190

Queensland Council of Unions

QCU Supplementary Submission for the Inquiry into the Operation of Queensland's Workers' Compensation Scheme to the Finance and Administration Committee Queensland Parliament

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Introduction

The Queensland Council of Unions, has taken the opportunity to provide a further response to the Finance and Administration Committee inquiry into the Operation of Queensland's Workers' Compensation Scheme. This supplementary response is primarily to deal with a number of matters that have been raised by other organisations in submissions to this inquiry and in the media.

The significance of worker' compensation to the Queensland public should not be underestimated. With 2.2 million workers' and in the order of 100,000 claimants per annum any detrimental changes to the system of workers' compensation will have significant economic, political and social ramifications.

Public hearings included a number of uninformed statements concerning the viability of Queensland's workers' compensation scheme. However, an examination of submissions to the committee demonstrate that the Queensland scheme is in a good financial position (LGAQ undated P 4; Independent Education Union of Australia. Queensland and Northern Territory Branch undated p10; Hall Payne Lawyers 3 September 2012 p3; Sciaccas Lawyers and Consultants August 2012 p4) and is providing reasonable benefits to injured employees (Australian Medical Association Queensland 3 September 2012 and United Voice Union submission 3 September 2012).

In addition to the financial viability of the Queensland workers' compensation scheme it is apparent that by comparison to other states it is operating well. A reasonable yardstick for the operation of the workers' compensation scheme is the level of disputation. Queensland has the second lowest disputation rates and is well below the national average (Sciaccas Lawyers and Consultants August 2012 p5)

A consistent theme of the Queensland Council of Unions has been that there is no need for change within the current scheme given its financial viability and fairness to all parties.

Many of the submissions to the Committee have sought to advocate a position of reducing entitlements to employees in order to reduce costs when already the lowest cost scheme in Australia on average over the last ten years. Whilst this position adopted by many employer organisations is predictable, the arguments have not been made out. By contrast there is ample evidence of the financial viability of the scheme and several examples of instances where reductions to entitlements would have resulted in catastrophic consequences for the injured employees.

It is this balance between fairness and viability that the Committee must consider. The overwhelming evidence is in favor of the financial viability of the scheme (being the cheapest scheme in Australia to employers) coupled with premiums that are consistently amongst the lowest in Australia. In light of this evidence, it is our submission that there can be no justification for the removal of employee entitlements that would be the net result if many of the employer recommendations were adopted. Moreover it is speculative to suggest that the removal of these conditions would result in any reduction in premiums to employers.

This supplementary response focuses on the major issues that have been addressed by the QCU in our initial response and various parties that have also made submissions to the Committee under the various headings set out below.

Journey claims

A number of submissions highlighted the consistently low percentage of claims that journey claims amount to, namely six percent of all claims (Queensland Nurses Union 21 August 2012 page 5; United Voice 3 September 2012 p 6; CCIQ 3 September 2012 p20; Civil Contractors Federation 3 September 2012 p6;

TWU 26 July 2012 p3; Slater and Gordon 3 September 2012 p13). None the less, journey claims received an inordinate amount of attention from employer groups and the media.

Consistent with the position adopted by some employer groups, a number of submissions are recommending the removal of the journey to work claim (e.g. CCIQ 3 September 2012 p20). The justification for such a removal is absent from any submission. The theoretical question asked by employers is: how does the employer control the journey to work? Firstly, the fatigue experienced by an employee can be directly connected to employment and the responsibility of the employer to provide a safe system of work. Secondly, journey claims are excluded from affecting employer premiums so the suggestion of no employer control is an irrelevant consideration (CCIQ 3 September 2012 p20; Civil Contractors Federation 3 September 2012 p6).

One isolated example that received an amount of media attention (AAP 21 November 2012) was provided by Newhaven Funerals (12 July 2012). In the case of Newhaven Funerals premiums increased as a result of a motor vehicle accident sustained by an employee. Considerable media reporting surrounding this inquiry has focused on the journey to work aspect of workers' compensation. By definition however, this accident could not have been a journey claim because it did result in an increased premium for the employer. The removal of journey claims would not have assisted this employer in the circumstances outlined in the submission.

By contrast a number of union submissions illustrated the importance of journey claims to employees. The Transport Workers Union (26 July 2012 p3) was able to establish the importance of the journey claim to members of that union. The nature of the work performed by transport workers means that they will be using either their own or an employer's vehicle to travel to and from work. In addition work-related fatigue (not unknown within the transport sector) increases the risk of injury on a journey to or from work. The TWU also quite rightly identify the absence of a no fault system for motor vehicle accidents in Queensland and thereby demonstrates the need for the journey claim as part of the workers' compensation scheme. Employees in this important sector of the community would be denied a very important entitlement if journey claims were removed and it would not assist employers in terms of their premiums.

Another occupation that could be adversely affected by the removal of journey claims is teachers. Many teachers hold joint appointments within the private school system and almost all partake in extra curricular activities (Education Union of Australia Queensland and Northern Territory Branch undated p16). An exclusion of journey claims would adversely affect this significant and substantial group of professional employees. In addition, shift worker such as nurses (transcript 31 October 2012 page 15, Queensland Nurses Union 21 August 2012 page 5) emergency service workers (transcript 31 October 2012 page 23), farm, construction and mining workers are likely to be subject to fatigue and benefit greatly from the current journey coverage (Slater and Gordon 3 September 2012 p14).

Perhaps in recognition of the need for journey claims for construction workers, a reasoned and sensible submission was made by an employer organisation on the issue of journey claims by the Civil Contractors Federation (3 September 2012 p6) and reads as follows:

> "Whilst journey claims are such a small percentage of all claims and do not directly affect employer premiums we see no need to change this aspect of the system".

Likewise the Master Builders Association (3 September 2012 p7) sees the need for journey claims to cover employees in their industry:

> "The building and construction industry has inherent requirements that building workers travel as part of their employment. This necessitates a modest response for calls to abandon this cover. Building workers are currently travelling long distances to work and Master Builders cannot see any reason to water down or remove this cover."

Given that the removal of the journey claim would not assist individual employers, one can only ponder the motivation for some employer groups wanting its removal. It would appear that submissions advocating the removal of journey claims are based in an ideological mind set that automatically seeks to remove employee's conditions notwithstanding the negligible (or non-existent) impact on employers. The only possible justification for the removal of journey claims would be if they were causing the scheme to face impending financial disaster. As previously stated there is no evidence to suggest that the Queensland workers' compensation scheme is anything other than financially viable. Even if it was the case that there was considerable financial pressure on the scheme (which there is not), the relatively low (6%) proportion of claims would not justify the removal of such an important safeguard for Queensland employees.

Definition of worker

A number of employer groups sought change to the definition of a worker. It is acknowledged that several definitions of employee exist in various jurisdictions and legislation. However, it would be naive to consider that a change to the definition of worker within the Queensland workers' compensation scheme would resolve an issue that exists throughout Australia.

It is more likely that any change to definition of worker would result in the exclusion of employees from existing entitlements to reasonable coverage for workers' compensation. Moreover any change to definition of worker might provide greater incentive for employers to create sham contracting arrangement in order to avoid obligations under the workers' compensation system. In addition to this removal of a basic entitlement such as workers' compensation, sham contracting arrangements have implications for Government revenue and retirement incomes because of the impact on payroll tax and superannuation contributions.

In addition to amend the definition of worker for the purpose of workers' compensation would create a greater capacity for ambiguity and argument (Slater and Gordon 3 September 2012 p 23)

Definition of injury

Similarly a number of employer organisations sought to change the definition of injury. In reality advocating changes to the definition of injury is an attempt to reduce the number of claims. There is no evidence that the existing definition creates any difficulty. Similar to the definition of worker, any amendment to the definition of injury brings with it greater capacity for ambiguity and argument (Slater and Gordon 3 September 2012 p 23).

The definition of injury has been the subject of legislative change in the past. The definition was broadened in 2000 in order to restore a reasonable definition that would not unfairly exclude employees from workers' compensation coverage. Actuarial advice received in 2010 was that this expansion to the definition of injury that was enacted in 2000 has not resulted in substantially increased claims (Slater and Gordon 3 September 2012 p 23).

A number of employees who would otherwise have been excluded from workers' compensation have received the protection of a workers' compensation scheme. One such group of employees is nurses (Queensland Nurses Union 27 August 2012 page 7; Slater and Gordon 3 September 2012 p 24). Like much of Queensland, nurses form part of an ageing population and degenerative illness and injury is associated with such an ageing population. Concurrently the ageing population is placing greater demand on the health system and in turn greater demand for the employment of nurses. To restrict the definition of injury as was previously done in 1996 has the potential to exclude a large number of reasonable claims for nurses and other workers into the future.

Fraudulent claims

Whilst fraudulent claims received a significant amount of attention from the media, an examination of submissions and evidence provided to the committee, reveals that there is nothing in the way of concrete evidence of widespread abuse of workers' compensation by employees. At best there are isolated examples of anecdotal evidence of supposed fraudulent claims.

It is reasonable to conclude that the existing arrangements are adequate to deal with fraudulent claims.

Threshold for common law claims

Employer organisations expressed their desire to introduce a threshold for common law claims. The introduction of a threshold for common law claims, is a euphemism for the virtual removal of the ability for employees to undertake common law action against their employer. Much of the employer opposition to common law damages appears to be fuelled by an increase in the number of such claims towards the end of the last decade. Previous legislative amendment has brought about a decline in the number and extent of common law damages and a sustained increase in common law damages that had been predicted has not eventuated (Hall Payne Lawyers 3 September 2012 p 5; Slater and Gordon 3 September 2012 p18). In fact common law damages have declined on average by 30 percent and the number of claims for common law damages has declined by 10 percent compared to the pre 2010 legislative amendment (Australian Workers Union/Shop Distributive and Allied Employees Association /Transport Workers Union undated P4; Slater and Gordon 3 September 2012 p19).

By contrast to the employers' proposition to restrict common law damages rights for employees, this committee has been provided with numerous real life examples of where employees would have been left destitute had it not been for their capacity to undertake common law damages claims. A range of examples of where employees who were injured, by the negligence of their employer, were able to settle matters that enabled them to continue with their life (Transport Workers Union 26 July 2012 p4-5, Slater and Gordon 3 September 2012 p12 -13). By comparison the statutory payments these employees would have received, had they not been entitled to take common law action, would have been manifestly inadequate for their circumstances.

The seemingly benign introduction of a threshold for common law damages would result in a serious deterioration of protection of employees injured at work. The mere fact of a low percentage injury does not necessarily equate to a low impact on the employee in their chosen occupation. It is quite possible that a worker with a zero or low percent injury might still not be able to return to work (G Barnes 26 July 2012; Trilby Misso 31 August 2012; Hall Payne Lawyers 3 September 2012 p 5; Slater and Gordon Lawyers 3 September 2012 p8).

Another significant factor concerning common law damages is that it acts as a deterrent to employers conducting themselves in a negligent manner (Slater and Gordon 3 September 2012 p13). When one considers the health and safety record of a number of industries, it follows that removing the right to common law damages will not make these industries any safer. When dealing with matters of health and safety, a deterrent factor is essential and the QCU opposes any legislative amendment that has the potential for reducing the incentive for an employer to provide a safe system for work.

Finally, the position adopted by the QCU with respect to common law damages claims, is that it removes a right for an employee to which every other member of the community is entitled. In that regard the suppression of an employee's capacity to undertake common law damages claims treats employees as second class citizens. This position is well expressed by the independent Education Union of Australia. Queensland and Northern Territory Branch (undated p12):

> "...it would produce the inequitable situation where someone who is a customer in a shop and suffers an injury in the shop as a result of negligence, can pursue a common law damages claim as a personal injury, but a worker in this same situation would not have the same rights, despite the fact that negligence exists, because it is work-related."

Self insurance threshold

Some organisations, but by no means all employer organisations, argued for the relaxation of the thresholds for self insurance. Insurers such as Suncorp (3 September 2012) argue for the relaxation of the threshold out of self interest. Others argue for the relaxation out of an ideology that espouses deregulation regardless of the consequences (CCIQ 3 September 2012, Rio Tinto 1 August 2012).

The supposed justification for the relaxation of requirements for self insurance is that greater competition would lead to lower premiums for employers. Some employers such as Newhaven Funerals (12 July 2012), mentioned previously in relation to journey claims, believe they will be able to shop around if they are met with an increase in premiums. There is no evidence however that the perfect market conditions imagined by those advocating open-slather self-insurance would eventuate. In fact the nature of such a market would dictate the opposite. In an open market, insurers would use premiums in such a way as to decrease their risk and deliberately price some employers or industries with a perceived high risk out of their clientele.

The potential consequences of greater self insurance have been correctly identified by at least two employer organisations. The LGAQ (undated P5 and 6) outline the reason for the success of existing self insurance requirements within the Queensland legislative framework and highlighted the potential detrimental affect on the same.

> "If self-insurance licensing criteria were weakened by potentially allowing large numbers of organisations to obtain a license the number of self-insurers could very significantly increase. Under such circumstances the factors outlined above that have directly contributed to the success of existing self-insurers would not be present to the same degree to underpin the position of larger numbers of new organisations taking on self-insurance. In that situation Q-COMP would face considerable regulatory and cost burdens and almost inevitably turn back the clock on a self-insurance regulatory environment that has taken some 14 years to properly mature. It is considered that this would run counter to current moves to reduce the regulatory burden on businesses...
>
> ...Arguments in support of changing the licensing criteria appear to be more philosophically based. We do however see very material risks arising from changes to the licensing criteria."

Likewise the QHA (3 August 2012 p6) agrees with the current size and regulatory requirements for self insurance. The QHA notes that wholesale adoption of self insurance would adversely affect the operation

of Queensland's WorkCover scheme and employers, such as the QHA members, would be forced to pay higher premiums as a result.

The arguments for further self insurance are clearly ideological rather than practical. Illusory market conditions would not eventuate and the only result of wider spread self insurance would be to damage the existing workers' compensation system.

Conclusion

In the submission of the Queensland Council of Unions, the case for change has not been made out by the various employer groups. The Queensland workers' compensation scheme is financially viable and amongst the best in Australia. The cost to employers in premiums in Queensland is also consistently amongst the lowest of all jurisdictions with a remarkable low level of disputation. Balanced with this effective and efficient workers' compensation scheme are the reasonable entitlements made available to Queensland employees. The removal of these entitlements would result in hardship and inequity for a large number of working Queenslanders.