Finance and Administration Committee

From: [redacted]
Sent: Monday, 25 March 2013 9:36 AM
To: Finance and Administration Committee
Cc: Terry Burke
Subject: IEU-QNT Submission to Finance and Administration Committee
Attachments: In25121dw.docx

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Dear Chair

Please find attached the IEU-QNT's further submission to the proposal provided by QComp in relation to the "Inquiry Into the Operation of Queensland's Worker's Compensation Scheme".

Please advise if any further clarification is required.

Regards
Danielle Wilson

on behalf of
Terry Burke
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Finance and Administration Committee – Queensland Parliament
Submission to QComp Proposal

This document is in response to the proposal that has been put forward to the Finance and Administration Committee's Inquiry into the Operation of Queensland's Workers' Compensation Scheme.

The IEUA-QNT is concerned about why this particular proposal has been singled out for consideration and feedback. In particular we question Q-COMP's role as regulatory authority and whether it is appropriate for them to be making comment on, for example, how to reduce the number of claims, when its primary function is to regulate the scheme, monitor performance and ensure compliance. Many of the submissions contain a range of ideas that have been put forward, but this is the proposal has been isolated for stakeholder feedback. However, we will take the opportunity to provide our feedback as follows:

The Concept of Reducing "Red-Tape"

In terms of the proposal, we are not convinced that this concept will reduce red tape for employers. This proposal requires employers to undertake, for possibly up to the first ten days of a claim, the full administration of a claim. We have a number of concerns as follows:

- The proposal will require employers to outlay costs and manage the initial burden of claims and reporting. At the moment, an employer can simply lodge a claim by phone which is then recorded by the insurer regardless of what paperwork the employer chooses to record. The proposal outlines the need for an employer to complete paperwork and then manage this documentation which will increase the administrative load for many employers who manage their injuries differently at the moment. This proposal effectively means that initially all employers will be required to manage as if they are self-insurers. Self-insurers go through significant assessment and accreditation processes because it is important that employers can establish their capacity to comply with the basics in managing claims. We do not believe that a vast majority of employers, particularly those in the small to medium-sized bracket, will have the infrastructure, the knowledge or experience to deal with the initial stages of a claim.

- There are federal requirements to report all work-related injuries to SafeWork Australia and this burden is currently met by the insurers. If injuries are not claimed through an insurer, employers will be required to take up the burden for reporting. Our concern is that the QComp proposal to administratively shift of responsibility for these low-level injuries could mean they will not be reported at all in future. This would cause a distortion in the statistics because clearly, any injury in the workplace needs to be recorded and reported on, or industry will not have a clear picture of injury trends and will not be able to adequately address injury prevention. This will increase the health and safety risk to all workers and cannot be entertained.

- There is no doubt costs will have to be incurred by the employer needing to initiate a new system to manage the burden of initial claims and injury reporting. This will include the cost of resources to track medical treatment, the table of costs, the training of staff to manage claims,

the cost of putting in place processes to discharge their assessment duties, the added responsibility of an employer needing to know how to assess the seriousness of an injury and costs associated with possible return to work and rehabilitation of an injured worker. Unless there could be demonstrated long term gains from this, employers should not be expected to bear the brunt of these expenses that are currently covered by the scheme.

- On top of the assessing costs, there is also the excess. At present, employers do not pay an excess for medical expenses only claims. Under the QComp proposal, employers will now pick up a cost they have not had to outlay before. In practice, under this proposal it would mean that the 32,787 medical expenses only claims that were registered in the 2011/2012 year will attract an excess into the future. This is approximately a third of claims, which is significant in the scheme.

- Lastly, but not least, in addition to the "red-tape" burden on employers, this proposal is likely to create further red-tape for injured workers. Speaking from an industrial perspective, there is significant advantage in having a third party manage and assess claims. QComp have referred to a disputed claims process which may seem that at least injured workers have an avenue to pursue should the employer refuse to acknowledge the work-related injury. However, while this would be managed independently through insurers, it can only delay claim decisions for injured workers and will result in additional administrative work for employers. We believe that claims durations would most certainly blow out under the QComp proposal.

The Statistics

The statistics, as presented in this proposal, look attractive to those intent on changing our scheme. According to these figures, Queenslanders would appear to be the most injured workers in the country, however we clearly know this is not the case. It has been well established throughout this Review process that it is not as simple as comparing Queensland with any other jurisdiction. The type of scheme that we have is very different to every other state, including the range of the scheme and the definitions. As referred to in many submissions to this review so far, a short tail scheme has proven over every other model to be far more cost-effective for both insurers and employers because it is designed to reduce costs. If just one element of a short-tail scheme is dismantled, the balance will be lost and in our case, we will end up with something like the South Australian model which according to current premium reporting, is costing employers almost three times as much as the Queensland scheme.

Further to this, the statistics quoted fail to identify their context. Through the public briefings it was explained that other jurisdictions do not record "notification only" claims and these are included in the Queensland figures. QComp have also advised that other jurisdictions do not record "medical expenses only" claims, which again are also included in the Queensland figures. These two factors added together approximate the number of claims QComp believes the statistic will be reduced by. However, the QComp proposal will not remove the need for these claims to be made, and if adopted, they will continue to exist but simply be absent from the statistics we see in the future.

This proposal focuses on reducing injury through administration and is merely reassigning liability. It is far more important to have a scheme that is solvent, cost-effective for all parties, well-balanced

and viable in the long term. The risk is that a scheme that concentrates on looking "cheaper" in the short term, will end up costing employers much more in litigious costs long term. The only genuine way to reduce injury is through much stronger regulation and education around workplace health and safety at the worksite level. The administrative changes proposed by QComp will not deliver less workplace injury – they will only deliver less work for insurers. As we have indicated in our previous submissions, we support all measures taken to reduce workplace injury, as the key to reducing the number of claims is to put in place mechanism that prevent injury from occurring in the first place.

Employer in Claims Determination and Case Management

Effectively what is being proposed by QComp would leave both the acceptance and rejection of a claim in the hands of the employer from the outset. This makes it far too easy to create an environment free from compliance where workers would follow, for various reasons, the employer's directions regarding the management of their claim. In the regulated environment we currently have, there are employers who fail to comply regularly with their obligations under the *Workers Compensation and Rehabilitation Act 2003* and the *Work Health and Safety Act 2011*. In our own industry we have reports from members where some employers regularly encourage them not to lodge claims, insisting that they will "look after them". The QComp proposal will make it harder to enforce compliance and the process will take longer.

A further concern for us is the potential for injured workers to be discriminated against due to the lack of separation between the employer and the management of the claim. This is already a concern for us in the space in which self-insurers operate. The employer will have unregulated access to medical information that is usually controlled by the insurer. The employer will be come the judge, jury and executioner in those initial stages and there will be added pressure for employees not to seek treatment from their own treating medical professionals. The QComp proposal does not provide any mechanism to ensure that there is separation in the roles as insurer as and employer. Unless there are regulatory measures put in place, we have no doubt this will impact on the industrial rights of workers

For a proposal like this to be given any serious consideration, at the very least, mandatory notification of potential claim with an insurer or a regulatory body must continue. At the briefing QComp spoke of the obligations of employers to report injuries to Workplace Health and Safety Queensland. This is an area of compliance that is incredibly low and without additional resources to allow Workplace Health and Safety Queensland to enforce compliance, this will not change. Again, without adequate regulatory resourcing for compliance on injury and incident reporting, it means the statistics will not accurately reflect the number of injuries incurred in the workplace.

A further safeguard that would have to be considered is that injured workers need to be formally advised of their rights each and every time they report an injury. This could take the form of a statement, similar to those produced by the Fair Work Commission and there would have to be a mandatory obligation for employers to provide this at the outset.

The Proposal Overall

There is a lack of detail in the proposal to satisfy appropriate level of regulation around how an employer would determine and manage a claim. The statistics used paint a very biased picture of how we fare compared to other states and the way the statistics have been used is a falsehood because they are not fully explained in a way that could be used to make an informed judgement.

This proposal denies the fundamental right for an injured worker to make a claim for a work-related injury and removes liability from an employer who may be negligent. It assumes all workers have capacity to represent themselves to their employers when they are in their most vulnerable of circumstances. We know this is not the case. It also leaves open the denial of rights to pursue common law damages in cases of negligence by failing to ensure accurate reporting mechanisms will be in place.

The proposal defies the current focus by stakeholders on the importance of injury prevention, early intervention, rehabilitation and early return to work of an injured worker. The timeframe from sustaining an injury, disputation of the claim to the claim then being assessed and accepted by the insurer could be significant as opposed to the average decision making time frame for a claim reported by insurers in 2011/12 of 6.2 days.

We do not believe the proposal will cut red tape for employers. From every aspect we can only see that there actually will be more red tape for employers and also injured workers.