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20 March 2013

Mr Michael Crandon MP
Chair
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Sir,

Parliamentary Inquiry – Operation of Queensland's Workers' Compensation Scheme

We refer to your letter dated 27 February 2013 in which you invite submissions on Q-COMP's proposal that the Finance and Administration Committee consider a change to the reporting and management of statutory claims.

While this proposal would have no real impact on the operations of self-insurers such as ACES, we offer the following comments for the Committee's consideration, based upon the workers' compensation experience of ACES members.

- At first glance, Q-COMP's proposal to exclude claims reporting under an excess amount makes sense, but the benefits may well be superficial depending upon its implementation.
- Employers are already involved in "red tape" administrative burden through the administration of the "QOTE or first week benefits" excess. Employers are required to directly pay weekly benefits up to the relevant excess amount and then also lodge claim documentation with WorkCover.

  The Q-COMP proposal only eliminates the requirement for employers to lodge claim documentation with WorkCover and, depending on implementation, may well increase the "red tape" for employers.
- The proposal eliminates much administrative burden for WorkCover but the "red tape" elimination for employers is questionable. The "red tape" elimination benefit to employers becomes more questionable when one considers the employer skills required to decide and pay small claims; whereas, currently, employers depend on WorkCover's skill base to decide and advise on liability and payment issues. Further comments in this regard are contained in Attachment 1.

- A significant omission from the proposal is any analysis of the costs and benefits to WorkCover and employers. The proposal mentions only that the change would be *"Cost neutral to the scheme"* but provides no justification for this assertion.

  Presumably, the proposal envisages reductions in WorkCover staff numbers (to reflect much reduced claims numbers) and adjustments to WorkCover costs and premiums.

  Employers should be justly concerned that the proposal does not objectively address such issues. Attachment 2 provides an example where the excess amount will be higher for employers under Q-COMP's proposal.

- If the Q-COMP proposal was adopted, a thorough analysis would be needed to determine how –
  - the changed arrangements would be structured to reduce "red tape" for employers. It would be critical to ensure that legislation does not impose further administrative burden and costs on employers in deciding and administering these smaller claims.
  - consistency in claims decisions will be achieved and injured workers are not disadvantaged.

- If such a proposal was to proceed, then it is suggested that research be undertaken into the simplest form of excess to be administered by employers.

The Q-COMP proposal is titled "Reducing red tape for employers". It is difficult to see how the proposal would achieve this aim, in any significant way, for employers. ACES respectfully suggests that there are other statutory and common law claims legislative amendments that would have noticeably more benefit in reducing "red tape" and claims management inefficiencies for employers.

During consideration of this Q-COMP proposal, a feature of the Victorian legislation was discovered that ACES believes has merit, would be more beneficial to the Queensland scheme and is worthy of consideration by the Finance and Administration Committee Inquiry. Your attention is drawn to Attachment 3 which explains the feature.

ACES would be happy to provide further information on the content of this letter if that was the Committee's wish.

This Submission is made for and on behalf of RSL Care Limited, the TriCare group of companies and Sundale Garden Village, Nambour, employer members of Aged Care Employers Self-Insurance.

Yours sincerely,

John Hastie,
ACES Licence Manager.

Attachment 1

Following are comments regarding Q-COMP's proposal:

- The great majority of WorkCover Queensland's policyholders are small employers without the in-house resources to manage the process in Q-COMP's proposal.
- In Queensland the current claims excess process is simple for employers. All that an employer has to do when they have a claim, is wait for WorkCover's written advice as to the excess amount they have to pay and they then pay it.
- Q-COMP says that with their proposal employers will be required to develop and maintain a Register for Minor Injuries.
- Q-COMP uses the excess requirements in Victoria as an example for their proposal but they don't provide the detail of how it will be put into practice. Presumably, Q-COMP intends a process similar to the Victorian claims process.
- An ACES employer has a Retirement Village in Victoria and, therefore, has a workers' compensation policy in that State. The WorkSafe claims agent in Victoria is QBE.
- In Victoria employers are required to develop and maintain a Register of Injuries. When an injury or illness is recorded in the Register of Injuries, an employer must acknowledge this registration in writing to the injured worker concerned.
- In Victoria, if the period of incapacity will be 10 days or less and the medical expenses $629 or less, by paying the injured worker, the employer is accepting liability and they then manage the claim including any return to work on suitable duties.
- When paying the excess, an employer can either pay 95% of the injured worker's pre-injury average weekly earnings (PIAWE) or the workers' normal weekly earnings. It's the employer's decision. Determining PIAWE can be complex as some payments to the worker are included and some are not.
- There are then different processes for employers to follow depending on whether the claim will exceed 10 days incapacity/$629 in medical expenses or not. If the employer disputes liability, the claim goes to the WorkSafe agent for determination.
- WorkSafe Victoria advises that they receive various complaints. One is where the employer doesn't record a claim and just pays the injured worker. Later on if the worker is dismissed or changes employers and the worker requires an operation for example, WorkSafe says that makes it difficult for them as there is no record of an injury.

Like everything to do with workers' compensation, this is not a simple issue. Q-COMP claims in their proposal that it would reduce "red tape" and allow employers to manage low impact and uncomplicated injuries themselves and get on with business. If they are going to copy the Victorian system, this would not be true particularly for the majority of small employers. WorkSafe Victoria's "*Guide for employers - what to do if a worker is injured"* is 43 pages long. It is a complex process for employers in circumstances where employers have many other Government compliance obligations.

Small employers could be in a situation where –

- they have additional complex processes to follow; and
- have to pay a higher excess. With WorkCover's premium setting system where claim costs can have a minimal effect on premium for small employers, they get a reduction in premium that is less than the excess they have paid. The Government will likely receive complaints if that happened.

The proposal may be attractive to medium to large employers who already have the in-house resources to manage the process and the consequential reduction in WorkCover premium is more than the claim costs they have paid.

Q-COMP should provide the detail on how their proposal would work for employers and they should also provide examples on the effect that it will have on premium for the different levels of employers e.g. small, medium, and large. If it is going to create a more complex process for the majority of employers and also cost those employers more, then it will not achieve the stated aims.

Attachment 2

According to CCIQ's submission to the Inquiry dated 8 February 2013, Q-COMP told CCIQ that the total amount of excess that an employer would have to pay would remain the same with their proposal. It seems from CCIQ's submission (paragraph three) that discussions with Q-COMP regarding the proposal focused primarily on 100% of QOTE; to the exclusion of the other part of the existing excess.

As advised in the last paragraph of page 1 of Q-COMP's proposal to the Inquiry, the excess in Queensland is QOTE, which is currently $1,330.50 **or** the value of the first week of benefits if under that amount.

The current excess as advised in section 16 of the Regulation is the **lesser** of the following:

(a) QOTE;
(b) The amount of weekly compensation payable to a worker under Chapter 3, Part 9 of the Act.

The amount of weekly compensation payable to a worker under Chapter 3, Part 9 of the Act for the first 26 weeks is the greater of 85% of the workers' normal weekly earnings or the amount payable under the workers' industrial instrument (*compensation rate*).

As previously advised, the current QOTE is $1,330.50 per week. In the Aged Care Industry, injured workers' *compensation rates* normally range between $700 to $850 per week due to most claims being from Personal Carers, Cleaners, Kitchen staff etc. For the great majority of Aged Care industry claims, the injured worker would not earn the QOTE rate or anywhere near it.

If the compensation rate for an injured worker is, say $850.00 per week that would be the existing excess to be paid, not the QOTE rate. However, if Q-COMP is saying that with their proposal the new excess will only be QOTE, the employer would then have to pay an excess to an injured worker with a compensation rate of $850.00 per week, the QOTE rate of $1,330.50, which is an additional $480.50.

Attachment 3

The Victoria workers' compensation scheme incorporates a practical and worthwhile feature that would be beneficial in the management of statutory claims. Section 82, Sub-sections 7 and 8 of the Victorian Accident Compensation Act 1985 states:

(7) If it is proved that before commencing employment with the employer -

(a) a worker had a pre-existing injury or disease of which the worker was aware; and

(b) the employer in writing-

(i) advised the worker as to the nature of the proposed employment; and

(ii) requested the worker to disclose all pre-existing injuries and diseases suffered by the worker of which the worker was aware and could reasonably be expected to foresee could be affected by the nature of the proposed employment; and

(iii) advised the worker that subsection (8) will apply to a failure to make such a disclosure or the making of a false or misleading disclosure; and

(iv) advised the worker as to the effect of subsection (8) on the worker's entitlement to compensation; and

(c) the worker failed to make such a disclosure or made a false or misleading disclosure- subsection (8) applies.

(8) If this subsection applies, any recurrence, aggravation, acceleration, exacerbation or deterioration of the pre-existing injury or disease arising out of or in the course of or due to the nature of employment with the employer does not entitle the worker to compensation under this Act.

ACES employers encounter frequent instances where previous or pre-existing injuries are not disclosed when workers are appointed to positions. These workers subsequently make claims for such injuries alleging that the injuries were caused by their current employment. For example, an ACES employer has a current common law claim from an employee for a shoulder injury. This employee also had a common law claim with a previous employer for an injury to the same shoulder, which she obviously didn't disclose when she applied for the job.