3rd September 2012

The Research Director
Finance & Administration Committee
Parliament House
George Street
Brisbane, QLD, 4000

Dear Research Director,

We thank the Finance Administration Committee for the opportunity to contribute to its Inquiry into the operation of Queensland's Worker's Compensation Scheme.

JBS Australia is pleased to submit our attached submission to the Inquiry.

Should the Committee have any questions in relation to our submission, please contact David Gomulka, JBS Australia's Queensland Worker's Compensation Manager on (07) 3810 2220. We would also welcome any opportunity to provide further information in support of the submission.

Yours sincerely

David Gomulka
Queensland Worker's Compensation Manager

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JBS AUSTRALIA

SUBMISSION TO FINANCE AND ADMINISTRATION COMMITTEE:

INQUIRY INTO THE OPERATION OF QUEENSLAND'S WORKERS' COMPENSATION SCHEME

3rd September 2012

Introduction

JBS Australia Pty Limited has held a self-insurer licence in accordance with the *Workers' Compensation and Rehabilitation Act 2003* ("the Act") since 1999.

JBS Australia is Australia's largest meat processor and exporter, supplying the finest Grain Fed and pasture fed meats to export and domestic customers for over 20 years. Although we operate extensively across Australia's eastern seaboard, our company has its origins in Queensland. Our corporate head office is in Queensland and we operate four meat processing plants and two feedlots in this state as well as other value-adding and ancillary business divisions.

The writer has over thirty years experience in workers compensation insurance in this state and feels well qualified to present JBS Australia's views and solutions.

Overview

This Inquiry undertaken by the Parliamentary Committee has the potential to be the most extensive review of the scheme since the *Kennedy* Commission of Inquiry in 1996. It is evident that the scheme is still suffering from many of the problems that were plaguing the scheme in the mid-1990's. The "Compo Culture" identified and described by *Kennedy* still exists today.

It is evident through many public submissions in recent years that the concerns of employers have not been alleviated with many worrying trends developing or continuing in the scheme. Many of these problems are outside of the control sphere of employers, such as the growing "compo" culture and litigiousness in our society, the dubious behaviour of some plaintiff lawyers, injuries which bear little relationship to employment, and injuries that occur in circumstances not controlled by the employer.

It is widely accepted amongst employers that the common law claim system has been abused and that many plaintiff lawyers and claimants have exploited the common law damages scheme beyond its goals and aims.

Self-Insurance

The meat processing industry has traditionally attracted one of the highest premium rates in the workers compensation scheme. JBS Australia has found that being self-insured has many advantages, including, but not limited to:

- No longer paying high levels of premium to cross-subsidise other insured employers
- A sharper management focus on the risks and costs of workplace injuries, with the cost of injuries coming straight off the "bottom line"
- More expedient initiation of rehabilitation and case management
- Claims and injury management staff with better understanding of our work environment
- Direct communication with injured workers about their claims, instead of through an external body
- Weekly compensation entitlements are paid to workers though one integrated payroll, instead of from an external body
- Better preparation in defending common law claims.

In our experience, and in our observation, WorkCover Queensland has had a focus on efficiency in claims management, but in our view, effectiveness has often suffered. Our claims management practices have balanced both efficiency and effectiveness. All of our processing statistics compare favourably with the corresponding performance areas in the scheme. Yet, we have been able to manage claims at a much lower average cost than WorkCover Queensland.

Queensland is the only state in which our company is currently self-insured. We have noted distinct business advantages in being self-insured in this state. We have also noted that the Qld workers compensation scheme, relative to other states, provides *reasonable cost levels for employers*, which therefore meets one of the objectives in section 5 of the Act.

2010 Review & Amendments

We believe that the impact of the reforms implemented in 2010 have been minimal, especially in the area of common law claims. Whilst there has been a slow drop in the number of common law claims in the scheme, the claim numbers have not returned to the levels prior to 2007/2008. When the 2010 review was announced by the government and it soon became evident that there would be a focus on common law claims lodgement, there were some noticeable changes in the culture. The common law claim lodgement data shows that there was a drop in numbers even before the reforms took effect.

The pattern of lodgement of common law claims is due to more complex factors than the few legislative provisions. Damages claims and litigation are driven more by the culture in our society. As identified by *Kennedy* in 1996, *"There are 'compo lawyers' who aggressively trawl the workplace for injured workers and encourage them to take out sometimes dubious or speculative common law actions on a 'no win no fee' basis"*. This culture still exists today. Lawyers can largely influence the common law claim lodgement.

From the 2010 Structural Review of the scheme, a further review was planned to assess whether the enacted reforms were succeeding. There is anecdotal evidence that some significant plaintiff law firms have modified their behaviour. However, we suspect that this modification may be only temporary. There are no safeguards to ensure they will not revert to previous behaviours after the planned review is completed.

We submit that the 2010 amendments did not go the heart of the common law problems plaguing the scheme and there is no safeguard to stop common law claim again escalating. Our submissions below address some of the core issues. If our recommendations were to be implemented, then we believe the scheme would be better protected.

The litigious culture that has developed in our scheme also takes claimants' focus away from injury management and rehabilitation, and onto financial gains.

Behaviour of Plaintiff Lawyers

The behaviour of plaintiff lawyers needs to be addressed.

Whilst Q-Comp, WorkCover and ASIEQ (Association of Self Insured Employers of Queensland) have continued to promote injury management strategies, the litigious culture encouraged by many plaintiff law firms instead takes the focus away from rehabilitation. It is well known that that injured workers have at times been discouraged from pursuing vocational options until their common law claim is resolved. Furthermore, insurers often note a change in attitude in injured workers after they start consulting a lawyer. Severe penalties should be introduced to stop lawyers from advising their clients not to engage in vocational rehabilitation.

Plaintiff lawyers also embark on unscrupulous marketing methods such as advertising in medical centres and cold calling workers who have attended certain medical or health practitioners. This type of marketing should be banned and a more ethical set of professional standards should be established. Some review of these professional standards occurred after the *Kennedy* Inquiry but unfortunately, stricter legislative controls are now needed.

It is our view that to simply implement greater stakeholder education is inadequate.

RECOMMENDATIONS

- Severe Penalties should be introduced to stop lawyers from advising their clients not to engage in vocational rehabilitation.

- The committee recommend to the Attorney-General and Minister for Justice that stricter legislative provisions be enacted to curb the marketing and touting practices of personal injury lawyers.

Definition of Injury

Concerns exist about the tenuous level of contribution of employment to some specific injuries, such as psychological injuries and solar related injuries. However, JBS Australia believes the problem is more extensive and we believe that the definition of injury in section 32 of the Act enables injuries with minimal connection into employment to be compensated. The definition needs to be strengthened to only include injuries where employment was a "major significant contributing factor". This was a key recommendation of the *Kennedy* Inquiry and was adopted into legislation. However, it was later repealed when the ALP government was elected. Currently, many injuries occur where there is a tenuous relationship to employment but are considered compensable. For example:

- A Qantas employee was injured while going out for dinner whilst on a rest day between long-haul flights in an overseas city; employment was considered to be a significant contributing factor. (*Qantas Airways Limited v Q-COMP and Michelle Blanch C/2009/9*)
- JBS rejected a recent claim where the worker's knee 'locked up' inexplicably whilst walking down steps at work. He had a pre-existing condition. Q-COMP considered the injury to be a compensable aggravation merely because it occurred at work and therefore set aside our decision. There are other published decisions in the courts that are similar to this.

We submit that the fact that a worker is in the workplace should not be sufficient criteria for injuries to be considered connected to employment. One of the objects of the Act in section 5 is to encourage "...improved health and safety performance by employers". It is very difficult for employers to manage the risks that bear little relationship to employment.
We believe that unnecessary complexities may be created when legislative provisions are introduced for specific types of injuries. The government may want to avoid an environment whereby it must react to each new emerging type of injury; e.g. solar related injures, asbestos related injuries and psychological injuries. It would be safer to simply cover all injuries where employment is the major significant factor causing injury.

RECOMMENDATION

- The definition of injury in section 32 of the Act be returned the wording after the *Kennedy* Inquiry and therefore include the requirement that employment must be "the major significant contributing factor" to the injury.

Workers Compensations Coverage for:

- **Journey Claims between the Workers Home & Work**
- **Recess Claims which occur away from the workplace**

Coverage for injuries on Journeys to and from work and in recess breaks away from the workplace has been removed from most other workers' compensation schemes in Australia. It is illogical for employers to be held liable for injuries that occur in these circumstances. Employers cannot manage the risks that exist for their workers in these circumstances. One of the major risks arises from motor vehicle accidents and despite extensive advertising campaigns by the state government, the road toll remains high. If the government has difficulty managing this risk then how are employers supposed to manage it?

The *Kennedy* Inquiry in 1996 recommended removal of coverage for these claims but these legislative amendments were not enacted by the minority government of the day.

We understand that some submissions have highlighted some unique circumstances that create longer journeys situations. We submit that this is not an argument for retaining coverage of all journey claims. One solution is to introduce special contracts of insurance to extend coverage for those unique journey scenarios. Various non-compulsory types of contracts of insurance are already available through WorkCover in the Act; e.g. for 'eligible persons' and for students in 'work experience'. The provision of such insurance by employers to their workers could be a useful provision in industrial agreements or employment contracts.

RECOMMENDATION

- The legislation be amended to remove coverage for injuries that occur:
  - On journeys to and from work;
  - In recess breaks away from the workplace.

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Application for Review

Workers and employers aggrieved by an insurer's decision can make an Application for Review to Q-COMP. This system of review has provided a much more cost effective and efficient dispute resolution mechanism than exists in most other workers compensation schemes.

However, in recent years, this system is becoming bogged down through protracted reviews. Under the Act, the aggrieved party can make the application up to 3 months after receiving the insurer's decision. Furthermore, the applicant can seek a further extension to lodge the application for review. This timeframe was originally 35 days when the review system was introduced in 1997 but this was later amended.

We submit that applicants have more than adequate time to lodge their applications for review. The Act enables them to submit information in support of their application.

However, applicants, often represented by lawyers, are sometimes lodging their review application towards the end of the 3 month timeframe. They then ask Q-COMP to delay making their decision until the applicant obtains more information in support of their review application. Due to natural justice principles, Q-COMP usually feels compelled to extend the review decision timeframe to enable this to occur. These reviews often become an oscillating affair whereby the applicant's lawyers find information to counter the evidence in the insurer's decision and the insurer should have the right to respond.

This practice is removing much of the efficiency that existed in the review system. Furthermore, it creates uncertainty for workers, insurers and employers, as it can be several months before an outcome is known.

RECOMMENDATIONS

- The legislation be amended so that parties who make an application for review cannot submit any further information after the application has been made.

- The legislation be amended to remove Q-COMP's ability to extend the review decision time in section 545(1) of the Act for the purpose of allowing the applicant more time to give information.

Injury Management

Injury management as a concept is not clearly defined and can be widely applied to work-related and non-work-related issues.

It is well known that the previous government sought to promote an injury management focus amongst employers but it was ASIEQ that provided a great deal of leadership on this issue through suggesting the Return to Work awards and through many informative conferences and seminars. In recent years, Q-COMP and WorkCover have joined with ASIEQ in facilitating conferences.

Some commendable and creative injury management initiatives have been presented at forums, conferences and seminars facilitated by ASIEQ, but most of these extend well beyond the scope of managing work-related injuries. These have included "Wellness" programs that address lifestyle issues such as smoking, drugs, alcohol, diet, and exercise. Whilst there are some documented benefits that can be derived from these programs in creating healthier employees, there is little evidence that they reduce workers compensation costs. Even if they do eventually lead to reduced workers compensation costs, any such reductions would not offset the substantial "wellness" investment expended by the employers. Wellness programs have been more successful in the U.S.A. where employers are often responsible for the medical insurance for their employees. In Australia, this responsibility falls upon Medicare.

We believe there is no need to place greater weight on injury management in the Act. The fact that there are employers already embarking on these initiatives is a demonstration that there is sufficient flexibility and scope in Queensland's legislative framework to allow these strategies to sprout.

There is no need for any increased regulatory or government intervention on the issue of injury management. Current developments are occurring in an environment of creativity. We understand that some parties may be advocating the establishment of advisory committees on the subject of injury management. We submit that a committee could stifle creativity.

Whilst some employers may gain benefits from implementing broad injury management and wellness programs, there should not be an expectation on all employers to do the same.

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Injury Management (cont'd)

Government regulation often leads to an unnecessary prescriptive intrusion and this will inevitably hinder injury management initiatives, rather than enhance them.

There is no need for changes to Section 5 of the Act in relation to injury management. There are adequate legislative provisions to provide injury management for work related injuries. As stated above, many injury management strategies do not directly relate to work related injuries. The initiative shown by employers in developing injury management strategies has occurred due to the flexibility that already exists.

Chapter 4 (titled "Injury Management") of the Act provides for a comprehensive coverage of injury management needs for work-related injuries, including medical treatment, hospitalisation, prosthetics, rehabilitation, employment protection for injured workers, as well as travelling and caring allowances. Of particular note, section 223(b) provides for "other rehabilitation – the fees or costs approved by the insurer", which provides virtually unlimited flexibility for an insurer in injury management.

Allied health professionals often make a valuable contribution to the management of injured workers. However, we would be opposed to any moves to prescribe increased involvement of allied health and other rehabilitation providers in the management of workers compensation claims. The experience in other states has been that providers have added a great deal of cost to the workers compensation claims but without necessarily providing a positive return on this cost. It should be left to employers to decide whether their own in-house rehabilitation resources are adequate to manage injuries and they, or their insurer, can decide if external involvement is needed. The involvement of Allied health providers needs to be managed, but not prescribed.

Businesses will inevitably come to their own conclusions as to the financial benefits of relevant injury management programs to their business, and this is evidently already occurring.

The development of injury management strategies could continue to be encouraged and shared by employers and other stakeholders but individual employers should be allowed to choose the strategies that are appropriate for them and for their industry and environment. The sharing of injury management ideas should continue to be facilitated by Q-COMP, WorkCover, and ASIEQ through conferences and other mediums.

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Common Law Damages Claims

As stated earlier, we have serious concerns that that the common law claim system has been abused and exploited. We therefore submit the following issues that need to be addressed together with our recommendations.

ISSUE 1 - COMMON LAW CLAIMS FOR DAMAGES WHERE THERE IS NO WORK RELATED IMPAIRMENT

- Most other workers compensation jurisdictions in Australia have imposed some level of restriction on access to common law damages claims.
- Qld has virtually unlimited access to common law damages.
- The opportunity for Damages Claims was arguably never intended to exist for injured workers with little or no assessed impairment.
- However, from the statistics, it appears that plaintiff solicitors actively encourage these claims.
- The proliferation of common law claims for little or no impairment has been demonstrated by Q-COMP statistics; in 2011-2012, 26% of finalised common law claims were for injuries with 0% work related impairment. In 2011-2012, 26% of finalised common law claims were for injuries with 0% work related impairment.
- It should be noted that the impairment relates only to the work related component. Some workers may be left with some level of impairment that is not work related. For example, workers compensation coverage extends to aggravations of pre-existing conditions. At the conclusion of the compensable medical treatment and compensable incapacity, the worker may still be left with the effects of the underlying condition.
- The employer/insurer is not liable for the non-work component and there are other funding arrangements for non-work injuries or conditions; e.g. Medicare, Centrelink.
- The main argument against introducing a threshold for access to common law claims is that it could change the short-tail nature of the Qld scheme. One of the main features of the Qld scheme that maintains this short-tail effect is that entitlement to statutory compensation stops after a notice of assessment is issued for an impairment that results in a lump sum offer.
- Under the legislation, however, if the impairment is 0%, and there is no lump sum offer, the statutory compensation entitlement continues.

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Common Law Damages Claims (cont'd)

- Therefore, injured workers with 0% impairment have ongoing entitlements as long as medical treatment is required or for as long as the incapacity continues.

- If a legislative provision was introduced to limit common law claim access to those injured workers with greater than 0% impairment, these workers would continue to have ongoing statutory entitlements as is the situation presently. Therefore, there would be no impact on the short-tail nature of the scheme.

- This level of access will not prevent severely or even moderately injured workers having access to the courts in cases of negligence by the employer.

- Another argument against the introduction of a threshold for access to common law claims is that it could lead to an increase in disputation regarding permanent impairment assessments and this would overload the Medical Assessment Tribunals. In another section of this submission we propose better methods for resolving disputes surrounding permanent impairment assessments.

RECOMMENDATION

- Common law claims for damages be permitted only where the injured worker has sustained work related impairment; i.e. an impairment assessed at greater than 0%.

ISSUE 2 - COMMON LAW DAMAGES CLAIMS FOR "ADDITIONAL INJURIES", WHICH HAVE NOT BEEN THE SUBJECT OF A STATUTORY CLAIM

- There is an increasing frequency of common law damages claims where there has been no previous statutory claim for the injury. There is provision for this under section 258 of the Act.

- These additional injuries are often claimed in addition to other injuries for which there have been statutory claims.

- This has particularly been an issue following the 2010 review which introduces scales for assessing General Damages. Under these scales, the quantum of general damages can be increased if multiple injuries are claimed.

- Solicitors appear to be attempting to supplement the common law damages claim for other injuries by adding one or more additional injuries.

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Common Law Damages Claims (cont'd)

- Furthermore, often the solicitors add a claim for an injury "over a period of time" extending to the commencement of employment.

- Often there is little or no evidence of the additional injury or event. A claimant is not required to supply medical certificates or other evidence of the injuries claimed.

- To make the claim for the additional injury or additional event period, the claimant merely lists it on the Notice of Claim for Damages. Often, a doctor has not even been consulted about the injury. This makes it too easy to make ambit claims for unproven injuries or events.

- Furthermore, these claims for additional injuries are made years after the event or injury occurred, thus circumventing the time limits for injuries.

- We believe the onus of proof should rest with the claimant.

- Claimants on statutory claims must discharge their initial onus of proof by submitting a medical certificate in the approved form from a medical practitioner. The insurer can then seek any other medical information necessary.

- Claimants on common law claims should be required to submit an approved medical certificate issued by a medical practitioner for injuries or event periods in common law damages claim, which were not claimed in the statutory claim.

- In practice, upon receipt of such a Notice of Claim, insurers will often be able to write to the issuing doctor for additional medical information.

RECOMMENDATION

- An approved medical certificate be developed for injuries or event periods in common law damages claim, which were not claimed in the statutory claim. Such a certificate would need to be more extensive than the current medical certificate approved for use in statutory claims. A Notice of Claim for Damages that contains such additional injuries or additional event periods would need to be accompanied by this approved certificate issued by a medical practitioner. The cost of obtaining this medical certificate from a medical practitioner would be borne by the claimant.

- These claims for additional injuries or additional event periods should be made within 6 months of the worker consulting the doctor for the certificate.

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Common Law Damages Claims (cont'd)

ISSUE 3 - OBLIGATIONS ON WORKERS TO MITIGATE THEIR LOSS

- Although the legislation makes some mention of mitigation, in reality there is little enforcement of this principle.
- The courts rarely reduce awards of damages where workers have not made reasonable attempts to mitigate their loss.
- There has been a focus on injury management in the scheme but if a worker fails to participate in rehabilitation, there is little incentive to change this.
- Q-COMP has introduced the Return-to-work Assist program but if a worker fails to participate, there is little incentive to change this.
- Despite the best attempts of employers and insurers to rehabilitate injured workers, they may still pay for economic loss if the injured worker chooses not to participate in rehabilitation.

RECOMMENDATION

- Introduce clearer and firmer legislative obligations on workers to mitigate their loss; there should be reductions in damages payable if the worker does not mitigate.

ISSUE 4 - CONTRIBUTORY NEGLIGENCE

- The courts rarely reduce awards of damages where the worker has contributed to the injury.
- The Kennedy Inquiry in 1996 recommended the introduction of legislative definition of "contributory negligence" to be applied. Legislative provisions were introduced to define contributory negligence and to prescribe consideration of possible sources of contributory negligence. However, these were later repealed.
- Whilst the 2010 amendments to the Act provide some clearer definitions of contributory negligence, there is still no compulsion for a court to apply those principles.

RECOMMENDATION

- Reintroduce clearer legislative obligations to prescribe consideration of possible sources of contributory negligence. The Act should mandate reductions in damages if contributory negligence occurs.

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Common Law Damages Claims (cont'd)

ISSUE 5 - REQUIREMENTS FOR NOTICES OF CLAIMS FOR DAMAGES TO BE COMPLIANT WITH THE LEGISLATIVE REQUIREMENTS

- Solicitors often lodge Notices of Claims for Damages (N.O.C.) which are non-complaint with the Act. It is then up to the insurer to assist them to make the Notice complaint.
- Often important information (which is required by the legislation) is not included with the N.O.C.
- These poor practices of plaintiff solicitors are impacting insurers through increased legal costs or increased use of resources.
- These poor practices also impact injured workers through delays and increased legal costs.
- Solicitors should have adequate legal competence to prepare a compliant N.O.C. but instead, they rely on the insurer to advise them.
- One solution may to consider the N.O.C. invalid and allow the insurer to return it.

RECOMMENDATION

- Introduce more stringent requirements for Notices of claims for Damages to be compliant with the legislative requirements or else they will not be considered by the insurer.
- Introduce legislative provisions to prohibit solicitors for charging legal costs for rectifying non-compliance issues.

JBS

Common Law Damages Claims (cont'd)

ISSUE 6 – LEGAL COSTS CHARGED TO INJURED WORKERS

- Presently the claimant/plaintiff legal costs are the only cost to the workers compensation scheme that is hidden.

- There is anecdotal evidence through claim settlement negotiations that there is upward pressure on the quantum of damages claims in order to cover legal fees incurred; solicitors sometimes will not advise their client to settle the claim unless they can derive a certain level of fees from the transaction.

- Most claimants have insufficient knowledge of the legal system to know whether their legal costs are fair or not.

- The proliferation of small common law claims indicates that that these claims are a significant revenue source for solicitors.

RECOMMENDATION

- Claimants' solicitors should be required to declare to Q-COMP the legal costs charged to clients. An auditing regime should be implemented whereby independent cost assessors are utilised to review legal fees charged in a sample of cases, or in cases where there concerns are raised by any of the parties in the case.

Common Law Damages Claims (cont'd)

ISSUE 7 – AUTHORITY TO RELEASE INFORMATION

- Section 275 of the *Workers Compensation and Rehabilitation Act 2003* at sub-section (7) requires that a Notice of Claim for Damages must be accompanied by a written authority to allow the insurer to obtain information that is in the possession of various listed parties and bodies.

- This information can be important to the assessment of damages. Without it, the quantum of claims can be inflated.

- However, the form suggested by Q-COMP for this purpose, and which is generally used by claimants' solicitors, is often not acceptable to various parties and bodies.

- For example, the insurer usually requires information from various commonwealth statutory bodies about the worker, including Medicare and Centrelink; these bodies will not accept the release authority form suggested by Q-COMP and instead have their own forms.

- Some private health providers have concerns about the wording in the release authority form suggested by Q-COMP based on "legal advice".

- "Relevant" information should include all medical conditions and not just the work-related injury. All medical conditions are relevant because they can impact on a person's future earning capacity and therefore are to be taken into consideration when assessing the "Future Economic Loss", which is one of the heads of damages.

RECOMMENDATION

- Q-COMP to review the wording of their suggested release authority form and consult with all relevant parties to address concerns. The aim should be to establish a release authority form that will be acceptable to all relevant parties and bodies and that enables the release of all relevant information.

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Assessment of Permanent Impairment – Dispute of Permanent Impairment

Currently, if workers disagree with impairment assessments issued by insurers, the matter must be referred to a Medical Assessment Tribunal. However, they are not required to supply grounds for their disagreement. In some cases, tribunals hear matters where the worker has already been assessed with the maximum percentage for their injury.

According to the 2010/2011 Q-COMP Statistics Report, 53.3% of the cases determined by the Medical Assessment Tribunal were for permanent impairment assessment.

We submit that this is not the most cost effective manner in which to resolve permanent impairment disputes. A tribunal hearing requires travel by the injured worker (at the insurer's expense), the time of the three medical specialists, and potential legal costs.

Not all medical practitioners have received the appropriate training in the assessment of permanent impairments, yet the legislation allows any doctor to conduct these assessments. We believe that only doctors who are trained in Q-COMP in the in the assessment of permanent impairments should be utilised for these assessments. Q-COMP could publish a list of approved doctors. Comcare publishes a similar list on their website.

If a worker disputes an assessment by an approved doctor, they should be required to submit fresh medical evidence in support of their grievance. This additional evidence could then be reviewed by a *review panel* consisting of the chairperson or deputy chairperson of the General Medical Assessment Tribunal and a member of an appropriate medical assessment tribunal. Such panels are already provided in the legislation to consider situations where fresh evidence is submitted. Injured workers could be given up to 12 months to submit the fresh evidence. The review panel would consider the medical evidence produced by the worker and may accept or reject the evidence. A decision of the review panel would be final and may not be appealed against. If the review panel accepts the medical evidence, the insurer would then be required to refer the matter to the appropriate tribunal for further decision.

This process would eliminate many of the unnecessary referrals to the medicals assessment tribunals. It would reduce the costs to Q-COMP, workers, and insurers.

JBS

Assessment of Permanent Impairment – Dispute of Permanent Impairment

RECOMMENDATION

- Regulatory changes be made to mandate that only doctors trained in the appropriate permanent impairment assessment guides be permitted to conduct the assessments under the Act (other than for industrial deafness, which requires an audiologist.)

- Legislative change be made so that if a worker disputes an assessment by an approved doctor, they should be required to submit fresh medical evidence in support of their grievance within 12 months of receiving the notice of assessment. Then this additional evidence is to be reviewed by a *review panel* consisting of the chairperson or deputy chairperson of the General Medical Assessment Tribunal and a member of an appropriate medical assessment tribunal. The review panel would consider the medical evidence produced by the worker and may accept or reject the evidence. A decision of the review panel would be final and may not be appealed against. If the review panel accepts the medical evidence, the insurer would then be required to refer the matter to the appropriate tribunal for further decision.

Medical Assessment Tribunal Hearings

The legislation allows injured workers to be legally represented at Medical Assessment Tribunal hearings; however, these hearings are meant to be limited to medical issues only and therefore should not require legal representation. The legislation was changed several years ago to enable the worker and the insurer to make submissions to the tribunal prior to the hearing. However, neither the employer nor the insurer is permitted to attend the hearing. Arguably, the practice of lawyers attending the tribunal hearings provides no value, but has the potential to increase cost to the claimant and to prolong hearings.

RECOMMENDATION

- That injured workers not be permitted legal representation at Medical Assessment Tribunal hearings.

Self-Insurance

SELF-INSURANCE LICENCE RENEWALS

The legislation permits self-insurance licences to be issued for up to 4 years in duration. For established self-insurers, the renewal process can be an unnecessary burden. The renewal process can also be an unnecessary drain on Q-COMP's resources.

RECOMMENDATION

- That legislative amendment be made to allow for self-insurers who are not in their initial licence period, to be granted licences for up to six years.

SELF-INSURANCE - BANK GUARANTEE

Currently, the legislation requires a self-insurer to lodge with Q-COMP a bank guarantee or cash deposit for a value that is the greater of $5m or 150% of the self-insurer's estimated claims liability. We believe that 150% of the estimated claims liability is an unnecessarily high security amount, especially for an established self-insurer. This incurs unnecessary costs.

RECOMMENDATION

- That for self-insurers who are not in their initial licence period, be required to submit a bank guarantee or cash deposit for a value that is the greater of $5m or 125% of the self-insurer's estimated claims liability.

Safety Audits for Self Insurers

The legislation has a requirement that a self-insured employer's occupational health and safety performance must be satisfactory. The current audit regime to measure this performance is the "Nat OHS audit tool", which is also based on Australian Standards 4801 and 4804.

JBS Australia has aligned its auditing tools and auditing program to the national tool and the above standards.

We have found this system to be satisfactory and we support its continuance. We would be concerned if Workplace Health and Safety Queensland changed the auditing requirement yet again as we would again need to use resources that could be better utilised on injury prevention activities.

JBS