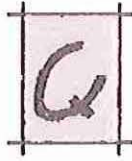


Queensland



Council of Unions

President: **John Battams**

General Secretary: **Ron Monaghan**

Assistant General Secretary: **Amanda Richards**

Ref: AR:JC20130322

22 March 2013

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

Email: fac@parliament.qld.gov.au

Dear Mr Crandon

Please find attached the Queensland Council of Unions (QCU) submission to the Inquiry submitted on behalf of Affiliates.

This submission is in response to the QComp proposal "Reducing red tape for employers" and was developed in consultation with Affiliates.

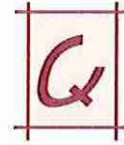
If you wish to discuss our submission further please do not hesitate to contact me.

Yours sincerely

Ron Monaghan
GENERAL SECRETARY



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Queensland Council of Unions

Inquiry in to the operation
of Queensland's workers'
compensation scheme.

- Response to Q-COMP's
proposal "Reducing red
tape for employers"

Prepared by: Amanda Richards

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Introduction

This submission is in response to a proposal put forward by Q-COMP titled *Reducing red tape for Employers* and represents the views of our 34 Affiliated Unions covering over 350 000 union members in the state of Queensland. It is our belief that the proposition will not lead to reduced red tape for employers, but will in fact extend their documentary requirements and increase their financial obligations, and potentially could lead to increased disputation over claims for workers' compensation.

Facts

Q-COMP asserts that the Queensland scheme "has significantly more claims than any other scheme".

As indicated previously to the Inquiry, the Queensland scheme is significantly different to all other schemes in Australia and the scheme is well funded. Employers and workers are protected under our scheme in its current context. The claim number reporting differences are historical, well known and accepted in the industry.

It should be noted that all time lost claims are to be reported to SafeWork Australia and that currently states collect and submit this information from employers through their workers' compensation Agents, however most jurisdictions only report externally on claims above their excess period.

It is our assertion that the inclusion of graph 1 in Q-COMP's paper provides little value. We would add that injuries of 5 days duration or more are comparable across the states.

The Queensland scheme has always encouraged early reporting of injuries in order that early intervention is commenced in a timely way. Notification or record purposes only claims have been part of the system in order that injuries or illnesses which may initially present as minor but further medical investigation reveals a more serious injury or illness has been sustained, and for those injuries and illnesses with potential lag times such as exposure to asbestos, chemical spills or even exposure to violence in the workplace which later leads to post traumatic stress disorder, are recorded when the information is fresh in everyone's mind.

Medical expenses only claims have been encouraged in order that injured workers can stay at work, and receive the necessary treatment at an early stage eg physiotherapy for a sore back.

In the Victorian scheme we understand that the claims are lodged with the employer, but they do not have a centralised scheme such as Queensland.

They have a number of insurers in Victoria who have all had to replicate administrative systems. The insurer determines the rehabilitation available to injured workers.

Victoria's premium rate for 2008/2009 was 1.38%¹ and was only reduced by 0.042 for the period of 2011-2012². The scheme according to Safe Work Australia is 100% funded³. The percentage of other administrative costs of running the scheme in 2009-2010 for Victoria is 2.2% whilst in Queensland other administrative costs were 2.4%⁴. However these figures do not attest to the superiority of Victoria's scheme because the following year the Victorian Ombudsman carried out an investigation into the Victorian Scheme. This was because over a three year period general complaints for the scheme increased by 27%⁵.

¹ Safe Work Australia. (2011). *Comparison of workers' compensation arrangements in Australia and New Zealand*. Canberra: AGPS.

² Work Safe Victoria- **Workers compensation premium rate 2011-12**

(2011)(<http://www5.worksafe.vic.gov.au/wps/wcm/connect/wsinternet/worksafe/sitetools/news/workers+compensation+premium+rate+2011-12>)

³ Ibid n1

⁴ Safe Work Australia. (2011). *Comparative Performance Monitoring Report 13th Edition*. Canberra: AGPS.

⁵ The Victorian Ombudsman (2011). *Investigation into the record keeping failures by WorkSafe agents*. Victoria. Victorian Government Printer

Among numerous issues the Victorian Ombudsman found that there was poor record keeping by agents⁶. This impacted the scheme by causing delays in payments, breaches of privacy and poor record keeping procedures⁷.

Victorian scheme

Q-COMP Submission

In the Q-COMP submission the Workers' Compensation Scheme which operates in Victoria is used as a comparator to the current scheme which is in operation in Queensland.

Q-COMP states: "In Victoria for example, where claims are lodged with the employer, the employer is not required to pass that claim on to the insurer for 10 days".

Section 108 of the *Accident Compensation Act 1985* sets out the responsibilities of an employer in relation to the forwarding of a claim.

An employer must forward to their WorkSafe agent any claim for compensation in the form of weekly payments⁸ or any relevant medical certificate relating to a claim for compensation in the form of weekly payments⁹.

The medical certificate is required to be issued by a medical practitioner¹⁰ and in a form approved by the authority¹¹. The certificate must also specify the expected duration of the worker's incapacity and the worker's capacity to work¹².

The Act clearly stipulates that the employer must do this within 10 days after they have received the claim from the injured worker.¹³

Q-COMP states "The excess amount payable by an employer in Victoria in the first 10 days of compensation and the first \$610 of medical expenses".

The employer is liable to pay weekly payments for the first 10 days an injured worker is absent **and** the first \$629 of medical and like services.¹⁴

Q-COMP states "if the injured worker returns to work and does not require any further treatment within the bounds of these excess provisions the employer is under no obligation to lodge the claim.

If medical expenses are likely to exceed \$629 an employer must forward an injured worker's claim to their WorkSafe Agent within 10 days.

If an injured worker has any time off due to the work-related injury the employer is required to forward their claim to their WorkSafe Agent within 10 days.¹⁵

⁶ Ibid n5

⁷ Ibid n5

⁸ *Accident Compensation Act 1985 section 108 (1) (ab)*

⁹ *Accident Compensation Act 1985 section 108 (1) (aba)*

¹⁰ *Accident Compensation Act 1985 section 105 (a)*

¹¹ *Accident Compensation Act 1985 section 105 (b)*

¹² *Accident Compensation Act 1985 section 105 (c)*

¹³ *Accident Compensation Act 1985 section 108*

¹⁴ Work Safe Victoria – *Employers Rights and Responsibilities* (2013) < <http://www.worksafe.vic.gov.au/injury-and-claims/the-claims-process-following-an-injury/the-claims-process-for-employers> > at 7 March 2013.

¹⁵ Ibid

The employer must also submit an injury claim form, employer injury claim report, the injured workers medical certificate and any other relevant documentation such as medical expenses.¹⁶ If medical expenses are not likely to exceed \$629 and the employer intends to keep paying the expenses the claim can be submitted at no greater than three month intervals¹⁷.

Q-COMP states the employer is simply required to keep a register containing details of the injury”.

Employer to keep register of injuries etc¹⁸.

An employer must keep a register of injuries at each workplace and the register must be readily accessible at all reasonable times to a worker employed in that workplace.¹⁹

The register must be in the summary of a form approved by the Authority which includes requirements relating to the giving notice of an injury and the making of a claim under the *Accident Compensation Act 1985*.²⁰ If an authorised agent is responsible for managing claims under the Act against the employer, the name of the authorised agent must be included.²¹ The benefits to the worker must be included²².

When a notice of an injury is composed an employer must ensure that the specified particulars of the injury are entered in the register.²³

A worker or any person acting on the worker's behalf may enter such particulars of the injury which are specified by the Authority in the register of injuries²⁴

Notice of injury²⁵

The time limit for an injured worker to give notice to their employer is 30 days after the person becomes aware of the injury.²⁶

The notice of injury must be in a form which is approved by the authority and include the particulars required by the authority²⁷. The employer must acknowledge in writing the giving of notice of an injury²⁸.

Each workplace is required to display an “if you are injured at work poster” in a place where it can be read by all workers.²⁹ The poster informs workers of their right to claim for compensation if they are injured in the workplace.³⁰ The poster is available in 10 languages.³¹ If an employer does not display the sign they may be liable for a penalty up \$35,835.³²

¹⁶ Ibid

¹⁷ Ibid

¹⁸ *Accident Compensation Act 1985 section 101*

¹⁹ *Accident Compensation Act 1985 section 101 (1)*

²⁰ *Accident Compensation Act 1985 section 101 (1) a*

²¹ *Accident Compensation Act 1985 section 101 (1) b*

²² *Accident Compensation Act 1985 section 101 (1) c*

²³ *Accident Compensation Act 1985 section 101 (3)*

²⁴ *Accident Compensation Act 1985 section 101 (4)*

²⁵ *Accident Compensation Act 1985 section 102*

²⁶ *Accident Compensation Act 1985 section 102 (1)*

²⁷ *Accident Compensation Act 1985 section 102 (2) a,b*

²⁸ *Accident Compensation Act 1985 section 102 (4)*

²⁹ Work Safe Victoria – *Employers Rights and Responsibilities* (2013) < <http://www.worksafe.vic.gov.au/injury-and-claims/the-claims-process-following-an-injury/the-claims-process-for-employers> > at 7 March 2013.

³⁰ Ibid

³¹ Ibid

³² Ibid

Option for employer excess payment

Option for employer excess payment: amend the legislation to remove the requirement for claims to be lodged with the insurer until 50% of QOTE is reached with medical or compensation for loss of wages is reached (\$665.25).

The amount of excess remains the same.

Retain the right for the employer or injured worker to lodge a claim with the insurer immediately if there is:

- Dispute
- Strong indication that the claim will cost more than QOTE.

The Queensland union movement on behalf of its members does not support Q-COMP's option for employer excess payment on the basis that we have been unable to identify any benefit to worker, employers or the scheme.

Currently if a worker is injured the employer and the injured worker completes an application form and it is forwarded to WorkCover Queensland for a decision along with any relevant receipts. WorkCover Queensland make a decision on the validity of the claim and the appropriate payments are made. A copy is usually kept on the workers file if they do not have a return to work coordinator.

Based on our experience, under the proposed model an employer would need to determine the following:

- Was the injury work related
- Did the incident occur at work
- What is the financial benchmark
- Will the injured worker be off work for any duration
- How to best keep records if not defined by the Regulator
- Who in their business will manage these matters
- Who in the business will track associated costs
- What is the relevant fee under the table of medical costs

Employers will not only have to pay up front costs, wages and an excess but will have to submit a claim form along with associated receipts of expended monies, and keep records of it all.

They will need to create a recording system, and their payroll system will need to accommodate this. In a lot of instances this will cost the employer extra monies as the system will need to be amended.

Furthermore how is compliance to be checked and by whom, and what penalties would be in place for those not meeting their obligations?

Should there be any disputation this will also take up time and resources of the business owner as they are not experienced in these matters.

Queensland's current system has one of the lowest dispute rates in Australia. During the period of 2009-2010 Victoria's disputation rate was 9% where as Queensland's Disputation rate was 3%³³.

Queensland is 95% small business; we do not believe that Q-COMP's proposal reduces red tape for small business owners. It is our opinion that WorkCover Queensland is best placed to manage the totality of the

³³ Safe Work Australia. (2011). *Comparative Performance Monitoring Report 13th Edition*. Canberra: AGPS.

workers' compensation claim process as due to their size and experience there are significant economies of scale and therefore efficiencies.

It is our belief that claims costs may in fact increase under this proposal. Furthermore we are constantly briefed at stakeholder meetings on the improvements being made to the scheme to reduce red tape for employers.

Potential impact on Workers

The Q-COMP proposal totally disregards any rights of workers to be part of a process that compensates them for being injured at work. Their proposal continually talks about the employer lodging claims and the employer having the ability to manage these proposed processes.

In our experience the initial claim lodgment stems from the injured worker and their treating doctor, rarely from the employer. The proposal runs the risk of the employer not following proper processes and the injured worker being put at a disadvantage due to lack of records or claims being put through as sick leave.

Injured workers would be at a disadvantage as soon as they were injured.

Currently an injured worker has a right to see their own doctor. We believe that this would be put at risk whilst businesses make arrangements with medical clinics.

Alternatively early treatment could be put at risk as workers can't afford the up front costs for medical or therapy visits and workers could continue working, further exacerbating their injury.

Currently WorkCover Queensland have good arrangements with the medical profession and therapists in order that injured workers do not have to pay accounts up front and the fees are relative to the table of medical costs. Most injured workers are not aware that there is a table of medical costs and would unwittingly pay accounts not realizing that they may not be reimbursed the full amount by their employer.

Other implications

We are also concerned in relation to potential common law claims made by injured workers, and the impact on this process should their full information not be available, particularly as Queensland has a high rate of business closures each year.

Currently injured workers are able to access copies of their records. Would this still be available under this proposed scheme?

Should Q-COMP's proposal be implemented there would need to be an extensive campaign across the state advising business of these changes and the provision of seminars in order that they are appropriately briefed on their obligations under a new proposed system.