Queensland Council of Unions

QCU Submission on the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014

Introduction

This submission is prepared by the Queensland Council of Unions on behalf of its affiliates. It pertains to the Safety Rehabilitation and Compensation Legislation Amendment Bill 2014 (the Bill seeks to amend the Safety, Rehabilitation and Compensation Act 1988 and Work Health and Safety Act 2011). This Bill seeks to:

- remove the requirement for a ministerial declaration for a corporation to be eligible to be granted a licence for self-insurance;
- enable certain corporations to apply to join the Comcare scheme;
- allow a former Commonwealth authority to apply to be a self-insurer in the Comcare scheme and be granted a group licence if it meets the national employer test;
- enable group licences to be granted to related corporations; and
- extend coverage to corporations that are licenced to self-insure.

The prospects of the Bill pose grave concerns to the Queensland Council of Unions in terms of the reduction in compensation to injured workers. It is our understanding that the Bill would, amongst other things, provide for a virtual removal of common law rights and deny workers access to journey claims by allowing national employers to use Comcare.

Whilst one could imagine that a nationally consistent approach to workers' compensation might be attractive, workers cannot afford for their entitlements and protections to be diminished in the process. It would be wrong to argue that national consistency in workers' compensation means reducing coverage to the lowest common denominator. It would be wrong to diminish the rights of workers.

The potential loss of workers compensation rights has been a matter of contention at a Queensland Government level for some time. Soon after being elected, the Newman LNP Government initiated a review of the workers' compensation scheme and quite rightly unions and community groups were quick to respond to any threat to existing entitlements. Concern about the Newman Government's agenda triggered the establishment of community coalitions and campaigns. In particular, the removal or reduction in employees' common law rights as well as the removal of journey claims, were the subject of public debate and campaigns.

Any objective observer would have concluded that the existing Queensland scheme was fair to employees and employers, inexpensive to employers and financially viable. Not all of these statements can be made about Comcare.

Polling undertaken by the QCU and other organisations pointed to a significant majority of Queenslanders being opposed to the reductions in the fundamental conditions of injured workers[1].

In addition to the reduction in protections for injured workers proposed by the Bill, the departure of national employers from the Queensland workers' compensation scheme would result in a weakening of that scheme. Presumably national employers would ordinarily be larger than state-based organisations. It follows that if larger employers leave the Queensland scheme its income from premiums would be greatly reduced thereby threatening its viability.

Two inevitable consequences would be massive increases to premiums for state-based employers and/or the eventual removal of entitlements to injured workers to attempt to maintain the scheme's viability.

Additionally, the Comcare scheme does not have the same level of inspection infrastructure as Queensland's scheme. Some employers may be attracted to Comcare to avoid inspection in respect of their workplace health and safety obligations.

Improved Health and Safety

Improved health and safety in the workplace is a fundamental principle that should be shared by all parties. It is demonstrable that improvements in health and safety in the workplace does lead to fewer injuries. To this degree it should be a fundamental objective of any government to assist workplaces to improve their health and safety performance thereby decreasing the impact on the workers' compensation system.

The activities of Workplace Health and Safety Queensland[2] (WHSQ) focus on achieving the National Strategy injury and fatality targets, compliance audits, along with targeted policy work on Industries which are showing above the norm injury rates e.g. Manufacturing and Transport. The Union movement supports the activities of WHSQ and believe there is currently a balanced approach between proactive assistance to business and enforcement activities. By removing employers from the jurisdiction of WHSQ there is a significant threat to enforceability of reasonable health and safety standards. Confusion over jurisdiction is another possible adverse consequence of broadening the application of Comcare.

[1] ReachTEL conducted a six---question survey of 823 residents across the Queensland State electorates of Toowoomba South and Toowoomba North on the night of 23rd April 2013; and ReachTEL conducted an eight---question survey of 1,138 Queensland residents on the night of 29th November 2012

[2] Queensland Government Division that enforces WH&S legislation

Competitiveness

To ensure competiveness for Queensland businesses and to remove the barriers for businesses operating in the state there are a number of initiatives in place. This is to ensure that businesses are not discouraged from operating in Queensland because of a cumbersome system. It is evident that WorkCover is not a cumbersome system considering that in 2011 WorkCover Queensland had an employer customer satisfaction rate of 74% and a worker customer satisfaction rate of 84%. If WorkCover was impeding businesses financial viability the satisfaction for the scheme would be considerably less than the three quarter satisfaction rate.

In addition to having a devastating impact on injured workers, the cost of a workplace injury can have an adverse effect on both businesses and the government. The WorkCover scheme is successfully mitigating these economic costs by achieving a return to work rate of 97%.

The most successful strategy to reduce the cost associated with a workplace injury is not to amend legislation which places further restrictions on the scheme. If this method was to be chosen, workplace injuries would still happen. Business productivity and competiveness are tied to workplace health and safety performance. A workplace injury affects business competiveness and productivity by virtue of reduced numbers of skilled employees or extra employees being engaged into the workplace on a temporary basis. This would result in lower productivity which would have a negative impact on competiveness.

Self insurance threshold

The QCU and its affiliated unions do not support self-insurance for business. Under current arrangements there are regulations and functions in place which protect workers who are employed by companies that self-insure. In order to ensure that self-insurers are compliant with the Act, Q-COMP regularly conducts reviews of the licence holders. Q-COMP reviews their finances and their health and safety records. Furthermore a self-insurer is required to reinsure and if there is a history of poor performance additional cost will be imposed. Therefore under the current system of self-insurance there is an encouragement to ensure that self-insurers comply with Workers' Compensation legislation and Workplace Health and Safety legislation which leads to decreased operating costs.

Should the changes look at decreasing the number of employees a self-insurer is required to have employed there are a number of scenarios which could happen. Each scenario is likely to result in increased costs for the workers' compensation scheme. This is dependent on the magnitude of changes which are made to the scheme. It is foreseeable that companies with better health and safety outcomes would look to self-insure and leaving the poor performers in WorkCover. This would result in a cost blowout for WorkCover.

It is the QCU's position that any proposed changes to self-insurance licencing should be the subject of an Actuarial Review of the projected impact of any such changes. Due to changes in the composition of Australia's workforce, there is an increase in precarious work arrangements, with one in five workers being casual. Casual workers are more likely to have an accident in the workplace. Workers who are covered by a self-insurer are less likely to receive the required support and rehabilitation. Because of the lack of security for casual employees it is easier to push a casual employee out of their job once they return to work. If workers are not being properly rehabilitated or returned to work a further strain will be placed on the economy and community.

The potential consequences of greater self insurance have been correctly identified by at least two employer organisations. The LGAQ, in a submission to the Queensland Parliamentary committee[3] outlines the reason for the success of self insurance within the Queensland legislative framework and goes on to say :

> "If self-insurance licensing criteria were weakened by potentially allowing large numbers of organisations to obtain a license the number of self-insurers could very significantly increase. Under such circumstances the factors outlined above that have directly contributed to the success of existing self-insurers would not be present to the same degree to underpin the position of larger numbers of new organisations taking on self-insurance. In that situation Q-COMP would face considerable regulatory and cost burdens and almost inevitably turn back the clock on a self-insurance regulatory environment that has taken some 14 years to properly mature. It is considered that this would run counter to current moves to reduce the regulatory burden on businesses…
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> …Arguments in support of changing the licensing criteria appear to be more philosophically based. We do however see very material risks arising from changes to the licensing criteria."

Likewise the QHA[4] (3 August 2012 p6) agrees with the current size and regulatory requirements for self insurance. The QHA notes that wholesale adoption of self insurance would adversely effect the operation of Queensland's WorkCover scheme.

The arguments for further self insurance are clearly ideological rather than practical. Illusory market conditions, would not eventuate and the only result of wider spread self insurance would be to damage the existing workers compensation system.

Journey claims

A number of submissions highlighted the consistently low percentage of claims that journey claims amount to, namely six percent of all claims (United Voice 3 September 2012 p 6; CCIQ 3 September 2012 p20; Civil Contractors

[3] LGAQ Submission Operation of Queensland's Workers' Compensation Scheme
[4] QHA Submission Operation of Queensland's Workers' Compensation Scheme

Federation 3 September 2012 p6; TWU 26 July 2012 p3; Slater and Gordon 3 September 2012 p13)[5]. None the less, journey claims received an inordinate amount of attention from employer groups and the media.

Consistent with the position adopted by some employer groups, a number of submissions are recommending the removal of the journey to work claim[6] (e.g. CCIQ 3 September 2012 p20). The justification for such a removal is absent from any submission. The theoretical question asked by employers is how does the employer control the journey to work? Firstly, the fatigue experienced by an employee can be directed connected to employment and the responsibility of the employer to provide a safe system of work. Secondly journey claims are excluded from affecting employer premiums so the suggestion of no employer control is an irrelevant consideration (CCIQ 3 September 2012 p20; Civil Contractors Federation 3 September 2012 p6)[7].

A number of union submissions to the Queensland Parliamentary committee illustrated the importance of journey claims to employees. In particular the Transport Workers Union (26 July 2012 p3)[8] was able to establish the importance of the journey claim to members of that union in particular. The nature of the work performed by transport workers means that they will be using either their own or an employer's vehicle to travel to and from work. In addition work-related fatigue (not unknown within the transport sector) increases the risk of injury on a journey to or form work. The TWU also quite rightly identify the absence of a no fault system for motor vehicle accidents in Queensland and thereby demonstrates the need for the journey claim as part of the workers compensation scheme. Employees in this important sector of the community would be denied a very important entitlement if journey claims were removed and it would not assist employers in terms of their premiums.

Teachers are another occupation that could be adversely affected by the removal of journey claims. Many teachers hold joint appointments within the private school system and almost all partake in extra curricular activities (Independent Education Union of Australia. Queensland and Northern Territory Branch undated p16)[9]. An exclusion of journey claims would adversely affect this significant and substantial group of professional employees. In addition shift worker such nurses emergency service workers, farm, construction and mining workers are likely to be subject to fatigue and benefit greatly from the current journey coverage (Slater and Gordon 3 September 2012 p14)[10].

Perhaps in recognition of the need for journey claims for construction workers, a reasoned and sensible submission was made by an employer organisation to the Queensland Parliamentary committee on the issue of journey claims by the Civil Contractors Federation (3 September 2012 p6)[11] and reads as follows:

> "Whilst journey claims are such a small percentage of all claims and do not directly affect employer premiums we see no need to change this aspect of the system".

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[5] Various Submission Operation of Queensland's Workers' Compensation Scheme
[6] CCIQ Submission Operation of Queensland's Workers' Compensation Scheme
[7] Various Submission Operation of Queensland's Workers' Compensation Scheme
[8] TWU Submission Operation of Queensland's Workers' Compensation Scheme
[9] IEU Submission Operation of Queensland's Workers' Compensation Scheme
[10] Slater and Gordon Submission Operation of Queensland's Workers' Compensation Scheme
[11] CCF Submission Operation of Queensland's Workers' Compensation Scheme

Likewise the Master Builders Association (3 September 2012 p7)[12] sees the need for journey claims to cover employees in their industry:

> "The building and construction industry has Inherent requirements that building workers travel as part of their employment. This necessitates a modest response for calls to abandon this cover. Building workers are currently travelling long distances to work and Master Builders cannot see any reason to water down or remove this cover."

Even if it was the case that there was considerable financial pressure on the Queensland scheme (which there currently isn't), the relatively low (6%) proportion of claims would not justify the removal of such an important safeguard for Queensland employees.

Removal of access to compensation for injury during recess breaks

Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 recommends altering the Safety, Rehabilitation and Compensation Act 1988 to exclude access to workers' compensation when injuries occur during recess breaks away from an employer's premises

Queensland Workers Compensation and Rehabilitation Act 2003 provides that a worker is covered under Section 34 1 (c) while the worker is temporarily absent from the place of employment during an ordinary recess if the event is not due to the worker voluntarily subjecting themselves to an abnormal risk of injury during the recess

To transfer to the amended Comcare legislation would mean that a worker who took an authorised break and suffered an injury would receive no compensation. Many workers use breaks to complete employer business and to carry out extra duties. This amendment would assist unethical employers to avoid their responsibilities. If not for their employment the worker would not be taking the break in that location and would not be exposed to the risk. There would be no organised sports events and other team building activities because workers would not be covered if they were injured during these activities.

Serious or wilful misconduct

Safety, Rehabilitation and Compensation Legislation Amendment Bill 20142014 recommends altering the Safety, Rehabilitation and Compensation Act 1988 to exclude access to workers' compensation when injuries or death occur because a person engages in serious and wilful misconduct. Queensland Workers Compensation and Rehabilitation Act 2003 is no fault compensation, which provides real safety net compensation for all workers. The avoidance of misconduct and poor work practice is part of the policies and procedures of any workplace and is the responsibility of supervisors and is included in training and instruction.

[12] MBAQ Submission Operation of Queensland's Workers' Compensation Scheme

To include this clause in compensation legislation will complicate injury and responsibility. Too much time would be devoted to argument about the nature of the action and the definition of serious and wilful misconduct. If a worker is engaging in such conduct surely the question would be:

- What kind of supervision is being provided if a worker is engaging in serious misconduct?
- Is it misconduct if a worker ignores safety considerations to meet unrealistic work targets or deadlines? What if a supervisor instructs a worker to perform a risky task and the worker is injured?
- The transport industry is rich in examples of drivers being instructed to ignore rest breaks to make delivery schedules, and the resulting fatigue is a serious risk to that driver's safety and to that of the other road users. Is that wilful misconduct?

If machinery can be operated quicker without guards and other safety devices and that results in a serious injury or death, will this amendment mean that there will be no compensation? It is an employer's responsibility to ensure that workers work safely and not be allowed or encouraged to bypass safe work practices.

Conclusion

As a result of research undertaken, the QCU is acutely aware that the people of Queensland do not want a diminution of the workers' compensation entitlements currently available to Queensland workers. Broadening the Comcare scheme as is proposed by the Bill would have exactly that effect both directly for employers leaving the Queensland scheme and indirectly by virtue of the financial stress that would potentially place on the scheme as larger employers leave the Queensland scheme.

In addition Comcare does not compare well to the Queensland scheme in terms of:

- its protection to workers;
- its cost to employers; and
- the viability of the scheme.

There is no doubt that passing the Bill in its current form would be both fundamentally bad public policy and electorally unpopular in the extreme. For both virtuous and pragmatic reasons we urge the Senate to reject the Bill in its entity.