn Farmers Association (APFA) and Australian Barramundi Farmers Association (ABFA) have canvassed their members in relation to the Workers Compensation Scheme Review and would like to express the following opinions for the research director's consideration.

The APFA/ABFA members are a trade exposed industry – 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, number 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"***

APFA and ABFA members find the current system puts us in an anti competitive position, our farms operate in regional areas where access to fit workers is often limited or shared with the resource sector.

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 on a workers claim history and employers in our industry are finding it increasingly difficult to employ seasonal workers whole discharging their duty of care not to unreasonable 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, farm 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 i.e. *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 farms 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.

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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 of what is reasonable. The aquaculture Industry Rate has more than doubled in the past 4 years, and on the information we have seen, this is entirely attributable to an increase number of common law claims in recent years. Those of our members who have been the subject of opportunistic common law claims have experienced substantial premium increases. Data reviewed by APFA/ABFA shows that statutory claims costs for 2012/13 will be almost 9 times that of claims costs in the 2011/12 year. The impact on our small farming group is crippling.

The APFA/ABFA appeals for limited access to common law damages.

We recommend like many of the employers and employee 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 impairments in 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 unreasonable high while workers seem to have a disproportionally low level of responsibility for their actions. There needs to be a stronger and real application of the principle of contributory negligence.

The APFA/ABFA agrees with key points raised in the National Retail Association and Timber Queensland submissions. These key points are relevant to our industry and concerns.

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 belittle of 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 reasonable can.

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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 Medial; 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 or 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 of Appeal situation but the employer's options are very much more constrained and are forced to further expense pursuing these matters.

Finally of the methods to calculate premium, it seems that employers can establish a premium rate equal to 15% of the Industry Rate if they have sustained a 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 one 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 submission on behalf of our members and the employers of Queensland.

Please contact either party on the numbers below if we can help you any further.

Yours sincerely

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