

Ensuring sustainability and fairness in the Queensland workers' compensation scheme

Response to discussion paper prepared by the
Australian Industry Group

March 2010

Introduction

Ai Group welcomes the opportunity to comment on the discussion paper *The Queensland Workers' Compensation Scheme: Ensuring Sustainability and Fairness*.

Ai Group is one of Australia's leading industry associations. Our member businesses employ around 750,000 staff nationally in an expanding range of industry sectors including: manufacturing; engineering; construction; automotive; food and beverage; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other related service industries.

Our members have a strong interest in a fair and financially viable WorkCover scheme that properly compensates workers injured in the course of their employment.

It should be noted that our comments below relate to the current context and issues facing the Queensland workers' compensation scheme and may not be directly applicable to the operation of schemes in other states, or reforms that may take place at a national level in the future.

General Comments

Recent feedback from Ai Group members indicates strong concerns about the workers' compensation system in Queensland. Whilst companies are appreciative of the competitive premium rates compared with other jurisdictions, there are a range of activities and practices within the current workers compensation system that causes them immense frustration, cost and time.

Many employers are frustrated by what they believe are severe injustices in the system which are highlighted to them via their respective experiences with cases in which they are directly involved. There are many examples of employers trying to "do the right thing" but hampered by what they believe are clear abuses of the system or just plain opportunism on the part of some employees and their representatives.

In developing this submission, many members of Ai Group provided examples of where they believe the system has failed. The most common complaints are that they believe that WorkCover had not adequately scrutinised the bona fides of a claim before it was accepted or where they, as employers, were not given a reasonable or proper opportunity (including with regard to a very limited timeframe in which to respond to WorkCover) to provide feedback or input in relation to either the initial claim determination or the common law settlement process.

This anecdotal feedback is confirmed in a recent nation-wide survey of over 600 Ai Group members in March 2010¹. In the survey, companies were asked about their satisfaction levels with the State Workers Compensation scheme operating in their state.

As indicated in the table below, almost 6-in-10 employers in Queensland expressed dissatisfaction with the state's scheme, with 28% "very dissatisfied" and 31% "moderately dissatisfied". Significantly, this represents a large increase in dissatisfaction levels since March 2009 when a similar survey was undertaken, and is a higher dissatisfaction rate than the national rate.

¹ Survey undertaken in Queensland, New South Wales, Victoria and South Australia.

Can you rate your satisfaction with the state workers' compensation scheme?

	QLD (2010)	QLD (2009)	AUST (2010)	AUST (2009)
Very Dissatisfied	28.0	13.1	26.4	26.1
Moderately Dissatisfied	31.2	25.2	25.0	26.1
Total dissatisfied	59.1	38.3	51.4	52.2
<i>Neither</i>	21.5	36.4	33.9	27.4
<i>Not used in last 12 months</i>	5.4	6.1	3.9	6
Moderately Satisfied	14.0	16.8	10.0	12.9
Very Satisfied	0.0	2.3	0.8	1.5
Total satisfied	14.0	19.1	10.8	14.4
Grand Total	100.0	100.0	100.0	100

Source: Ai Group State Industry Survey (March 2010)

In view of this, Ai Group members have clearly expressed a view that a much broader examination of workers' compensation processes need to be undertaken to ensure that the system works better for employers and injured workers.

Whilst Ai Group members strongly support the proposed introduction of a 15% WPI Common Law Threshold in line with that proposed by the WorkCover Board (and similar to that in place in other jurisdictions), they have also urged that a broader examination of some aspects of the claim determination process (within the statutory and common-law scheme) be undertaken to ensure a tighter scrutiny of claims be undertaken by WorkCover.

Comments on specific proposals

Statutory scheme recommendations

The discussion paper includes a range of proposals from the Workcover Board in relation to the statutory scheme, including:

- Increasing the maximum lump sum to \$300,000 from \$244,710
- Bringing forward step down in benefits from 26 weeks to 13 weeks with corresponding increase in rate
- Additional return to work initiatives

In principle, Ai Group strongly supports measures to support return to work initiatives. We are comfortable with an increase in the maximum lump sum, and the bringing forward of the step down in benefits which should aim to encourage a quicker rehabilitation and return to work.

On additional return-to-work initiatives, we strongly support mechanisms focusing on workers who are at risk of not being able to return to their previous employment or occupation to be reskilled or retrained for new work.

Feedback from many of Ai Group's members suggests that whilst many employers would welcome the return of the injured worker to their original place of employment, in many cases this is simply impractical and unsafe for many jobs and many places of employment particularly with regard to the heightened risk of further aggravation of an injury. We are also supportive of the proposal for employer incentives to employ workers where the worker is unable to either return to the worker's previous job or duties.

As enunciated above, Ai Group members also believe that more rigorous processes should be put in place within WorkCover to ensure tighter scrutiny of statutory claims.

In summary, Ai Group:

- **Supports the expansion of return to work initiatives**
- **Is comfortable with an increase in the maximum lump sum payable to \$300,000, as long as it is accompanied by other reforms**
- **Urges improvements to the statutory scheme that would encourage greater scrutiny of claims by WorkCover**

Common law recommendations

Ai Group strongly supports the introduction of the common law threshold, and believes this threshold should be 15% Whole Person Impairment (WPI).

Ai Group also believes that confidence in the State's workers compensation scheme has increasingly been undermined and compromised in recent times by the fact that many WorkCover claimants are of the view that they have a better compensation prospect via the common law process than via the statutory compensation scheme. This prospect is also enhanced by easy access to "no win" and "no fee" arrangements being offered by some legal firms.

As many common law matters are also settled by WorkCover at the early compulsory conference stage, it also appears that few claimants and their legal representatives are ever actually exposed to the rigorous scrutiny of the court system.

Certain recent decisions of the courts have also not provided much comfort to employers with regard to their interpretation State legislation, so in all the circumstances Queensland employers have been put unfairly on the back foot with regard to workers' compensation for some time.

As the discussion paper notes common law claims have increased dramatically since 2003 and are projected to continue to increase. For example from 2009-10 to 2017-18 common law claims have been projected by WorkCover's actuary to grow at an average compounded annual growth rate of 14.5%. As a result of this projection common law claims payments are estimated to account for 64% of all claims costs by 2017-18. This is from 41% in 2008-09.

In the manufacturing sector alone the number of claims taken to common law has increased by 50 per cent in the past six years.

Last year common law claims were less than 5 per cent of the total number of all claims yet accounted for just over 40 per cent of the cost of running the Scheme.

Accordingly, Ai Group believes that among other reforms, limits need to be put in place as to who may access the common law process and who may not.

It is not contested that a seriously injured employee should be able to access compensation via common law which is appropriate to their injury and the level of disability created by this injury.

Ai Group's view is that an injured worker who is assessed as having a 15 per cent or greater impairment should be able to take their claim on to common law claim if they so elect.

Further, and in relation to the above Ai Group acknowledges but does not make any submission with regard to the current situation under the Scheme whereby it is a pre-condition to access to common law that an injured worker with a less than 20 per cent assessment must have rejected any statutory compensation offer. This is a potential issue which will have to be further explored in due course with all stakeholders.

Ai Group notes however that in general terms this proposed reform is consistent with that adopted by all other States and Territories.

Queensland is the only state in Australia where (apart from the abovestated pre-condition) there are no limits in relation to common law access – where there is no threshold test.

New South Wales made the change after a review in 2001 which originally argued for a 20 per cent or greater impairment threshold. They settled on 15 per cent. The same applies in Western Australia. Victoria and Tasmania have a 30 per cent threshold. In South Australia they restrict access altogether.

Ai Group submits that restricting common law claims will help ensure the ongoing viability of the Scheme. Injured workers will still be compensated via the statutory process.

It also means that the cost of administering the Scheme will be reduced significantly.

In setting a threshold level for access to common law the State Government will not only take pressure off the Scheme but also off the cost of running a business in Queensland which will inevitably occur if there is any increase in workers' compensation premiums.

On balance, Ai Group also supports extending common law coverage to host employers and principal contractors who have a WorkCover policy. This would allow greater indemnity protection for such employers, and address any reluctance by public liability insurers to provide insurance coverage.

However, this support is contingent on a 15% WPI threshold being introduced for Common Law access.

Further, Ai Group is of the view that there needs to be greater harmonisation with the *Civil Liability Act 2003*. However in this regard it would be important to mirror common law thresholds that may be introduced via workers compensation to those in the *Personal Injuries Proceedings Act 2002* to prevent any "spillage" from the workers' compensation scheme to the civil damages scheme.

In relation to other proposals contained in the discussion paper Ai Group submits as follows:

- Ai Group does not believe that increasing the employer excess will have a significant impact by way of creating an incentive for employers to prevent workplace injury.
- Ai Group also supports moving to a WPI methodology in terms of calculating impairment for both common law and statutory claims. (Queensland is the only jurisdiction that measures impairment using Work Related Impairment methodology (WRI), and the adoption of WPI within Queensland would result in greater national consistency).

Short tail versus long tail schemes

It is pointed out in the discussion paper (page 12) that the Queensland (and Tasmanian) "short tail" workers' compensation differs from other States' "long tail" schemes apparently to the effect of making it difficult to compare relative differences between schemes (such as a common law threshold).

However, despite the legislated differences between short and long tailed schemes the practical experience exhibited by the different schemes shows strong similarities in overall pattern. This is indicated below.

For instance most states have 10% or less of serious claims at 52 weeks or more.

Similarly there are broadly similar proportions (mainly between 10%-20%) for serious claims of 26 weeks or more. This is likely due to the fact that long tailed schemes put in place various measures to limit compensation periods.

Indicator 9 – Serious* claims: Percentage involving selected periods of compensation, 2005–06

Jurisdiction	Less than 6 weeks	6 weeks or more	12 weeks or more	26 weeks or more	52 weeks or more
	%	%	%	%	%
New South Wales	64	36	22	13	8
Victoria	54	46	30	18	11
Queensland	62	38	23	11	3
Western Australia	60	40	27	16	9
South Australia	60	40	28	19	13
Tasmania	64	36	20	10	5
Northern Territory	56	44	28	16	9
Australian Capital Territory	52	48	32	18	10
Australian Government	56	44	29	15	8
Seacare	23	77	46	22	10
Australian Average	61	39	25	14	8
New Zealand	67	33	20	11	6

* Includes all accepted workers' compensation claims involving temporary incapacity of one or more weeks plus all claims for fatality and permanent incapacity.

Source: Workplace Relations Ministers' Council *Comparative Performance Monitoring Report* 11th edition December 2009

In summary, Ai Group:

- Supports the introduction of a common law threshold of 15% Whole Person Impairment within the Queensland Workers' Compensation Scheme.
- On balance, supports the extension of common law coverage to host employers and principal contractors who have a WorkCover policy. This support is contingent on a 15% WPI threshold being introduced for Common Law access. It would also be important to mirror common law thresholds that may be brought in with the workers compensation to those within the *Personal Injuries Proceedings Act 2002* to prevent any "spillage" from the workers compensation scheme to the civil damages scheme.
- Supports moving to a WPI methodology of calculating impairment for both common law and statutory claims to result in greater national consistency.

Premiums

Ai Group recognises the competitive position of premiums for Queensland employers operating through the WorkCover system.

However, Ai Group opposes any increase in premiums.

Increases in premiums will create a cost burden for the 150,000 employers across the state with a workers compensation insurance policy through WorkCover. These employers range in size, sector and scope – from the small community organisation running on limited funding, to businesses trying to recover from the recent turbulence of the global financial crisis, and attempting to cope with increases in business costs on other fronts – such as energy costs, wage increases and interest rate increases.

Recent Ai Group research² indicates that whilst business growth is going to be reasonably solid over the year ahead, the recovery is uneven and the rebound will not be as sharp as that which occurred following previous downturns. Despite the stronger sales and employment expectations, investment trends across these sectors remain soft and conservative. This research also indicates that:

- An improvement in activity is expected in 2010 across the manufacturing, construction and services sectors, although it is likely to be stronger in the services and manufacturing sectors than the construction sector.
- The fading of Government stimulus and rising interest rates will particularly impact on the construction industry.
- Employment will improve modestly. Building on gains late in 2009, the manufacturing sector expects a 2.9% lift, in the services sector employment is anticipated to rise by 2.3% while the construction industry is expecting only a slight improvement of 0.5%.
- Employers across the sectors are concerned about a possible re-emergence of skills shortages as the economy returns to growth and how this will impact on employment and wages.
- The higher exchange rate will continue to cap exports in 2010. The services sector is expecting the biggest lift, 8.2%, bringing total exports in 2010 to around \$57.7 billion.

The vast majority of employers who have either not experienced a statutory or common law claim or have only minimal experience in this regard will also particularly feel aggrieved by any increase in premiums. For many employers significant increases will also have a negative impact on their ability to simply run their businesses effectively including by way of investing more in their business or by way of employing more workers.

Queensland has held an enviable position compared to other states in relation to the average rate of workers' compensation premiums, and it would be very disappointing if Queensland was to forfeit any of its current advantage.

Similarly, an increase in premiums will add to increased business costs, and will come at a time when many businesses are still recovering from the downturn.

If premiums are to be increased, Ai Group would support the gradual introduction of premium increases over a longer time period so that businesses can absorb the cost increases in a more gradual manner.

² Australian Industry Group/Deloitte *Industry in Recovery Mode in 2010*

In summary, Ai Group:

- **Opposes an increase in workers compensation premiums. However, should an increase be introduced, then Ai Group would urge that it be phased in to allow employers to absorb the cost increase in a gradual manner**

Conclusion

In summary, Ai Group welcomes the opportunity to comment on the discussion paper on the Queensland Workers' Compensation Scheme.

Recent feedback from Ai Group members indicates strong concerns and disquiet about the system in Queensland. Whilst companies are appreciative of the competitive premium rates compared with other jurisdictions, there many aspects of the current workers compensation system that causes them immense frustration, cost and time. The Queensland Government needs to act with urgency to ensure the scheme remains viable in the long term. It can do this without adding the impost of doing business in Queensland nor affecting the fairness of the scheme.

Most importantly, Ai Group strongly supports the introduction of the 15% WPI Common Law Threshold in the Queensland workers' compensation scheme. Introducing such a threshold will not prevent injured workers from receiving fair compensation for work-related injuries, and at the same time will relieve significant financial pressure on the Scheme. A Common Law threshold is also in place in all other states.

Ai Group also opposes proposed increases in WorkCover premiums. Queensland has held an enviable position compared to other states in relation to the average rate of workers' compensation premiums, and it would be very disappointing if Queensland was to forfeit any of its current advantage, particularly in the current economic environment. Should an increase be introduced, then Ai Group would urge that it be done in a phased-in manner to allow employers to absorb the cost increase gradually.

In relation to other proposals outlined in the paper, Ai Group:

- Supports the expansion of return to work initiatives
- Is comfortable with an increase in the maximum lump sum payable to \$300,000, as long as it is accompanied by other reforms
- Urges improvements to the statutory scheme that would encourage more rigorous scrutiny of claims by WorkCover.
- On balance, supports extending common law coverage to host employers and principal contractors who have a WorkCover policy. This support is contingent on a 15% WPI threshold being introduced for Common Law access. It would also be important to mirror common law thresholds that may be brought in with the workers compensation to those within the *Personal Injuries Proceedings Act 2002* to prevent any "spillage" from the workers compensation scheme to the civil damages scheme
- Moving to a WPI methodology of calculating impairment for both common law and statutory claims to result in greater national consistency