



# Restoring the Balance

Delivering a fair and equitable system  
of Workers' Compensation  
in Queensland



March 1999

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## SUMMARY

The Queensland workers' compensation system lacks balance. Many injured workers are currently missing out on compensation to which they were previously entitled. Some employers are paying artificially high premiums because others are not paying their share.

This package will restore the balance significantly advantaging both workers and employers.

### **Advantages for Queensland workers ...**

- ✓ security of benefits as the scheme will continue to grow towards being fully funded.
- ✓ more workers will have access to common law and other benefits.
- ✓ workers who aggravate an existing injury while at work will be compensated.
- ✓ the scheme will take account of the needs of workers in a contemporary society, e.g. workers injured while working from home or while dropping children off at school or childcare enroute to work will be compensated.
- ✓ workers will have their say when applying to have a decision on their claim reviewed. The review process will be at arm's length from WorkCover, more independent and transparent.
- ✓ decisions on workers' claims will be better and more consistent as legislative guidelines and further training of claims managers will be introduced.
- ✓ the time for WorkCover/self-insurer to decide a claim will be reduced from 6 months to 3 months and the time for lodgment of an application for review will be increased from 28 days to 3 months.

### **Advantages for Queensland employers ...**

- ✓ premiums will drop by 10% as the surcharge will be abolished after 30 June 1999.
- ✓ premium rates will not rise as a result of the changes. They will still be the second lowest in the country.
- ✓ employers' WorkCover policies will once again protect them against common law damages from workers injured at work.
- ✓ security of protection as the scheme will continue to grow towards being fully funded.
- ✓ new compliance measures will ensure that more employers will be paying their fair share.
- ✓ decisions on workers' claims will be better and more consistent as legislative guidelines and extensive training of claims management staff will be introduced.
- ✓ self-insurance will be maintained. Only those employers that demonstrate the best workplace health and safety performance will be granted a licence.
- ✓ employers will be able to have their say when applying to have a decision on their policy reviewed.
- ✓ the time for lodgment of an application for review will be increased from 28 days to 3 months.

## Introduction

The changes to the workers' compensation system introduced by the Coalition in the *WorkCover Queensland Act 1996* saw workers' rights to compensation restricted. These restrictions are proving to be detrimental to the livelihood of many workers and their families.

Workers, from all industries, are simply missing out on compensation they should be entitled to predominantly because they do not belong to the diminishing group of PAYE tax payers or their work is not considered "*the major contributing factor*" to the injury.

Employers are also being greatly disadvantaged. Many are paying artificially high premiums, particularly in certain industry sectors, because some employers are not paying their share. Others are being left high and dry without common law coverage which they had under the previous workers' compensation scheme.

In 1916 the Labour Government, under the leadership of T.J. Ryan, introduced the first State workers' compensation insurance scheme. Fairness and equity were at the forefront of the legislation.

The Act, which implemented a number of changes to previous workers' compensation laws, provided for compulsory insurance coverage for all workers and secure benefits for workers, while maintaining protection for employers. In his pre-election speech T.J. Ryan said that:

*The Workers' Compensation Act will be amended on the lines so persistently advocated by the Labour Party in the past in order to secure equitable compensation for injured workers ..."*<sup>i</sup>

Since the first workers' compensation legislation came into effect, Queensland has experienced enormous industrial and social change. For example, technology has seen many jobs replaced; the workforce is becoming more transient; an increasing number of positions are becoming temporary, under contract or placed through labour hire agencies; places of employment are shifting to include off-site locations such as the family home and workers are demanding more flexibility.

In spite of these changes, the principles of the original legislation remain as relevant to workers' compensation insurance today as they were then.

This Government believes that the Queensland workers' compensation system must benefit the whole community. It cannot encompass discrimination against particular workers or employers, or have the hurdles so high that access to compensation is extremely difficult.

The system must be fair in that it balances the rights of injured workers against the need for competitive and affordable premiums for employers, while maintaining a secure and viable workers' compensation system.

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<sup>i</sup> The Worker, Australia's Pioneer Co-operative Labour Journal, "The Policy of Labour", Thursday April 1, 1915

In looking at ways to restore such balance, the Government has sought advice from the WorkCover Queensland Board of Directors and the Department of Employment, Training and Industrial Relations. An analysis of past claims trends and historical workers' compensation data was undertaken by WorkCover Queensland and the Department of Employment, Training and Industrial Relations.

This paper outlines the Government's position on how it will restore the balance to the Queensland workers' compensation system. Importantly, the reforms will improve access for injured workers to compensation, will not increase employers' premiums and will continue the Fund's growth to full funding.

The changes proposed go a long way to re-establishing the fundamental principles of workers' compensation espoused in 1916, which can only benefit the Queensland community as a whole.

## **Proposed Changes**

### **Definition of Injury**

#### *Government Position*

An injury will be compensable if it arises out of, or in the course of employment if the employment is a **significant contributing factor** to the injury. Legislated guidelines will be included to assist with the interpretation of this provision. For example:

- ◆ the nature of, and the particular tasks involved in the employment;
- ◆ the likelihood of the aggravation occurring despite employment;
- ◆ the existence of any pre-existing/predisposing factors in relation to the aggravation of the injury or disease; and
- ◆ the activities of the worker not related to employment.

For an aggravation of a pre-existing injury, the legislation will clearly define that the injury is compensable to the extent of the aggravation only.

The Government will request that the WorkCover Queensland Board provide claims managers with further training on how to fairly interpret the legislation and apply it consistently. WorkCover will also be requested to require self-insurers to do the same.

It is proposed that these changes commence on 1 July 1999.

#### *Comment*

"A *significant contributing factor*" is a return to the definition of injury introduced in December 1994. The definition maintains a strong link between employment and injury, as the injury must have more than a minimal or coincidental work related component before it becomes compensable.

The current definition which requires that employment must be "*the major significant factor causing the injury*" has proven to be harsh as it excludes some workers from

receiving the compensation they should be entitled to. This is particularly the case in relation to a work related aggravation of a pre-existing injury.

When proposing the use of “*the major significant factor*” the Kennedy Report stated that, given this recommendation was a strengthening of the previous definition, “*there is a need for claims managers to exercise flexibility in terms of their administrative judgements particularly in relation to accepting or rejecting a workers’ compensation claim.*”<sup>ii</sup> The Report also suggested that this definition would provide clarity for those managing claims, achieving a more consistent approach to their decision making.

The Queensland definition of injury as “*the major significant factor*” is the most restrictive in Australia.

It can be argued that this definition has produced some clarity for those deciding claims. However, it appears that the concerns raised regarding the need for a common sense approach are valid.

A recent case file review undertaken by the Department of Employment, Training and Industrial Relations showed a significant increase in the rate of rejections for work related aggravations of pre-existing injuries.

This Government believes that there must be a balance between providing legislative clarity to assist decision making and providing fairness and equity in the underpinning principles.

Therefore, to complement the change to “**a significant contributing factor**”, legislative guidelines will be introduced to assist decision making. In addition the Government will request the WorkCover Board to undertake systematic training of claims managers to ensure consistent decision making. It also will request WorkCover to require self-insurers to do the same.

This is a comprehensive approach that is not only fair and equitable to workers and employers, but addresses the difficulties foreseen in the Kennedy Report.

## **Stress (psychiatric and psychological disorders)**

### *Government Position*

The causal relationship between employment and injury will be maintained for stress claims (ie. “a significant contributing factor”). Stress disorders will remain compensable if the employer’s management action in relation to the worker is considered unreasonable.

Also remaining will be the provision that excludes compensation where the disorder arises out of the worker’s expectation or perception of reasonable management action being taken against the worker, or in circumstances arising from action taken by WorkCover or a self-insurer in connection with the worker’s application for compensation.

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<sup>ii</sup> Report of the Commission of Inquiry into Workers’ Compensation and Related Matters in Queensland, Vol 2, page 159.

The “reasonable person” and “ordinary susceptibility” tests will be removed.

It is proposed that these changes commence from 1 July 1999.

*Comment*

The changes effectively return eligibility for compensation for stress claims to the previous Labor amendments of 1996. The provisions for reasonable management action will be maintained to ensure that any unreasonable management action can be the basis for a compensable stress claim, where the action is a significant contributing factor to the injury.

Under the existing legislation, there are a number of criteria that a worker must overcome before the claim could be accepted. One of these is “reasonable management action”. As a part of this exclusion a worker must specifically overcome two additional tests, “reasonable person” and “ordinary susceptibility”.

The reforms will remove these two requirements, which reflect concerns raised about the subjective and differing interpretations that can be applied to them.

These provisions mean that claims managers and the courts need to determine whether a reasonable person in exactly the same employment would have sustained the same stress disorder and also make some assessment of the person’s susceptibility to psychological/psychiatric disorders when deciding if a claim is compensable.

Not only is such an assessment extremely difficult, but due to human nature, such decisions will never be uniform. The subjectivity concerns were reflected in a recent industrial magistrate’s decision.<sup>iii</sup>

The removal of the two provisions is a reasonable balance between providing compensation to workers who suffer stress disorders and protecting employers from claims that may arise from a worker who might not want to accept a fair and sound management decision.

## **Journey Claims**

*Government Position*

Compensation for injuries incurred while travelling to and from a worker's home will be maintained. The journey will still start or end at the boundary of the property on which the worker’s home is situated.

Claims will not be accepted where it is proven that a worker contravened the Criminal Code S328A, the Traffic Act S16, or undertook a substantial delay, interruption or deviation during the journey. Legislative guidelines for the interpretation of the latter will be included.

<sup>iii</sup> *Smith v WorkCover, AP1554 of 1997*

The requirement to use the shortest convenient route will be removed, as will excluding compensation for those who voluntarily subject themselves to risk of injury.

It is proposed that these changes commence from 1 July 1999.

### *Comment*

As society dictates that people have to work, it is simply a matter of fairness that workers be compensated should they be injured on their way to or from their place of employment. This is a fundamental policy of this Government.

In today's society a large number of households have both parents working. This means that in many instances working men and women do not take the shortest route to work, as they are required to take children to school and childcare.

The existing legislation may not cater for this need as it specifically excludes compensation for injuries arising where a worker did not take the shortest convenient route.

The proposed changes do not mean a worker will have access to compensation for any journey claim. Existing provisions which exclude compensation for injuries incurred during a journey that involved "a substantial delay", "substantial interruption" or "substantial deviation" will remain.

These provisions are considered sufficient to protect employers against claims that are incurred beyond what would be reasonably expected in a journey to and from work. Legislative guidelines will be an important part of this amendment, as they will provide for more consistent decisions.

The change also removes the exclusion for compensation to a person who is judged to have either partly or wholly voluntarily placed him/herself at risk of injury during the journey. This provision effectively disqualifies a person from compensation if they contribute in any way, even by way of inattention, to the injury.

This effect was upheld in a recent Industrial Magistrate's decision and is considered to be extremely harsh on workers.<sup>iv</sup>

Inattention, which can be nothing more than a loss of concentration affects everyone at some stage, and while not condoned, it should not be the substantial factor in determining if a worker should receive compensation.

## **Worker**

### *Government Position*

The definition of worker will be changed so that all people who work under a contract of service, regardless of their tax paying status, will be eligible for workers' compensation. The legislation will include additional guidelines that will assist decision-makers in determining whether a contract of service exists.

<sup>iv</sup> *Cook v WorkCover, AP163 of 1997*

For further clarification, provision will be made to declare certain groups as workers or employers. For example, labour hire agencies will be declared employers and share farmers declared workers.

Self-employed persons, including working directors will remain as they are currently, as will the provisions covering volunteers and other persons.

It is proposed that these changes commence 1 July 2000.

Comment

The Federal Government's taxation reforms propose changes to the taxpayer definitions such as Pay-As-You-Earn (PAYE) and Prescribed Payments System (PPS) and the implementation of a new Pay-As-You-Go (PAYG) definition. While it appears that the changes are likely to be effective by 1 July 2000, no final position or detail is likely for some time.

Any changes to the current taxation system will impact on who is considered a worker under the *WorkCover Queensland Act 1996*.

In addition to this immediate problem, the Government is concerned that the current requirement is inequitable and unfair as it provides compensation for only one category of worker.

Other significant groups of workers such as those paying tax under PPS including labour only subcontractors, while working under a contract of service, are excluded from compensation. They must seek their own personal injury insurance at their own cost. Such restrictions were not always the case.

Employers are also exposed to common law damages for negligence for those workers who have been excluded from coverage. Under the previous legislation, employers were insured against common law claims for all workers who worked under a contract of service.

There is potential for unscrupulous employers to force workers into PPS tax arrangements in order to avoid their workers' compensation obligations and premium payments. Anecdotal evidence in some industry sectors suggests that this is occurring.

The Kennedy Report suggested that one of the reasons for introducing the PAYE provision was to address the issue of poor premium compliance, particularly in the building and construction industry.<sup>v</sup>

A submission forwarded to the Kennedy Inquiry by the Construction, Forestry, Mining and Energy Union (CFMEU) suggested that premium non-compliance in this industry (at the time of the Kennedy review) was approximately 60 percent.<sup>vi</sup>

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<sup>v</sup> Report of the Commission of Inquiry into Workers' Compensation and Related Matters in Queensland, Vol 2, page 140

<sup>vi</sup> Ibid, submission 148

The primary compliance issue that WorkCover has had to address over the years is its inability to collect all premium owed by employers. As a means to address this problem the Kennedy Inquiry recommended that the definition of worker be limited.

It can be argued that there is now a better match of premium collection with the claims payments, effectively improving compliance within a reduced premium pool. However, this change alone does not result in collecting premium owed by employers or addressing the underlying compliance problem in particular industry sectors.

This Government believes that premium collection and compliance can be improved while allowing more workers access to compensation. This will be achieved through a comprehensive compliance strategy comprising the following two complementary elements:

1. a levy-based premium collection proposal for the building and construction industry (see Attachment One); and
2. the development, by WorkCover Queensland, of a more systematic and efficient compliance strategy for specific industry sectors.

The Government's position on the definition of worker is balanced and fair. It will ensure that the workers' compensation system in this State again provides coverage for workers in Queensland regardless of their tax paying status.

It also addresses the compliance concerns being faced by WorkCover Queensland, resulting in more employers paying their fair share rather than compliant employers supporting those who either under-insure or do not pay.

## **Premium Rates and Costs**

### *Government Position*

Premium rates for employers will not rise as a result of the changes and the workers' compensation fund will continue its growth towards full funding.

The total cost of the reforms will range from \$17.35M – \$20.25M (see Attachment Two). This will be more than made up for by the improved premium payment compliance and offsets associated with the self-insurance changes.

WorkCover Queensland expects that a new compliance strategy will bring in an additional \$10M of premium per annum. This does not include additional premium likely to be collected through the building and construction industry levy proposal (see Attachment One).

### *Comment*

All of the reforms have been costed by the WorkCover actuary except for the changes to the review process. This was undertaken by the Department of Employment, Training and Industrial Relations.

A report from QStats on the changes in claims frequency resulting from the various legislative changes was also commissioned. The findings of this report were consistent with the assumptions used by the actuary in costing the proposals. A summary of these findings is outlined in Attachment Three.

The Government considered it absolutely essential that the package of reforms would not cause premium rates for employers to rise. Similarly, it did not want any negative impact on the positive growth of the Fund to achieve full solvency.

The Queensland Government is fully committed to job creation and recognises that any increased cost for employers can potentially lead to job losses. Similarly, it supports the long-standing principles that compensation for workers must be secure.

This package delivers security by ensuring the steady continued growth of the Fund. Importantly it has been able to do this by attacking the compliance problems and restoring equity to the scheme for both workers and employers.

## **Self-Insurance**

### *Government Position*

The licensing criteria for self-insurers will be strengthened to include both prudential and performance requirements. The new criteria will be as follows:

1. **Occupational Health and Safety** – An application for a self-insurance licence will not be accepted by WorkCover Queensland without a certificate from the Division of Workplace Health and Safety in the Department of Employment, Training and Industrial Relations, verifying that there are no outstanding compliance issues and that appropriate Occupational Health and Safety (OHS) management systems have been implemented;
2. **Liability** – Self-insurers will assume responsibility for claims incurred prior to the self-insurance period. WorkCover will pay the self-insurer an amount proposed by WorkCover, which is based on the outstanding claims liability of the self-insurer;
3. **No third party claims management** – The management of claims will only be undertaken by the self-insurer and cannot be transferred to a third party. (Except in certain circumstances such as group classification self-insurers); and
4. **Number of workers** – Companies and group employers will be required to employ more than 2000 employees in Queensland to qualify for a self-insurance licence.

## **Introduction**

### Existing Licences

All existing licences will remain in place. However, these licence holders will need to meet the strengthened criteria when renewing their licence, except for the increase in the number of workers.

### Existing Applications

Applications received and currently being considered by WorkCover but not yet approved, will be assessed for their initial licence on the existing criteria. However, third party claims management will not be allowed. On renewal of these licences, the strengthened criteria will apply except for the increased number of workers.

### New Applicants

All new applications received after 2 March 1999 will be subject to the strengthened criteria.

### Comment

The Kennedy Report suggested that self-insurance provides a strong incentive for employers to provide safe work practices and better claims management as claims costs are borne directly by the self-insurer. It also suggested that self-insurance fosters the cultural change needed to minimise the incidence and cost associated with workplace accidents and disease.<sup>vii</sup>

This Government has a long held public commitment to maintaining a public workers' compensation system and believes the changes proposed will further protect this system.

Since the introduction of self-insurance in July 1997, there has been a greater than expected uptake of self-insurance, creating the potential for a future negative impact on smaller employers left in the general scheme.

The Government acknowledges that companies which have already self-insured have incurred significant establishment costs and therefore cannot justify reversing self-insurance.

However, if the current rate of uptake was to continue, the viability of a public workers' compensation system in Queensland could be jeopardised.

The Government is also concerned that there are insufficient safeguards within the current system to ensure workers and employers operating within self-insurance schemes are securely protected.

Protection for workers and employers can only be achieved if a self-insurer's workplace injury costs are kept to a minimum. This reduces the self-insurer's cost and therefore the risk to its ongoing viability. It is for this reason that only the "best" performing companies, that is those with a proven excellent workplace safety record, should qualify for a licence.

Once licenced, self-insurers' OHS performances will be monitored more closely to ensure they continue the practices expected of them.

The Government believes that the new licencing requirements will better achieve these outcomes, as they will ensure that workplace injuries and their associated costs will be minimised and that more positive outcomes for workers are achieved.

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<sup>vii</sup> Ibid, page 131

All employers need to continually improve workplace safety and provide the best rehabilitation and return to work outcomes for injured workers.

Companies or groups of companies will be required to have 2000 employees (currently it is 500) working in Queensland before they can qualify for a self-insurance licence.

Security and the protection of benefits for workers is one of the founding principles of Queensland's workers' compensation system and one this Government believes cannot be compromised.

The Government considers that the risk to this security can be minimised by providing that only large companies, which have a greater capability of carrying the infrastructure and costs associated with maintaining a workers' compensation system, be eligible for a self-insurance licence.

The current system allows for employers who want to self-insure to leave the liability for previous claims with WorkCover. Consequently, the general Fund must meet this liability.

The Government considers that this is inequitable and therefore proposes that self-insurers will now assume liability for all pre-existing claims as well as those incurred during the period of the self-insurance licence. This is consistent with the founding principles of the original workers' compensation legislation.

As self-insurers have paid premium in previous years to meet their liabilities, an actuarial assessment of any outstanding liability will be undertaken and a payment, at a level proposed by WorkCover, made to the self-insurer. The process will consider premium previously paid by the employer and an actuarial assessment of the outstanding liability.

This is consistent with what currently occurs when an existing self-insurer opts back into the central scheme.

The change also provides consistency for self-insurers as it removes the requirement for employers to operate under two schemes and provides clarity, reducing likely disputes about who is responsible for the payment and management of a claim.

The requirement for self-insurers to assume the responsibility for past claims is not new and has been adopted by other Australian jurisdictions.

The changes to self-insurance licensing criteria will further address occupational health and safety issues raised in the Kennedy Report.<sup>viii</sup>

There are very few principles which rate more highly than ensuring injured workers are securely cared for and provided every assistance to help them return to work and to the financial safety they enjoyed before their injury.

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<sup>viii</sup> Ibid, page 133

## Self-Rating

### *Government Position*

The option for companies to self-rate will no longer be available.

### Comment

Following the Kennedy Report two premium calculation options for employers were introduced. These were:

1. self-rating – an employer’s premium is calculated according to their estimated future liability. The employer operates with its own premium pool and pays an annual premium to fully cover claims costs incurred in that year; and
2. experience based rating (EBR) –an employer’s premium is calculated according to its individual performance and that of its industry sector. It is calculated on past experience taking into account the claims costs of the employer over the past five years.

Under the current system, companies who self-rate and who have a poor past claims history, can effectively minimise the effect of their past record from their premium calculation.

The current legislation also lends itself to allowing companies to opt in and out of the system at will to minimise premiums payable. This legacy must be paid for by other employers through cross-subsidisation within the central scheme.

In order to restore some equity for employers, self-rating will no longer be available.

The impact of this will be minimal to employers, as to date only one employer has taken up this option and one other has applied. The predominant reasons for this is that EBR provides employers with premium that more accurately reflects their own claims experience.

It is proposed that this change will take effect from 2 March 1999.

## **Review and Appeals (inc. Medical Assessment Tribunals)**

### *Government Position*

A more independent and transparent review process for workers and employers, as outlined below, will be established.

- The regulatory functions and commercial activities in WorkCover have been separated internally, with both areas separately reporting to the CEO.
- The statutory review functions will be assumed by the new Review Branch established by legislation, located within the Regulatory Functions Division.

- A Reference Group will be appointed by the Minister, with its functions specified in legislation, viz monitor, report and make recommendations to the Board on efficient and effective operation of the Review Branch and Medical Assessment Tribunals.
- The composition of the Reference Group will be specified in the legislation to include the WorkCover Chairman or a WorkCover Director, 2 representatives of employers and 2 representatives of employees.
- The legislation will ensure appellants have the right to be heard by providing personal contact with appellants on request (such as face to face interviews) and conciliation. The Government will request that the WorkCover Queensland Board train its review staff in negotiation skills and employ a conciliator.
- A grant will be provided by WorkCover to the peak advisory bodies (employer & worker) per annum to establish a workers' compensation advisory service to assist all workers and employers in the review process (ie. MATs and Statutory Review). Funding will be based on the ratio of employer and worker reviews.

Other mandatory features to be introduced:

- The time for WorkCover/self-insurer to decide a claim will be reduced from 6 months to 3 months.
- The time for lodgement of an application for review will be increased from 28 days to 3 months.
- The process to appoint doctors to the MATs will be reviewed to ensure that the broadest range of medical specialists are attracted to the panel.
- The Government will request the WorkCover Queensland Board to relocate the review functions out of the WorkCover building.

The revised review process will be examined within three years. If there is no improvement in worker and employer satisfaction with the process and it appears that it is not working effectively, then the Government will consider other options.

### Comment

Prior to 1 July 1997 there was no formal review and appeals process for workers and employers other than the court process.

Following the introduction of the *WorkCover Queensland Act 1996*, the Statutory Review Branch was established within WorkCover Queensland to review all WorkCover and self-insurer decisions before an appellant proceeded to court.

While the process is an improvement on previous practices, it has been the subject of ongoing criticism. This criticism centres on the lack of independence and transparency.

An aggrieved person receives only a paper or file review of the decision and there is little or no opportunity for an appellant worker/employer or their representative to present their case and be heard.

The MATs have also been subject to criticism. They are seen to be too closely associated with WorkCover resulting in perceived WorkCover bias in decisions. Complaints have also been received by DETIR that the process is intimidating to some claimants.

The proposed changes place WorkCover at arm's length from the review process. They will provide a more independent, yet cost-effective review process.

In the longer term feedback from the process should result in a much quicker resolution of the disputes, better initial claims decisions and a reduction in the number of claims that actually reach dispute from both WorkCover and self-insurers.

An important aspect of the proposed change is a grant to industry bodies (employer and worker) to provide an advisory service that will assist all workers and employers through the review process.

Much of the difficulty facing appellants now is a general lack of understanding of the process. Assistance will make the process much more transparent and accessible for workers and employers, as will personal contact and conciliation.

The Government believes that the revised review process will ensure that the rights of both workers and employers are upheld and a more consistent and balanced system is created.

This review process will remain mandatory and must be followed before a person proceeds to court. This will keep costs of appeals to a minimum for workers and employers.

The fundamental right of individuals to use the court system remains. However, the focus will be on resolution of issues, rather than pursuing legalistic outcomes in the first instance.

## **Premium Compliance**

### *Proposal*

WorkCover Queensland in conjunction with KPMG consultants is developing more effective auditing processes which WorkCover estimates will recoup up to \$10M per annum in additional premium. These strategies will be implemented during the 1999/2000 financial year.

A new levy-based premium collection process will be introduced into the building and construction industry. This is being developed with the industry and is planned to commence on 1 July 2000.

### *Comment*

Premium compliance has been a long-standing problem affecting the Queensland workers' compensation system. Over the years, successive Governments have tinkered with the "policing" aspect of compliance such as fraud prevention and investigation. For

instance, a 100% premium penalty now applies for employers who under declare wages, employers have to pay for claims lodged against them if they are uninsured plus an additional 50% of the claims cost. WorkCover also has undergone internal changes aimed at better targeting fraud prevention and detection.

However, never before has the system been radically overhauled to improve compliance to capture lost premium revenue.

The ramifications of lost premium are that employers who are paying their correct premium are subsidising those who are not, worker benefits are held at levels that reflect premium income and unlevel commercial playing fields are established within industry sectors.

Queensland is not the only jurisdiction facing premium compliance problems. It is a growing concern for workers' compensation systems around Australia. This is predominantly due to the changing nature of the Australian workforce and the opportunities this creates for employers and workers to enter into various contractual arrangements.

Other reasons include the considerable growth in the mobility between jobs, permanent positions being substituted for temporary positions and the rapidly expanding use of contractors and outsourcing.

A number of industries are particularly affected by such changes. These include building and construction, transport, hospitality and retail. Due to the complex and differing natures of each industry it may not be possible to adopt the same strategy for each industry.

The Government therefore supports WorkCover Queensland in developing its two-pronged approach to tackle premium compliance. Improvements to the current internal programme and a fundamental shift away from collecting premium based on wages to a levy-based scheme for the building and construction industry should see compliance rise significantly.

The Kennedy Report suggested that WorkCover Queensland was facing a \$28M shortfall in known unpaid premium. It went on to say that *“this does not include consideration of employers who escape the net altogether.”*<sup>ix</sup>

Anecdotal evidence from the building and construction industry suggests that the level of compliance in premium collection could be as low as 30 percent.

Preliminary estimates suggest that if this is the case, over the last 5 years WorkCover has not collected approximately \$700M in premium. If a more conservative estimate of 70 percent compliance was used, WorkCover did not collect approximately \$130M of premium (over the same period). These calculations only relate to the building and construction industry.

The compliance strategy for this industry, as outlined in Attachment One, will see premium compliance increase to a record 96%.

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<sup>ix</sup> Ibid, page 142

The proposal, developed in co-operation with the industry, suggests that premium will be collected as a levy on building and construction projects, as part of the portable long service leave levy. The Portable Long Service Leave Authority is currently experiencing these excellent compliance levels.

The increase in revenue to WorkCover Queensland from these improved compliance measures will more than off-set the cost of the reforms outlined in this paper. Should compliance increase drastically then this can be reflected in worker benefits and employer premiums.

Such a system is fair and restores the balance of equity for all participants in the workers' compensation system.

### **Other Procedural Changes Proposed by WorkCover Queensland**

*Proposal*

The WorkCover Queensland Board has proposed a number of legislative amendments to clarify the intent of certain sections of the *WorkCover Queensland Act 1996*. The changes are procedural only aimed at improving the administration of the Act.

## EMPLOYER PREMIUM ISSUES

Employers' premiums are set to rise in the 1999/2000 financial year as a result of the transition to the Experience Based Rating (EBR) premium calculation formula, introduced by the former Coalition Government.

EBR replaced the Merit Bonus/Penalty scheme that rewarded employers for a good claims performance with a premium rebate. Under EBR employers are no longer provided with this rebate, and have their premium calculated to more reflect their actual claims performance.

The transition to the EBR system, as structured by both WorkCover and the Actuary provided for a decrease in rates for one year. That is in 1997/98 employers received a decrease in premium due to the impact of the merit bonus rebate.

The full financial effect of EBR will impact on employers for the first time this financial year . They will pay significantly more premium, estimated to be on average 27%.

The WorkCover Queensland Board has been looking at ways to minimise this impost on employers and proposes the following changes.

### Surcharge

#### *Proposal*

It is proposed that the current surcharge of 10% of net premium for employers under the experience based rating system be removed from 1 July 1999.

The surcharge for self-insurers will be retained, albeit at a reduced rate, until they take their "tail of claims".

#### *Comment*

This proposal is based on the recommendation of the WorkCover Queensland Board.

The dropping of the surcharge will ease the burden on employers in the transition to full EBR.

The surcharge was introduced on 1 January 1996 to assist in returning the scheme to full funding. The dropping of the surcharge will have the effect of reducing employers' premiums by 10%. This is 12 months earlier than planned.

EBR employers will still be contributing to achieving full funding through the calculation of their premium rates. Therefore as a matter of fairness, the surcharge for self-insurers will still be maintained, albeit at a reduced level.

Once a self-insurer assumes liability for claims incurred prior to the self-insurance licence being granted, or when full funding is achieved, the surcharge will be dropped.

## Solvency

### *Proposal*

It is proposed that the level of solvency required for full funding under the WorkCover legislation be reduced from 30% to 20%. This is in addition to the 15% prudential margin.

### *Comment*

Under the *WorkCover Queensland Act 1996* and the *WorkCover Queensland Regulation 1997*, the scheme is currently taken to be fully funded if it achieves 30% solvency. That is:

- if WorkCover is able to meet its liabilities for compensation and damages payable from its funds and accounts;
- maintains minimum solvency or capital adequacy standards as provided in the Insurance Act 1973 (Cwlth), section 29 (ie.15% of outstanding claims liabilities); and
- solvency as required under the Regulation – 15%.

In addition to the 30% solvency requirements, WorkCover's provisions for outstanding claims liabilities currently includes a 15% prudential margin.

The WorkCover Queensland Board found that it could recommend to the Government a reduction in the solvency level for full funding based on actuarial advice. That is, the solvency required for full funding be reduced to 20%, and that the 15% prudential margin remain.

This is considered sufficient to meet catastrophes and other unpredictable events that may arise. The Queensland Government Actuary has reviewed WorkCover's recommendation and supports this position.

The Government considers that the current reserve is putting an unnecessary burden on Queensland employers, which may adversely affect their competitiveness and future growth. This is not necessary given the healthy position of the scheme at the present time and the fact that the changes proposed in this paper will not negatively impact on the positive growth of the scheme.

## **ATTACHMENT ONE**

### **LEVY BASED WORKERS' COMPENSATION PREMIUM COLLECTION PROPOSAL FOR THE BUILDING AND CONSTRUCTION INDUSTRY.**

The following preliminary proposal has been developed in conjunction with the building and construction industry.

#### **PREMIUM COLLECTION**

- Premium will be collected as levy calculated as percentage of total project cost.
- The *Building and Construction Industry (Portable Long Service Leave) Act 1991* definition of the industry will apply for collection of the levy.
- Levy is collected by the Building and Construction Industry (Portable Long Service Leave) Authority (B&CIPLSLA) and incorporated in the current Notification & Payment form for ease of industry compliance.
- Responsibility for and timing of payment will mirror current B&CIPLSLA and Division of Workplace Health & Safety levies.

Advantages include:

- Industry understanding because of consistency of definition.
- One stop shop.
- Broad base for levy collection providing greater equity throughout the industry.
- Excellent levy collection compliance (approx 96%). Non-compliance with premium payment in 1997/98 under the current scheme is estimated at approximately \$50M-\$60M. The Kennedy report acknowledged upward of \$28M.
- More level playing field for employers within the industry.

#### **WHO IS COVERED**

- Employees in the building and construction industry.

#### **REGISTRATIONS and CLAIMS**

- Claims management responsibility remains with WorkCover.
- WorkCover appeals processes apply.

#### **INCENTIVES/DISINCENTIVES**

- Incentives introduced as recognition of good claims record.
- Employer claims excess maintained.
- Penalties introduced for employers with poor claims record.

#### **INDUSTRY BASED REHABILITATION SCHEME**

- Developed in conjunction with WorkCover and the industry.
- Administered by the industry.

#### **IMPLEMENTATION**

- Significant legislative amendments and industry specific awareness campaign requires commencement date of 1 July 2000.

## ATTACHMENT TWO

### COSTINGS TABLE

#### *Costs*

<b>Change</b>	<b>Cost</b>
<b>Definition of “injury”</b> “a significant contributing factor” costings include changes in stress, injury, and journey claims	<b>\$12.7M per annum</b>
<b>Definition of “worker”</b> A “contract of service”	<b>\$4.1M - \$7.0M per annum</b>
<b>Self-Insurance</b>	<b>\$0.00*</b>
<b>Review and Appeals</b>	<b>\$0.55M per annum</b>
<b>Miscellaneous Amendments</b>	<b>\$0.00 per annum</b>
<b>TOTAL COST</b>	<b>\$17.35M - \$20.25M per annum</b>

\* The actuaries estimated that for 1998/99 the workers' compensation fund lost \$12M as a result of employers self-insuring.

#### *Cost Off-Sets*

<b>Source</b>	<b>Amount</b>
Increased premium collection from improved compliance	<b>\$10m per annum</b>
Increased compliance – building and construction industry	<b>\$50m per annum</b>
Off-sets from self-insurance initiatives.	<b>\$22M (one-off savings)</b>

## **ATTACHMENT THREE**

### **Summary of the Impact of Legislative Amendments On Statutory Claims Since 1994**

Independent analysis undertaken by QStats and WorkCover's actuary, PriceWaterhouseCoopers, identified similar claims trends in statutory claims experience following the various legislative changes.

The only significant difference related to the assumption adopted by the actuary, that 4% of the reduction in claim frequency was due to an underlying downward trend, which QStats did not feel there was evidence to support.

#### **Definition of Injury**

*To revert to the 1 January 1996 position from the present*

This would equate to a 7-8% increase in claim frequency of which removal of "*the major significant factor*" contributes approximately 3- 6%. Journey claims contribute less than 1% to this increase. The balance is attributable to stress claims.

The proposed amendments to the definition of injury (including the stress provisions) basically equate to the 1 January 1996 definition. The proposed changes to journey claims only partially remove the 1 February 1997 changes, therefore the increase in claim frequency will be minimal for this component.

The actuary has costed reverting to the 1 January 1996 position for the definition of injury at approximately \$12.7M. This includes provision for a 3% increase in common law claim frequency as a result of the change.

#### **Definition of worker**

Both the actuary and QStats highlighted the difficulty in obtaining accurate estimates of the number of workers impacted by the PAYE definition. QStats stated that "*on the basis of the data available the change in the overall claim rate could range from a decrease of 1.5%, if applying Australian Taxation Office estimates of PAYE and PPS taxpayers, up to an increase of about 5%, if using ABS Labour force estimates of wage and salary earners and self employed persons... This upward change would indicate that the PAYE workers had higher claim rates than other workers, those workers being predominantly self employed people paying their tax under a Prescribed Payments System.*"

In calculating the cost of removing the PAYE definition the actuary has taken into account both changes in claim numbers and resulting increases in premium income. The actuary has adopted a conservative position and estimated a net impact (ie. the difference between total cost for claims and premium income) of between \$4.1M and \$7M.

## **Self-insurance**

\$12M has been lost to the scheme by the withdrawal of self-insurers in 1998/99. This is based on the actuary's estimate of the difference between the estimated net premium and estimated cost of claims for those employers. The actuary's report states that "*had these employers remained in the Scheme, this surplus amount would have contributed to improving the Schemes funding position.*"

In the long term this amount should reduce to \$3-4M per annum based on those particular employers.

These figures may increase if the uptake of self-insurance increases. Therefore there is a potential long-term negative impact for those employers left in the scheme

## **Case File review**

A case review of 505 rejected claims was undertaken by DETIR to assist in identifying the impact of the legislative changes to the definition of "injury" on the determination (acceptance/rejection) of statutory claims. Approximately 3000 claims are rejected by WorkCover each year. In 1997/98, WorkCover accepted approximately 74,000 claims.

The case review sample of rejected claims showed a 67% increase in the rate of rejection of aggravations/pre-existing conditions based on "*the major significant factor*".

Across the sample, aggravations/pre-existing conditions were involved in 23.2% of all rejections. This shows an increase in the rate of rejections involving aggravations which indicates that the definition is being applied strictly in relation to aggravations. The anticipated reduction in duration of aggravation claims as opposed to increased rejections of such claims is not evident.