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Ms. Deborah Jeffrey
The Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane, QLD 4000

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3rd September 2012

Dear Deborah,

**RE: SUMBISSION TO THE QLD WORKCOVER REVIEW**

Bundaberg Fruit and Vegetable Growers Cooperative Limited (BFVG) was established in 1948 to represent production horticulture growers in the Bundaberg district on issues critical to their overall success. As a regional Production Horticulture Industry representative organisation, BFVG has evolved to become a central industry contact point for our local membership base.

BFVG is a non-trading, not-for-profit, grower-based cooperative comprising a membership base of production horticulture growers and industry service businesses in the Bundaberg, Gympie and Gayndah regions. The Bundaberg region alone is one of the largest Production Horticulture regions in Australia growing a diverse range of healthy nutritious fruits, vegetables, nuts and herbs. This region is estimated to have a farm gate value of more than $500 million, injects over $1 billion into the local economy and plays an integral role in the nation's food security.

One of our primary functions as an organisation is to service and protect the interests of the region's Production Horticulture Industry. As an industry that employs approximately 25,000 people State wide. WorkCover is a major cost to the production horticulture industry, which is now feeling extremely disheartened by the current system.

**THE ISSUES IN BRIEF:**
BFVG has ascertained through one on one visits, workshops & direct feedback with regional growers that the current WorkCover system has some serious flaws and is a major constraint for employers. Employers believe a significant number of employees have been abusing the current WorkCover system, a system which currently endorses blatant abuse. BFVG believes the WorkCover system at present contributes to an employee - favoured culture which detracts from businesses effectively boosting the State's economy and from the industry which continues to be one of the State's largest employment sectors.

Listed below are some specific examples our members have been faced with and which have been provided to us in good faith. BFVG is committed to resolving these concerns. The examples highlight many of the flaws in the current system:-

i) After obtaining signed Statutory Declarations from other employees an employer was able to prove a claim made through WorkCover, by an employee, was in fact false. However, the employee suffered no penalty for this deceit and was allowed to continue working in the country on their working holiday visa.

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ii) Employers have mentioned after a number of claims have been put through WorkCover, their premiums have increased significantly from one year to another. One reported an increase in premiums after 5 claims even though 4 of those 5 claims were found to be false! In the Premium Calculations there is an 'F' factor. This is a number that appears to be made up each year by WorkCover to make sure they remain financially viable. If the employer has high claims (whether legitimate or not) in a year where this number is high, the premium calculator will penalise the employer much more than in a year where the 'F' factor is low. This is not fair as the same injury might cost an employer double in their premiums than in another year where the 'F' factor is low. One employer's 'F' factor has ranged from 3.5 to 6.5 in the last 5 years.

iii) Within one week an employer had five minor WorkCover claims made from five different employees living in the same house. This demonstrates employees are 'Doctor Shopping' and telling colleagues how easy it is to gain paid time off work. Currently the doctor is the decision maker! This is not always the best option. Many doctors do not understand the industry in which the accident occurred and therefore are not in a position to ascertain if it is a genuine work related claim. The worker may not be completely truthful with their disclosure to the doctor when being assessed. There needs to be more education provided to doctors on the obligation of all parties under WorkCover rules and regulations.

iv) Employees have been successfully claiming through WorkCover more than six months after the supposed incident occurred (i.e. back injuries, sprains, muscular injuries etc), **without** an incident report and **without** the employer being aware that an injury had occurred. An employer had a claim 3 years ago from an employee who claimed she fell off a trolley and injured her arm. The employer was never made aware by WorkCover they could challenge the claim. There was never an incident report made to the employer and the incident was reported 2 weeks after the occurrence. The incident was not witnessed even though the employee was working with 5 other employees. The employer was later made aware by a third party the employee may have injured the arm shifting furniture (non work related). When the employer challenged the WorkCover officer on this fact, the officer stated that in a court of law the testament of an employee carries more weight than an employer. After a period, the employer had to provide a place to ease the employee back into the workplace. The employer offered to have the employee in the office answering the phone and taking messages. The employer was told by the employee that this would only cause mental anguish and this was not suitable. Some 8 months later the employee received a payout and found employment elsewhere. It has since become known that this ex-employee is now a pole dance instructor!

v) Employers are not being made aware through WorkCover that an option to appeal or review claims exists through organisations such as Q-Comp, nor the options to request the "reasons for decision" from WorkCover. One member was recently advised by a WorkCover employee that the employer must provide significant or documented evidence of why they think it is not a Workcover claim, or the decision is wrong, otherwise they cannot receive the "reasons for decision" from WorkCover.

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vi) Employees return to work after a WorkCover claim has expired with a medical certificate stating that they are only able to work 'restricted duties', however the WorkCover form does not state what these duties are.

vii) An employer found out six months after a WorkCover claim had been processed and paid that this employee did not disclose they had a pre-existing condition which contributed to the incident. However after the employer went back to WorkCover to disclose this new information, they were not reimbursed for any money spent or for the effect this claim had to their premium increase.

viii) Employers are waiting up to a week to have initial contact with WorkCover after a claim has been lodged by an employee. In some cases of known injuries, employers have had to phone WorkCover themselves to find out the status of the claim.

ix) In the previous WorkCover System, employee's who suffered 5% impairment as a result of a WorkCover claim had the option to take the claim further to common law. However currently an employee has the option to take a claim to common law with **0% impairment**. In addition to being able to proceed to common law at 0% impairment, one of the main issues is the cost of defending a claim. This is at least $35-$50k to the employer whether they win or lose. Whether fraudulent or genuine, the employer needs a low cost option to defend themselves or to achieve a fairer outcome.

x) General Practitioners are reportedly able to charge more for a WorkCover consultation than a Medicare based consultation, thus creating incentive to engage in false claims over genuine concerns.

xi) When common law claims go through the legal system, they can drag on for months. One employer had phone links with up to three legal people in a room and that was just on the WorkCover side. After 6 months the claim was settled for very near the same amount. They [the legal team for WorkCover] were very happy that the claim settled without going to court. The employer's complaint fell on deaf ears regarding the legal cost of settlement under the system being very near the same amount after approx 6 months of negotiation. The employer was told "it was capped" and no matter how much it goes over, it shouldn't worry the employer. The employer's premiums have since more than trebled.

**JUSTIFICATION and SOLUTION**

BFVG applauds the Finance and Administration Committee for setting up a review to consider the administration of WorkCover. BFVG respectfully requests you investigate, and adequately resolve the following identified issues:-

i) **Employees should be penalised when caught filing a false claim through WorkCover**. For example, an employee filing a false claim should be fined or black listed for any future WorkCover claims and if a backpacker working in Australia on a Working Holiday Visa files a false claim through WorkCover then they should have their Working Holiday Visa revoked. There needs to be some sort of infringement to the employee to make them aware they will not get away with making false claims. Some "back packers" think workers compensation is a way of getting paid for nothing. There is pressure on small

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country town doctors as they are understaffed and busy. This puts pressure on them to 'tick and flick'. Again it is the doctor who is making this decision. Perhaps it should be stipulated that paid time off work under WorkCover for working holiday makers should not count towards their 88 days specified work to enable them to obtain their second years' visa. Therefore there needs to be improved liaison between the Queensland Department and the Federal Immigration Department. Employees (either back packers or permanent/ full time) who have machinery/ operators tickets etc. do not have a penalty or fine system for the ticket/license holder. When an incident occurs and it is the operator's fault, they should be held accountable, yet the onus of proof AND penalties rest solely with the employer. It is the employer who pays the price of these incidents through fines, compensation, premium increases etc. If the same worker has an accident on the road and the employer's car/vehicle is registered and road worthy, the driver gets the fine and if necessary is taken to court and open to prosecution. If that same driver has an accident in the workplace, the employer is to blame and the incident added to their WorkCover premium calculation.

ii) **Premiums through WorkCover should not increase dramatically from one year to another.** Employers have been faced with massive increases to their WorkCover premiums from one year to another after a number of claims have been put through. Employers already pay enough through premiums, why should they increase if the existing WorkCover system is making WorkCover claims far too simple for the employee to lodge, resulting in employer's premiums sky-rocketing? Premiums could be calculated on a 5 year rolling average for employers rather than rather only on the previous year. This way premium increases would be spread over a long period thus allowing for greater future management to bring workplace injuries down. The 'F' factor, as stated previously, should be either more consistent or calculated to give the same impact on a premium for a certain injury cost, no matter what year it falls in and not include false claims.

iii) **A short list of WorkCover Specialist Doctors in the region should be developed**. This will prevent employees continually booking appointments with different Doctors until they receive Doctor's approval to a WorkCover claim, i.e. 'Doctor Shopping'. In addition to having a selected list of doctors, the selected doctors should be selected and reviewed by an employer panel or representative panel.

iv) **Incident Reports must be made compulsory in order to lodge a WorkCover claim.** There is no duty on the worker to notify the employer that there has been an injury until in some cases well after the event. From the employer's point of view it is impossible to manage and or assist an injured worker at this late stage. The ultimate aim of WorkCover is cover until you **return to work.** The definition of work does involve an employer! BFVG and our members understand some injuries take time to manifest (i.e. Repetitive Strain Injury) however other injuries are easily identified. Employers are regulated to maintain appropriate paperwork, policies and procedures therefore employees should be obligated through regulation to utilise them. By making Incident Reports compulsory this will result in minimising dishonest WorkCover claims lodged by employees.

v) **WorkCover should make all employers aware that organisations such as Q-Comp exist in order to appeal or review claims.** All of our members that have

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expressed to us their concerns with WorkCover did not realise they could appeal or review claims through Q-Comp. It should be mandatory of WorkCover when advising an employer that a claim has been lodged, that they provide the 'reasons for decision' and also advise the employer that they have the right of appeal to Q-Comp.

vi) **If employees are only able to return to work with 'restricted duties' then these duties should be written on the medical certificate issued from the Doctor.** Employers are receiving incomplete medical certificate documentation issued from doctors when employees return to work. The employers then have to waste more time and money for the employees to return back to the doctor to find out what the 'restricted duties' are. If a short list of WorkCover Specialist Doctors is developed (as suggested above at point iii) it would help to eliminate documentation being completed incorrectly and information being omitted. There is an understanding among employees that unless you pay a small fortune for a physiotherapist to come to your work place and write a 'suitable duties' program this option is basically useless. Unless as an industry we can have generic suitable duties such as administration, light field work without heavy lifting, tractor driving, it is virtually impossible to request / set up suitable duties after the worker has seen the doctor! There should be an option to discuss this before time off work is granted.

vii) **If employees do not disclose they have a pre-existing medical condition when commencing employment, and if an incident occurs based on this condition, a WorkCover claim should be void due to the dishonest information from the employee.** WorkCover claims should not be accepted if all medical information is not disclosed to the employer from the commencement of an employee's work. Therefore the employers should be reimbursed for any money lost and should **not** have their premiums increased due to inaccurate WorkCover claims. This system employers work under including the Fairwork Act is unfair, inhibits productivity and reduces growers' commitment to the industry.

viii) **WorkCover should be in contact with the employer <u>immediately</u> after a WorkCover claim has been lodged by an employee.** Employers should not have to wait up to a week to hear from WorkCover in regards to the status of a WorkCover claim.

ix) **Employee's should only be given the option to take a WorkCover claim to common law if an injury results in 10% or more impairment to the employee as stated in the previous WorkCover System.** Employers endure a significant amount of financial hardship, paperwork and burden as a result of a WorkCover claim; and at present the employee is able to take their employer to court with 0% impairment caused to the employee.

x) **General Practitioners (GP) should not charge more for a WorkCover consultation.** Employers are burdened with for the WorkCover consultation the employee has with their GP; the fee is significantly more than a regular GP consultation however the duration of a WorkCover consultation at times can be less than ten minutes.

xi) **Optional Legal Representation.** Far too many dishonest claims are being approved through WorkCover allowing employees to easily obtain paid time off work. When a notice of claim is submitted to WorkCover, WorkCover appoints

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a solicitor without consultation with the employer. Employers believe that it should be optional to use a WorkCover solicitor or the Employer's own solicitor as the WorkCover solicitor is often much more expensive. We believe that it is important to get a fair outcome without involving lawyers where possible as this is where a lot of the claim cost ends up – inevitably decreasing value for the employee and increasing cost for the employer. We suggest that there should be a more structured and transparent resolution approach with the Employee, Employer and WorkCover (or the Ombudsman) before allowing a common law case to be brought to fruition. The law should make this the most favourable approach for both parties. This will significantly reduce the overall system cost while delivering the fundamental services that WorkCover is meant to provide for all parties. Currently at the first stage of an impairment offer, there is little or no consultation with the employer or employee. We believe that if there was an opportunity for all three parties to sit down and go through the process that a fair and reasonable outcome will be attainable in many cases for minimal cost. It is also suggested that the minimum impairment for eligibility for a common law claim should be increased to 10% (refer to point ix above).

**CONCLUSION**

BFVG believes the proposed solutions above will be of great benefit to the State's production horticulture industry and that the information provided herein justifies why the current WorkCover system is flawed. On behalf of BFVG and our membership base I would like to thank the Finance and Administration Committee for considering this submission.

Yours sincerely,

Peter Hockings

Executive Officer



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