



The Presbyterian &
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The Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Sir/Madam

Submission to the Inquiry into the Operation of Queensland's Workers' Compensation Scheme

The Presbyterian and Methodist Schools Association (PMSA) welcomes the opportunity to make a submission to the Finance and Administration Committee in response to the parliamentary inquiry into the operation of the Queensland workers' compensation scheme.

The PMSA supports this review and regards it as timely in light of recent changes to the work health and safety legislation and the harmonisation under the *Work Health and Safety Act 2011*.

Overall, the PMSA believes there are several aspects of the existing Queensland workers' compensation scheme that warrant consideration by the Committee, as they place an unreasonable burden particularly on not-for-profit organisations (schools, in our case) and reduce our ability to provide services effectively and affordably. The PMSA attached submission (**Appendix 1**) addresses these aspects.

The PMSA would welcome the opportunity to discuss any matters raised in its submission with the Committee or to assist by providing further clarification where necessary.

The PMSA is a provider of high quality school education to over 5,000 students and employs approximately 950 staff, along with a significant number of volunteers and contractors. A brief outline of the PMSA is provided in **Appendix 2**.

Further queries regarding PMSA's submission should be directed to myself by telephone (07-33710709) or email [REDACTED].

Yours faithfully

Michael Willis
Executive Director

Appendix 1

Presbyterian and Methodist Schools Association - Submission

The Presbyterian and Methodist Schools Association (PMSA) welcomes the opportunity to make a submission to the Parliamentary Finance and Administration Committee inquiry into the operation of the Queensland workers' compensation scheme. The PMSA supports this review and regards it as timely in light of recent changes to the work health and safety legislation and the harmonisation under the *Work Health and Safety Act 2011*.

The PMSA requests that the Committee consider the following matters in its deliberations:

1. Flexibility in Insurance Options

The PMSA believes that the current Queensland workers' compensation scheme fails to meet its objectives under Section 5(4)(e) of the Workers' Compensation and Rehabilitation Act 2003, which requires '**flexible insurance arrangements suited to particular needs of industry**'. The PMSA considers that the current approach to assessing premium rates is restrictive and does not provide employers with flexible insurance options. The current scheme provides only one very limited alternate insurance option (ie: self-insurance), which is highly restrictive and is not available to most employers.

The Queensland workers' compensation scheme is the only scheme in Australia which has a central claims management model. All other states allow for other providers of workers' compensation insurance. The PMSA believe that efficiencies and cost reductions can be achieved by the government establishing a modified market mechanism for this insurance sector, allowing other insurance providers to offer workers' compensation insurance in the Queensland market.

2. Premium Flexibility

The PMSA endorses the provision of premium rates that more accurately reflect the claims experience of individual employers. The PMSA does not believe it is fair for employers who build a safe workplace to be penalised for claims that occur in other poorer performing employers, either within the same industry or across the whole of Queensland.

Over the past five years, PMSA schools have made substantial efforts to provide safe workplaces – through effective prevention, rehabilitation and "return to work" strategies and programs - resulting in a reduction in workplace injuries and a substantial diminution in both statutory and common law claims.

Despite this, the industry rate for our four PMSA schools has seen an increase from 0.407% to 0.729% over the same period. While there has been a modest **relative** improvement in our premiums, our considerable efforts to provide safe workplaces and reduce claims have not resulted in any premium reduction over this period. On the contrary, we have faced premium rises, partly because of the poor safety performance and claims patterns of other employers.

In our case, this additional premium cost comes at the expense of our educational programs and the needs of our students. As a result, our investment in being a good and safe employer has come at a double cost, when our improvements should have been compensated by premium reductions.

The Experience Based Rating (EBR) formula currently used by the Queensland workers' compensation scheme to calculate workers' compensation premiums currently uses five years of claims history. Other states use various periods and methods, varying from three years to risk based premiums agreed by the insurer and the employer. The PMSA believes the current 'claims

experience' period reduces the impact that good risk prevention, rehabilitation and "return to work" strategies have on premiums. Further, premium rates should more accurately reflect more closely the experience of individual employers.

3. Recognition for Employer WHS Performance

The current EBR formula fails to provide adequate recognition or incentives for employers who have implemented injury prevention, workplace rehabilitation and "return to work" programs across their organisations. Further, it negatively impacts an employer's premium where an employer is not at fault in an incident. The PMSA's preferred outcome from the review is for Queensland employers to be rewarded with annual premium rebates if appropriate rehabilitation and "return to work" outcomes are implemented. While it is not a perfect model, the New South Wales structure merits consideration in this respect. The PMSA also endorses the establishment of targets and rewards for performance in relation to injury prevention, such as a "No Claim Bonus" provision and/or a claims improvement reward.

4. Decision Criteria

The existing workers' compensation scheme in Queensland does not consider the prevention programs of an employer at the time an injury occurs in making a decision to compensate. Currently, when deciding a claim, WorkCover Queensland applies the following criteria from the *Workers' Compensation and Rehabilitation Act 2003*:

- the claim was made within the time limits
- the person was employed at the time of the injury by an employer who's not self-insured
- the person is considered to be a worker
- the injury was caused by a work-related event, and
- the person was injured because of, or in the course of, employment if the employment is a significant contributing factor to the injury.

The PMSA suggests that there needs to be a stronger relationship between the requirements of the *Work Health and Safety Act 2011* and the *Workers' Compensation and Rehabilitation Act 2003* in relation to the question of whether employment was the cause of an injury.

The PMSA notes that, in relation to applications for workers' compensation, applicants must show that the injury was caused by a work-related event and that they were injured because of, or in the course of, their employment if the employment is a significant factor to the injury.

However, in practice, this onus does not include a requirement for the injured worker to provide anything more than a casual nexus between their employment and their injury. In the current scheme, simply being at work when the "event" causing the injury occurred is sufficient for employment to be seen as a significant contributing factor to the injury.

The PMSA endorses the consideration of contributory negligence as one of the criteria for determining statutory claims. Contributory negligence is currently only considered if the claim proceeds to Common Law.

In support of this point, we offer the following recent example:

- A school employer has a comprehensive health and safety prevention education, training and awareness program in place for slips, trips and falls risks. The Program has been established using best practice risk management techniques and strategies for all staff

identified as being at risk of injury from these particular hazards. The program and training are mandatory.

- In addition, as a result of a risk analysis, each classroom has been provided with a step-ladder and each teacher has been trained in its use. There are also posters in the classroom warning people not to stand on furniture and regular hazard alert warnings regarding this matter are disseminated to all staff.
- A teacher falls backwards from a student's desk on which he/she was standing to hang some student art work – in contravention of training and instructions.
- As a result, the teacher lodges a Workcover claim, which is accepted by Workcover as the teacher's employment is seen as a significant contributing factor to the injury.

Given the effort undertaken by the employer to reduce the risk of such an action, and the failure of the employee to follow direction and training, it is unfair that such a claim should affect the employer's premium.

The PMSA proposes that a more adequate test is required to assess whether the employment was a significant contributing factor to the injury. Where an employee's negligence, rather than an employer failing in their duty of care, is the major cause, there should be a reduced entitlement to workers' compensation benefits. The PMSA endorses the retention of the scheme for illness and accidents caused by cases where employment has genuinely been a significant contributing factor to the injury, but not where an employee was simply at work when the injury occurred.

A practical solution to this issue may include:

- A reduction in benefits available under statutory claims, with the opportunity for an employee to proceed to common law action for any further claim; and
- A greater opportunity for an employer to provide evidence of appropriate defences (such as policy, training, enforcement, etc) that indicate a reduced contribution of employment to the injury, with a compensating reduction in benefit.

5. Claims Management Issues

The PMSA also supports a full review of the current process for case management of claims, in particular the knowledge and experience of the case manager and their ability to effectively contain statutory claims leakage. Whilst the PMSA acknowledges that there will inevitably be some minor level of claims leakage in managing workers' compensation claims, employers' premiums should not be burdened with claims costs that have occurred as a result of poor and untimely claims management on the part of WorkCover Queensland. Employers need to have more assurance that the case managers responsible for managing claims have the appropriate skills and ability to adhere to case management plans and to ensure that statutory claims leakage is contained at all times.

The PMSA is also concerned with the current standard of decision making by WorkCover Queensland in relation to new claims. The current scheme is vulnerable to the quality of the initial decision making process, with the overall scheme exposed to considerable cost if decisions are reviewed and overturned by QComp. As an example, we provide the following incident:

- WorkCover accepted an employee claim for statutory benefits.

- The employer applies to have that decision reviewed by QComp, which overturns WorkCover's original decision.
- By this stage, the cost of this claim exceeds \$120,000.
- The statutory claim costs that have already been paid on that claim, prior to QComp's decision to overturn it, are then transferred from the employer's policy to WorkCover Queensland's policy.

As the claim should have been rejected in the first instance, the employers of Queensland collectively carry the burden of the initial incorrect decision, through increased premiums. While the PMSA acknowledges the need for a review and appeals mechanism, the Committee is encouraged to ensure that employers have improved assurance that claims representatives have the requisite skills to interpret and apply the provisions of the *Workers' Compensation and Rehabilitation Act 2003* to a high standard, without undue reliance on the QComp review mechanism.

6. Employee Disclosure Obligations

The PMSA endorses the introduction of more robust obligations on employees to provide pre-employment disclosure of injury information to new employers. The current scheme continues to place employees at risk by minimising their obligations to disclose pre-existing conditions when an employer makes legitimate enquiries in order to meet their obligations to provide a safe workplace and to protect the health and safety of the employee and his or her colleagues. Further, it adds considerable cost and risk to an employer, in Workcover premiums resulting from unnecessary injuries and in distress to employers, employees and their families when a worker is unnecessarily injured.

For example, if an employee injures his or her back at work, after failing to disclose a known pre-existing condition when an employer enquires for legitimate reasons, then some form of adjustment to any compensation should be imposed to reflect the fact that their employment was not the significant contributing factor to the injury.

About the PMSA

Overview & Mission

The Presbyterian and Methodist Schools Association ("PMSA") was established in 1918, and operates four schools and one child care centre in South-East Queensland. Its members are appointed from the Uniting and Presbyterian Churches in Queensland and it is governed by a Council of fifteen members.

The PMSA's mission is to provide outstanding teaching and learning environments for our students and staff, in schools built on Christian teachings, to enable our students to discover and then develop their God-given talents, so that they may achieve personal excellence, live a fulfilling and satisfying life and make a meaningful contribution to family and society

PMSA Schools and Activities

The PMSA provides over 5,000 students with an education of excellence in a Christian and caring environment:

Brisbane Boys' College, Toowong (established in 1901) provides education for approximately 1575 boys from Preparatory Year to Year 12. Enrolments at Brisbane Boys' College include approximately 110 boarding students from rural and regional Queensland, interstate and overseas.

Clayfield College, Clayfield (established 1931) provides education for approximately 935 students, including girls from Preparatory Year to Year 12 and boys from Preparatory Year to Year 6. Enrolments at Clayfield College include approximately 105 boarding students from rural and regional Queensland, interstate and overseas. Enrolments include approximately 106 Full Fee-Paying Overseas Students.

Clayfield College also operates:

- A Pre-Preparatory Year course, licensed by the Department of Communities.
- An International College to provide English Language Intensive Courses for Overseas Students. On completion of their courses, many girls enrol in Clayfield College. Clayfield International College is accredited for 60 students.

Somerville House, South Brisbane (established in 1899) provides education for approximately 1230 girls from Preparatory Year to Year 12. Enrolments at Somerville House include approximately 105 boarding students from rural and regional Queensland, interstate and overseas.

Sunshine Coast Grammar School, Forest Glen, which was established in 1997, provides education for approximately 1220 boys and girls from Preparatory Year to Year 12. Sunshine Coast Grammar School was acquired by the PMSA in 2004.



New Leaf Early Learning Centre, associated with and adjacent to the Sunshine Coast Grammar School, was established in 2006 and is a 150-place child care centre providing care for 51 weeks of the year, including nursery care for children from 6 weeks of age and pre-prep sessions for older children. New Leaf Early Learning Centre is licensed by the Department of Communities.

For more information on PMSA and our schools, please visit our website: www.pmsa-schools.edu.au.