

Our ref: Accident Compensation / Tort Law Committee

22 March 2013

The Research Director  
Finance and Administration Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By email: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

Dear Research Director

**OPERATION OF QUEENSLAND'S WORKERS' COMPENSATION SCHEME – Additional Submission**

Thank you for providing the Queensland Law Society (the Society) an opportunity to lodge an additional submission to the Finance and Administration Committee (the Committee) for its Inquiry into the Operation of the Queensland Workers' Compensation scheme (the Scheme).

The Accident Compensation / Tort Law Committee of the Society closely monitors the Scheme and has contributed to this submission.

**General observations**

The Society observes that there is no impact on the consolidated revenue of the State of Queensland from a positive or negative financial result of WorkCover Queensland in any particular year.

The Society is encouraged that results for the 2012 / 2013 financial year are tracking positively for the future financial viability of the scheme. It is understood that to the present:

- common law claims rates remain consistently low
- common law average payments continue to reduce.

Results presented at the November 2012 stakeholder actuarial presentation were very encouraging, evidencing the following:

- common law claims frequency decreasing both by wages and numbers of employees
- common law claims nil finalisations remaining high
- common law claims payments continuing to reduce
- actuarial provisions for outstanding claims were reduced by \$114 million.

The Society notes that at the November 2012 stakeholder presentation, the actuaries for both Q-Comp and WorkCover Queensland advised that sufficient time had elapsed since the passing of the 2010 amendments, to confirm with certainty that:

- the reforms in 2010 were effective in reducing exposure of the Scheme to adverse claims trends
- there was a 5% reduction in common law frequency for 2011 and later injury years
- there was a 5% reduction in common law settlement sizes for 2011 and later injury years.

The Society has consistently cautioned – and the actuaries for WorkCover Queensland and Q-Comp have confirmed - that any further significant structural change to the Scheme will introduce actuarial uncertainty and that it may take some considerable time for the impact of such changes to crystallise. In the case of the 2010 amendments, cautious actuarial confirmation indicates that that initiative has been successful notwithstanding actuarial opinion recently expressed that even without the 2010 amendments, the positive trends now confirmed may have eventuated.

### **Comparing the Victorian experience**

Currently Victoria claims to have the lowest workers' compensation premium in the nation, but as the Society noted in its supplementary submission to the Inquiry, there is a significant difference in the nature of the excess payable by employers in the two States. This will inevitably have an impact on premium levels.

Queensland has the second lowest average workers compensation premium in the country at 1.45% of wages. The published average premium in Victoria is lower at 1.29% but employers in Victoria must pay the first two weeks of wages and the first \$629 in medical expenses of a claim directly. Employers can buy out this excess by paying a 10% premium increase, being a total premium (presently) of 1.4278%.

Another aspect of the Victorian model is a threshold to access common law claim entitlements. The threshold contributes to the high rate of disputation in the Victorian scheme as a result of arguments over entitlements to pursue common law claims. Additional administrative burdens are placed on employers who are often required to participate in the complex multi-stage common law process in Victoria.

### *Results*

In the 2011 – 12 year:

- Worksafe Victoria made a \$675.6M loss after tax
- WorkCover Queensland made a \$199M profit after tax
- WorkCover Queensland improved its equity position by 58%
- Worksafe Victoria's equity position worsened by 54%.

There have been no concerns expressed in respect of the financial position of WorkCover Queensland in the 2012 – 13 year.

Recent reporting<sup>1</sup> has indicated that there are significant issues facing the Victorian scheme in the 2012 – 13 year:

- there is a sustained surge in common law claims which has dented performance of the Victorian scheme

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<sup>1</sup> Australian Financial Review, 20 March 2013, "Rising Claims hit Vic WorkCover"

- half-year results for the 2012 – 13 year showed a significant reduction in profit from insurance operations down from \$118 million to \$13 million
- rising levels of common law claims for the half year added about \$150 million to liabilities
- the Victorian scheme actuary has taken the view that the trend in the increased number of common law claims was not likely to abate.

It is an interesting outcome that despite having a threshold for access to common law claims in Victoria there now appears to be a sustained increase in the claims rate. In Queensland we have open access to common law claims and a clearly identified decreasing common law claims rate together with decreasing average claims payments as a result of the introduction of the ISV scale in relation to awards of general damages.

The recent Victorian scheme claims experience reinforces the Society's long-held position that the imposition of thresholds in order to access common law claims entitlements:

- does not necessarily impact upon common law claims rates
- will not, going forward, result in the removal from the scheme of that cohort of claims which presently meet the claims profile which would be excluded by the imposition of a threshold. In other words, if for example the imposition of a threshold would on current figures remove 20% of claims, the imposition of a threshold will never in reality achieve such an optimistic outcome and the actual reduction in claims will always be less than projected.

The problems and limitations previously identified by the Society with the operation of access thresholds will always frustrate the ultimate outcome sought when imposing such thresholds.

### **Changes to the Scheme**

The workers' compensation scheme in Queensland is the best in the nation. It delivers:

- fair benefits to injured workers
- low premiums to employers
- the right balance between the delivery of statutory benefits and access to common law
- the opportunity for employers to enjoy the benefits flowing from a positive involvement in the workplace health and safety of workers.

The Society has asserted for some time that significant structural changes to the Scheme were not needed, and that with current claims trends premium levels will decrease.

Premiums may also be decreased by increasing employer excesses as referred to above and we address below in the context of QCOMP's proposal.

The Society urges the exercise of caution in undertaking significant changes to the Scheme. If changes are considered necessary, it is to be expected that the actuaries for both WorkCover Queensland and QCOMP will be given the opportunity to model the impact any such reforms and, if necessary, further consultation with stakeholders will be undertaken.

### **The QCOMP proposal**

The Society supports in general terms the suggestion of QCOMP regarding adjusting the excess payable by employers.

The Society notes that there are a number of practical issues which will need to be resolved to ensure that there is appropriate collection and retention of evidence as to:

- the occurrence of an event giving rise to an injury and the sustaining of an injury by a worker

- notification having been given to the employer as above.

However, there are risks with the type of arrangement proposed by QCOMP:

- employers with poor record keeping processes may assert that a genuine injury had not been reported and therefore, did not occur. In such cases any ensuing dispute will have the potential to be costly and administratively burdensome for both employers and WorkCover Queensland
- injuries which at the time might be considered minor may, in the fullness of time, be more significant
- latent onset conditions may be sustained and may remain asymptomatic for many years and ultimately be fatal, eg, mesothelioma (a fatal asbestos related condition).

It is imperative that safeguards are implemented to ensure that injured workers managed solely at the employer level (as suggested by QCOMP) are not disadvantaged compared to arrangements currently in place.

One possible way of addressing the issues identified above – which is both practical, cost effective and reduces the administrative burden on employers - is for WorkCover Queensland to establish an online portal for workers, or their representatives, to report claims. This portal could be designed in such a way to present brief details of the basis of the claim and be immediately transmitted to the employer for action. Relevant information could be retained by WorkCover Queensland for future use. Notifications through the portal would also need to be specifically excluded when calculating loadings or claims experience metrics for an employer's premium. In the event of a dispute in relation to the claim, WorkCover Queensland could immediately intervene.

### **Alternative approach**

An alternate approach, which may be of greater efficacy to employers and may serve to reduce average premiums, would be introduction of a system which draws heavily on the Victorian excess and claim reporting system. This may include providing employers with a choice of premiums:

- the standard premium payable, which would:
  - permit an employer to refer all workers' compensation claims to WorkCover Queensland for management; and
  - retain the current one week of QOTE excess; or
- a discounted premium payable (around 10% less than the standard premium payable), which would:
  - permit an employer to self-manage workers' compensation claims up to an amount of two weeks of QOTE (or alternatively up to 10 days lost time) and / or \$650 in medical expenses; and
  - empower either the employer or employee to lodge a claim directly with WorkCover Queensland if a dispute has arisen concerning a claim that cannot be resolved between the parties within two working days; and
  - have WorkCover Queensland implement either an employee claims notification portal as discussed above or an online claims management tool for employers to record details of the claim and the action that they had taken. Loadings or claims experience metrics for an employer's premium is to not to be assessed on the basis of information entered into the online facility.

Some of the benefits of this approach are:

- the potential to significantly reduce the statutory claims administrative burden on WorkCover Queensland
- discount premium rates are offered to employers who are willing to take a greater role in managing their workers' compensation responsibilities
- injured workers are not denied any assistance or support
- employers are incentivised to improve their injury rates and obtain direct benefits for reducing the number of minor injuries in their workplaces
- employers need not take a greater role in managing their workers' compensation responsibilities and can still access a full service model from WorkCover Queensland, but contribute to the increased administrative costs without penalising more proactive employers
- reduced administrative burdens for employers as a result of reductions in red tape.

Thank you again for the opportunity to provide these supplementary comments and observations. The Society would be pleased to respond to any questions from the Committee relating to legal practitioners, or to assist the Committee in any way it can. Please contact our Principal Policy Solicitor, Mr Matt Dunn, on 3842 5889 or via email on [m.dunn@qls.com.au](mailto:m.dunn@qls.com.au).

Yours faithfully



Annette Bradfield  
**President**