

**From:** Ken McKell <kmckell@amic.org.au>  
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**Subject:** RE: QLD W/C Inquiry  
**Attachments:** Supplementary Submission for Parliamentary Committee 221112.doc

**Follow Up Flag:** Follow up  
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Hi Deborah,

At the end of our appearance before the Finance and Administration Committee on 31st October 2012 the chair mentioned that parties had the option to submit further information.

Please find attached above supplementary material to the Australian Meat Industry Council's submission.

Regards,

Ken

Ken McKell  
Manager, Human Resources  
Australian Meat Industry Council

Subject	Issues	Solutions <span style="float: right;">206</span>
<p><b>Employer right to seek a second or more qualified medical opinion on any medical certification presented to the employer.</b></p>	<p>Failures to obtain correct diagnosis</p> <p>Failure to correctly complete medical certificates</p> <p>Failure of TMP to engage employer regarding RTW.</p> <p>Pre existing and degenerative conditions not disclosed to employers at time of employment</p>	<p>Further education for medical professional on medical certificate completion.</p> <p>Awareness training for TMP's on implications of incorrectly completed medical certificates for the IW</p> <p>Significant compulsory training for medical professionals on employer and employee obligations for RTW, who are authorised to issue QCOMP Certificates.</p> <p>Where non-compliance issues are identified with a medical certificate then the employer can refer the IW to another doctor approved by either the company or Workcover.</p> <p>Where the IW has been identified as having a pre-existing or degenerative condition then they must be treated separately under legislation, not under a circumstance of aggravation or acceleration.</p>
<p><b>Opportunity for employers to access persons worker compensation history in Qld</b></p>	<p>Potential for professional WC claimants, by going from one employer to another and putting in claims for compensation, because they mislead or fail to report previous work injury history, there by creating significant risk for themselves and the employer.</p>	<p>Where the employee signs a release then employers can access the person workers compensation history for pre employment or at any time they lodge a claim for compensation.</p> <p>This was previously available prior to the Beattie / Bligh governments, and operated without issue.</p>
<p><b>Stronger requirements for QCOMP medical certification to be completed correctly and with sufficient details and diagnosis of real conditions (not just pain).</b></p>	<p>Failures to obtain correct diagnosis</p> <p>Failure to correctly complete certificates</p>	<p>Further education for medical professional on medical certificate completion.</p> <p>Awareness training on implications of incorrectly completed medical certificates for the IW</p>
<p><b>Application of any workers compensation claim should always be with the employer and not any other 3<sup>rd</sup> party (including e-lodgement or lodgement by facsimile or phone)</b></p>	<p>With the race to the early lodgement for claims, employers are finding claims are not being sufficiently investigated in a fit and proper way by Workcover before accepting it. This is adding unnecessary cost to the scheme and unnecessary cost to employer premiums.</p> <p>By accepting claims, this then also gives the claimants an open ticket for access to common law which again waste time and money for all involved in the running of the scheme.</p>	<p>Stop WC claims lodgement by phone, fax or electronic means for workers without employers signing off or submitting their employer report at the same time. If necessary increase penalties for employers who fail to submit report within an agreed time frame.</p> <p>All lodgements for worker compensation claims should remain only direct through their employer and not through another party unless identification of the employer is an issue. If necessary increase penalties for employers who fail to submit report within an agreed time frame. Facility Fee could then be abolished by Workcover saving the scheme. This extra cost adds no value to the scheme what so ever</p>

<p><b>Claims Process</b></p>	<p>Failure of notification for employers, by worker or Workcover in a timely manner</p> <p>Employers unable to conduct timely investigations and put in place prevention measure for injuries if a claim is raised without their knowledge because of delayed reporting by the worker or the Workcover.</p> <p>Delayed reporting of claims should always have a heightened level of investigation, without reasonable excuse from both the employer and the employee.</p> <p>Level of Investigation conduct by Workcover in determining the claim, allows for claims that should not be accepted or fraudulent to occur without the necessary checks and balances in place.</p> <p>Workcover KPI requirements counter productive for a fit and proper investigation.</p> <p>Workcover staff turnover, causing employers major issues when staff do not understand industry and RTW options available by particular employers.</p>	<p>All lodgements for worker compensation claims should remain only direct through their employer and not through another party unless identification of the employer is an issue. Facility Fee could then be abolished by Workcover saving the scheme. These costs adds no value to the scheme what so ever.</p> <p>In conjunction with Workcover and WHS, investigation training could be developed to support employers on conducting workplace investigations. To prevent further occurrences of same or similar injuries.</p> <p>Delayed reporting by the worker or employer should always be regarded as a red flag and have the affect of a more in-depth investigation by Workcover.</p> <p>Workcover Officers need more investigation powers and also be trained to a higher standard to ensure suspicious and fraudulent claims are identified and dealt with in accordance with legislation (rejected, approved or people referred for charges)</p> <p>In the pursuit of time based decision excellence and running of a sound and viable WC scheme it is felt by employers that the time frame KPI's for actions &amp; decision developed by Workcover &amp; QComp is counter productive to conducting a fit and proper claims investigations. Particularly relevant for stress related investigations.</p> <p>Workcover staff should have a developed training program to become better acquainted with larger to medium sized employers to ensure that there is a higher take up rate on RTW programs and better more qualified investigations, which then inturn leads to better claims decisions and higher satisfaction with WC services by both employers and employees.</p>
<p><b>Section 32 of the Act - Stronger Definition of Injury</b></p>	<p>There is also a need to revisit the definition of an injury as prescribed in Section 32 of the Act and in particular, the words, <i>"significant contributing factor"</i>.</p> <p>Perhaps we should argue for a change to the Section and replace the current definition with the former definition, (Pre 2003) <i>"the major significant factor causing the injury"</i>. Bearing this in mind, if there were an aggravation to a pre-existing condition which was originally caused by an incident in the employees former workplace then the employee should be able to revert the claim back to</p>	<p>In essence this change will make claiming for a pre existing condition somewhat harder.</p> <p>This definition was available prior to the Beattie / Bligh governments and the legal systems and case law quickly established precedents then enable employers, insurers and unions what was a work related injury and what was not. Case law would still be relevant by returning to the previous definition of injury, thereby not incurring any additional costs to the scheme or extra work on the court systems. By changing back to: <i>"the major significant factor causing the injury"</i>, the scheme would remain viable for the protection of everyone.</p>

	his or her previous employer and should be barred from taking Common Law action against their current employer, or if this is not prudent, damages should be shared with the employees previous employer where the original injury occurred.	
<b>Drugs and Alcohol:</b>	The Act should be amended to preclude a worker from claiming workers compensation if it is found they had alcohol or illegal drugs in their body. <i>(Under the influence of a liquor or a drug would be too hard to prove)</i>	A good argument in applying for this inclusion for an individual who tested positive under an approved testing arrangement if an injury is sustained whilst under the influence of illicit drug or alcohol (above a prescribe limit of ".05" for alcohol and zero "0" for illicit drugs) an insurance claim if drugs or alcohol (above agreed prescribe limits) are found in a claimant's body and WorkCover / insurers should deny the claim or automatically be statue bar from access to a common law claim.
<b>Quality of Decision making by Q-Comp</b>	Desk Top Review - Copy and paste unrelated decisions providing wildly and irreconcilable different accounts of how and when an injury occurred.	Blind desk top reviews must be abolished and be replaced with properly trained and experience staff to conduct reviews and not base a decision on a narrow view
<b>Section 543 – Right of Appearance</b>	Recent instances of WorkCover rejecting claims for workers compensation and with subsequent Reviews lodged with Q-Comp by the injured worker's legal representative. The legislation only allows the Applicant to be the only person having a Right of Appearance, which in recent cases, turned out to be a significant disadvantage and the decision of WorkCover was overturned by Q Comp.	The legislation needs to be changed to allow equal Right of Appearances in order to strengthen or clarify some important aspects when an application for review is lodged with Q-Comp.
<b>Section 550 – Procedure of Appeal</b>	Appealing Q-Comp Decision – only 20 business days to appeal to QIRC. 20 Business days in some instances is not long enough to seek legal advice.	All appeals processes should be standardise to period to 3 month maximum time limit. This standardisation amount of time would include appeals for a WorkCover / Insurer, Q-Comp or court decision only for workers compensation related cases.
<b>Permanent Impairment &amp; access to common law</b>	Any Worker Compensation system must cope with a variety of injuries and illnesses for those of the community who suffer genuine injury or illness (including latent onset) that results in a permanent impairment rating of more than "0"  As with others workers compensation schemes throughout Australia access to damages via common law or other means should only ever be for people with more serious injuries or illness, a figure of 15 % whole of person could ensure that only people with genuine serious injuries are given full protection. People who in most cases fully recover	Currently the threshold for access to both statutory and common law is set at a 20% PI Whole of person... In order to introduce new restrictions to common law at a lower level it is recommended that this be lowered to 15% or greater and people >15% do not gain access to common law. It is further recommended that the PI payment table values be revised for all injuries from 5 % or greater to <15%, and that they be significantly increased to allow for future and better resolution controls at a statutory claims handling level.

	form an injury or illness without any affect to future life activities and some lawyers are currently clogging up the legal system and workers compensation scheme with cases that simply don't have merit or cause of action and it generally support by a "0" or <5% PI rating.	
<b>Time Limits</b>	An Under Section 131 (1) this allows for someone to delay applying for workers compensation for up to 6 months, and therefore potential delay treatment and or rehabilitation activities.	<p>Unless for latent onset type injuries and illness of a prescribe form (clearly identified) and where death is imminent, time limits for apply for workers compensation should be reduced to 3 months from 6 months. Time limitations should also be strictly enforced under any review or appeal process.</p> <p>Access to common law should also be reduced to 12 months from the closing of claim or a maximum of 2 years from the date of injury, again with strict observance of time limitations by review and appeals and the courts.</p>
<b>Self Insurance</b>	Due to the minimum affects on the viability of the entire WC scheme in Qld the industry supports a process where only suitable applicants be considered for self Insurance. However the current entry requirements are far too restrictive and discriminate against medium sized employers there by giving larger multi-national overseas company an unfair cost advantages against medium size Queensland companies and potential growth opportunities for the state.	<p>Due to the minimum affects on the viability of the entire WC scheme in Qld the industry supports an entry level number of FTE employees to be set at a level of 500 directly employed FTE as a minimum entry requirements.</p> <p>The industry also supports some of the financial entry requirements, but questions why the net tangible assets are set at \$100 million dollars, when other controls such as reinsurance and bank guarantees are in place. This could be reviewed, but the industry believes there needs to be a financial viability test with all applications.</p>
<p><b>Common Law</b></p> <p>Common law claims continue to be a significant financial risk to the future financial stability of not only WorkCover Queensland (WCQ), but also those smaller employers who are more vulnerable to rising costs.</p>	<ul style="list-style-type: none"> <li>▪ Manufacturing, of which meat processing is included, represented the highest proportion of common law claims lodged in the Queensland scheme, accounting for just over a fifth (20.7%) of all common law claim lodgements in 11/12. [Q-Comp – Supporting Queensland 11/12 Statistics Report]</li> <li>▪ It is well documented that common law claims have a very low amount of claims registered, 4%, as opposed to registered statutory claims, 96%.</li> <li>▪ This being said, the common law component nonetheless accounts for 41% of the total value of payments. [WorkCover Queensland, Assessment and Improvement Opportunities 2009]</li> </ul>	<p>Implement a 15% threshold for access to common law payments to curb the access and assist with the reduction of Common Law costs</p> <p>Clearly common law claims need more regulation, and the introduction of a 15% threshold is consistent with practice in other states. There is no doubt that the access to common law must be constrained to only allow those claims that can demonstrate a more significant loss.</p> <p>The argument that WPI is not always representative of the holistic impact of injury on the individual is accurate at times. However the statutory agent will need to be the vehicle to manage claims that are less than 15% WPI. They need to be provided with an improved rehabilitation approach and for arguments sake a revised PI schedule.</p>

	<ul style="list-style-type: none"> <li>A concerning feature is that whilst there might have been a decrease in claims registered between the 10-11 &amp; 11-12 years, there has still been an increase in the overall common law cost. [Q-Comp – Supporting Queensland 11/12 Statistics Report]</li> </ul>	
<p>We also understand that WCQ have a common law KPI of 45 weeks duration. WCQ's actual result for 2012 was 54 weeks.</p> <p>[P,8, WorkCover Queensland, Annual Report 2011-2012]</p>	<ul style="list-style-type: none"> <li>We consider that there is no doubt that duration KPI's certainly are beneficial to injury management and that they have a positive financial effect on the reduction of costs for statutory claims, however the reverse would be suspected for common law claims, especially where an injury is not yet stabilised physically or clinically.</li> <li>This approach results in an award that is over inflated and is not reflective of the actual impact on the claimant's life, the 'Notice of Claim' details concerning injury impact are also often exaggerated.</li> <li>Payments for the same injury managed by different Common Law officer have varying results.</li> <li>Duration surely leads to a hasty decision to settle the claim. The driver being the achievement of the KPI rather than the financial impact on the employer and the scheme.</li> </ul>	<p>KPI targets where the desired result permits awards for damages that are consistent with similar injuries aligned with the industry that the claimant was working in.</p>
<p>The inclusion of Future Economic Loss (FEL) in the damages awarded averages approximately 50% of the award.</p>	<p>In many cases KPC have witnessed where claimants have continued to remain in our employment and earn remuneration at the same level or higher.</p> <p>Example:  <i>"One employee was awarded 140K through early settlement, he continues to exceed his previous remuneration level each year following the injury, and he advises that the issues he was suffering from as indicated in his NOC, are no longer a problem? He drives his new expensive vehicle to work and the other employees realise how easy it is to gain financial benefit from what has panned out to be a seemingly low WPI injury, with no impact on his FEL to date"</i></p> <p>This sort of outcome is common, it is concerning,</p>	<p>We would accept that that FEL is warranted where there is an identified loss when it can be measured for example, against Tax Returns furnished with ATO for the successive years following an injury.</p> <p>An approach that encompasses reality vs. assumption would also make it less attractive for solicitors to engage with claimants who were vexatious or had little merit to their claim. There is no current mechanism to filter these claims.</p> <p>The viability of the scheme, and the wider economic impact across the state, demand that certain controls are applied that will contain the ever increasing financial impact of common law claims on the scheme.</p>

	and it will continue while the process is advantageous to the claimant and their legal representatives.	
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Definitions

TMP – Treating medical professional

RTW – Return to work

IW – Injured worker

WC – Workers Compensation