Office of the Director-General

30 APR 1996

DPI
QUEENSLAND
DEPARTMENT OF
PRIMARY INDUSTRIES

30 APR 1996

Mr J Kennedy
Commissioner
Inquiry into Workers' Compensation
Level 27, Central Plaza One
345 Queen Street
BRISBANE QLD 4000

Dear Mr Kennedy

Invitation to make a submission to inquiry into Workers' Compensation

Thank you for the opportunity to comment and make recommendations for your consideration by written submission, which is attached.

Yours sincerely

R E Nieper
A/DIRECTOR-GENERAL

Att (1)

Enquiries to: Hary Vogelsang Your Ref: Our Ref: Admin/ WCinqui.2.doc
Primary Industries Building, 80 Ann Street, GPO Box 46, Brisbane Q 4001
Telephone : 3239 6489 Facsimile: 3239 6487 Telex: AA

SUBMISSION TO THE INQUIRY INTO WORKERS COMPENSATION AND RELATED MATTERS IN QUEENSLAND.

One: INTRODUCTION:

(a) Department of Primary Industries (DPI):

The Department's purpose was to serve the community's needs by promoting the sustainable economic development of Queensland's water, vegetation and land-based production systems.

Until the recent change in the Queensland Government, the Department had an organisational structure of six business Groups:

- Land Use and Fisheries Group
- Agricultural Production Group
- Agribusiness Group
- Forest Service
- Water Resources
- Corporate Services Group

The first five managed the Department's technical functions, while the Corporate Services Group supported the others with corporate and administrative services.

Note: Subsequent to the installation of the Coalition Government, Water Resources and Land Use have been amalgamated with the former Department of Lands to form the Department of Natural Resources.

Areas Serviced Prior to Change in Government:

- Natural Resources used for Production
- Agricultural, Aquatic and Forest Production
- Water Quantity, Storage, Quality and Supply
- Food Production
- Market Intelligence and Facilitation.

Types of Service Prior to Change in Government:

- Resource Assessment, Planning and Allocation
- Production and Marketing Research
- Extension and Advisory Services
- Financial Planning
- Commercial Sales and Services
- Quality Control and Monitoring
- Regulations and Monitoring Compliance
- Policy Analysis and Advice.

(b) Workers' Compensation Performance:

DPI commenced premium-based workers' compensation insurance from 1st July 1995. Prior to that date, payments were made to the Workers' Compensation Board on a cost plus 12.5% service fee basis.

Total Workers' Compensation Premiums paid 1st July 1995:

- DPI: $853,578:00 (premium rate 0.81%)
- FORESTRY: $908,625 :00 (premium rate: 2.5%)
- WATER: $336,150:00 premium rate 0.81%)

Workplace Health, Safety and Welfare Management:

Prior to the change of Government DPI had the following Workplace Health and Safety and Rehabilitation management resources:

- 97 Workplace health & Safety Officers
- 133 trained Workplace Health and Safety Representatives
- 74 Rehabilitation Coordinators.

Commitment to workplace health, safety and welfare is maintained through clear accountability guidelines in the Position Descriptions of all Regional Directors and Regional Managers; Occupational Health and Safety Coordinators in each of the five regions; and three full-time occupational health and safety consultants based in Brisbane.

(c) Previous Claims Experience:

Workers' Compensation Claims Cost Comparison 1993-1994 to 1994-1995.

		1993-1994	1994-1995
Forestry	New Claims	$295,146	$190,934
	Industrial Deafness	$7,762	$48,797
	Tail Claims	$170,448	$89,800
	Total Claims	$473.356	$329,531
	12.5% WCB Fee	$59,170	$41,191
	Total	$532,526	$370,772
Water	New Claims	$55,335	$91,911
	Industrial Deafness	$8,000	$13,687
	Tail Claims	$35,807	$43,234
	Total Claims	$99,162	$148,832
	12.5% WCB Fee	$12,395	$18,604
	Total	$111,557	$167,434
Other	New Claims	$286,670	$288,271
	Industrial Deafness	$5,853	$228
	Tail Claims	$129,499	$176,800
	Total Claims	$422,022	$465,299
	12.5% WCB Fee	$52,753	$58,162
	Total	$474,775	$523,461
DPI	New Claims	$637,171	$571,116
	Industrial Deafness	$21,615	$62,712
	Tail Claims	$335,754	$309,834
	Total Claims	$994,540	$943,662
	12.5% WCB Fee	$124,318	$177,957
	Total	$1,228,858	$1,061,617

(d) Department's commitment to Health and Safety:

Workplace Health and Safety, Rehabilitation Policies:

The DPI supports the objectives of the *Workplace Health and Safety Act* and recognises its obligation to protect all staff and non-staff at the workplace from the risk of injury and work-related illness.

The Department recognises that injury or illness may still occur and staff members will be assisted to achieve an early safe return to meaningful and productive work, consistent with appropriate medical advice, wherever possible.

The Department is dedicated to the early return of the injured/ill staff member to the fullest physical, psychological, vocational and economic usefulness for which they are capable with as little disruption to the normal routine of both the staff member and the Department.

However, if, as the result of a any injury or illness, a DPI staff member cannot immediately resume her/his normal duties with full capacity following appropriate medical treatment, with the consent of the Treating Medical Officer(s), the staff member will be offered Alternative Duties which may include placement in another section of the Department or the Public Sector in accordance with the PSMC Transfer at Level policy and appropriate training.

If all reasonable rehabilitation efforts and avenues to place an injured/ill staff member in Alternative Duties are unsuccessful, Medical Retirement policies or other Performance Management policies will be considered.

TWO: NEEDS:

The most effective and efficient injury/illness compensation system achievable to support the department and its staff.

Including:

- Allocation of a Claims Officer to handle DPI enquiries.
- Timely notification of claims' acceptances.
- Improved CEDVET System. For example, more frequent updates; identification of Employer Excess, claims to be identified by registered workplace, not the office at which the claim was lodged.

THREE: OPPORTUNITIES AND BENEFITS OF THE CURRENT SYSTEM FOR WORKERS' COMPENSATION IN QUEENSLAND:

Benefits of the Current System:

- Under the present system for Workers' Compensation calculations for the DPI is easy to understand because it is performance based.

- The fact that the Merit/Demerit system is not applied to DPI is considered beneficial.

- In comparison with average premiums levied in other states, the average premium of 1.15% paid by DPI is considered reasonable to meet its current statutory and future Common Law claims liabilities. It has been agreed that this average premium rate will be adjusted up or down consistent with department's compensation claims' experience.

- DPI agrees with the majority of the stated objectives of the Workers' Compensation Act 1990, except in those specific cases referred to elsewhere in this submission.

Recommended Changes to the Current Scheme:

- Participation in rehabilitation program(s) by injured/ill employees should be compulsory and commence immediately after the injury or onset of the illness. It is recognised that early intervention will reduce cost of claims.

- The threshold of Common Law claims to be raised to 30% of the maximum statutory lump sum compensation entitlement. The addition or combination of physical and psychiatric/psychological injuries to achieve this 30% should continue to be disallowed. The irrevocable choice provisions in applying for Common Law should also remain. This should reduce the number of Common Law claims lodged and effect a shift back to the statutory claims area.

- Employers to have a choice of compensation insurers (or self-insurance) and of rehabilitation service providers compared to the current system of a monopoly by one insurance provider in Queensland. This will enable the creation of a competitive environment.

- Increase lump sum payable for permanent incapacity to $160,000. But not to include "pain and suffering" provisions. It is believed that this strategy would reduce the propensity to lodge Common Law Claims as demonstrated in the New South Wales experience.

- Increase death benefits to $200,000. It is believed this high cap would result in less Common Law claims with very little impact on the overall cost of workers' compensation due to the low number of fatality claims in Queensland per annum.

- Consideration be given to the introduction of a system of workers' compensation for self-employed persons working for an un-incorporated company. For example, farmers, electricians *etc.* This would provide them with protection, increase revenue and improve the reliability of accident statistics.

Elements of Other Systems Worthy of Consideration:

- Workers' compensation insurance structure be underwritten by the State government, and offered to private insurers for management. Self-insurance to be offered as an option under a licensing arrangement to companies and government departments. This licensing to be based, in part, on their ability to prove efficient management such a system. This experience in New South Wales has demonstrated improvements and advantages in service provision and reduction in management costs.

- Improvements in policy coordination, efficient administration, integration of data collection systems and costs savings can be achieved by the amalgamation of the Workers' Compensation Board of Queensland and the Division of Workplace Health and Safety as per the **Tregillis Review (December 1995).** Consideration be given to the implementation of the major recommendations of this Review.

- Create a provision whereby workers' compensation cover applies to volunteer (unpaid) employees who provide a service to DPI. For example: honorary stock inspectors, fish stocking program etc. This will be consistent with the department's obligations under workplace health and safety legislation.

- Rationalise the definition of "worker" to make it consistent between the Workers' Compensation Act and the Workplace Health and Safety Act. This will remove current ambiguities.

INQUIRY INTO WORKERS' COMPENSATION
& Related Matters in Queensland

Inquiry Commissioner **Jim Kennedy**
AO, CBE, D Univ
Secretariat Manager **Peter Hall**

1st April 1996

Mr R Nieper
Acting Director-General
Department of Primary Industries, Fisheries & Forestry
8th Floor, Primary Industries Building
80 Ann Street
BRISBANE Q 4000

Dear Mr Nieper

INVITATION TO MAKE A SUBMISSION TO INQUIRY INTO WORKERS COMPENSATION

The Minister for Training and Industrial Relations, Hon. Santo Santoro, has established an independent Inquiry into Workers Compensation and Related Matters in Queensland.

As Inquiry Commissioner, I extend to you an invitation to make a written submission to the Inquiry on any or all of the Terms of Reference. A copy of the Terms of Reference is enclosed for your information.

Closing date for submissions is April 30, 1996. Please note that all submissions will be on the Public Record and will be incorporated in my Inquiry Report.

If there are any issues with regard to your submission which require follow-up by the Inquiry, you will be contacted by a member of my staff.

Also enclosed is a list of documents available to assist you in addressing various issues relating to Workers Compensation. If you require any or all of the documents referred to, please write to me at GPO Box 374, Brisbane 4001, and I will arrange for them to be posted to you.

Yours sincerely

JIM KENNEDY
Commissioner

DG no. 96/1039

OS NO: 96/857

Level 27, Central Plaza One, 345 Queen Street, Brisbane Q 4000
GPO Box 374, Brisbane Q 4001
Phone (07) 3405 1135 Fax (07) 3405 1141

96/240.

TERMS OF REFERENCE

The Inquiry will:-

1. Review the current objects of the Workers' Compensation Act 1990 to determine their relevance to the needs of the Queensland community.

2. Report on whether the present system of accident insurance in Queensland provides adequately for these objects as follows:-

   (a) Providing the maintenance of a system of accident insurance providing adequate and suitable cover for workers who suffer injury and for dependants of workers whose death result from injury;

   (b) meeting the needs of workers and dependants mentioned in paragraph (a) including the need for adequate income and appropriate medical treatment;

   (c) seeking the participation of injured workers in suitable rehabilitation programs with a view to their early return to productive work;

   (d) encouraging safety in industry;

   (e) protecting the interests of employers in relation to claims for damages because of injury to a worker; and

   (f) providing for the efficient and economic administration of the system of accident insurance referred to in paragraph (a).

3. Without limiting the scope of the above, report on the most appropriate accident insurance delivery methods for Queensland, in particular:-

   (a) the advisability of the Board's role as a sole insurer;

   (b) the advisability of the Board's role as both a regulator and service and deliverer; and

   (c) what other systems of accident insurance could better achieve the objects.

4. Report on:-

   (a) the role and structure of the Board;

   (b) whether there is adequate incentive to encourage safety in industry, including a review of the effectiveness of the merit bonus/penalty system;

   (c) any necessary or desirable changes to the relationship between the Workers' Compensation Board and the Division of Workplace Health and Safety;

(d) the most appropriate system for determining premiums;

(e) the adequacy of statutory benefits paid to injured workers and the dependants of deceased workers;

(f) the efficiency and cost effectiveness of the current provisions for the delivery of rehabilitation services; and

(g) the effectiveness of the current damages claims system, including but not limited to:-

(i) whether damages claims should be determined within the existing court system or by a dedicated court system;

(ii) whether procedures for the handling and administration of damages claims are adequate and what changes, if any, are necessary and desirable to better administer these claims; and

(iii) the impact on the Workers' Compensation Scheme of restrictions being placed upon advertising by the legal profession for accident insurance business.

5. Report on any other issues impacting on the operation, viability, efficiency and effectiveness of the Queensland Workers' Compensation system.

6. Make an assessment of the implications of proposed/recommended changes to the accident insurance scheme on Queensland's position as a low tax State for business.

Major Stakeholder Groups Consulted Regarding the Terms of Reference

Bar Association of Queensland

Queensland Law Society

Metal Trades Industry Association

Queensland Mining Council

Queensland Farmers Federation

Queensland Chamber of Commerce and Industry

Australian Council of Trade Unions (Q)

Australian Workers' Union

Australian Medical Association (Q)

State Public Services Federation Queensland

Insurance Council of Australia

LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND INC.

LOCAL GOVERNMENT
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OF QUEENSLAND INC.

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30 APR 1996

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29 April 1996

Mr Jim Kennedy,
Inquiry into Workers Compensation and
Related Matters in Queensland,
G P O Box 374
BRISBANE QLD 4001

Dear Mr Kennedy,

Attached is the Local Government Association of Queensland's submission to the Inquiry into Workers Compensation and Related Matters in Queensland.

It is understood that parties making submissions may also have the opportunity to discuss them directly with the Inquiry. If this is the case, the Association would wish to speak to its submission either directly to the Inquiry or as part of a public hearing process.

Should you require any additional information in relation to the Local Government Association or our submission, please do not hesitate to contact me.

Yours sincerely,

GREG HALLAM
EXECUTIVE DIRECTOR

gh:vrf

encl.

Submission

of the

Local Government Association of Queensland (Inc)

to the

Inquiry into the Workers' Compensation and Related Matters in Queensland

April 1996

CONTENTS

	Page
Introduction	1
Overview of the Local Government Association's Position	2
Comments on the Present System	4
The Future Regulatory Environment	8
Background to Development of Arrangements Proposed by Local Government	10
Concept Overview and General Administation	14
Scheme Structure (Table)	20
Management Unit Structure (Table)	21
Claims Management	22
Claims Management Department Structure (Table)	23
Risk Management	24
Risk Management Department Structure (Table)	27
Rehabilitation	28
Rehabilitation Department Structure (Table)	31
Summary	32

Introduction

The Local Government Association of Queensland (Inc.) is the peak body representing the interests of Local Government in Queensland. The Association was formed in 1896 and is recognised by the Local Government Act (1993).

All Queensland Councils constituted under the Local Government Act are members of the LGAQ and this has been the position during most of the Association's period of existence. Current membership also includes 10 Aboriginal and Island Councils and the Aboriginal Co-ordinating Council.

Members of the Association employ in excess of 30,000 employees.

The LGAQ is a member of the Queensland Chamber of Commerce and Industry and has been involved in the preparation of their submission. We generally endorse and support the QCCI's submission to this inquiry and do not intend to discuss in detail many of the issues comprehensively dealt with in the QCCI submission.

The LGAQ's submission will concentrate on a discussion of the regulatory environment considered necessary to implement highly effective workers compensation and workplace health and safety strategies in Local Government.

Overview of the Local Government Association's Position

There is clearly a need to modernise the objects of Queensland's Workers Compensation legislation to emphasise the necessity for a system that is more innovative and proactive in terms of injury prevention, injury management and claims management. However, a primary issue that must be addressed by the inquiry is the degree to which the system of Workers Compensation developed through application and administration of the legislation is capable of achieving the legislative objectives.

The current objects of the Workers Compensation Act generally describe a picture that should go a long way towards meeting the reasonable needs of both employees and employers. But the system put in place to achieve the Act's objectives quite simply cannot allow this to happen. The centralisation of control away from the workplace and lack of any semblance of co-ordination with workplace health and safety programs are just two important reasons why this is the case.

Over a number of years, but particularly since 1990/91 when significant structural problems in the scheme were identified, but not addressed by government, the LGAQ has been a major proponent for change in workers' compensation, management and regulation.

In 1993 the primary local government premium rate increased by 24.86% which translated into an increased premium cost of approximately $4million. After additional progressive increases, the premium rate was increased by a further 24% on 1 January 1996. The overall level of increase in 1996, including the surcharge and excess, significantly exceeds 30%.

In 1992/93 total local government premium was $19,783,077. In 1996/97 including the surcharge, but excluding effects of the excess, it is projected to be $37,672,898 which represents an increase over that period of 90%.

Local government does not claim to have a perfect record of performance in workers' compensation. It is, however, absolutely committed to reducing the incidence and cost of workplace injuries. Given the size and spread of the industry, this can only occur to any significant and sustainable extent by adoption of measures either discouraged or prohibited under the current system.

Arising from this inquiry, the LGAQ is seeking changes to the system that encourage competitive forces, innovation, and provide employers' flexibility to pursue management/insurance options that best suit their circumstances. These options should include self management of claims, use of claims management agents, alternate sources of insurance and self insurance.

The Local Government Association believes that, in the long run, establishing a joint self insurance arrangement covering Queensland Local Governments will provide the greatest benefits to both Councils and their employees. Detailed later in this submission is the structure of an arrangement designed to manage all aspects of workers compensation in Local Government. The arrangement involves a self insurance model but would be easily adaptable to a self management environment. In either case, the primary objective is to reinforce workers compensation as a priority workplace issue by delivering and resourcing meaningful levels of workplace control and accountability.

Local Government is seeking the greatest possible range of options so that it may pursue an arrangement that best suits its current circumstances and, if necessary, has the flexibility to progress into new or changed arrangements to meet future needs.

Comments on the Present System

From a service delivery perspective, Local Government is continually frustrated by delays and communication problems associated with the current system.

It is well acknowledged that actions taken immediately following occurrance of an injury often determine the prospects for successful management of the injury. Presently it takes time to complete and forward paperwork to the Board and then it can take weeks before the claim is approved or rejected. After this there is often no consistent contact within the Board who can immediately provide advice to a Council of claim progress and authority to implement important injury management measures.

This is not to suggest that the Board's staff are not doing their job. They are, in fact, quite conscientiously fulfilling their statutory obligations. The difficulty appears to arise from the general absence of a client service focus in the Board's operations.

In many cases both employers and employees suffer from a severe lack of information and input in relation to the management of a claim. This is not totally attributable to the Board's operations and some Councils have taken measures that improve the flow of information. The key point, however, is that desirable standards of communication are not offered by the Board as a matter of course as part of a client focused organisational strategy.

A critical area where this situation is having a direct impact is rehabilitation intervention. There will not be a significant reduction in claim costs until an assessment of the need for rehabilitation intervention and the means for

delivering such intervention are readily available. An initial assessment of the need for rehabilitation should occur at the time formal notification of an injury is made. The present system does not reach the stage of examining the need for rehabilitation until approximately 4 to 6 weeks after approval of the claim.

Programs introduced by some Queensland Councils clearly demonstrate that workplace based rehabilitation programs have greatest impact when directly supported by a specialist rehabilitation professional. It is considered that the current system places too much reliance on workplace rehabilitation co-ordinators without providing enough specialist support. The implications of this situation are often most obvious when part time workplace co-ordinators have to address medical issues such as the nature of injuries or return to work capabilities with treating doctors.

Again, whilst statutory obligations are being fulfilled, the focus of the service provider (the Board) is not directed towards managing events occurring at the workplace level. It is these events that directly influence the eventual costs of injuries.

Difficulties with the current arrangements have been compounded since introduction of the Employer Excess. Effectively, employers are being forced to make payment for a period during which they have little or no control. It is highly unlikely that paperwork initiating a claim would have worked its way through the system within 5 days, let alone any proactive action being commenced by the Board.

The LGAQ has previously stated that an excess can have positive features but only if it is used in the right environment. If employers are required to pay for

the first four days following the day of an injury, they must be allowed by the system to directly manage the injury situation during that period.

Local Government has also regularly raised in the past, serious objections to the funds removed by Government from the Workers Compensation Fund. The overall levels of such funds are documented and well known.

Based on the proportion of premium revenue from Local Government compared to total premium revenue, the amount of Local Government premium removed by the Government in 1994/95 is estimated as follows:-

Workplace Health and Safety Grant	-	$ 316,939.00
Corporate Services Charge	-	$ 170,660.00
Stamp Duty	-	$ 950,818.00
Payroll Tax	-	$ 48,760.00
Bad and Doubtful Debts	-	$ 170,660.00
TOTAL	-	**$1,657,837.00**

This amount of money would go a long way towards funding the Local Government claims management structure detailed later in this submission. Our research demonstrates that this structure would be capable of reducing Local Government claims costs by at least 10%.

Instead of being used for a positive purpose within the Workers Compensation system the money is simply absorbed by the Government or diverted to areas which should be totally funded from Consolidated Revenue.

The case of Bad and Doubtful debts is particularly outrageous from Local Government's perspective as, by law, Councils cannot fail to pay their debts. In terms of premium, recent audits have shown that Councils have tended to overstate wages for the purposes of workers compensation premium rather than understate them.

The LGAQ believes that the Division of Workplace Health and Safety should be funded from Consolidated Revenue. We believe this position is consistent with the recommendations of the Tregillis Review.

If funding is to be allocated from Workers Compensation premiums towards Workplace Health and Safety programs it should be as part of a co-ordinated strategy directly linking health and safety with Workers' Compensation systems. The proposed Local Government management structure detailed in this submission provides an example of such an initiative.

In short, the LGAQ considers that the current operating arrangements are primarily orientated towards satisfying specific procedural legislative obligations rather than being performance based and achieving the broader objects of the Workers Compensation Act. Employers do not have either the degree of operational control or freedom to access other options that would be necessary to change this situation.

The Future Regulatory Environment

As mentioned earlier, the LGAQ does not intend to deal in any detail with benefits issues. We support the submission of the QCCI in relation to access and levels of benefits.

From an operational perspective the Local Government Association's position is that the Workers Compensation Board's primary role in the future should be as the regulator of a flexible and competitive system. With the changes that are being sought by many employers, there will be a vital role for the Board in setting and monitoring performance standards.

We believe, however, that the Board should no longer be the sole provider of insurance and claims management services. There is a general movement towards competition in the economy (facilitated by the Hilmer reforms) that must impact on workers' compensation in Queensland. In a monopoly situation where there is a sole insurer that is also the only service provider, performance standards which are drawn up are seen to be illusory because, if you don't like them and are unable to affect a change by negotiation with the Board, there is no alternative supplier or service provider to go to.

In order to move towards best practice, employers must have the option to choose between providers that best suit their requirements and circumstances. It has also been clearly demonstrated interstate that the best option for some employers will be self insurance.

The LGAQ strongly supports the need for providers and particularly potential self insurers to demonstrate appropriate security and financial ability to carry

out the prescribed statutory functions in such a way that any reasonable objectives can be achieved in an accountable, transparent way.

In keeping with the need to maximise choice, when setting standards there should not be a predetermined limitation on the nature of entities or structures that would be considered able to satisfy the standards. For example, self insurance will be an attractive and viable option for some large employers, however, similar benefits and viability can potentially be achieved by smaller employers joining in co-operative self insurance arrangements.

Local Government is an obvious example where joint insurance arrangements such as the Local Government self insurance scheme in South Australia and mutual liability insurance pools in most states (including Queensland) have been highly successful.

Queensland Local Government is totally committed to making a significant impact on the human and monetary costs of workplace injuries. This submission details an organisational structure and operational arrangements which can achieve this objective. Due to our work with the Workers Compensation Board over the last twelve months, the arrangements can be put in place within a short time frame and will be capable of meeting and exceeding any reasonable security and performance standards.

Background to Development of Arrangements Proposed by Local Government

Local Government in Queensland is currently experiencing a period of change across all areas of Council operations, so intensive and encompassing that re-examination of all existing approaches to Council activities has become imperative.

We have recently seen major changes to the Local Government Act which has the effect of requiring Councils to be much more accountable for their actions.

All Councils, because of the increasing accountability requirements, and in efforts to meet and exceed the ratepayers and general public's expectations, are making significant gains in the professional standards being utilised in their general business practices.

The LGAQ provides member Councils with a wide range of "value added" services and has been instrumental in developing a number of initiatives designed to reduce the expenditure of public money on goods and services.

Major examples of these initiatives are bulk purchasing arrangements for petroleum products which have reduced the average cost of fuel by $0.04 per litre. A State-wide telecommunication program has significantly reduced the communication costs for Councils with particular impact on Councils in rural Queensland.

The LGAQ developed LGM Queensland, a Mutual Liability Pool, which provides Councils with public liability and professional indemnity protection at a cost which is some 25% less than commercial insurance rates.

In summary, the LGAQ is constantly investigating all aspects of Local Government operations to seek out ways where greater efficiencies and reduced costs can be achieved.

Many of these benefits have been achieved with existing suppliers after examining the issue on a co-operative basis to ensure that the interest of all the parties are recognised.

In mid 1994 the LGAQ commenced a study into the Workers' Compensation arrangements then in place with a view to determining whether or not these arrangements met the needs of Queensland Local Government as they then existed and their ability to meet foreseeable future expectations.

As the inquiry would be aware, considerable pressure for change was applied to the Workers' Compensation Board of Queensland by the Federal Government, due primarily to the findings of the Industry Commission report released in April 1994.

In addition, many other interested parties sought to examine and question the Queensland Workers' Compensation system and practice.

It became clear to the Association that a climate of change was developing right across Australia, not only in Local Governments, but across all sections of the community. Local Government across the country has, in many cases, been directly involved in many of the processes of change as it seeks to become more and more responsive to the expectations of the community.

In mid 1995 meaningful dialogue took place with the General Manager and senior management of the Workers' Compensation Board of Queensland,

eventually leading in July 1995 to the LGAQ lodging with the Board a submission proposing a co-operative joint venture between the Workers' Compensation Board of Queensland and Queensland Local Government.

The submission clearly stated the LGAQ's objectives in relation to Workers' Compensation, namely:-

- To develop and encourage safe systems of work and safe working environments.

- To develop and encourage pro-active Council involvement in worker rehabilitation programs.

- To develop and encourage the application of modern risk management and loss control techniques

- To develop and encourage strategies designed to reduce the incidence and costs of claims.

We still see these objectives as relevant today and consider that achievement of the above objectives will result in significant benefits flowing to Councils such as:-

- Fewer injured workers

- Retention of trained, productive workers

- Continuity of service delivery to the community

- Reduced workers' compensation premiums

- Reduced indirect costs to the community

When Local Government, as the arm of Government which is closest to the Queensland community is able to derive significant benefits from major initiates such as that proposed for workers' compensation, significant benefits, albeit in different forms, will flow to the wider community.

Concept Overview and General Administration

The scheme which we will now detail is structured to suit a self insurance arrangement. As stated earlier, it focusses heavily on targeted management of occupational health and safety and workplace injuries in local government and is therefore easily adaptable to a self management arrangement.

One way of viewing our submission is from the basic premise that we are seeking a mechanism which has the effect of bringing the cost of risk, the premium, closer to the cost of claims.

It follows, therefore, that Local Government by virtue of this more cost effective delivery system is better able to contain, and may even reduce, the premium required to fund the operation thereby enabling public money raised by Local Government to be expended in more productive ways.

As stated earlier in this submission, the LGAQ's objectives are:-

- To develop and encourage safe systems of work and safe working environments

- To develop and encourage pro-active Council involvement in worker rehabilitation programs

- To develop and encourage the application of modern risk management and loss control techniques

- To develop and encourage strategies designed to reduce the incidence and costs of claims.

Achievement of the above objectives will result in significant benefits flowing to Councils, such as:-

- Fewer injured workers.
- Retention of trained, productive workers.
- Continuity of service delivery to the community.
- Reduced workers' compensation premiums.
- Reduced indirect costs to the community.

The basic concept developed by the LGAQ is one which includes the principal functions of successful schemes in other jurisdictions, namely claims management, rehabilitation services, administration services and loss control services. Occupational health and safety services grouped under a risk management heading, also form an integral part of our concept.

During this inquiry much will be said about the financial impact of Common Law actions. The practical realities are that access to Common Law should be restricted but is unlikely to be completely abolished. Under such circumstances, more direct attention must be given to other factors affecting Common Law costs such as prevention and case management.

Our concept involves enhancing the basic functions described above and specifically targeting and applying them to each Council in Queensland. The experience in other jurisdictions of a co-ordinated, properly targeted approach

has demonstrated the potential for reduced incidents and cost of claims, and therefore premiums.

In a situation where self insurance is pursued the LGAQ becomes fully accountable for a Queensland Local Government Workers' Compensation Self Insurance Scheme and would be responsible for:-

- The setting and collecting of premiums
- The investment of premium funds
- The management of claims responsive merit/penalty systems
- The settlement and administration of claims
- The provision of risk management and rehabilitation services

As mentioned elsewhere, we envisage that the Queensland Workers' Compensation System will quickly evolve to one where the Government, by consensus with stakeholders, sets out the statutory obligations and benefits, and then appoints a body to regulate the processes.

This regulatory body could be the current Workers' Compensation Board, suitably restructured to divest itself of the service provision aspects of the current operations.

It is considered that the Government should approve of private sector participation in all the system elements, including self insurance for those employers able to meet certain criteria.

As regards the criteria which should be used to evaluate whether or not an industry or individual employer should be considered for self insurance, we believe that the following points should constitute the evaluation benchmark:-

- The Scheme must be financially sound to ensure that injured workers can always be paid the statutory benefits.

- The Scheme must be able to manage and settle claims in compliance with the Act.

- The Scheme must be structured to minimise cost to members, and in particular should incorporate mechanisms to encourage members to take proactive decisions in relation to risk management issues and rehabilitation programs for injured workers.

The LGAQ considers that the security provisions to be incorporated in a self insurance scheme are of the greatest importance.

A Local Government scheme would put in place a reinsurance package which is designed to limit the exposure to loss for each participating Council to a predetermined amount in respect of each claim and to limit the funds' total exposure to loss in any one year to a predetermined aggregate amount.

Arrangements such as this which apply to other self insurance schemes such as LGM Queensland, are designed to protect the scheme on a yearly basis from unexpected or "catastrophe" claims costs.

In addition, we consider that the financial integrity of the premium fund would be further assumed by adopting restrictions on the nature of investments. We would propose that allowable investments be restricted to Local Government or Trustee securities.

Further, long term stability of a Local Government Self Insurance Scheme would be enhanced by the fact that Local Government is enshrined in legislation, thereby guaranteeing its long term existence. This aspect enables proper strategic planning for managing "long tail" insurance to be implemented.

The LGAQ submission to the Workers' Compensation Board in July 1995 presented a model for the operation of a Queensland Local Government Workers' Compensation Scheme.

It is noteworthy that the model developed for that submission was based on the premise that the Board and the Government of the day would not consider the self insurance option at that time but would actually consider submissions presenting other alternatives. The self insurance option was then, and remains, an important factor in local governments' future plans relating to workers' compensation.

Considerable progress and substantial agreement had been achieved between the LGAQ and Officers of the Board in relation to all aspects of the proposed Scheme and, it is fair to say, were it not for a change of Government and a different approach our original proposal may have shortly been approved.

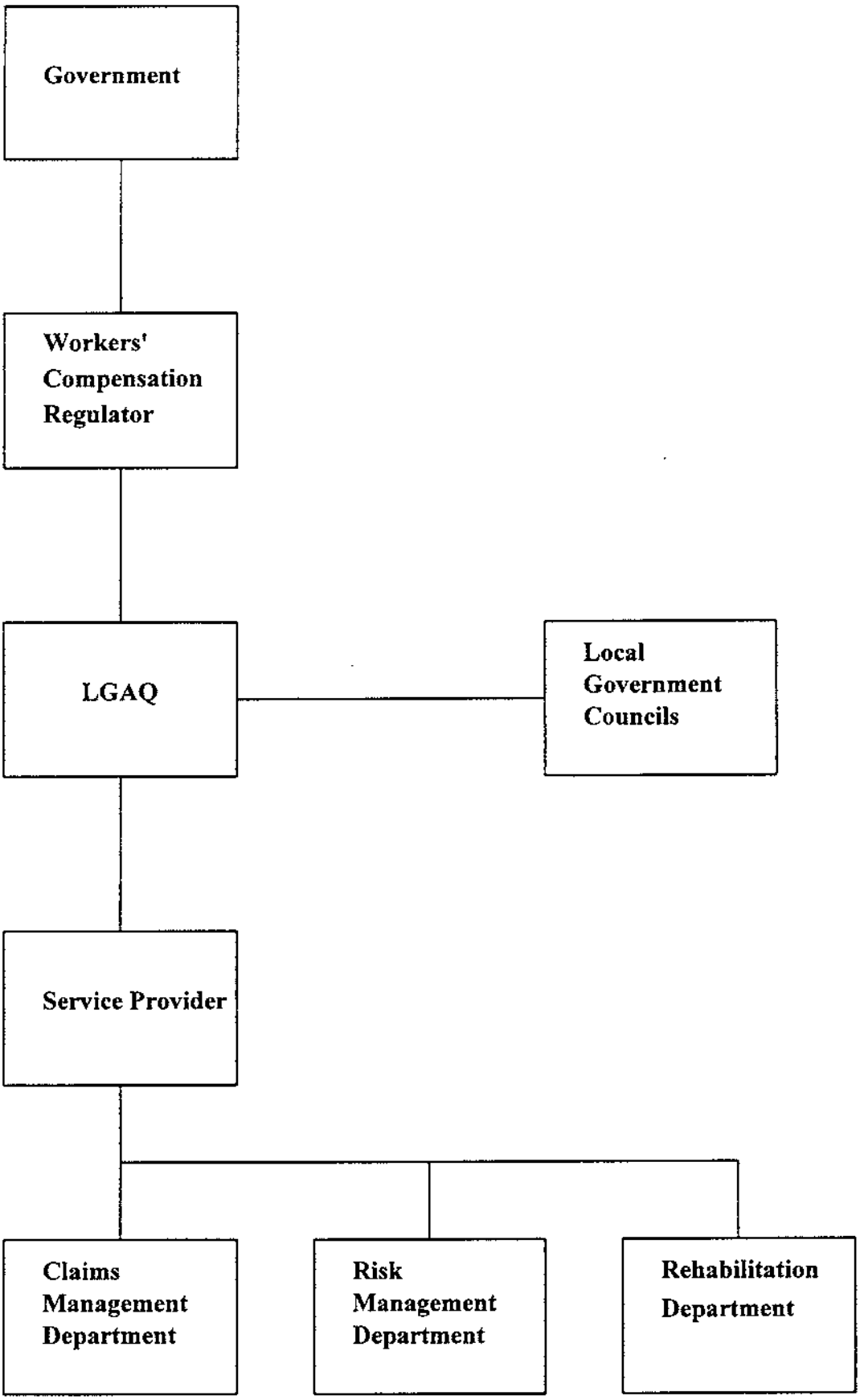
Set out below is an operational structure developed using Local Government specific data provided by the Workers' Compensation Board on claims,

rehabilitation and occupational health and safety elements. It reflects the results of our extensive research into interstate models and particularly Local Government initiatives such as the joint arrangements developed in South Australia and Western Australia.

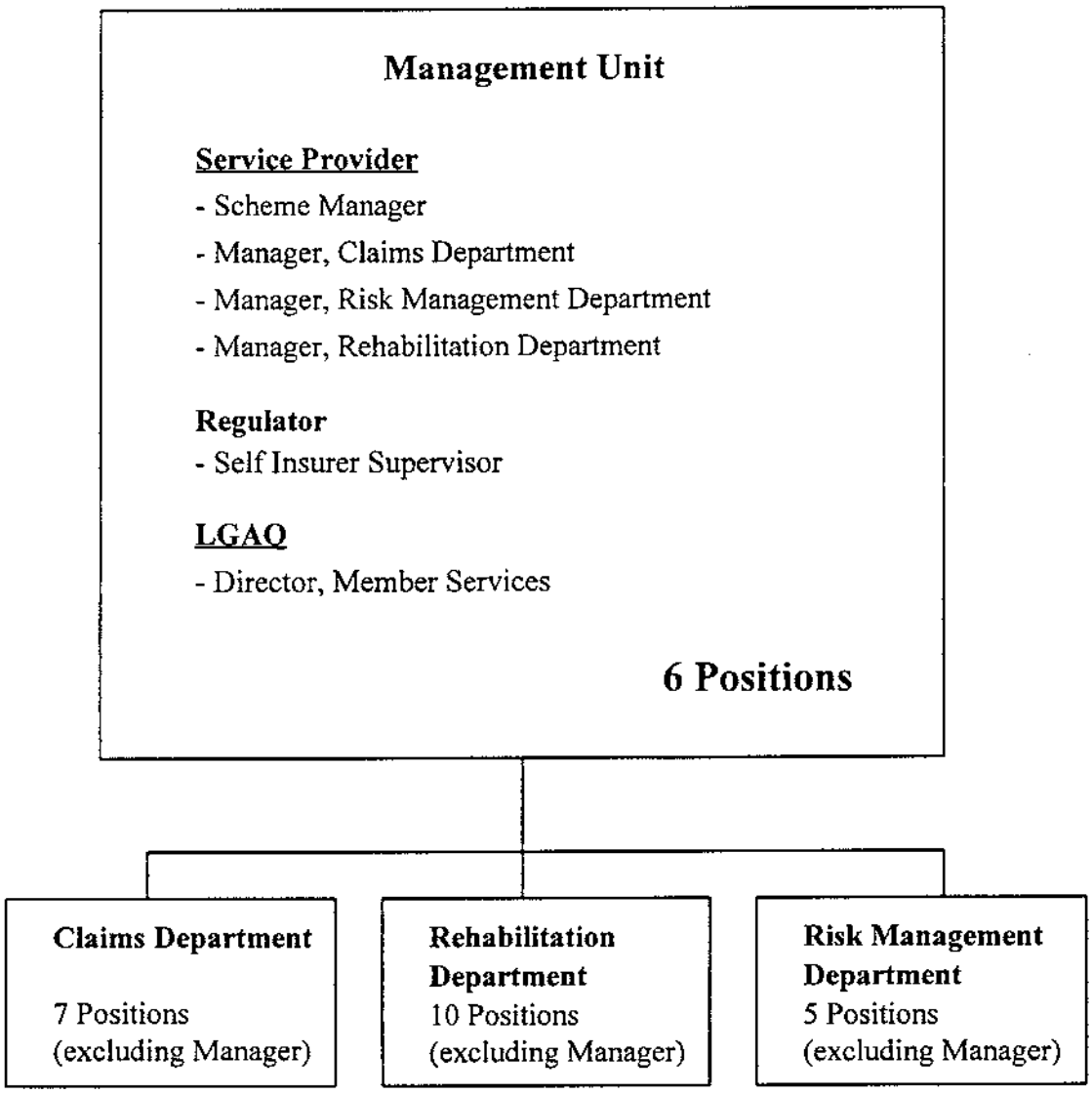
For all practical purposes, the only difference between this structure and the one included in our earlier submission is that with the self insurance model proposed here, accountability for the premium fund rests with Local Government, rather than with the Workers' Compensation Board as would have been the case in the original proposal.

Development of our proposals has always proceeded on the basis that because of their size Brisbane City Council and possibly Gold Coast City Council may wish to pursue individual self insurance arrangements if that option is open to them. Our financial and operational models are adaptable to the positions that may be taken by these Councils.

Scheme Structure



Management Structure



Total Staffing

Service Provider	**26**
Regulator	**1**
LGAQ	**1**
	28

Claims Management

The service provider appointed by the LGAQ to manage our proposed scheme has wide experience in Workers' Compensation claims management for Local Government in other jurisdictions and has sophisticated computerised claims management systems in place.

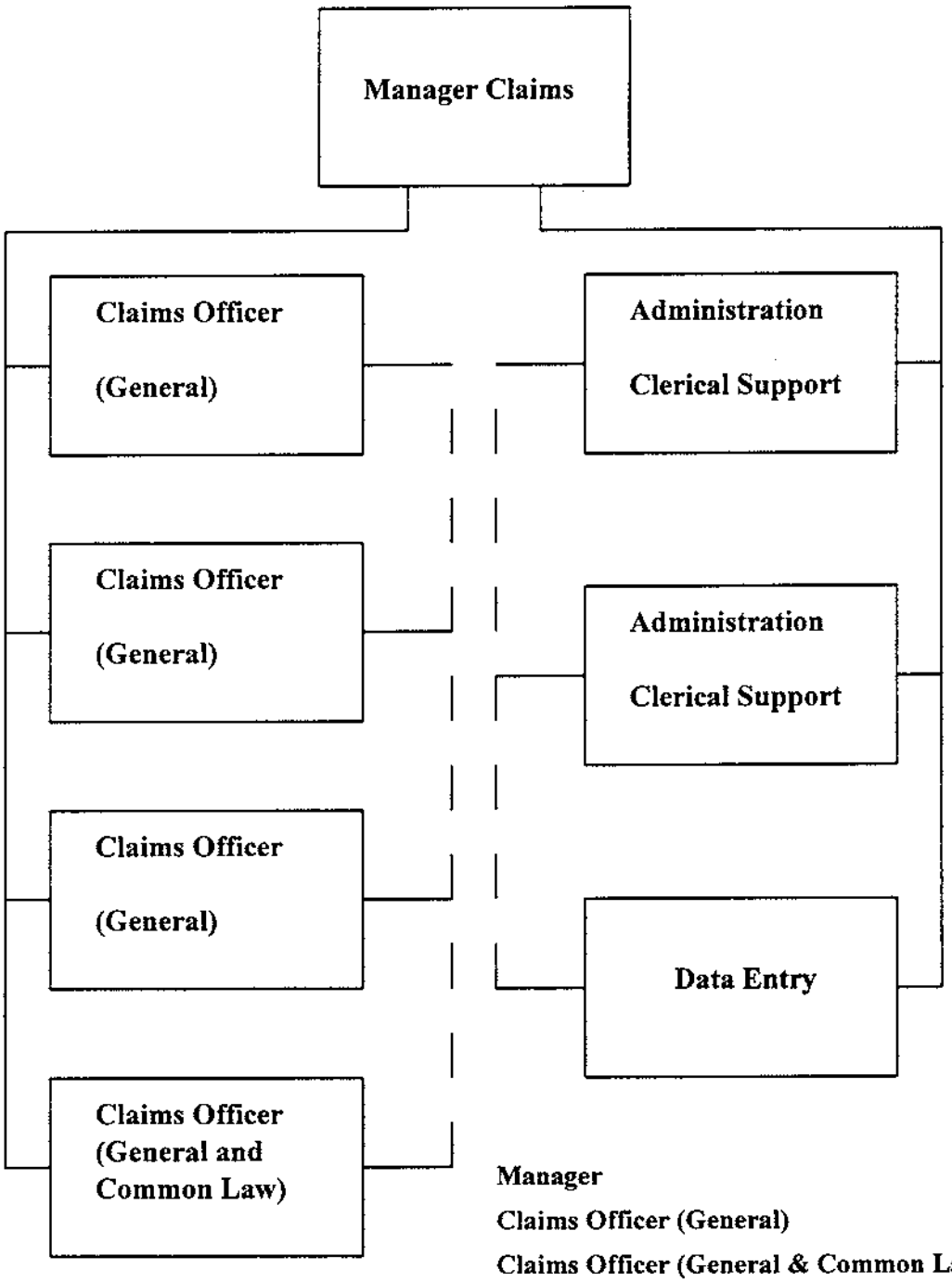
The timely capture and distribution of meaningful claims data to Councils forms an integral part of the loss prevention strategies to be employed.

A claims management structure, as detailed on the following sheet, has been developed, based on the estimated Local Government claims volume, arrived at after consultation with the Workers' Compensation Board and individual Councils.

Because of the co-ordinated management approach envisaged, where the three service functions of claims management, risk management and rehabilitation work closely together, we propose to handle all Local Government claims in one central location, close to the regulating authority.

Department Structure

Claims Management Department



Manager	1
Claims Officer (General)	3
Claims Officer (General & Common Law)	1
Administration/Clerical Support Officer	2
Data Entry Officer	1
	8

Risk Management

The proposed risk management department will have as its goal the prevention of injury to people employed in the Local Government industry.

Once again, to achieve this goal it is considered that a risk management service that is tailored to Local Government will bring about the desired results.

The operational structure will be staffed by risk management officers with a wealth of experience in the field of loss prevention and occupational health and safety.

The services and programs to be provided by the risk management department will include the following:-

- Training and Education programs in:
    - Management - roles and responsibilities
    - Supervision - training in accordance with legislative requirements
    - Accident reporting, recording and investigation
    - Identification and control of hazards
    - Creating effective Safety Committees
    - Ergonomics

- Office safety
- Manual handling
- Managing hazardous substances

- Auditing and surveying
- Preparation and Interpretation of Statistics
- Information and advice on Occupational Health and Safety Issues
- A hazardous substance data base
- Development of specific programs for individual Scheme Members
- Preparation of Safe Job Procedures
- Development of policies and procedures dealing with industry-wide safety issues
- Individual assistance for Scheme Members requiring specific Occupational Health and Safety advice
- Evaluation of videos, films, articles and safety equipment
- Collation of responses to draft Codes of Practice, Australian Standards and Regulations for the industry

- Speakers to address Local Government Elected Members

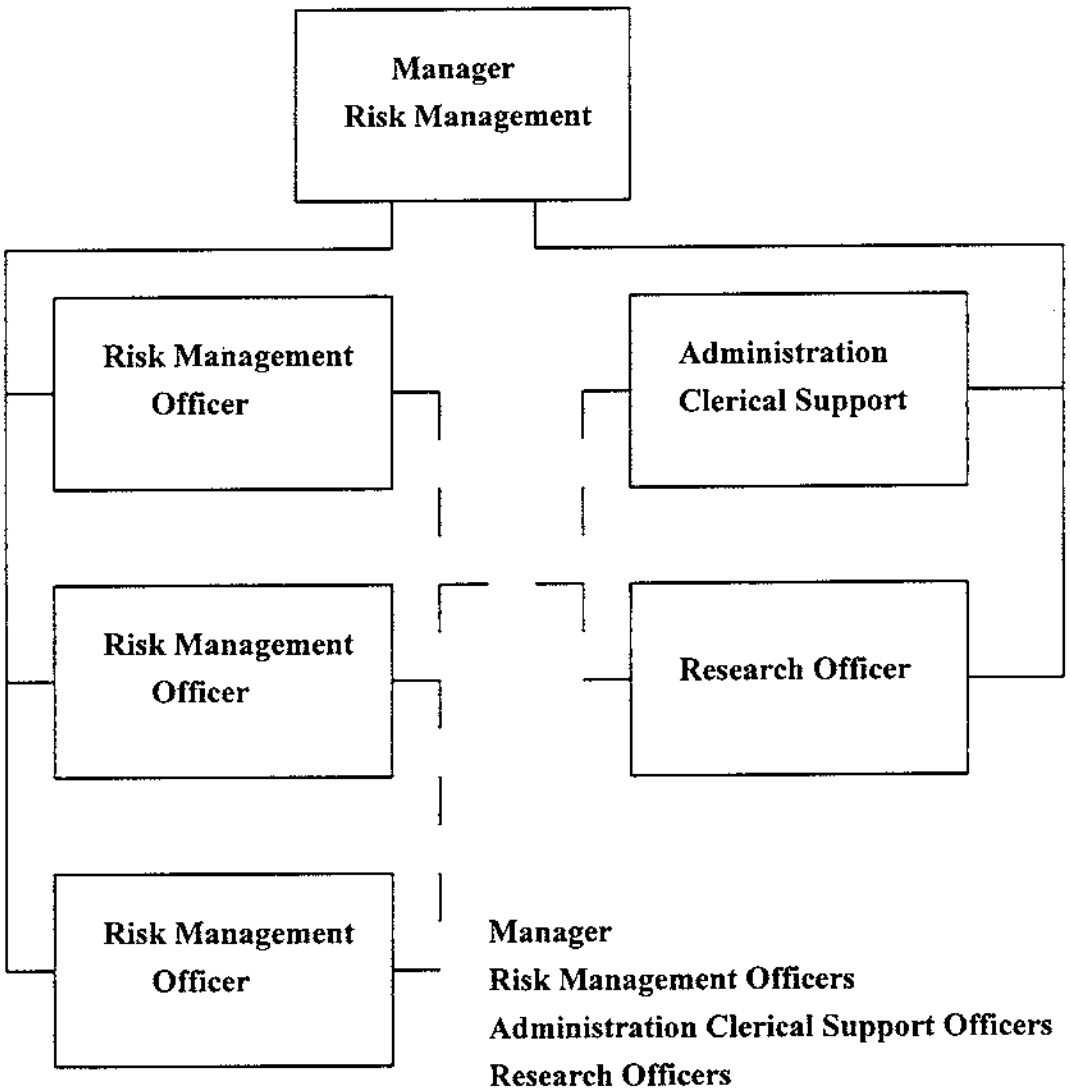
- Liaison with Occupational Health and Safety interest groups

- Training and co-ordination for committees and working parties addressing specific Occupational Health and Safety matters

Through close co-ordination with the claims processing sections up to date data specific to Local Government can be used to identify and target particular areas or processes of concern.

Department Structure

Risk Management Department



Manager	1
Risk Management Officers	3
Administration Clerical Support Officers	1
Research Officers	1
	6

Rehabilitation

Following our July 1995 submission to the Workers' Compensation Board, extensive research and work has been undertaken with a view to developing appropriate strategies for controlling and managing effective work based rehabilitation.

The LGAQ considers that positive rehabilitation programs which recognise the value of protecting and keeping employees expertise within the Local Government industry is vital.

The rehabilitation department structure we have developed is designed to place qualified rehabilitation professionals in various regions throughout Queensland.

Each officer will be assigned to Councils from the region and will be responsible for tailoring an effective rehabilitation strategy for each Council in conjunction with employees, unions, medical practitioners and other service providers from within the region or from other sources.

The activities of each of the regional rehabilitation officers will be centrally co-ordinated to avoid duplication and unnecessary overlapping of effort.

The development of a close working relationship between regional rehabilitation officers and local rehabilitation co-ordinators in Councils will be a key element in supporting essential initiatives in the areas of early intervention and rehabilitation.

Broad acceptance of rehabilitation as a mainstream policy issue amongst Local Governments will be a core feature of the scheme.

We consider that a scheme can be developed providing the following services:-

- Prompt assessment of rehabilitation needs.
- Rehabilitation programs designed to suit the specific requirements of each individual.
- Uniformity in the understanding of work within the Local Government industry.
- Support for industry based and industry relevant rehabilitation concepts.
- On site assessment to ensure safe and suitable work environments for employees returning to work.
- Job and task analysis.
- On going case management and co-ordination of rehabilitation programs including liaison with all parties.
- Rehabilitation counselling.
- Provision of literature which explains the rehabilitation process for employees with work related disabilities.
- Work hardening programs.
- Co-ordination of vocational assessments.

- Assessment of worksite modifications.

- On site advice on work techniques for rehabilitated employees.

- Assessment of the activities of daily living.

- Assessment for the need for retraining.

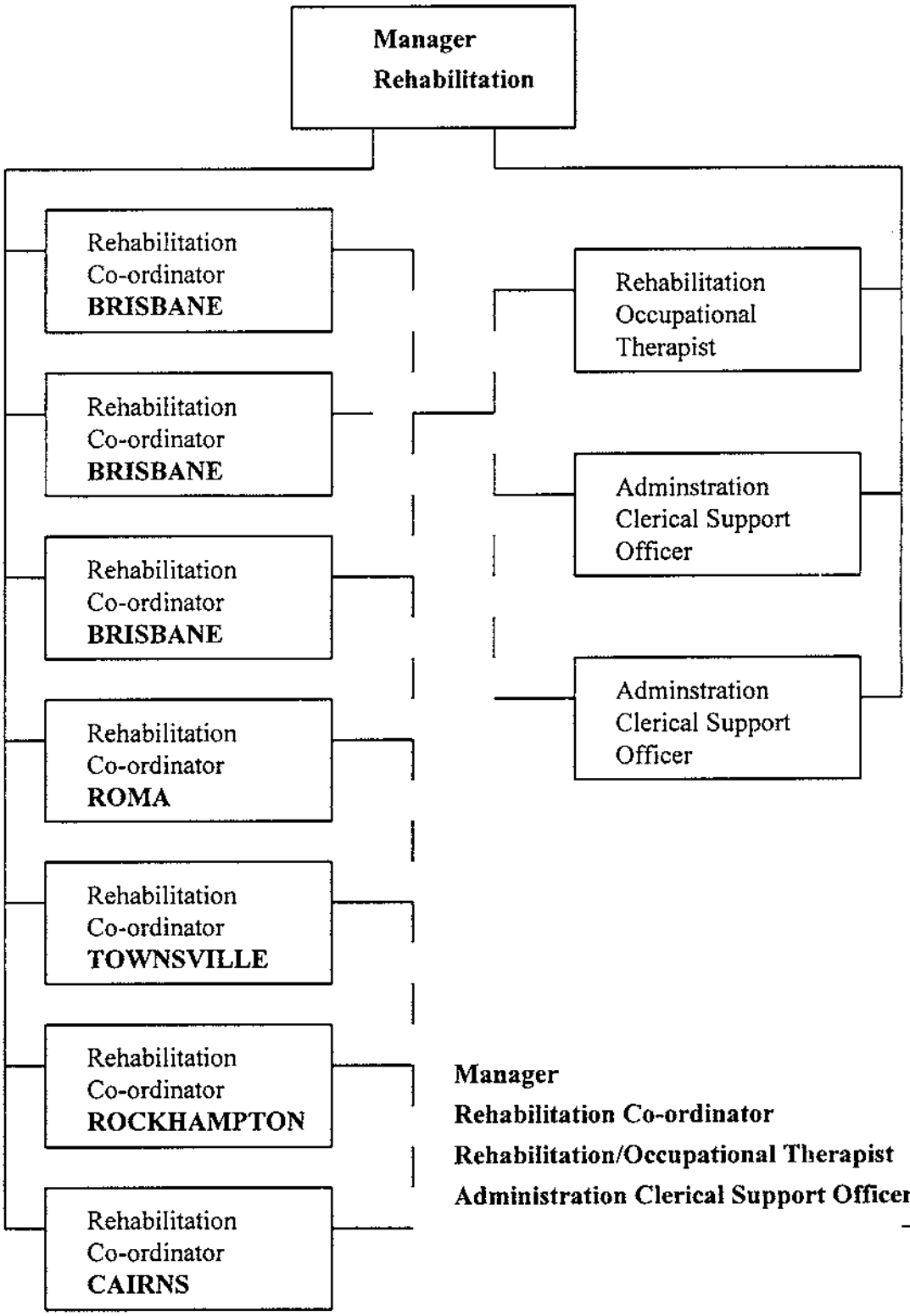
- Assistance with job seeking and placement.

- Training programs for all Local Government senior management, supervisors and internal rehabilitation co-ordinators.

- Regular newsletters providing rehabilitation advice, legislative requirements and other appropriate material.

Department Structure

Rehabilitation Department



Manager	**1**
Rehabilitation Co-ordinator	**7**
Rehabilitation/Occupational Therapist	**1**
Administration Clerical Support Officer	**2**
	11

Summary

The concept we have developed and broadly detailed in this submission appears to us to present a framework that with proactive co-operation between the parties could produce significant benefits to all the stakeholders in the system.

We are convinced, because of the overwhelming evidence from other jurisdictions, that proper targeting of Local Government specific endeavours will bring about meaningful outcomes.

There is no doubt in our mind that Local Government may achieve significant cost reduction benefits by the proper management of claims processes and so in turn reduce premium costs.

Most importantly of all, while cost reductions and other associated financial benefits are desirable, and achievable, safer working environments and fewer injured workers will be seen as its greatest benefit.

Our conviction that a scheme such as this can work is reinforced by our view that for all practical purposes the objectives of all the parties will prove to be consistent, if not identical.

As pointed out in our submission, Local Government has publicly identified the need to significantly improve its health and safety and workers' compensation performance. We have also identified the means by which this can be achieved. This inquiry is an impotant step in breaking out of the short sighted quick-fix mentality of propping up a failing scheme structure with massive premium increases.

(113)

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PO BOX 84 KILCOY QUEENSLAND 4515 AUSTRALIA
FAX (074) 97 1572 TELEPHONE (074) 97 1277
MEAT PROCESSORS • DISTRIBUTORS • EXPORTERS

24 April, 1996.

Mr Jim Kennedy
Inquiry Commissioner
Inquiry Into Workers' Compensation
& Related Matters In Queensland
PO Box 374
BRISBANE Q 4001

Dear Sir,

Please find attached my Company's submission to the Workers' Compensation Inquiry. The thrust of the submission goes generally to the terms of reference.

I regard workers' compensation as one of the most significant issues facing this Company in respect of the costs of running a business.

I urge the Inquiry to balance the expectations of the competing interest groups with the users of the system i.e. enterprises such as ourselves.

Genuine reform is required for the workers' compensation system in Queensland and I hope that the Inquiry is prepared to confront the present problems and recommend the hard decisions required to remedy the present situation.

Yours faithfully,

I P Kennedy A.O.
CHIEF EXECUTIVE OFFICER

April, 1996.

SUBMISSION OF THE

KILCOY PASTORAL COMPANY LIMITED

TO THE

INQUIRY INTO WORKERS' COMPENSATION & RELATED MATTERS IN QUEENSLAND

The Kilcoy Pastoral Company Limited (KPC) is an export and domestic beef and small stock processing plant. Our export markets include Japan, the United States, Korea and South East Asia.

Established in 1953, KPC is a medium sized organisation which employs 280 people. Local people including beef producers and employees hold the majority of shares in the company and the KPC has a proud and traditional association with the Kilcoy district.

This submission is a case study of KPC's experience with workers' compensation under the present system for the previous nine (9) years.

Our experience clearly demonstrates the fundamental unfairness and deficiencies of the system in terms of:

* the setting of premium levels on an industry basis;

* a failure to recognise and/or reward companies with excellent track records;

* a complete absence of value for money.

KPC is a small player in the Queensland meat industry. We have an excellent claims experience ratio, yet our premiums are set based on the experience of the industry, with is mainly comprised of large foreign owned corporations (see Attachment A - Qld Meat Processors 1994).

Our good record stems from the fact that KPC has been proactive in establishing and maintaining safety and rehabilitation systems and procedures at the plant. This represents a significant investment in time, money and resources.

Our workers' compensation outlays are outlined in Table 1 below, and it is worthwhile noting that we have received close to the maximum merit bonus available each year. In fact, in the last 9 years our claims experience ratio has averaged 10.2% (see Attachment B - KPC claims history).

TABLE 1 - KPC CLAIMS EXPERIENCE 1986/87 - 1994/95

ASSESSED PREMIUM:	**$ 6,101,751**
LESS MERIT BONUS:	**$ 2,299,232**
WORKERS' COMP. EXPENDITURE:	**$ 3,802,519**
LESS WORKERS' COMP. EXPENSES: (*including common law payments)	**$ 753,602***
NET EXPENDITURE (PROFIT TO WCB):	**$ 3,048,916**

The figures contained in TABLE 1 represent a very poor insurance investment.

KPC has had two (2) common law claims in the past forty-three (43) years of operation. Yet in the recent changes to the *Workers' Compensation Act 1990* we are being required to pay for something that is clearly not our problem.

The Australian beef industry is presently in turmoil. World beef prices are depressed, processing costs are uncompetitive and margins are slim. The present workers' compensation costs represent an unjustified and unsustainable impost on this organisation. (see Attachment C - Beef Processing Cost Comparison)

The thrust of this submission is:

1. The Board should not retain its present monopoly as the sole insurer for Queensland. The system must allow alternate insurance providers to compete for business.

2. Concepts such as self-rating, self-assessment and self-insurance should be investigated as alternate workers' compensation systems which individual companies may access and utilise, subject to compliance with stringent performance standards. It is submitted that the minimum number of employees required before a company may self-insure should be 200.

3. The present method of premium level setting should be dispensed with. Premium levels should be based on the historical performance of an individual company not the experience of the industry.

4. The adopted system should provide for more significant financial incentives, rewards and/or rebates for good performers, and companies who establish and operate appropriate safety and rehabilitation programs.

5. Employees should bear a portion of the cost associated with workers' compensation. Employees with a financial stake in their workplace insurance arrangements will ensure that they are cognisant of their duty of care and obligations, and will retain a greater incentive to participate in company safety and rehabilitation programs.

This may take the form of either:

(a) Requiring employees to contribute a percentage of workplace insurance cover for when are off work injured.

    This would done on, for example, a 70% employer: 30% employee basis. In such a scenario employees could make their own insurance contribution to cover 30% of compensation benefits for when they are off work injured. Where they elected not to and were off work on compensation they would be paid benefits at the rate of 70% of their base rate.

(b) Paying for part of lost time injuries out of their sick leave entitlements.

6. It is contended that medical certification by the employees' own general practitioner is open to bias and/or leniency due to the fact that doctors have a vested interest in their regular patients.

Consideration should be given to the employer having a say in the choice of the certifying medical practitioner or at least having the ability to obtain a second opinion from a nominated company medical officer.

7. The present requirement to pay employees off work at 85% of their average weekly earnings is a significant disincentive for people to return to work. The simple facts of the matter are that employees are on more money sitting at home than when they are at work participating in a modified/alternate duties program.

The payment structure should be reviewed and altered to provide an incentive for people to return to work in structured rehabilitation programs. Employees who remain at home would be paid at 85% of the award base rate, for example.

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ATTACHMENTS

ATTACHMENT A - QUEENSLAND MEAT PROCESSORS STATISTICS

ATTACHMENT B - KPC CLAIMS HISTORY 1986/7 - 94/95

ATTACHMENT C - INTERNATIONAL BEEF PROCESSING COSTS COMPARISON

Table 1 outlines details of Queensland export processing plants for the 1994 calendar year (note that some companies with multiple sites have plants located outside of Queensland).

TABLE 1 - QUEENSLAND MEAT PROCESSORS 1994

COMPANY	O'SHIP	THROUGHPUT*	PLANTS	T'OVER ($M)	EMP.NO.	EXPORT
AMH	USA	275,000	9	1,636	4,300	85%
NIPPON	JAPAN	151,465	5	761	2,600	N/A
QAC	AUST.	112,000	5	40	660	50%
TEYS	AUST.	56,000	2	206	750	80%
S.BURNETT	AUST	42,000	1	156	580	85%
CMG	AUST.	31,000	4	133	490	78%
KPC	AUST.	26,663	1	85	280	75%

* Estimated Tonnes Carcase Weight (ETCW)

(source: AUSMEAT'S "Feedback" magazine July/August 1995)

ATTACHMENT B - KPC CLAIMS HISTORY 1986/7 - 1994/5

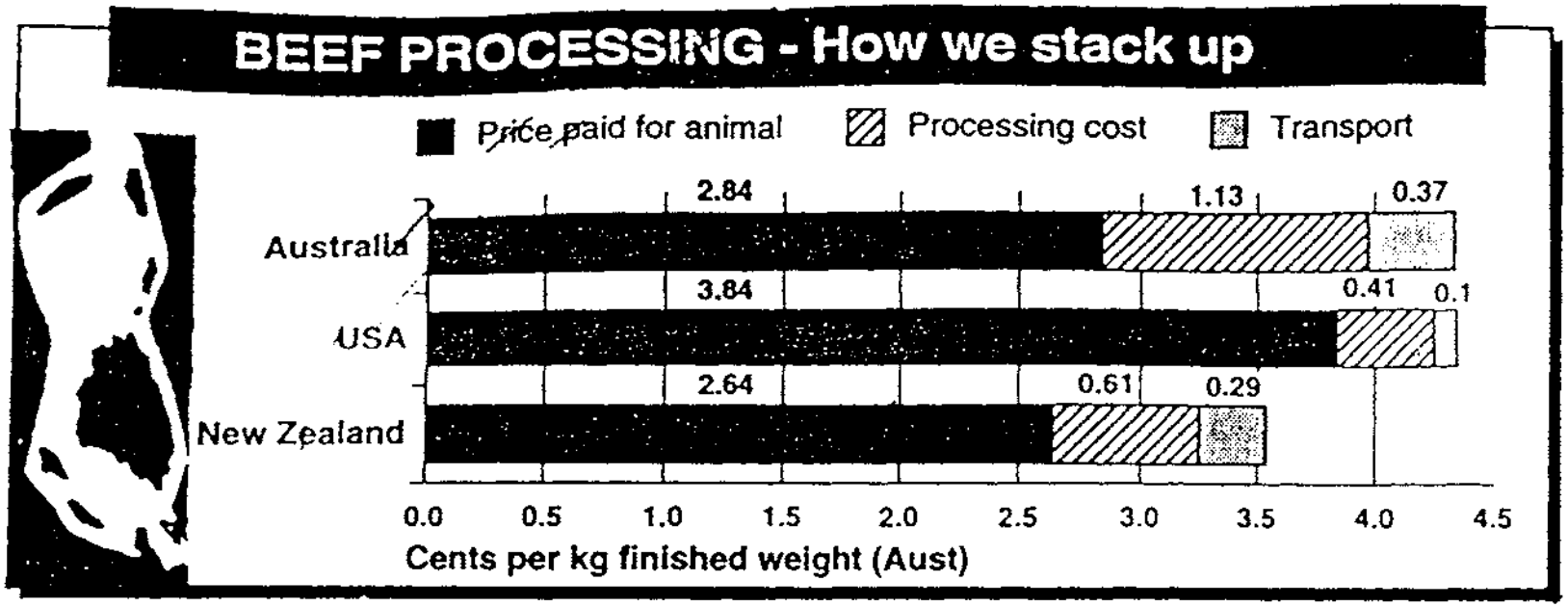
KPC WORKERS' COMPENSATION CLAIMS EXPERIENCE

YEAR	ASSESSED PREMIUM $	ACTUAL CLAIMS $	CLAIMS EXPERI RATIO	MERIT BONUS %	MERIT BONUS $	POTENTIAL BONUS $	LOST BONUS $
86/87	605,138	58,187	9.6%	45.0%	257,782	302,569	44,787
87/88	602,215	59,187	9.9%	45.0%	256,419	301,108	44,617
88/89	633,342	69,840	11.0%	43.0%	259,039	316,671	57,632
89/90	680,222	36,966	5.4%	49.0%	316,990	340,111	23,121
90/91	688,876	61,039	8.9%	45.0%	295,576	344,438	48,862
91/92	671,350	140,294	20.9%	24.9%	153,217	268,540	115,323 ●
92/93	708,880	84,972	12.0%	32.0%	215,807	283,552	67,745 ●
93/94	725,868	45,689	6.3%	36.0%	261,312	290,347	29,035
94/95	786,162	69,071	8.8%	36.0%	283,018	314,465	31,447
TOT.	**6,101,751**	**625,427**	**10.2%**	**39.4%**	**2,299,232**	**2,761,801**	**462,569**

(● common law payout)

KPC's two (2) common law claims have cost a total of **$128,175.19.**

ATTACHMENT C - BEEF PROCESSING COSTS COMPARISON



This chart shows how New Zealand is able to undercut our prices on the beef export market. NZ has lower processing costs and lower transport costs. The US also has far lower processing and transport costs. It exports at around the same prices as does Australian beef, but producers get a far bigger share of that export price, resulting in far higher prices for their cattle.

(source: Queensland Country Life 12/10/95)

SUNCORP

30 APR 1996

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(14)

OUR REF: WORKCOMP.LTR

30 April 1996

Mr Jim Kennedy, AO, CBE, D Univ
Inquiry into Workers' Compensation & Related Matters in Queensland
Level 27
Central Plaza One
345 Queen Street
BRISBANE QLD 4000

Dear Mr Kennedy,

INQUIRY INTO WORKERS' COMPENSATION AND RELATED MATTERS IN QUEENSLAND - CALL FOR SUBMISSIONS

On behalf of SUNCORP, may I express my appreciation for the opportunity to provide a submission to the Inquiry which responds comprehensively to the issues raised in the Terms of Reference.

As SUNCORP is a significant player in the insurance market in Queensland, we believe that our considerable resources and experience will support whatever changes are recommended by the Inquiry.

The Board of SUNCORP Insurance and Finance is aware that a Submission is being made.

As this is only the preliminary stage in the Inquiry, obviously further indepth discussions will be necessitated; our staff are at your disposal for consultation as necessary.

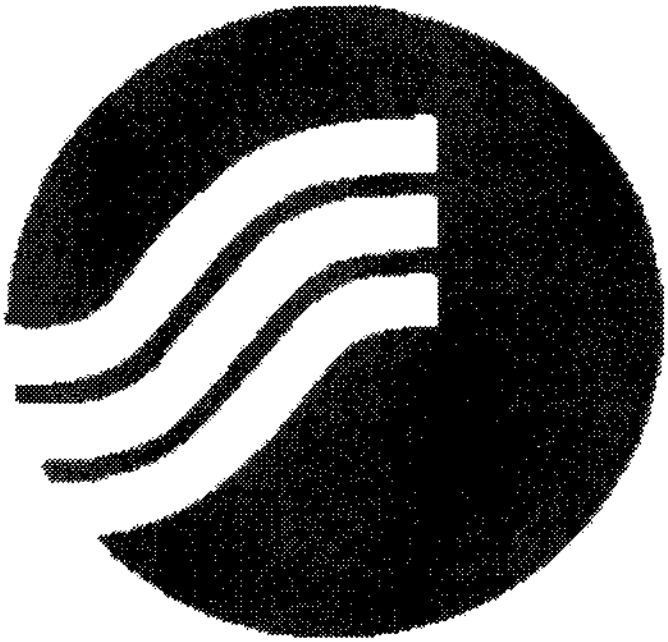
We wish the Inquiry every success in achieving its objectives.

Yours sincerely,

B C ROWLEY
Chief Executive

SUNCORP

Insurance and Finance



SUBMISSIONS TO THE INQUIRY INTO WORKERS' COMPENSATION AND RELATED MATTERS IN QUEENSLAND

SUNCORP

INDEX

Page I — EXECUTIVE SUMMARY

A. MATTERS ARISING OUT OF THE TERMS OF REFERENCE
. CURRENT ROLE OF THE BOARD
. PREMIUM SETTING/ENCOURAGING SAFETY IN INDUSTRY
. WORKPLACE HEALTH AND SAFETY
Page II . COMMON LAW
. REHABILITATION
. SELF INSURANCE
. ADVERTISING

Page III — B. CAPABILITY STATEMENT
Page III . CLAIMS MANAGEMENT
Page III . QUALITY ASSURANCE
. REHABILITATION
. TECHNOLOGY
. EXPERIENCED STAFF
. BRANCH NETWORK
Page IV . FUND MANAGEMENT
. ACTUARIAL SERVICES
. SECURITY

Page IV — CONCLUSION

* * *

Page 1 — INTRODUCTION

Page 1 - 2 — HISTORY

Page 2 — TERMS OF REFERENCE

Page 2 - 3 — A. THE CURRENT OBJECTS OF THE WORKERS' COMPENSATION ACT 1990 AND THEIR RELEVANCE TO THE NEEDS OF THE QUEENSLAND COMMUNITY
Page 3 — B. DOES THE PRESENT SYSTEM OF ACCIDENT INSURANCE IN QUEENSLAND PROVIDE ADEQUATELY FOR THESE OBJECTS?
Page 3 - 4 — (i) A SYSTEM OF ACCIDENT INSURANCE PROVIDING ADEQUATE AND SUITABLE COVER TO INJURED WORKERS AND THEIR DEPENDANTS
Page 4 - 5 — (ii) MEETING THE NEEDS FOR ADEQUATE INCOME AND APPROPRIATE MEDICAL TREATMENT
Page 5 — (iii) REHABILITATION
Page 6 — (iv) ENCOURAGING SAFETY IN INDUSTRY
Page 6 - 7 — (v) PROTECTING THE INTERESTS OF EMPLOYERS
Page 7 — (vi) EFFICIENT AND ECONOMIC ADMINISTRATION

Page 7	C.	THE MOST APPROPRIATE DELIVERY METHOD
Page 7 - 9	(i)	THE BOARD AS SOLE INSURER
Page 9 - 10	(ii)	THE BOARD AS REGULATOR AND SERVICE DELIVERER
Page 10	(iii)	OTHER SYSTEMS OF ACCIDENT INSURANCE
Page 11	D.	THE BOARD
Page 11	(i)	CURRENT ROLE AND STRUCTURE
Page 11 - 12	(ii)	ARE THERE ADEQUATE INCENTIVES TO ENCOURAGE SAFETY IN INDUSTRY?
Page 12	(iii)	RELATIONSHIP BETWEEN THE BOARD AND THE DIVISION OF WORKPLACE HEALTH AND SAFETY
Page 12 - 13	(iv)	MOST APPROPRIATE SYSTEM FOR DETERMINING PREMIUMS
Page 13	(v)	THE ADEQUACY OF STATUTORY BENEFITS
Page 13	(vi)	COST EFFECTIVENESS OF THE DELIVERY OF REHABILITATION SERVICES
Page 13	(vii)	THE EFFECTIVENESS OF THE CURRENT DAMAGES CLAIMS SYSTEM
Page 13 - 14	(a)	A Dedicated Court System
Page 14 - 17	(b)	Procedures For The Handling And Administration of Damages Claims
Page 17	(c)	Advertising By The Legal Profession
Page 18		CAPABILITY STATEMENT
Page 18	A.	CLAIMS MANAGEMENT EXPERTISE
Page 18 - 19	(i)	FRAUD MANAGEMENT
Page 19 - 20	(ii)	SERVICE PROVIDERS
Page 20	(iii)	PRO-ACTIVE SETTLEMENT CULTURE
Page 20 - 21	(iv)	LEGAL SERVICES DEPARTMENT
Page 21 - 22	(v)	CLAIMS PRACTICES - QUALITY ASSURANCE
Page 22	B.	REHABILITATION
Page 22 - 23	(i)	SERVICE DELIVERY - THE MODEL
Page 23	(ii)	CASE MANAGEMENT
Page 23	(iii)	SERVICE PROVIDERS
Page 24	(iv)	COST-EFFECTIVE SERVICE DELIVERY
Page 24	C.	TECHNOLOGY
Page 24 - 25	(i)	OPERATIONAL SYSTEMS - COGEN
Page 25	(ii)	RELEVANT BENEFITS SUNCORP HAS GAINED FROM COGEN
Page 25 - 26	(iii)	EXPERT SYSTEMS - COLOSSUS, ECO-LOSS, RESERVER & ESTIMATOR
Page 26	(iv)	BENEFITS OF COLOSSUS

Page 27	D.	STAFF
Page 27	E.	REGIONAL REPRESENTATION
Page 27 - 28	F.	FUND MANAGEMENT
Page 28 - 29	G.	ACTUARIAL SERVICES
Page 29	H.	MARKETING SERVICES
Page 29	(i)	THE SUNCORP NAME
Page 29 - 30	(ii)	REGIONAL EXPERIENCE
Page 30	I.	FINANCIAL AND REPORTING CAPABILITIES
Page 30	(i)	FINANCIAL STABILITY
Page 30 - 31	(ii)	PREMIUM COLLECTION AND POLICY INSURANCE
Page 31	(iii)	MANAGEMENT REPORTING AND COMPLIANCE
Page 31		CONCLUSION

SUNCORP

EXECUTIVE SUMMARY

Whilst acknowledging the desirability and relevance of the objects of the "Workers' Compensation Act 1990", SUNCORP recognises that these objects will only be achieved through modification of the operations of the current scheme. SUNCORP has, in this submission, addressed issues relevant to the continuing viability of the scheme and, in doing so, has addressed most of the matters raised in the published Terms of Reference. Additionally, in the annexed Capability Statement, the ways in which SUNCORP can assist the operations of the scheme are documented.

A. MATTERS ARISING OUT OF THE TERMS OF REFERENCE

- CURRENT ROLE OF THE BOARD

The current dual roles of the Workers' Compensation Board (as regulator and service deliverer) must be separated, with the Board continuing on in a regulatory role. Subject to appropriate licensing requirements, based upon certain minimum criteria, SUNCORP is supportive of the entry of an insurer, or a number of insurers, into the Workers' Compensation market to assume all but the regulatory functions currently carried on by the Board.

- PREMIUM SETTING/ENCOURAGING SAFETY IN INDUSTRY

The Board, or the relevant authority which assumes the functions of the Board, should include a person with significant commercial underwriting expertise and experience to ensure that accepted and established underwriting models are adopted (including the rating of premiums according to risk based upon the true claims experience of an individual employer over a number of years). SUNCORP contends that the current funding deficit could have arisen, in part, through the application in past years of a flawed approach to the merit bonus/penalty premium system.

Employers, in part through the merit bonus/penalty premium system, do not currently receive the appropriate financial incentives to encourage safety in industry.

- WORKPLACE HEALTH AND SAFETY

The operations of the Workers' Compensation Scheme and the Division of Workplace Health and Safety should be overseen by the relevant Workers' Compensation Authority to assist in the achievement of common goals, to reduce duplicity of effort, and to pool incident/claims data.

Further, the Division of Workplace Health and Safety should be funded from consolidated revenue rather than from the Workers' Compensation Fund to ensure the ongoing viability of the Workers' Compensation Scheme.

- COMMON LAW

SUNCORP is supportive of the retention of access by injured workers to common law damages subject, perhaps, to regulatory assistance in respect of the circumstances in which a common law claim may be made and the manner in which certain heads of damage are to be assessed.

SUNCORP does not support the notion of a pension-based compensation scheme.

SUNCORP is in favour of the establishment, within the existing general court structure, of a dedicated system dealing with all personal injury claims. However, SUNCORP is not in favour of a specialised workers' compensation court.

- REHABILITATION

SUNCORP acknowledges the benefits to the community of providing rehabilitation assistance at an early stage to an injured worker to return that person to productive employment. However, the current rehabilitation model employed by the Board relies on the intervention and authorisation by the Board and has inherent administrative delays. SUNCORP supports the encouragement of employers to participate in rehabilitation initiatives to assist their injured employees.

- SELF INSURANCE

SUNCORP does not object to the notion of self insurance as an option to larger employers, subject to those employers demonstrating their ability to satisfy certain pre-determined criteria.

- ADVERTISING

SUNCORP is supportive of the introduction of a voluntary Code of Conduct amongst lawyers in respect of advertising for personal injury business or the introduction of legislation regulating such advertising.

B. CAPABILITY STATEMENT

SUNCORP is ideally placed to assume some or all of the functions of the Workers' Compensation Board, save for its regulatory role.

- CLAIMS MANAGEMENT

SUNCORP has extensive claims management expertise and has developed specialist divisions, including fraud management, proactive claims settlement and legal services.

- QUALITY ASSURANCE

SUNCORP has recently received quality assurance certification in the CTP area, demonstrating its commitment to quality processes and practices. Personal injury claims have been managed by SUNCORP since its inception (including Workers' Compensation claims). The claims management processes of SUNCORP are considered best practice.

- REHABILITATION

SUNCORP is an experienced provider of rehabilitation services to the Queensland public through its management of, and responses to, the obligations cast upon it by the Motor Accident Insurance Act 1994. SUNCORP was quick to benchmark rehabilitation services, establish best practice, introduce a cost-effective service delivery model, and implement quality assurance guidelines for rehabilitation.

- TECHNOLOGY

SUNCORP has embraced advances in technology to increase its productivity levels and information reporting for the management of personal injury claims, as well as for policy administration, accounting functions and general support services.

- EXPERIENCED STAFF

SUNCORP has highly experienced staff in the CTP area who are more than competent to handle other forms of personal injury claims, such as Workers' Compensation. Indeed, a number of staff members have had previous direct experience in Workers' Compensation in this State, in other States of Australia and overseas.

- BRANCH NETWORK

SUNCORP has an extensive branch network in Queensland with all regional centres comprehensively represented which would enable it to deliver Workers'

Compensation services more efficiently and effectively than any other insurer currently operating in Queensland.

SUNCORP has considerable expertise in promotional and customer segmentation marketing which will enable it to develop marketing strategies throughout Queensland to address the issues of workplace safety and other relevant factors of the Workers' Compensation Scheme.

- FUND MANAGEMENT

SUNCORP has a proven track record in fund management and has the infrastructure, resources, skills and experience to assume the fund management role of the Workers' Compensation Scheme with confidence.

- ACTUARIAL SERVICES

SUNCORP has significant actuarial expertise which provides specialist analysis and forecasting for the CTP portfolio, and for other personal injury lines of business.

- SECURITY

SUNCORP is one of the most stable and financially secure insurers operating in Australia, and has impeccable financial credentials. It has considerable resources and expertise in both the issuing of policies and the collection of premiums. SUNCORP has management information systems at best practice levels and is more than capable to provide timely and accurate statistical information to a supervisory body.

CONCLUSION

SUNCORP has the resources, experience, infrastructure and economies of scale to conduct Workers' Compensation business more effectively and efficiently than any other insurer likely to enter the Queensland market and, indeed, the Board itself in its current state.

SUNCORP

SUNCORP INSURANCE AND FINANCE

SUBMISSIONS TO THE INQUIRY INTO WORKERS' COMPENSATION AND RELATED MATTERS IN QUEENSLAND

INTRODUCTION

SUNCORP Insurance and Finance ("SUNCORP") welcomes the opportunity to provide comment in respect of the Workers' Compensation scheme currently operating in Queensland, and to put forward suggestions in respect of alternatives which might exist to improve the scheme.

HISTORY

SUNCORP is a body corporate constituted by virtue of the "SUNCORP Insurance and Finance Act 1985", and is wholly owned by the Government of the State of Queensland. SUNCORP carries on the operations and functions of the former State Government Insurance Office ("SGIO"). The SGIO was solely responsible for the administration of the Workers' Compensation Scheme in Queensland between 1916 and 1978.

On 1 July 1978, the Workers' Compensation Board ("the Board") was established to administer the scheme and manage the Workers' Compensation Fund independently of the SGIO.

Since 1936, SUNCORP has been the principal supplier of Compulsory Third Party ("CTP") insurance to the motoring public of Queensland. SUNCORP currently provides CTP cover on more than 56% of all registered motor vehicles in Queensland, and has lost little of its market share despite the entry of a number of private insurers into the CTP scheme over recent years.

SUNCORP is one of the largest suppliers of commercial insurances in Queensland and has a major commercial and domestic third party liability portfolio.

Accordingly, SUNCORP has significant and unrivalled experience in Queensland in the underwriting and claims management of third party personal injury insurance business. In its capacity as sole administrator of the Workers' Compensation scheme in Queensland for more than 60 years, SUNCORP has significant experience in the delivery of statutory benefits to injured workers.

SUNCORP employs in excess of 3,000 Queenslanders throughout the State and currently maintains 98 branch offices throughout the state, providing a broad range of financial and insurance services.
The Inquiry will, no doubt, inform itself as to the schemes operating successfully, or otherwise, in the other States and Territories of Australia. A draft paper, prepared by the CEO of WorkCover (South Australia), made available at a recent meeting of interested parties arranged by the QCCI, stated that it is difficult to compare schemes between States due to the different social, cultural, historical and economical forces which have shaped their development. What is working in one State will not necessarily be successful in another. Against this background, SUNCORP, through its own history and association with the State of Queensland, has a special understanding and appreciation of the forces which have shaped the State's development and unique culture.

TERMS OF REFERENCE

The numbering used in the published Terms of Reference have been adopted for the sake of consistency in this submission.

A. THE CURRENT OBJECTS OF THE WORKERS' COMPENSATION ACT 1990 AND THEIR RELEVANCE TO THE NEEDS OF THE QUEENSLAND COMMUNITY

The current objects are relevant and desirable to the Queensland community and should be retained with little, if any, change notwithstanding any modification which might be made to the operation of the scheme itself as a result of the recommendations of the Inquiry. It is important that any scheme established for the compensation of workers injured in the workplace addresses:-

- the immediate financial/medical needs of the injured worker and his/her family and/or dependants;
- the rehabilitation and early re-entry of the injured worker into the workforce;
- strategies/incentives to reduce the incidence of workplace accidents;
- the protection of employers against claims made by employees for work related injuries.

Notwithstanding that prevention is better than cure, there will always be accidents in the workplace and any scheme must address the broad spectrum of the issues raised above. SUNCORP, through its CTP operations, has accepted and embraced the fundamental tenets of the "Motor Accident Insurance Act 1994", which are closely aligned to the current objects of the "Workers' Compensation Act 1990". The objects of the Motor Accident Insurance Act are:-

(i) to continue and improve the system of compulsory third party motor vehicle insurance, and the scheme of statutory insurance for uninsured and unidentified vehicles, operating in Queensland; and

(ii) to provide for the licensing and supervision of insurers providing insurance under policies of compulsory third party motor vehicle insurance; and

(iii) to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents; and

(iv) to promote and encourage, as far as practicable, the rehabilitation of claimants who sustain personal injury because of motor vehicle accidents; and

(v) to establish and keep a register of motor vehicle accident claims to help the administration of the statutory insurance scheme and the detection of fraud; and

(vi) to promote measures directed at eliminating or reducing causes of motor vehicle accidents and mitigating their results.

Each of these aims has a broad equivalent within the Workers' Compensation framework.

B. DOES THE PRESENT SYSTEM OF ACCIDENT INSURANCE IN QUEENSLAND PROVIDE ADEQUATELY FOR THESE OBJECTS?

(i) A SYSTEM OF ACCIDENT INSURANCE PROVIDING ADEQUATE AND SUITABLE COVER TO INJURED WORKERS AND THEIR DEPENDANTS

Of all the objects, we believe that this is the most important. However, the importance of preventing or reducing workplace accidents should not be understated. Accidents will, despite the best and safest work practices, always happen. It is appropriate, and in the interests of society, that the focus of any scheme should be on the provision of immediate aid to the injured worker and his/her family.

As to the adequacy of the current level of benefits, an increase became effective on 1 January 1996 following a review in 1995 of the scheme. It is submitted that those levels are more than adequate if access to common law damages is to be retained. The recent amendments to the Act which impose a restriction of sorts on access to common law damages (where a worker may only sue in circumstances where the Board first offers a lump sum payment or certifies that the worker's

injuries would warrant a lump sum payment of at least 20% of the maximum lump sum payable) gave rise to the increases to make the lump sum a more attractive option. The effectiveness of that restriction has not yet been established, however one might assume that administrative difficulties could be encountered. If the recommendation of the Inquiry is that common law damages are not to be retained then clearly the level of benefits must be increased in respect of lump sum payments and a level of pension type payments must be determined for those workers who have sustained total or partial permanent incapacity. For reasons appearing elsewhere in this submission, SUNCORP is not in favour of a pension based system.

(ii) MEETING THE NEEDS FOR ADEQUATE INCOME AND APPROPRIATE MEDICAL TREATMENT

As discussed, the primary focus of the scheme should be, upon the provision of immediate financial/medical assistance to injured claimants and their families. The ability to provide that immediate assistance also enables the compensation authority to assess and provide effective rehabilitation measures with a view towards the early return to work of the injured claimant.

SUNCORP is in favour of the retention of access to common law damages in the event that the injured worker is not adequately compensated by the payment of interim financial and medical expenses, together with a lump sum, and can prove breach of duty and/or breach of contract of employment on the part of the employer. SUNCORP does not support the notion of a pension based compensation system for a number of reasons, including:-

(a) Such a system penalises employers where accidents have occurred through the negligence of the injured employee and provides little incentive for the employer to improve work practices and minimise the potential for workplace accidents;

(b) Such a system will act contrary to one of the main objects, that is to provide effective rehabilitation to re-introduce the injured worker to the workforce. A number of studies support the position that an injured person is less likely to attempt to return to productive employment when that person is eligible to receive pension-based income to a level which is only marginally less than his/her pre-accident income;

(c) Such systems are difficult to forecast and the appropriate level of funding can be impossible to calculate accurately, given the need

to provision for claims which may survive for many years into the future.

SUNCORP supports the preservation of access to justice by injured workers, subject perhaps to better legislative regulation of the circumstances in which common law claims may be made (ie. providing a statutory definition of negligence and contributory negligence) and the quantification of certain heads of damage (ie. damages for gratuitous assistance and future economic loss).

(iii) REHABILITATION

SUNCORP acknowledges the benefits to the community of providing rehabilitation assistance at an early stage to an injured worker to return that person to productive employment. SUNCORP has accepted and embraced the rehabilitation burdens cast upon it by virtue of the Motor Accident Insurance Act 1994, and currently manages the provision of rehabilitation services to thousands of injured claimants.

The focus of the legislation upon the importance of rehabilitation is reflected in both the Workers' Compensation and CTP Schemes. Currently, the rehabilitation model used by the Board relies on the intervention and authorisation by the Board. This model has inherent administrative delays and is inconsistent with the promotion of early intervention and workplace based rehabilitation, accepted worldwide as paramount for successful early return to work. Employers should be encouraged to participate in rehabilitation initiatives to assist their injured employees. Apart from anecdotal evidence, there has been little evidence of the financial benefits achieved through the current system. SUNCORP is of the view that the legislation should cast certain obligations upon injured workers seeking to claim common law damages to actively seek out and participate in rehabilitation programs to mitigate their loss and, in the event non-participation, have that failure to mitigate taken into account by the court when assessing damages. This is the position under the "Motor Accident Insurance Act 1994".

The combination of the substantial SUNCORP CTP operation, together with its participation in the Workers' Compensation Scheme, will create the economies of scale necessary to provide cost effective rehabilitation management to both injured workers and those injured through motor vehicle accidents. These capabilities are fully detailed in the annexed Capability Statement.

(iv) ENCOURAGING SAFETY IN INDUSTRY

This object is an important one in any effective Workers' Compensation Scheme, and this aspect has received appropriate focus in the current legislation to ensure employers are aware of the need for safe workplaces.

A deficiency in the current system of premium setting, however, perhaps detracts from this object through the lack of appropriate financial incentives for employers to effect change. The fact that claim numbers have continued to increase through a period of unprecedented focus on workplace health and safety is perhaps indicative of the failure of the current merit bonus/penalty system. The Scheme needs to recognise the participation of small employers who statistically can operate for many years at a time before receiving a common law claim. That system runs contrary to the basic commercial underwriting notion of adjusting premium against risk.

The link between the safety imperative and the remedial nature of the Act is tenuous. On the one hand, the "Workplace Health and Safety Act" imposes penalties on workers for engaging in unsafe practices, yet the same worker has unrestricted access to statutory benefits. For the same reason, "no-fault" systems of workers' compensation (where access to common law remedies has been removed) act against workers taking responsibility for their own safety.

(v) PROTECTING THE INTERESTS OF EMPLOYERS

As with the CTP Scheme in Queensland (and indeed, all other forms of third party personal injury liability insurance), the Workers' Compensation Scheme has long offered unlimited common law access for injured claimants. That access has been balanced against a modest statutory benefit scheme based on a no-fault premise.

SUNCORP is of the view that through the retention of common law rights, with appropriate regulatory safeguards, together with premiums set according to sound underwriting principles, the interests of employers will continue to be protected in the sense of recognition for reduced claim numbers (through appropriate premium relief), incentives for improvement in workplace safety (through appropriate penalty premiums) and indemnity in respect of court proceedings commenced by injured workers.

As previously discussed, a pension-based system discriminates against employers who have maintained a safe workplace, through claims

brought by workers injured through their own negligence with no fault on the part of the employer. The current merit bonus/penalty system is similarly inequitable, because it is based not upon the incidence of common law claims (where fault on the employer's part must be proven), but upon statutory claims (no-fault). Employers cannot currently affect their individual premium levels.

(vi) EFFICIENT AND ECONOMIC ADMINISTRATION

It is not possible for SUNCORP to comment upon the current efficiencies of the Board. SUNCORP is able, however, to draw upon its own experiences to highlight areas where improvement might occur. These aspects are detailed in the annexed Capability Statement.

C. THE MOST APPROPRIATE DELIVERY METHOD

(i) THE BOARD AS SOLE INSURER

Since 1916, the administration of the Workers' Compensation Scheme has been controlled by a sole authority - the SGIO until 1978 and the Workers' Compensation Board thereafter.

Certain benefits flow from having a sole authority administering such a scheme, including:

- flexibility in adopting strategies and policies which best further the attainment of the objectives of the legislation;
- reduction of duplicity;
- readily obtainable and identifiable information held in one central database with consistency in data coding and entry;
- a unified and consistent approach to achieving the objects of the legislation.

However, the current role of the Board as both regulator and service provider poses certain problems which will be addressed later in this submission. SUNCORP is in favour of a sole insurer, or a number of insurers, underwriting the scheme and providing claims management services provided that:-

- the insurer/s obtains a licence from the relevant overseeing authority to underwrite Workers' Compensation business;

- the insurer/s satisfy the minimum prudential requirements of the Insurance and Superannuation Commission;

- the insurer/s demonstrate the capacity and willingness to assist the authority to recommend solutions to address issues relating to the current funding deficit;

- the insurer/s have demonstrated claims paying capacity;

- the insurer/s operate beneath an overseeing authority which acts as a regulator, in much the same way as the Motor Accident Insurance Commission, which ensures that the objects of the scheme are being achieved whilst at the same time ensuring that the scheme remains fully funded and sets the minimum requirements for the licensing of private insurers participating in the scheme;

- the overseeing authority is responsible for recommending appropriate premium levels to Government;

- the insurer/s have a commitment to the retention of common law access for insured workers;

- the insurer/s make available relevant information relating to claims to the authority (similar to the reporting requirements of CTP insurers to the MAIC);

- the insurer/s demonstrate that it/they have a branch network throughout the State capable of delivering workers' compensation services cost effectively (including rehabilitation services) to the public of Queensland;

- the insurer/s demonstrate a proven ability to deal with injured claimants in a way that is consistent with the spirit and intent of the legislation.

SUNCORP is the only insurer currently operating in Queensland capable of satisfying all of these pre-conditions as well as having widespread community acceptance and trust. SUNCORP has the economies of scale and the established branch network throughout the State, combined with a proven record in third party personal injury insurance, to effectively and efficiently deliver workers' compensation services. According to the figures recently released by the Insurance Commissioner, in the 15 month period from 1 September 1994 to 31 December 1995, SUNCORP had determined liability in more than 95% of all its CTP common law claims. Further, SUNCORP had finalised

more than 50% of claims during the same period. These figures bear testament to the pro-active approach undertaken by SUNCORP towards the early resolution of claims.

SUNCORP is presently ideally positioned to administer the management operations of the scheme, including:-

- issuing policies to employers;
- collecting premiums;
- underwriting risk, either utilising Government or market-set premium rates;
- investment management of funds;
- providing statutory and common law claims management services;
- providing rehabilitation and return to work services;
- providing statistical analysis of the running of the scheme to the Board;
- monitoring service levels to claimants with recommendations for improvement to the Board;
- providing submissions to the Board and other interested parties regarding the viability of, and improvements to, the scheme including advertising and promotional activities which promote safety in the workplace.

(ii) THE BOARD AS REGULATOR AND SERVICE DELIVERER

The dual function of the Board as regulator and service deliverer presents the potential for conflict. The regulator of such a scheme must be able to strategically address the overall performance of the scheme unfettered by day-to-day operational claims management issues. Free of these operational burdens, the regulator is then able to focus on the performance of participating insurers and quality control.

We believe an independent board is required to administer the scheme, but that board should have no involvement in the scheme itself as a service deliverer. The board must represent all major stakeholders in the scheme and must have a sound grasp of established, generally accepted, underwriting practices.

SUNCORP has no objection to the proposition of the relevant Authority outsourcing some, or all, of its functions (apart from its role as regulator) to private insurers. The types of functions outsourced in other jurisdictions in Australia range from pure claims management (South Australia) to premium collection, claims management and fund management (New South Wales). If insurers are permitted access to the market, our preferred position is that those insurers carry out the full range of functions from premium collection through to fund management as these activities are within the scope of an insurer's everyday activities. There may be some merit in a phased transfer of functions over time, as is currently occurring in Victoria.

There may be merit in enhancing the role of the Insurance Commissioner to include the regulatory supervision of both the CTP and Workers' Compensation Schemes. This would result in significant benefits to both schemes. Amongst other advantages would be the elimination of duplication currently evident in both schemes (i.e. rehabilitation initiatives, fraud detection and control, claims management and so on). In that capacity, the Insurance Commissioner whilst overseeing both schemes, would necessarily report to a board of the type suggested in the preceding paragraph (ie. a "Personal Injuries Compensation Schemes Board" or similar).

(iii) OTHER SYSTEMS OF ACCIDENT INSURANCE

SUNCORP has no objection to the notion of self-insurance as an option to larger employers, subject to those employers demonstrating:

(a) their financial viability and ability to carry the risk ;

(b) an ability to manage claims (or a commitment to outsource claims management to an insurer with proven claims management ability);

(c) an ability to provide appropriate rehabilitation services to its workers;

(d) adequate insurance to provide cover over and above the separate reserves held by the employer in the event of catastrophic claims.

However, with the loss of the larger, more financially secure and mainly lower risk employers (with presumably more sophisticated safety systems) from the potential market pool to self insurance, those

left remaining will be the smaller and/or higher risk employers less likely to be financially capable of implementing comprehensive safety measures. This may pose a potential risk to the viability of the scheme and its capacity to remain fully funded - the "good risks" having been removed so that the "pooling" effect of insurance ceases to be available.

D. THE BOARD

(i) CURRENT ROLE AND STRUCTURE

At present, the Board represents the interests of the Government, employers and employees. This structure is not currently conducive to the achievement of the scheme objectives. It is deficient in that it does not have appropriate underwriting expertise and this has contributed to the apparent funding deficit through, amongst other things, the application of a misconceived approach to the application of merit bonuses and penalty premiums.

In the event that one or more private insurers are permitted to enter the market, it is essential that an appropriate representative/s of the insurance industry sit on the Board, preferably someone with extensive commercial liability underwriting experience and expertise.

It would be appropriate that the Board also represent the interests of the Queensland Law Society Inc. and the Australian Medical Association (Queensland Branch).

As previously discussed, it is the position of SUNCORP that the role of the Board must necessarily change if the service delivery function is removed with the Board retaining only a regulatory or "watchdog" function. The Board, in that capacity, should operate in a similar fashion to the MAIC so that it can, at a higher level and without becoming involved in operational issues, oversee policy, analyse statistical data and make strategic decisions regarding the scheme. The Board will then also have the ability to make a greater contribution to issues relating to workplace health and safety.

(ii) ARE THERE ADEQUATE INCENTIVES TO ENCOURAGE SAFETY IN INDUSTRY?

The failings of the current merit bonus/penalty premium system, insofar as it relates to the lack of real incentive for employers to improve workplace safety, have already been addressed in this submission.

The system adjusts premium based solely upon the statutory claims record of an employer (no fault), rather than upon common law claims (fault based), so that there is a distinct lack of incentive on employers to improve safety measures. The decision made to remove common law claims experience from the premium setting formula must be immediately reversed.

(iii) RELATIONSHIP BETWEEN THE BOARD AND THE DIVISION OF WORKPLACE HEALTH AND SAFETY

There is merit in the argument that one authority should oversee the operations of the Workers' Compensation Scheme and the Division of Workplace Health and Safety. There are clear and important objects of both operations which overlap. The pooling of incident/claims data (currently recorded separately by each scheme) would result in clear benefits such as the ability to track incident to claim ratios and forecast future claim rates as part of the reserving process. One structure would ensure the removal of duplication, will increase efficiencies, and allow uniformity of action to meet those objects resulting in ultimate cost savings.

The coalition, when in opposition, made assurances that the Division's costs would be funded from consolidated revenue rather than from the Workers' Compensation Fund ($23 million for year ended 30 June 1995). This would, of course, improve the funding of the Workers' Compensation Scheme and assist its ongoing viability.

(iv) MOST APPROPRIATE SYSTEM FOR DETERMINING PREMIUMS

As mentioned elsewhere, our view is that the current funding deficit is, at least in part, a result of the Board's failure to apply generally accepted underwriting models (including an appropriate claims experience mechanism). The viability of any insurance scheme starts with a close examination of the manner in which premiums are set to ensure that adequate provision is made for future claims to achieve full funding whilst also arriving at a premium rate which is commercially palatable to the end user.

Whether premiums are set by the market or by the Government, the ability of employers to directly influence their premiums is an important incentive to encourage an overall reduction in the number of claims on the scheme and safety in the workplace generally. It is essential that premiums are adjusted in light of the individual employer's common law and statutory claims record over a period of

several years rather than one. Given the benefit of those incentives, employers will have increased financial freedom to introduce more difficult and costly workplace improvements.

(v) THE ADEQUACY OF STATUTORY BENEFITS

If access to common law damages for injured workers is to be retained, there should be no real increase in the current level of statutory benefits (which have recently been substantially increased in any event).

For reasons which have been previously addressed, SUNCORP is not in favour of a pension-based scheme being introduced in lieu of the current dual compensation system.

(vi) COST EFFECTIVENESS OF THE DELIVERY OF REHABILITATION SERVICES

It is not possible for SUNCORP to comment upon the cost effectiveness of the rehabilitation services currently being provided by the Board without having had access to the relevant records maintained by the Board. SUNCORP is able, however, to draw upon its own experiences in the CTP field as to the benefits of rehabilitation. This aspect is dealt with more thoroughly in the annexed Capability Statement.

(vii) THE EFFECTIVENESS OF THE CURRENT DAMAGES CLAIMS SYSTEM

(a) A Dedicated Court System

SUNCORP is in favour of the establishment, within the existing general court structure, of a dedicated court dealing with all personal injury actions. SUNCORP is not in favour of a specialised Workers' Compensation Court, as has been trialed in other States with limited success.

One of the perceived difficulties of the existing system is the reluctance of judges to entertain personal injury trials - there being a general misconception that such matters are always capable of resolution. The comments of individual judges over time bear testament to this attitude. Accordingly, it is perceived (rightly or wrongly) that judges are prone to make over-inflated awards to punish insurers who have not been able to resolve actions prior to trial.

The establishment of a specialised structure within the existing general court system also has merit in respect of the

implementation of a formal alternative dispute resolution process. The court rules have recently introduced such processes, however, the success or otherwise of these initiatives has yet to be established. It is fair to say, however, that the existing court rules cater more for commercial disputes than they do for personal injuries damages claims which are generally given less importance and less priority.

Within that specialised structure exists the possibility for streamlining the existing processes so that actions are resolved quickly and economically. This has clear advantages to claimants and insurers alike. Currently in the Supreme Court, a Plaintiff may wait up to two years for a trial date after the action has been certified as ready for trial.

It would be desirable that there be an administrator to oversee the operations of the new system - ideally a senior barrister or solicitor - and that there be a rotation of the general court judges through the system so that the judges are able to focus on, and gain experience in, the idiosyncrasies of personal injuries proceedings.

(b) **Procedures For The Handling And Administration Of Damages Claims**

The proposed Personal Injuries Proceedings Bill, tabled in Parliament last year but never dealt with, was to impose a regime in respect of the conduct of all common law damages claims (other than those dealt with by the "Motor Accident Insurance Act 1994").

The Bill largely reflects the reforms brought about in connection with the new CTP system in Queensland - that is, it requires claimants to provide early notice of their intention to claim common law damages, requires co-operation and disclosure of materials between the claimant and the insurer, imposes dispute resolution procedures and so on.

SUNCORP is in favour of such legislation and would call for its timely passage. The benefits of such a system to common law claims by injured workers are many, including the imposition of mandatory dispute resolution initiatives to reduce the necessity of judicial determinations.

SUNCORP is of the view that certain reforms must also be introduced as to the manner in which common law claims are

dealt with, in respect of issues relating both to liability and the assessment of damages. Reforms in respect of the latter are currently being called for in relation to the motor accident insurance scheme. Insofar as workers' compensation is concerned, the following matters should be considered:

Liability

It is rare indeed these days for an employer to successfully defend a master/servant action - the cases in which a successful defence is raised almost always involve fraud or gross negligence on the part of the employee. Essentially, any injury arising out of an accident in the workplace amounts to prima facia evidence of negligence on the part of the employer. For this reason, SUNCORP supports the notion of a statutory definition of "breach of duty/negligence" with minimum facts which must be proven by the employee before the claim can be successfully prosecuted.

Further, it is also currently uncommon for a court to reduce a worker's damages to take into account negligence on the part of the worker which has caused or contributed to the accident. Even a finding that a worker has wilfully disobeyed a documented safety instruction from his employer is unlikely to result in a reduction of anything more than 10% to 20% of his/her overall award. Accordingly, SUNCORP would call for regulatory intervention to set minimum percentage reductions of damages assessments in certain cases (eg. intoxication/drug use, failure to use supplied safety equipment, wilful disregard for a documented safety instruction, and so on).

Assessment Of Damages

- **Gratuitous Assistance**

Awards of damages to an injured claimant based on the need evidenced by that claimant for domestic and other assistance (the principle in Griffiths -v- Kerkemeyer) continue to trouble insurers. Substantial awards are presently being made in respect of this component in relation to catastrophic injuries and there are sound public policy reasons to support the retention of this head of damage. It is in the claims involving lesser injuries, however, where difficulties are arising. A recent survey of a random sample of SUNCORP CTP claims revealed that around 70% of small to medium sized claims (ie. up to $100,000) contained a claim for Griffiths -v- Kerkemeyer damages - often

no more than $200 to $300. The multiplier effect places additional burdens on funds with no real benefit to those claimants.

SUNCORP is in favour of placing some structure around these claims to ensure they are only awarded to deserving claimants in appropriate circumstances and at an hourly rate set by law. It is not uncommon in personal injuries trials for parties to call commercial nursing and domestic care providers to give evidence as to their hourly rates of charge and for there to be much debate between the parties as to the appropriate hourly rate to be applied.

In New South Wales, recent amendments to their Motor Accidents Act have resulted in a system which effectively removes "nuisance" claims for this head of damage. The New South Wales scheme now provides that:-

- no Griffiths -v- Kerkemeyer damages are recoverable for the first six months following injury;

- after that six month period, the claimant may only recover damages for assistance over and above the first six hours of each week;

- damages are then assessed at an hourly rate calculated by reference to the average weekly earnings of a New South Wales worker, divided by 40.

A similar system in Queensland would remove a currently demonstrable burden from the scheme whilst still compensating the seriously ill. Additionally, the cost savings in the conduct of personal injury trials and negotiations would be substantial.

- **Deductibles**

SUNCORP does not support the introduction of a deductible or threshold for non-economic loss. The experience in the New South Wales CTP scheme has been that any benefit obtained from the introduction of deductibles has been short lived and over time has simply resulted in damages awards for non-economic loss increasing - a phenomenon known as "bracket creep".

- **Future Economic Loss**

As with Griffiths -v- Kerkemeyer damages, this head of damage also has the potential to expose insurers to significant awards. A judge, when assessing this component must make certain assumptions upon which his calculations rely. For example, assumptions must be made as to the plaintiff's pre-accident ability to work until a certain age, as to his/her ability remain in income producing employment had the accident not occurred, as to his/her pre-accident income earning potential, and so on.

Because a judge must make an award based upon future possible events and upon what "might have been", the assessment will never accurately compensate the plaintiff. Notwithstanding that there are certain accepted methods of calculating future economic loss, it is almost always a contentious issue in any action. The recent case of Blake -v- Norris in the New South Wales Supreme Court, where the future economic loss component alone exceeded $30 million, is an example of the potential for this component to blow out - particularly in cases where the plaintiff alleges loss based upon his/her lost opportunity to pursue high income employment.

Again, some regulatory framework needs to be established to ensure that a consistent approach to this component can be achieved. In New South Wales, pursuant to Section 70A of the Motor Accidents Act, a court can not award damages for future economic loss or for diminution of earning capacity unless it can be satisfied that there is at least a 25% chance of the claimant sustaining one of these types of loss. Whilst this is a step in the right direction, the section has received some criticism from insurers and the legal profession who believe that it will be ineffective. A 50% chance is suggested as being more effective.

(c) Advertising By The Legal Profession

Whilst SUNCORP acknowledges that advertising by solicitors is but one of a number of factors which have contributed to the increase in the number of common law claims, SUNCORP is in favour of a code of conduct for advertising for personal injury business by solicitors. It is understood that the Queensland Law Society is supportive of this notion and has, for some time, been calling for the introduction of a voluntary code of conduct for advertising by lawyers.

CAPABILITY STATEMENT

SUNCORP Insurance and Finance is ideally placed to assume some or all of the functions of the Workers' Compensation Board in Queensland save for its regulatory role.

The organisation has considerable resources which can be broadly categorised as follows:

- claims management expertise
- rehabilitation
- technology
- staff
- regional representation
- fund management
- actuarial services
- marketing services
- financial and reporting capabilities

A. CLAIMS MANAGEMENT EXPERTISE

As has already been stated, SUNCORP is an experienced manager of personal injury claims in Queensland. Considerable expertise has been built up with the management of the largest CTP portfolio in Queensland which represents around 14,000 common law claims.

Best practice initiatives have been adopted over a range of issues and we believe that these skill sets will easily be transferred to a workers' compensation portfolio.

Indeed considerable cost efficiencies for the Workers' Compensation scheme would result by expanding the personal injury portfolio through economies of scale and increased buying power with service providers.

(i) FRAUD MANAGEMENT

The "Special Claims" unit within SUNCORP was originally formed in 1988 after the existence of fraudulent practices in personal injury claims became apparent. Since that time the unit has handled in excess of 600 matters where gross fraudulent activity has been detected with an estimated saving to date of approximately $17 million in direct claims costs. The deterrent effect of successful prosecutions can also not be understated and this needs to be taken into account when considering the success of this unit.

This unit works closely with the claims technicians to detect signs of fraudulent activity, and is enhanced by the processing system Cogen, which helps develop profiles including scoring indicators.

SUNCORP also utilises the Insurance Reference Service (an industry database) as well as a panel of special investigators including legal experts who practice in this field.

Through the investigation of suspect claims the unit has established excellent working relationships with personal injury insurers both in Queensland and throughout Australia. Similar relationships exist with State and Federal Government bodies including various police units.

In respect of criminal prosecution, briefs are prepared following completion of civil trials and forwarded to the Fraud Squad with relevant transcripts and recommendations to ensure that adequate information is available to enable successful prosecution.

Excellent liaison with this particular group exists together with that of the Workers Compensation Board and common objectives have been reached to combat fraud on an industry basis in the personal injury area.

(ii) SERVICE PROVIDERS

SUNCORP currently manages its relationships with its service providers through a panel methodology incorporating contractual service agreements, combined with a formalised benchmarking process.

This strategy has enabled SUNCORP to achieve cost efficiencies combined with enhanced service levels and better working relationships.

We have demonstrated our ability to maximise performance of our solicitors, investigators and other providers by:

- building strong business relationships and creating working partnerships
- standardising and reducing costs
- monitoring performance against set standards
- ensuring high quality and improved service
- improved use of technology
- sharing common business goals and objectives

With regard to our dealings with solicitors in particular, we have been successful in lowering the cost per litigated claim, decreasing the average settlement costs of litigated claims, reducing the average life of litigated claims and increasing the service level response time for litigated claims.

All of these have practical application to the workers compensation environment where we believe similar cost efficiencies could be achieved together with improved service levels.

(iii) PRO-ACTIVE SETTLEMENT CULTURE

SUNCORP has had considerable success in the last few years in ensuring that common law matters are settled prior to judicial determination. This strategy is consistent with the intent of the Motor Vehicle Insurance Act 1994 to promote early settlement of genuine claims.

This settlement strategy has been achieved utilising a specialist negotiating team working with panel solicitors to arrange and participate in settlement conferences with plaintiffs and their representatives.

These settlement conferences occur regularly both in Brisbane and all regional centres ensuring that SUNCORP demonstrates its commitment to the resolution of claims by travelling to the plaintiff.

Settlement rates have been increased under this proactive approach and SUNCORP is now regarded as the industry leader in the Queensland CTP market. As supported by statistics recently released by the Motor Accident Insurance commission, SUNCORP has the highest settlement rate of any CTP insurer in Queensland.

Additionally, these settlement conferences have produced faster resolution of claims, speedier claimant compensation, significantly reduced legal costs with a positive effect on superimposed inflation.

We believe this proactive settlement culture combined with experienced settlement teams is ideally suited to other personal injury claims such as in the case of workers compensation.

(iv) LEGAL SERVICES DEPARTMENT

The development of the Legal Services Department within SUNCORP represents a first amongst general insurers operating in Queensland, none of which have internal lawyers.

The role of the Legal Services Department is multi-faceted. Primarily, its function is to identify and interpret legislation and case law (current and pending), and to ensure that SUNCORP is complying with the legislation or that strategies are adopted as a result of case law that affects SUNCORP.

The department also represents SUNCORP in a professional capacity to bodies such as the Motor Accident Insurance Commission and the Queensland Law Society. The Legal Services Manager is a member of the Accident Compensation Committee of the Queensland Law Society. No other insurers are represented on that committee.

On an operational level, legal expertise has been developed internally to facilitate the defence of litigated claims, the benefits of which include:

- a substantial bottom-line saving on legal costs previously paid to external legal service providers;
- the ability to control and direct the manner in which the defence of litigated claims is handled;
- uniformity of approach to claims;
- the availability of resources to recognise and monitor trends amongst the legal profession and the judiciary in respect of personal injury litigation.

The department is also responsible for an education program for claims staff, designed to improve their understanding of the legal environment in which they operate and to encourage them to play a pro-active role in their interface with the legal profession.

The department provides a point of reference for claims technicians in respect of legal questions which arise from time to time.

(v) CLAIMS PRACTICES - QUALITY ASSURANCE

SUNCORP has been handling personal injury claims since its inception and has now reached a level where its claims management processes are considered best practice.

Recently, SUNCORP has received Quality Assurance certification in the CTP area which further demonstrates its commitment to quality processes and practices.

Continual improvement is a key focus to this commitment. Staff, both formally and informally, are part of the process which is constantly challenging work practices and document flows to ensure the best practice is always achieved.

Internal and external formalised audit procedures add to this process and re-engineering of tasks is continually occurring as further capacity for automation or streamlining of tasks is identified.

Through the application of best market practice in the management of workers' compensation claims we believe that considerable cost savings could be achieved together with increased service levels.

These claims practices are also enhanced by the use of risk management techniques to ensure total claims costs are reduced by lowering both frequency and severity in the future. To this end SUNCORP utilises in-house assessors and surveyors who are ideally suited to advise Queensland businesses on work safety requirements and workplace improvement techniques which are required under the Workers Compensation Scheme.

B. REHABILITATION

SUNCORP is an experienced provider of rehabilitation services to the Queensland public through its management of and responses to, the Motor Accident Insurance Act 1994, which promotes this particular concept. In response to that legislation, SUNCORP was quick to benchmark rehabilitation services, establish best practice, introduce a cost effective service delivery model, and implement quality assurance guidelines for rehabilitation. SUNCORP is well positioned to achieve similar success with worker's compensation.

One anticipated outcome of the Inquiry is that it will lead to legislative change which will enforce safe work practices and support rehabilitation process and practice. Another possible outcome may be the establishment of an authority similar to WorkCover, New South Wales or South Australia. In these states, the authority's role is to develop and review accreditation processes for rehabilitation providers, to manage employer's rehabilitation education and to manage employers who chose to self manage compensation and rehabilitation. Regardless of the outcome of the inquiry, SUNCORP is confident it can take a lead role in rehabilitation service delivery for worker's compensation in Queensland.

(i) SERVICE DELIVERY - THE MODEL

Through an existing regionalised network, SUNCORP is able to demonstrate its capacity to meet the major principles of rehabilitation for worker's compensation. These principles include:

- early intervention;
- a proactive approach to rehabilitation;
- equity to service access;
- locally based service delivery;

- working with employers to ensure early return to work and the identification of alternative duties and alternative employment options;
- working alongside the medical profession to maximise outcomes;
- individual case management;
- the identification of redeployment opportunities for workers within, or external to, the employing organisation;
- injury and disability management; and
- caseload management with the controlled size of caseloads.

(ii) CASE MANAGEMENT

SUNCORP would integrate claims and case management. Case managers would implement early intervention by undertaking a compulsory assessment of claimants where injured workers have been absent from the work place for longer than two weeks. The case manager's responsibility would be to ensure that assessments lead to the development of rehabilitation plans which are structured, outcome focused, include the employer and treating medical officer, and focus on return to work.

Where significant injuries preclude the injured worker from retuning to work, the case manager would ensure appropriate disability management.

(iii) SERVICE PROVIDERS

Successful case management relies on access to professional services through rehabilitation providers. In order to evaluate rehabilitation services SUNCORP would want providers to undertake an accreditation process and would either encourage or introduce this as part of quality assurance. Competition between providers would also be encouraged to ensure the development of best practice in Queensland.

Rehabilitation providers would be responsible for the provision of services which would assist early return to work for injured workers and would ensure injured workers were maintained in their employment. Where the severity of injuries precludes return to work, providers would assist in successful management of disability.

(iv) COST-EFFECTIVE SERVICE DELIVERY

In a changing environment, SUNCORP takes a proactive approach to cost effective service delivery. SUNCORP strategies monitor and evaluate rehabilitation including:-

- monitoring early assessment of injured workers;
- monitoring early identification of alternative duties and early return to work;
- the employment of SUNCORP staff as case managers;
- referral to providers for individual services rather than referral of all cases for case management;
- referral to accredited rehabilitation providers;
- the development of well structured and costed rehabilitation plans;
- monitoring of provider outcomes and formal performance reviews with providers; and
- the development, implementation and review of internal guidelines for specific services, for example, occupational stress management and home modification guidelines.

SUNCORP not only recognises the benefits of rehabilitation but is experienced in rehabilitation service delivery. SUNCORP is a customer-focused organisation and rehabilitation service delivery would be reflective of this approach. SUNCORP can offer a well managed rehabilitation service to employers and injured workers in Queensland.

C. TECHNOLOGY

Through the integrated use of technology, SUNCORP has been able to increase its productivity levels and information reporting for the management of personal injury claims, as well as policy administration, accounting functions and general support services.

(i) OPERATIONAL SYSTEMS - COGEN

COGEN is an on line, realtime system utilising a DB2 relational database. The system processes all of our policy information electronically from Queensland transport and all of our CTP claims. COGEN can be applied however, across a

broad range of insurance products including workers' compensation (as is the case interstate and overseas).

The COGEN system is divided into sub-systems which reflect General Insurance office areas. They are:

- Client Administration
- Reinsurance
- Policy Administration
- Payables/ Receivables
- Locality Register
- Claims
- Support Services

All sub-systems need to work together to provide full functionality, and also be able to transfer to external systems relatively seamlessly. COGEN has a standard approach to sub-systems interfaces replacing direct reference data or processes outside the current sub system with controlled interface programs.

(ii) RELEVANT BENEFITS SUNCORP HAS GAINED FROM COGEN

- Cost effective claims investigation, handling and settlement by being able to produce statistics as to claims effectiveness from solicitors and investigators to claims clerks.

- Fraud detection.

- Provides improved service to our customers.

- Produce information which satisfies our statutory and legal obligations at the required levels of accuracy and timeliness.

- Captures data that allows management to identify profitable parts of the business and also the most effective distribution channels so that we are best able to promote our product.

(iii) EXPERT SYSTEMS - COLOSSUS, ECO-LOSS, RESERVER & ESTIMATOR

Assessing settlements for personal injury claims, particularly for general damages, is by its nature a very subjective process that requires the insurer to strike a balance between numerous variables, many of which are intangible. When claims are handled by claims technicians of varying levels of experience and backgrounds consistency becomes virtually impossible.

SUNCORP is adding more certainty to the assessment process with COLOSSUS and associated systems, which are expert systems that employ the latest developments in artificial intelligence, to make claims processing more efficient and consistent. The result is reducing the personal injury claims costs by as much as 10%.

COLOSSUS is a software program that captures and automates the expertise of claims technicians, medical specialists, and legal professionals. The program guides claims staff through an injury evaluation by asking a series of detailed questions. It then draws conclusions based on the severity of the injury and recommends a range of general damages.

Colossus takes into account various factors when considering general damages. These factors include trauma (pain and suffering) permanent disability, duties under duress and loss of enjoyment of life. It considers medical treatments and the possibility or probability of future treatments.

The associated systems validate whether claimants can perform their pre accident occupation and, if not, what occupations are within their physical and mental capacity. With access to over 7000 occupational titles and CES job availability information, it determines the claimants employment prospects. It even considers job proximity to the claimants home. From a workers compensation perspective the systems assists in finding suitable employment help the insurer mitigate there losses.

(iv) BENEFITS OF COLOSSUS

- Opportunity to achieve significant savings in General Damages.
- Assist in changes to work practices promoting a disciplined approach to the assessment of damages.
- Reduce inconsistencies in the assessment of quantum for estimating and finalising claims.
- Reduce inflationary trends in the cost of claims.
- Provides a basis for consistent and ongoing training through its comprehensive medical glossary.

These systems and others have allowed SUNCORP to achieve best practice in its management of personal injury claims, and we believe that this technology will also allow us to drive down costs in the workers compensation portfolio and provide increasing service levels through an inter-related benchmarking process.

D. STAFF

SUNCORP currently employs over 3,000 staff in total and operates a substantial personal injury claims department as already stated.

A number of SUNCORP staff have relevant and direct experience in workers' compensation claims in Queensland, interstate and/or overseas schemes.

We argue that highly experienced staff in the CTP area are more than competent to handle other forms of personal injury claims such as workers compensation.

As SUNCORP is the largest insurer in Queensland our staff are experienced in sales, risk management, accounting, marketing, actuarial, premium collection, administration as well as all the other functions required to run a large insurance and financial institution. We believe we have staff capabilities and skills which could be brought to the Workers Compensation scheme that exceed those currently available to the Board.

E. REGIONAL REPRESENTATION

SUNCORP currently has 107 offices of which 98 are situated in Queensland. The regional centres of Queensland are comprehensively represented and the growth of offices has strongly followed the demographic growth corridors of Queensland over the last ten years. This ensures that the corporation has developed a network of offices better than any other insurer who is represented in Queensland and indeed many other financial institutions in general. The principle of keeping SUNCORP close to the people of Queensland to allow easy access has been a major factor in the strong recognition and brand name that SUNCORP enjoys.

Strong regional representation, combined with successful working relationships with the various communities surrounding these offices, ensures that SUNCORP will be able to offer services that equal those of the current Board and create opportunities to improve overall service levels to customers.

F. FUND MANAGEMENT

An investment function has been operating within SUNCORP since its formation in 1916 as the State Government Insurance Office. A separate Investment department was established in 1965 and, in March 1995, SUNCORP Investment Management Limited (SIML) was incorporated as a wholly owned subsidiary of SUNCORP Insurance and Finance.

SUNCORP Investment Management Limited and its subsidiaries now have a staff of around 100 and manage assets of over $4.6 billion in life, superannuation and insurance investment funds, which places it in the top 20 managers in terms of funds

under management in Australia. It manages individual mandates and has established various unit trusts for the management of balanced and specialist asset pools. SIML has two subsidiary companies, SUNCORP Property Management Limited which is the manager of three wholesale and one public unlisted property trust, and SUNCORP Custodian Services Pty Limited which provides custody and settlement services to SIML's clients.

SUNCORP Investment Management Limited has achieved an enviable reputation in the wholesale investment market for strong investment performance, high calibre staff and robust investment processes. In 1994, SIML was voted "Superannuation Fund Manager of the Year" by *Money Management Magazine,* and was placed third in 1995.

SIML's investment style is active, research-driven, and places a heavy emphasis on risk control. The balanced (Superannuation No 2) market-linked fund performance has been ranked by independent consultants as having consistently below average volatility and above average returns.

Purvis van Eyk and Company has awarded SUNCORP Investment Management Limited an "A1" rating in asset allocation. This rating is only achieved if the people and processes are likely to add significant value relative to competitors in the medium and long-term. Towers Perrin has ranked SIML first overall in market timing out of 35 managers for the three years to 31 December 1995. It has maintained this ranking for ten quarters in succession.

William M. Mercer ranked SIML first overall for the three years to 31 December 1995 for the property component of the Balanced Superannuation No 2 Fund.

SIML is ranked second out of 32 managers for the three year period to 31 December 1995 by Mercers for the Fixed Interest component of Balanced Funds.

SUNCORP has a proven track record, the infrastructure, the resources, the skills and the experience to assume the Fund Management role for Workers' Compensation with confidence.

G. ACTUARIAL SERVICES

SUNCORP currently has a breadth of actuarial expertise within the structure which adds considerable value to the running of the business. One actuarial group specialises in providing analysis and forecasting for the CTP portfolio and other personal injury claims lines of business.

Commonly with these classes of business, by the time claims problems are finally recognised and accepted, significant financial damage has been done in that the

premium for the previous renewal period and the current one are found to be inadequate, with the pressure building to set the correct rate for the next period.

Consequently, long-tail classes require on-going monitoring with a real need to identify and react early to potentially ominous warning signs. Even when apparently adequate premium levels have been set, pro-active management and thorough structured regular analysis are vital to ensuring that fully funded positions are maintained.

Other pertinent issues include outstanding claims estimation, adopting prudential margins to cover uncertainty, premium rate estimation, the capital requirements to support the business and a solid understanding of the asset/liability relationship necessary for appropriate investment benchmark and asset allocation setting. SUNCORP has considerable experience for personal injury business in all these matters, on which it can draw. Many of the considerations relevant to Workers' Compensation are similar.

It is clear that external actuarial analysis has a definite role in the on-going process, however SUNCORP has actuarial resources which can get closer to the business on a regular basis and can bring to the table independent analysis, experience of long-tail business and knowledge of the major consultants' capabilities and skills. The organisation already has formed working relationships with a number of the major consultants and brings with it a confidence and willingness to work with any of them.

H. MARKETING SERVICES

(i) THE SUNCORP NAME

SUNCORP is a respected name which is currently supported by in excess of a million Queenslanders.

(ii) REGIONAL EXPERIENCE

The SUNCORP customer is found throughout Queensland, Northern New South Wales and now, to a growing extent, Sydney. This widespread customer base means SUNCORP has had to develop regional marketing skills and distribution capabilities (eg. 24 hour, 365 days a year teleservice and an extensive branch network) to ensure the customer focus ethos of SUNCORP is demonstrated in a tangible manner in the regional areas. This also necessitates the promotion of regional initiatives and campaigns which are specifically targeted to the many diverse regional areas.

As a result of the considerable expertise in promotional and customer segmentation marketing SUNCORP would be able to develop marketing strategies throughout

Queensland to address the issues of workplace safety and other relevant factors of the Workers Compensation scheme.

We believe that these considerable services would result in not only cost saving to the present scheme but also higher service standards including increased communication to the public.

I. FINANCIAL AND REPORTING CAPABILITIES

(i) FINANCIAL STABILITY

SUNCORP, with its AAA claim rating and sound prudential margins, is one of the most stable and financially secure insurers operating in Australia. SUNCORP has been owned by the Queensland Government since inception and impeccable financial credentials.

Whilst not directly regulated by the Insurance and Superannuation Commission it does however not only conform, but exceeds the prudential reserving requirements of that regulatory body.

SUNCORP is owned by Queenslanders, operates for the benefit of Queenslanders, and, through its regional offices and head office in Brisbane, employs over 3,000 Queenslanders. By placing the workers compensation business under its control, Queenslanders will continue to benefit and profits will not be lost to interstate or overseas interests.

(ii) PREMIUM COLLECTION AND POLICY INSURANCE

As the largest insurer in Queensland, SUNCORP has considerable resources and expertise in both the issuing of policies and the collection of premium.

With its large field force and regional office representation is it ideally placed to offer a superior range of services to those currently offered by the Board.

Systems already exist that ensure all Queenslanders, even in the most remote of locations, can be serviced by SUNCORP in a manner that is both cost effective and convenient to the customer.

Most of the businesses in Queensland and their employees are existing customers of SUNCORP in either its banking or insurance operations.

By offering further products for these clients SUNCORP will be able to demonstrate cost efficiencies that are unattainable under the current structure.

There also exists considerable opportunities for the cross selling of products which will deliver further benefits to the clients and also reduce some of the cost burdens that the scheme currently suffers from.

(iii) MANAGEMENT REPORTING AND COMPLIANCE

Management reporting and compliance are key issues in a modern insurance company and SUNCORP has expended considerable effort in ensuring that its management information systems are at best practice levels as well as conforming to regulatory requirements.

The provision of statistical information to a supervisory body is considered integral to maintaining a viable workers' compensation scheme in Queensland. All of these resources together with the corporation's intent and proactive strategy would ensure that the current Workers Compensation scheme would again benefit.

CONCLUSION

We believe that SUNCORP has the resources, experience, infrastructure and economies of scale to conduct workers compensation business more effectively and efficiently than any other insurer likely to enter the Queensland market and indeed the Board itself in its current state.

30 APR 1996

INSURANCE COUNCIL OF AUSTRALIA LIMITED
Incorporated in Victoria
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15

30 April 1996

Mr J.J. Kennedy
Commissioner
Inquiry into Workers Compensation & Related
Matters in Queensland
GPO Box 374
BRISBANE QLD 4001

Dear Jim,

Re: Insurance Council of Australia
Submission to Inquiry

On behalf of member companies of the Insurance Council of Australia (ICA), attached is our submission to the Inquiry.

Private insurers in Queensland have considerable experience in all facets of the management of personal injury claims.

The ICA will be available to speak to the content of the submission and elaborate on any point on which you may wish additional detail.

We are pleased to be able to have input into this Inquiry.

Kind regards,

G.C. JONES
Manager for Queensland

INSURANCE COUNCIL OF AUSTRALIA LIMITED

SUBMISSION TO

INQUIRY INTO WORKERS COMPENSATION AND RELATED MATTERS IN QUEENSLAND

APRIL 1996

TABLE OF CONTENTS

		PAGE NUMBERS
1.	EXECUTIVE SUMMARY	1 - 2
2.	INTRODUCTION	2 - 4
3.	PRIVATE INSURER UNDERWRITTEN SCHEMES IN WESTERN AUSTRALIA, TASMANIA, A.C.T. & NORTHERN TERRITORY	4
4.	SCHEMES WHERE PRIVATE INSURERS DELIVER CLAIMS MANAGEMENT SERVICE AND/OR PREMIUM COLLECTION AND/OR FUNDS MANAGEMENT	4 - 6
	- REMUNERATION	7
	- SUMMARY	7 - 8
5.	COMMENTARY ON DELIVERING WORKERS COMPENSATION SERVICES IN QUEENSLAND	8 - 9
6.	STRUCTURE OF WORKERS COMPENSATION SYSTEMS	9 - 11
7.	SYSTEM FOR DETERMINING PREMIUM	11 - 13
8.	PRICING	13 - 15
9.	ADVANTAGES OF COMPETITION BETWEEN INSURERS	15 - 16
10.	SPECIAL COMMENTARY	16
	- PREVENTION & SAFETY	16
	- REHABILITATION	17
	- FRAUD	17 - 18
	- SELF INSURANCE	18 - 19
	- BROKERS	19
	- FUNCTIONS OF THE WORKERS COMPENSATION BOARD & THE WORKPLACE HEALTH & SAFETY DIVISION	19 - 20
11.	INSURERS RECOMMENDATIONS	20 - 23
12.	NEED FOR CHANGE	23

INSURANCE COUNCIL OF AUSTRALIA (ICA)

SUBMISSION TO

INQUIRY INTO WORKERS' COMPENSATION IN QUEENSLAND

1. EXECUTIVE SUMMARY

1.1 This submission is made on behalf of the members of ICA who comprise 95% of the private sector general insurance market in Australia.

1.2 Private sector insurers have extensive experience in the administration and underwriting of workers compensation systems in the States and Territories of Australia, as well as managing the functions which interface with employers and injured workers.

1.3 Insurers can assemble the resources and provide the systems for handling all necessary Workers Compensation services to meet Queensland's requirements.

1.4 Insurers prefer to be the underwriter of the financial risk of workers compensation systems provided the system for setting premiums enables the insurers' provisions for claims liabilities to be fully funded.

1.5 Insurers have experience in implementing changes to workers compensation systems through a phased process.

1.6 Competition will provide choice to employers to select the most efficient provider to support and enhance the employers' accident prevention and rehabilitation programs.

1.7 The added value of these services will improve the employers' response to the rehabilitation of injured workers and to the improvement in occupational health and safety standards.

1.8 In Queensland, a transition of functions and services from the present operations of the Board to insurers will require co-operation and close attention to detail. Insurers recognise the challenges that lay ahead. Invaluable experience has been gained in collaborating with Authorities and recently achieved successful transitions in Victoria and South Australia. Insurers will apply this experience in Queensland.

1.9 Given the innovation and wide experience of insurers, the industry is well placed to assist in the design features of a successful and competitive workers compensation scheme. A successful scheme needs to strike a balance between the interests of all stakeholders.

1.10 Culture is a key factor in top performing schemes and evolves from the interaction of incentives and disincentives in the system. Competition is essential to a performance based culture.

1.11 These details are best dealt with through discussion and insurers are able to commence the process when required.

2. INTRODUCTION

2.1 The Insurance Council of Australia Limited (ICA) represents 117 private general insurers and associated companies whose combined annual premium is approximately 95% of the total private sector premium income written in Australia. The members of ICA comprise the private sector companies involved in underwriting or administering workers compensation in Australia.

2.2 Total annual workers compensation premium underwritten or managed by insurers in Australia is approximately $2.5 billion.

2.3 ICA, on behalf of its members, welcomes the Inquiry into Workers Compensation and Related Matters in Queensland, the only State in Australia where workers compensation insurance is controlled and delivered exclusively by the Workers Compensation Board. Insurers administer systems of workers compensation in the other States and Territories of Australia and have done so since the inception of the systems of workers compensation in this country.

2.4 Insurers have extensive experience in all aspects of workers compensation and the ability to introduce the benefit of competition in the delivery of workers compensation. Surveys have shown that competition in service delivery has had a positive impact in all States and Territories.

2.5 Insurers have views which they can put before the Inquiry on each of the Terms of Reference. However insurers prefer to concentrate at this stage on the issues before the Inquiry which reflect the Insurance aspects of the scheme:

- the issues relating to the most efficient and economic administration of the system;
- the most appropriate accident insurance delivery methods for Queensland;
- the most appropriate system for determining premiums.

2.6 In addition, this submission will comment on some other significant aspects of the Terms of Reference of the Inquiry and will be pleased to elaborate on any of these aspects if required.

2.7 Historically, outside the State of Queensland, insurers have underwritten the financial risk of the systems for workers compensation in each of the States and Territories in Australia, from the commencement of those schemes. In the middle to late 1980's the position of insurers in the States of Victoria, South Australia and New South Wales was altered when those States made sweeping changes to each of the schemes. The following is a short description of the participation by insurers in the present schemes operating in other States and Territories.

3. PRIVATE INSURER UNDERWRITTEN SCHEMES IN WESTERN AUSTRALIA, TASMANIA, A.C.T. & NORTHERN TERRITORY

3.1 In each of these areas insurers underwrite the financial risk of the scheme including the collection of premium, administration of claims and the investment of the premium funds. The premiums become part of the assets of the insurers and all claims costs and the expenses associated with the functions of the insurer are borne by the insurer.

3.2 Insurers' provide a variety of pricing methodologies directed at the needs of each market segment/niche.

4. SCHEMES WHERE PRIVATE INSURERS DELIVER CLAIMS MANAGEMENT SERVICE AND/OR PREMIUM COLLECTION AND/OR FUNDS MANAGEMENT

VICTORIA

4.1 In 1985 Victoria established the WorkCare system. This was a Government monopoly where the financial risk was undertaken by the Government Authority and many of the functions of insurers were transferred to that Authority. Insurers were licensed to act as claims agent for the Authority.

4.2 In 1992 the WorkCare system was terminated and was replaced by the establishment of the WorkCover Authority. The new WorkCover scheme envisaged a four phased approach to the complete transfer to a fully underwritten scheme. The first and second stage was the transfer of the financial risk of the system to the private insurers, subject to a re-insurance arrangement back to the WorkCover Authority, so that WorkCover, in effect, carries the ultimate liability for the financial risk. At the same time the functions of the administration of claims and premium collection were transferred to private insurers that were then licensed by the Authority.

4.3 The third phase involves the licensed insurers taking over a number of financial functions including partial investment of the scheme funds. The initial implementation of this phase is scheduled for 1 August 1996.

4.4 The fourth phase will see the transfer to private insurers of full underwriting responsibility for the financial risk, including the withdrawal of the re-insurance arrangements with the WorkCover Authority for future claims liabilities. The licensed insurers will then assume responsibilities for the financial risk, the administration of claims, collection of premiums and investment of assets.

4.5 Insurers expect the Government of Victoria to move to the fourth stage during the current term of Parliament since the scheme now has a financial surplus and authorised insurers have demonstrated the ability to deliver services to

the performance standards demanded by the WorkCover Authority and stakeholders.

NEW SOUTH WALES

4.6 In 1987 the New South Wales Government established the WorkCover Authority of New South Wales and introduced a new workers compensation system. The new system included the financial risk of the system being taken from insurers and vested in the WorkCover Authority. Licensed insurers continued to perform the functions of managers of the claims, the collection of premiums and the investment of the scheme's funds which became assets of the WorkCover Authority.

4.7 The operation of the scheme in this State follows the full insurance model and insurers have complete operational independence from the Authority.

4.8 Transfer to a fully privatised scheme could be effected with minimal administrative change with little or no impact on employers, workers and scheme service provides.

SOUTH AUSTRALIA

4.9 In 1986 the South Australian Government adopted a single provider scheme similar to the WorkCare system in Victoria. Private sector insurers were excluded.

4.10 In 1995 the South Australian Government licensed private insurers to act as agents of the WorkCover Authority in the administration of claims.

4.11 Insurers currently have a proposal before the WorkCover Authority advocating the benefits to stakeholders of transferring the premium collection function to licensed claims agents.

REMUNERATION

4.12 In Victoria, New South Wales and South Australia licensed insurers performing functions as agents for the Government Authority are paid fees at rates negotiated between insurers and the Government Authority, for the services which insurers perform. In each case the fee structure includes arrangements for incentive payments to insurers based on performance. The fee structure in each State are different.

SUMMARY

4.13 The position of insurers in each of the workers compensation systems operating in Australia varies between the position of independent risk carrier and a manager of functions assigned to the insurer by the State Authority pursuant to the legislation of the State.

4.14 The insurers preferred position is to operate as an independent risk carrier providing full competitive services in accordance with an insurer's normal role. Insurers find the limitations imposed by administration functions only, inconsistent with the manner an Insurer conducts its other risk-oriented business activities. Such arrangements do not permit insurers to use all the available expertise.

4.15 Insurers can readily and adequately maintain and support the role as agent in the short term. However it is the preferred position of the insurers to again resume the responsibility for the financial risk of those schemes currently underwritten by the Government Authority.

4.16 Insurers consider that in Victoria, South Australia and New South Wales the decisions made by Governments to transfer the financial risk from insurers to the State Authorities was undertaken on questionable advice that the

underwriting of the schemes by private insurers was a determinant factor in the instability of those schemes. State underwritten schemes are not necessarily the best option.

4.17 Subsequent experience has clearly established that the instability of the previous schemes was not the participation by private insurers in the underwriting of the schemes but fundamentally was a consequence of the benefit structures, external inflationary circumstances and the impact of excessive court awarded damages.

5. COMMENTARY ON DELIVERING WORKERS COMPENSATION SERVICES IN QUEENSLAND

5.1 Insurers have never been given the opportunity to participate in the Queensland scheme either as agents for a Government body or as underwriters of the financial risk of the scheme.

5.2 Having regard for the history of insurers' participation in the schemes in the other States and Territories of Australia, it is clear the experience in those areas demonstrates insurers are the better managers of administrative aspects of the schemes. This has been amply demonstrated by the experiences in Victoria and South Australia.

It is also demonstrated by the decision taken by the Government in New South Wales in 1987 when it introduced the WorkCover Authority. The Authority did not change, or transfer, the administrative functions of that scheme be removing the functions from insurers to the WorkCover Authority, as was done in Victoria and South Australia and which subsequently had to be re-assigned.

5.3 The Inquiry will be examining the benefits structures most appropriate for the Queensland scheme and will no doubt have regard to the external inflationary

impacts, influences of court decisions and, the unexpected and excessive use of legal disputation for resolving claims.

5.4 Whether the scheme is underwritten by a Government Authority or by the private insurers, the fully developed claims costs have to be passed on to employers, if the scheme is to remain viable and fully funded.

5.5 Insurers preference is for the introduction of a scheme administered and fully underwritten by private insurers supervised by a regulatory Authority. However recognising the realities of the situation insurers are comfortable with a phased process based on the following implementation model:

- Claims management
- Premium rating and collection
- Investment of funds

6. STRUCTURE OF WORKERS COMPENSATION SYSTEMS

6.1 The issue of what benefit structure is the most appropriate to provide the necessary balance between the provision of reasonable compensation for injured workers and premium affordability, is a subject of much debate. Insurers do not profess to have a judgement any better than many other experts who have contributed to the debate. There are certain fundamental points however that need to be emphasised.

6.2 An appropriate set of objectives for a best practice workers compensation scheme are:

- to reduce the incidence of accidents and diseases in the workplace;
- to make provision for the effective occupational rehabilitation of injured workers and their early return to work;

- to increase the provision of suitable employment to workers who are injured to enable their early return to work;
- to provide adequate and just compensation to injured workers;
- to ensure workers compensation costs are contained so as to minimise the burden on business;
- to establish incentives that are conductive to efficiency and discourage abuse;
- to enhance flexibility in the system and allow adaptation to the particular needs of disparate work situations;
- to establish and maintain a fully funded scheme; and
- to improve the health and safety of persons at work and to reduce the social and economic costs of accident compensation.

6.3 The benefit structure should provide strong incentives for injured workers to want to participate in their own rehabilitation and return to work at the earliest opportunity.

- Lump sum payments do not provide this incentive.
- Lump sum payments have a tendency to undermine co-operation in the rehabilitation process.
- Settlement of claims disputes through legal disputation will substantially increase costs of the system. The process unnecessarily delays resolution of the dispute and adds to costs.
- The majority of claims disputes relate to the medical assessment of the extent of the injury of the injured worker. Such disputes are better resolved through medical assessment processes than through the legal system.
- Controls of medical costs and the cost of hospital and rehabilitation services are a necessary part of the cost mitigation.

6.4 The Industry Commission in its report on WORKERS COMPENSATION IN AUSTRALIA (4 February 1994) examined the various benefit structures operating throughout Australia and in other countries and expressed views as to the principles that should be adopted in structuring a program of benefits. In particular the Commission did not recommend the application of a common law lump sum system of compensation for workplace injuries.

6.5 Insurers recommend this Inquiry should consider the movement in some States in Australia away from providing access to common law remedies for work related injury.

6.6 The Industry Commission made a strong plea for consistency in the benefit structures to operate in each of the States and Territories. Insurers support the need for consistency and welcomes the process established by the Heads of the WorkCover Authority in the expectation that it will produce a recommended uniform system of benefits to be applied throughout Australia.

7. SYSTEM FOR DETERMINING PREMIUM

7.1 Any consideration of the appropriate benefit structure for a system of compensation, is dependent on the appropriate method for determining premiums in the system.

7.2 There is a direct correlation between the impact on an employer of premium costs and the application by the employer of work place practices for the prevention of injury and the incentive for the rehabilitation of injured workers.

7.3 The premium schemes operating in South Australia, New South Wales and Victoria apply formulae that takes account of the actual claims experience of the individual employer.

There are variations in the formula in each State but in principle the formulae are consistent in that the employer's own claims experience directly impacts on the employer's premium costs.

7.4 Although such legislative prescribed formulae do not operate in areas in which the insurers underwrite the scheme, the principles adopted by insurers in determining individual premiums reflect directly the claims experience of the employer.

Whether it be a statutory formula or the formula applied by the insurers, the actual impact of claims experience on individual premiums is greater for larger employers than smaller employers.

7.5 The formulae have allowances for smoothing the impacts of large claims in the case of the smaller employers. One large claim would have a disastrous impact on the smaller employers.

The experience in each of the States and Territories establishes in most if not all cases claims experience factors in the insurance premium process, causes the employer to directly relate to the cost effect of each claim and consequently on the cost reduction that occur if claims are prevented or the number of accidents are

reduced or the worker is rehabilitated as quickly as possible. Insurers see first hand these impacts on employers.

8. PRICING

8.1 Certain objectives are fundamental to a workers compensation system and the pricing and premium setting for that system.

Pricing is a fundamental issue in scheme stability. A premium pricing system should be designed to maximise stability whilst ensuring that the price is responsive to real risk and employer performance.

8.2 An appropriate set of objectives for the premium pricing system are:

- to ensure that the scheme is fully funded;
- to provide financial incentives for employers and insurers to reduce scheme costs by better prevention, occupational rehabilitation, return-to-work and claims management;
- to avoid incentives for abuse or undesirable behaviour (such as understating of case estimates, temporary claim closures at key dates or unfair treatment of injured workers);
- to collect premiums for each employer that are equitable in relation to the risk level of the employer;
- to provide adequate insurance protection for employers against fortuitously high claims costs;
- to provide reasonable stability in employer premiums from year to year consistent with other objectives;
- to be economical to set up and administer;

- to be relatively simple to understand, and have the support of employers and other stakeholders;
- to focus competition among insurers on areas that are healthy for the scheme and support the other objectives, and
- to avoid or limit cross-subsidies between employers and between industries.

8.3 These principles have been adopted by the insurers in determining the premium structure to be applied in a private sector underwritten system.

8.4 The incorporation in the premium structure of the claims experience rating formula would replace the system of merit bonus/penalty which currently operates in Queensland. The bonus/penalty system is not as efficient, in the opinion of insurers, as the claims experience formula mechanism in equitably applying an individual employers actual claims experience to the determination of the employers final premium. Many Queensland employers are voicing dissatisfaction with the existing scheme which can see reduction in accident frequency rates not being fully reflected in premium costs.

8.5 It is noted that a "merit bonus" scheme has been in existence in Queensland since 1962, with "demerit" charges introduced from 1 July 1994. At this time it is understood a decision was taken that payments in respect to damages (Common Law) claims would not be taken into account in calculating the "Claims Experience Rating" (CER) equation for both "merit" and "demerit".

This approach does not seem the best mechanism to encourage safety in industry as employers should be penalised for all claim payments for which they are responsible.

8.6 There is a need in the administration and management of workers compensation for a risk management service to be provided to examine and improve the claims experience of employers. Prevention is not greatly assisted by just the issuing of brochures, videos etc. There is an essential requirement of contact with employers where CER is not acceptable and then encouragement to turn this experience around by way of "Risk Management".

9. ADVANTAGES OF COMPETITION BETWEEN INSURERS

9.1 In other jurisdictions, insurers keenly compete to provide to employers the services employers now see as necessary to manage risk. Competition in the provision of these services between insurers is strong because the delivery of such services to employers provides the value added which employers can assess and influences clients to remain with an insurer or change an insurer.

9.2 Employers benefit from this competition as it allows the employer to choose the insurer the employer considers will provide the services necessary to help reduce the incidence of claims, through prevention, and to assist the employer in the early rehabilitation of injured workers.

9.3 The awareness of the employer for these services is activated from the claims experience factor in the premium setting process. The ability of employers to select the better service provider is currently lacking in the Queensland system. It is a fundamental difference between Queensland and other States and Territories in the delivery of the administrative services

in the schemes. In the view of insurers it has a material impact on the outcomes of the system.

9.4 Best practice claims management will ensure injured workers receive efficient, fair and equitable treatment with rehabilitation being a major consideration.

10. SPECIAL COMMENTARY

10.1 The following items are selected by ICA for special commentary as each item has special relevance in the context of private insurer participation in a scheme for workers compensation.

PREVENTION AND SAFETY

10.2 It is an integral part of the service provided by insurers to employers, to assist employers prevent accidents by increasing the safety of the workplace. Employers seek the advice and services of insurers in these areas. Insurers provide the primary source of statistical information which employers need to identify those parts of its operation which generate claims and where emphasis on safety is to be placed. Each insurer maintains these statistics and draws the employer's attention to the areas where prevention techniques will reduce accidents. Insurers are now sophisticated in the systems and techniques they apply in assisting employers in these areas. Insurers are constantly upgrading these services and can adapt to meet the specific requirements of employers in Queensland.

REHABILITATION

10.3 In other jurisdictions insurers understand and apply screening processes to claims which quickly identify those workers whose injury will benefit from the early application of rehabilitation services. These injured workers are assessed in order to determine the particular rehabilitation service which will best help the worker. The worker is directed to the provider of those services at the earliest possible time. The results of such services are beneficial both to the worker who is rehabilitated into the work force and to the employer through the reduction in claims costs.

Again, insurers experience in applying these services expeditiously will be adopted in Queensland as it is being applied in the other States and Territories.

Private insurers in Queensland have already accumulated considerable experience in the application of rehabilitation services in the management of personal injury claims through involvement in Compulsory Third Party Insurance.

FRAUD

10.4 Insurers fully support the initiatives undertaken in Queensland with the establishment of a special fraud unit of the Board and the prosecution of offenders. Insurers would use their own anti-fraud techniques as an integral

part of the service provided to employers. Insurers have developed programs for fraud detection involving the application of fraud indicators in the workers compensation context.

There will be a need to maintain the Board's program for detecting uninsured employers. Insurers would encourage the maintenance of a vigorous program to minimise the level of non insurance. There will continue to be a need for the maintenance by the Board of an uninsured fund, the cost of which would become one of the costs of the Board.

SELF INSURANCE

10.5 Insurers are not opposed to the introduction of self insurance for those employers who are of a sufficient size and choose to bear the financial risk of their own claims experience and to self manage their own claims and provide associated services. If this responsibility is to be assumed by an employer certain safe guards must be applied to ensure that the employer will remain financially viable so that funds will be available to meet claims over whatever future period the claims of the employer have to be met. This can only be assured by the provision of independent guarantees and a constant assessment of the adequacy of the quantum of outstanding claims liabilities which need to be covered by the guarantee. In addition, provision should be made by the self insurer for insurance to cover the catastrophic occurrences which may cause a multitude of claims from the one event.

It would be necessary to ensure that self insurance was not extended so that the viability of the balance of the scheme was in jeopardy. This could occur if

the only risks left in the insurance scheme were a limited number of high risk employers so that the "pooling" effect of insurance ceased to be available.

Safe guards have been applied to the self insurers operating in the other States and we would refer the Inquiry to the requirements for self insurers applied in New South Wales.

BROKERS

10.6 Insurance brokers provide advice to employers which materially assist employers to select the insurer which can provide the employer with services most appropriate to the employer's workers compensation needs. Brokers provide such services to employers in other States and Territories. There are however restrictions in some of the States e.g. New South Wales and South Australia which prevent the brokers being paid commission based on premiums. In these cases the broker may charge a fee directly to the employer for services rendered.

These restrictions have the advantage that the charges made by the broker are transparent and do not directly add to the premium costs in the scheme. If commission is paid by insurers to brokers, the amount must be included in the premium rating formula and it will become an indirect charge to the employer.

THE FUNCTIONS OF THE WORKERS COMPENSATION BOARD AND THE WORKPLACE HEALTH AND SAFETY DIVISION

10.7 It is most essential and desirable to have Workers Compensation and Workplace Health and Safety drawn much closer together on the same overall path with similar aims and objectives for greater efficiency and achievement. In order for this to happen they should both have the same Business Board for overall direction and management. There is also a need that both areas be managed by the same manager to ensure a single purpose in achieving the aims and objectives by way of management and direction as both areas should and do have a very close relationship.

It is noted that in a draft report of the review of this relationship made by Tregillis it is recommended that these functions be amalgamated into a single organisation. Insurers support such a recommendation. Insurers' view is supported by experience in New South Wales where the integration of the functions have contributed to better overall control of the workers compensation system, especially in the collection and use of the data which is such an essential part of the administration of an effective workers compensation system.

11. INSURERS RECOMMENDATIONS

11.1 Insurers strongly recommend that in the interests of all the stakeholders in the Queensland workers compensation system, the introduction of competition through the participation by the private insurance sector:

- will result in substantially improved services to employers and workers.

- will provide employers with choice between competing services
- will enable the Board to concentrate on the effective supervision of the operation of the scheme untroubled by the administrative detail of claims management, premium collection and control of investments.
- will avoid any perceived conflicts between the role of the Board as the responsible Authority, and the deliverer of administrative services to employers and injured workers.

11.2 Insurers submit that it is not the function of the Board and through the Board, of the Government, to carry the risk for the financial outcomes of the scheme. Subject to establishing appropriate premium structures which enable insurers to determine appropriate premiums under the Board's supervision, insurers would wish to assume the financial risks of the system.

11.3 Insurers preference is for the introduction of the private sector competitive services and the transfer of financial risk to insurers, occur at the one time. Whether it is appropriate that each of these functions be transferred to the private sector contemporaneously, or through a phased process, will need to be examined and determined. This is best achieved through a consultative process with the Board and would involve details that are best left to discussion rather than attempted in this submission. Insurers are willing and able to undertake these discussions as soon as possible.

Because of the experiences in the other States and especially in Victoria, New South Wales and South Australia, insurers have an understanding of the issues that need to be dealt with and the details that have to be covered.

11.4 Insurers have the resources and the infrastructure to assume these responsibilities and to provide these services throughout Queensland via coverage of offices and branches.

11.5 The substantial resources needed to commence operations would require the transfer from the Board of staff, as it is clear insurers do not have available in Queensland sufficient trained staff to automatically take up the functions currently performed by the Board. This was successfully achieved in Victoria and South Australia.

11.6 Arrangements involving the existing workflow and the distribution of current claims processes will need to be worked out. These change-overs have been most satisfactorily completed in recent times in Victoria and South Australia and insurers would be confident that with the necessary co-operation, the transfer of functions can be effected in Queensland without disturbance to stakeholders.

11.7 Systems requirements will need attention as insurers readily accept the need for the Board to continue to collect from insurers and maintain centrally, all relevant regulatory data relating to the system.

Most insurers would prefer to continue to operate their own individual system so that, particularly in the case of large employers who operate nationally, insurers could continue to provide a comprehensive national coverage through the insurers own system. This scheme can take advantage of the many system enhancements insurers have implemented.

Initially, attention will need to be given by the Board and by insurers to determining the best methods by which maintenance of central data can continue uninterrupted by the introduction of the private insurers. These processes have been satisfactorily worked out in the other States and that experience can be applied to achieve a successful transition in Queensland.

12. NEED FOR CHANGE

The recent experience in the Queensland system of workers compensation demonstrates that the scheme is not immune from the sudden sharp increases in costs which in other States and Territories in Australia, have caused the Governments of those States to move away from a monopolistic form of management and to introduce private sector skills and techniques. Together with other structural changes to the schemes, particularly in the benefit structures, the introduction of private sector insurers has proved beneficial.

Employers and injured workers have experienced the benefit of competition and the comfort of dealing with private sector efficiencies rather than being solely exposed to a more bureaucratic system for the provision of the services of the system.

30 APR 1996

(116)

M.I.M. HOLDINGS LIMITED

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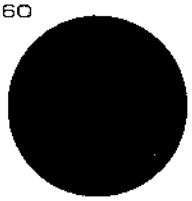


NICK STUMP
CHIEF EXECUTIVE

April 30, 1996

Mr Jim Kennedy,
Inquiry Commissioner,
Queensland Workers' Compensation Inquiry,
Level 27,
Central Plaza 1,
345 Queen Street,
BRISBANE. 4000.

Re: M.I.M. Holdings Limited Submission
Queensland Workers' Compensation Inquiry

Dear Mr Kennedy,

On March 11 1996 the Minister for Training and Industrial Relations Santo Santoro announced a major inquiry into the Queensland Workers' Compensation Scheme.

In setting up the Inquiry the Minister said that he "had approved the inquiry in the wake of recent actuarial advice that the Fund faced a projected unfunded liability to 30/6/96 of $216.7 million, including a projected nett loss $102.5 million for 1995/96". This estimate being "based on an independent actuarial report ordered by the Minister on February 28, 1996.".

At the end of March 1996 the MIM Group, with a total of 6248 employees in Queensland, of which 3647 are employed at Mount Isa, is the largest private enterprise employer in Queensland. It is therefore important that the MIM Group makes a submission to this inquiry.

At the outset, let me say that M.I.M. Holdings Limited (MIM) first priority is to the provision of safe working conditions in the workplace and acknowledges both the Inquiry and its role and supports wholeheartedly the concept of workers compensation and compensation for work related injuries which are affordable by industry and provide adequate compensation to injured workers.

A balanced approach to address the issue of the unfunded liability is required and all stakeholders should accept a role in doing so. It is not acceptable for any one set of stakeholders to bear the total cost of any solution. The effect of last years' amendments fell very heavily on employers. In my view, far too heavily. Further, it would seem that there are many improvements which can be made to the Scheme and its administration to address some of the fundamental causes of the problems. For too long the interests of various interest groups have been allowed to be advanced over the best interests of the scheme. This can ultimately lead to an inability to meet the original objectives of the scheme for its key stakeholders and should not continue to be tolerated.

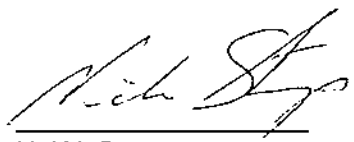
MIM had, and continues to have, serious misgivings about most of the items in the package solution implemented last year, which, in the end, were a major departure from what had originally been proposed by the then Government particularly in respect of implementing restrictions on common law claims. At the time, employer groups commented that the final package had little chance of success in the face of common law claims continuing to rise which they have done. In addition I personally approached the then Minister, Wendy Edmonds, with regard to changes for 5 day excess at employers expense and the considerable increase in weekly benefits.

For the good of all Queenslanders we must take this opportunity to make decisions which have the best chance of returning Queensland, not just to a fully funded scheme, but to its former advantageous position. The measures must address the root causes ie. in particular, unlimited common law liability and a constrained rehabilitation system. Employers should also be encouraged to continue to strengthen occupational health and safety measures and both employers and employees encouraged to take a greater role in rehabilitation and return to work schemes.

I am aware that detailed submissions from industry bodies are being made to your Inquiry. MIM's submission is therefore intended to be an overview of the important aspects of the scheme as it see them.

If useful to your Inquiry, we are prepared to participate in any further discussions on any matters that your Inquiry feels would be of assistance.

Yours sincerely,



N. W. Stump

SUBMISSION

To: **QUEENSLAND WORKERS' COMPENSATION INQUIRY**

As a Result of: The Workers' Compensation Fund receiving actuarial advice that it faced a projected unfunded liability to 30/06/96 of $216.7 million including a projected net loss of $102.5 million for 1995/96.

By: **MIM HOLDINGS LIMITED** A.C.N. 009 814 019

Date: **APRIL 30, 1996.**

RECOMMENDATIONS

M.I.M. Holdings Limited (MIM) submits the following recommendations to the Queensland Governments Workers' Compensation Inquiry:-

1. That the concept of Workers' Compensation which provides adequate compensation to an injured employee at a level which is economically sustainable for industry be fully supported by all stakeholders.

2. That every effort should be made for all stakeholders to contribute to reaching an equitable solution. It should not be acceptable for any one stakeholder to bear the total cost of any solution to adequately fund the Scheme.

3. That every effort should be made to keep increases in premiums to the absolute minimum in order to maintain Queensland's competitive advantage of being "the low cost State". This is necessary as the Workers' Compensation Scheme is by its very nature insulated from the constraints and disciplines imposed by competition.

4. That as much flexibility as possible (with appropriate government safeguards) be added to the Scheme and in particular that :-

- Employers with the capacity to do so be permitted to enter into properly regulated self insurance arrangements.

- The operational processing of the Scheme be opened up to private enterprise competition, with the Queensland Government retaining the overall risk. Care should be taken to ensure that this is done in such a way as to demonstrate the value to be added.

- There be more involvement by employers in claims administration by means such as electronic lodgment of claims, better information access, quicker feedback of claims status and better ability for claims tracking. The permanent assignment of Workers' Compensation Board officers to particular policy holders would greatly assist this process.

- There be more involvement by employers in rehabilitation processes and encouragement for employers and employees to participate in return to work schemes.

MIM does not see any of these elements as being mandatory. MIM believes that they should be made available as optional tools for better management of the overall process, thereby benefiting all.

5. That an employee's participation in the process of workplace based rehabilitation be made mandatory subject to satisfactory safeguards with respect to any reasonable medical requirements that are appropriate for individual injury needs. Failure to participate should have a consequential impact on benefits being paid and on access rights or damages levels in respect of common law claims.

6. That the Scheme should encourage individually tailored workplace based rehabilitation plans which result in:-

- Earliest possible return to work.

- Provision of an interest in and motivation for work.

- Preparation of an individual worker/injury rehabilitation plan for individual injuries in conjunction with the Board, the worker, his medical adviser and the employer.

- Minimisation of costs to the Scheme both for weekly benefits and common law claims by virtue of an earlier return to work and the provision of work opportunities within an injured worker's ability.

- The employer being the driving force in rehabilitation, provided that action is with the full consultation and approval of the Board.

7. That a limit on access to common law be established, based on 25% whole person impairment, recognising that this may require a corresponding increase in statutory maximum compensation payments.

8. That only the "day of the injury" be at the cost of the employer, thereby reversing the amendments introduced in October 1995 to increase to five (5) the number of days that are at the cost of the employer.

9.That the definition of average weekly earnings be amended to exclude the following components :-

- Effect of abnormal overtime

- Roster Allowances

- Incentive based payments.

10. That stress claims, other than those associated with critical incidents, should be removed from Permanent Partial Disability lump sum payments.

11. That the Workers' Compensation Board be restructured such :-

- That the legislation be amended to provide for the Minister to give policy directions to the Board of Directors and that the role of the Board be amended from advisory only to the delegated authority to implement policy and to manage the operations of the Board.

- That the composition of the Board be broadened to facilitate appointment to the Board of a greater proportion of business and other skills mix necessary to ensure the sound direction and efficiency of the organisation. This is not to say that some stakeholder representation is not appropriate.

12. That it is in the public interest for solicitors' advertising in respect of personal injury to be prohibited, or regulated in accordance with strict standards.

13.That the system be reformed in terms of the wide discretions available to judges in both making of awards and awarding costs. For example, the concept of mitigation of loss is rarely enforced by judges in making awards. This could be addressed by requiring judges to take into consideration efforts by plaintiffs to reduce their losses by participation in rehabilitation and return to work schemes where possible. Statutory definitions need to be tightened to ensure wide judicial interpretation does not erode legislative intent..

14.That alternative disputes resolution mechanisms be compulsory prior to commencement of common law claims.

15 That the merit/penalty bonus system be maintained and that it be enhanced by the following changes:-

- Increase in the maximum merit bonus that is possible from 40% to 85%. (which is the approximate equivalent level that would apply for a company of similar size and industry to MIM under the NSW scheme.)

- Amend the basis of calculation for claims in a given year to one which more accurately reflects safety performance in that year thereby resulting in the merit/penalty bonus received/paid being more relative to actual safety performance.

1.0 BACKGROUND

On March 11, 1996 the Queensland Government Minister for Training and Industrial Relations the Hon. Santo Santoro M.L.A. announced that Mr Jim Kennedy was to head Queensland's first major inquiry into the Workers' Compensation Scheme. That Inquiry is designed to be wide ranging and report, amongst other things, on the future direction, operation, viability, efficiency and effectiveness of the Workers' Compensation system. The relationship between the Workers' Compensation Board and the Division of Workplace Health and Safety is also to be reviewed.

1.1 M.I.M. Holdings Limited

M.I.M. Holdings Limited is an Australian based international mining and mineral processing company whose core products are copper, gold, zinc-lead-silver and coal. It has emerging interests in oil and gas. The Mount Isa mining and smelting complex in north west Queensland, on which the company has been built, remains the major operation, producing copper that is refined at the company's refinery in Townsville, lead-zinc that the company refines in the United Kingdom, and zinc concentrate. There are substantial mineral resources at Mount Isa and Hilton upon which a profitable operation can be sustained for years. The MIM Group mines zinc-lead-silver at McArthur River in the Northern Territory, operates a zinc-lead smelter/refinery in the United Kingdom and one in Germany, mines coking and steaming coal in central Queensland's Bowen Basin, principally for export, mines gold at Ravenswood and currently has an interest in the Porgera gold mine in Papua New Guinea. MIM is looking for further growth through mining.

For the year ended June 1995 MIM earned sales revenue from Australian production of $2 528.5 million of which $1 279.2 million represented export revenue to Australia and $422.5 million represented domestic sales. MIM's production is sold in Australia, Europe India and Asia.

At the end of March 1996 the MIM Group was the largest private enterprise employer in Queensland, with a total of 6248 employees in Queensland, 3647 of whom are at Mount Isa.

The Group places great importance on the safety of its employees. The MIM Group's safety record, as measured by lost time accidents, has exhibited an improving trend over the past two financial years. This trend reflects an increased diligence on improving safety performance, benchmarking against world's best practice and more frequent monitoring of people at risk.

In order to bring about an integrated safety, health and environment system, the Group has adopted the NOSA Safety System, which has a proven track record of success in the mining industry worldwide. An implementation timetable has been agreed, and the NOSA Safety System will be implemented at all MIM Group locations, including European and Argentine entities, over the next 18 months.

1.2 Workers Compensation Performance

The MIM Holdings Limited's premium and claims experience for the last three years has been as follows :-

	1992/93	1993/94	1994/95
Premiums	$7.2 m	$7.2	$6.8 m
Claims	$6.5 m	$8.8	$6.0 m

In describing the industry in which we operate we have limited our comments to those covering the operations at Mount Isa, our largest activity in Queensland.

1.2.1 Mount Isa Operations

Mount Isa Operations (ISA) is Australia's largest mining and minerals processing complex employing more than 3,500 people at Mount Isa. ISA operates four underground mines and four surface metallurgical plants as well as a the full range of heavy engineering and other support functions for the core businesses.

As is the case with all underground mining and heavy engineering operations, there are many hazards intrinsic to the operations at Mount Isa - underground conditions; hot metals; dangerous chemicals and heavy moving equipment.

ISA has a thorough and relatively effective rehabilitation programme aimed at returning injured people to their normal place of work. In the five months to the end of April 1996, the programme returned 68% of injured people to their regular job; 17% to an alternative full-time position; and was unable to place only 15% of injured people. Reasons for the high participation rate and effectiveness of ISA's programmes include a high level of management commitment to the programme as well as significant social and financial incentives to return to work as soon as possible after injury.

Over the last decade, ISA's safety performance, as measured by Lost Time Accident Frequency Rates (LTAFR), has been gradually improving to the point where performance has reached a plateau at around 16. According to a survey conducted by The Australian Mining Industry Council (AMIC) in 1993/94, these rates were comparable with those achieved by underground mining operations throughout Australia generally, and somewhat better than rates for smelting/refining operations nationally.

Over the same period, ISA has experienced a significant increase in both the total number of claims and the annual dollar value of those claims. The number and cost of common law claims has also increased. Since 1988/89, common law claims have made up more than 50% of the total payout against ISA's policy.

Together this information suggests that increasing premiums and claims over the past ten years reflect lower resistance to making claims through the Workers' Compensation Board, and probably also increasing access to common law claims, rather than more accidents and injuries.

ISA has recently expressed its Vision 2000 - aiming to be "among the best in the world" in terms of safety, customer satisfaction, cycle times and cost. Key factors in achieving the safety goals in the Vision have been the establishment of a well resourced Risk Management Team, the implementation of the NOSA safety system lease-wide and the introduction of process improvement initiatives throughout the whole organisation.

For further information regarding Mount Isa Operations refer to Appendix 1 attached.

1.3 1995 Inquiry into Workers Compensation Matters.

This Inquiry set out to achieve the following:

- "that the review must result in an effective and sustainable solution to the Fund's financial problems."
- "that the review deliver adequate compensation for genuinely injured workers"
- "that all the stakeholders in the workers' compensation system 'share the pain' of adjustment
- "that premium levels be kept competitive in comparison with other States"

MIM supports these aims. It is imperative for all stakeholders that the Fund is found a sustainable and cost efficient solution. No interests, social, political or commercial, are served if the Fund is continually in an under funded situation.

The Joint Media Release from Employer groups on Friday October 18, 1995, in response to the then recently announced amendments to the Fund, stated "the proposals appeared to do nothing to address the problem." and that " not only would the Governments proposals do nothing to solve current problems, but they would also cause more severe problems in the future by allowing the unfunded liability to blow out further."

The calling of this Inquiry by Minister Santoro suggests that employer's fears were well founded. The fact that the Fund is now projected to have an unfunded liability to 30/06/96 of $216.7 million with a projected net loss of $102.5 million for 1995/96 indicates the seriousness of the situation.

MIM had, and continues to have, serious misgivings about most of the items in the package solution implemented last year, which were hastily conceived in response to substantial Union opposition and represented a total departure from the previous Government's original intention to address the problem on both sides of the equation that is, to address the blowout in Common Law Claims by restricting access to common law for minor claims and to increase premiums to a degree which, while representing a substantial increased cost to the employers, was sustainable by employers and maintained Queensland's competitiveness in this area.

In the final result, a package was implemented which had little or no prospects of succeeding in reducing the incidence of common law claims and which in fact imposed additional burdens on employers such as the five day excess and increase in paid weekly earnings. For the good of all Queenslanders the decisions this time must address the root causes ie. in particular, unlimited common law liability. The essence of MIM's submission is that the previous approach should be reinstated, that is a meaningful limitation on common law claims. Further, reforms must focus on the primary objective of achieving early return to work for injured workers. This requires encouragements and incentives to both employers and employees to get injured workers back to work and in particular requires greater emphasis and innovation in the area of rehabilitation and some real disciplines in the system.

2.0 CURRENT SITUATION FOR MOUNT ISA OPERATIONS

Legislative changes relating to the payment of an "excess" effective from 1st January 1996 have had a significant effect on the cost of workers' compensation to ISA in two important ways. The first, requiring the employer to pay for the first five working shifts following an accident, has affected ISA in much the same way as most other employers - increasing the cost of the excess for each incident by a multiple of about 4.

An even greater and probably mining industry-specific cost is the effect of changes in the definition of weekly payments to "more closely reflect take-home pay". Currently most of ISA's employees regularly receive over-award payments, shift allowances or productivity-based incentive payments. The cost of the new definition (85% of average weekly earnings) for injured workers at the low end of our pay scale is approximately $80 per week. For contract miners, who are in some cases earning bonuses around $880 per week, the cost implications are enormous.

Combining the two elements of the new "5 day excess" requirements, the differences in cost to ISA under the new and old weekly payment definitions range from $340 per incident at the low end of the pay scale, to $910 per incident for our highest earners.

In the near future, ISA will be introducing all-inclusive annualised salaries for wages employees which will incorporate payments for shifts and associated penalties. In the mining area the new salaries are also expected to include an incentive based payment. (At time of preparation of this report, details of these arrangements have not yet been finalised.) Under these circumstances, the increase from one to five days will bear a greater cost to the company than the changing definition of "weekly payments".

In addition, the new arrangements do not encourage a speedy return to work. Under the previous arrangements, most employees were anxious to start their rehabilitation programme since they were paid only base wage to stay at home and were almost always able to earn substantially more in alternative duty roles. In contrast, the present arrangements act as a disincentive for employees to return to work for the first five shifts (which could in the case of some of our roster schedules, see our employees staying at home for up to two weeks).

3.0 DETAILED SUBMISSION

3.1 Benefits of the Existing Scheme.

MIM believes that the objectives of the scheme as set out in the Workers' Compensation Act are correct and should be retained.

The existing Scheme is simple to understand and therefore easy to communicate. Calculation of benefits is reasonably simple thereby minimising administration from an employer's point of view.

To the extent that it is possible, MIM recommends that the concept of simplicity should be retained in any amendments made as a result of this Inquiry.

3.2 What's Wrong with the Existing System.

3.2.1 General

The 1995 amendments to the Workers' Compensation Act of 1990 were characterised by a lack of consultation with employer groups which effectively excluded these groups from the key decision-making process, with the outcome being one which failed to account for the legitimate interests and objections of Queensland employers.

In MIM's view, any solution cannot be regarded as equitable and sustainable without full consultation with all stakeholders. MIM stands ready to participate in any discussions on this matter if requested.

Repeating, the end result of the 1995 amendments is that nothing has been achieved in moving towards the then agreed goals. Employers, and companies like MIM, are worse off with higher premiums, higher costs, more scope for rorts and still with no prospect of a fully funded scheme.

Our specific concerns follow :-

3.2.2 Flexibility

The flexibility of the existing Scheme could be improved in certain respects thereby allowing employers the necessary room to minimise disruption, inefficiency and minimise their costs of workers' compensation. It is MIM's view that the more an employer is in control of the "process", albeit within regulatory guidelines, the more incentive there is to act in a way that minimises both Scheme and employer costs

MIM believes that improved flexibility is important from all aspects of Workers' Compensation. It allows for better case management of rehabilitation, greater control of the whole process by employers who are in the best position to do so and we believe should reduce aggregate costs of workers compensation.

3.2.3 Rehabilitation

In MIM's view the part of the Scheme in which the greatest emphasis and attention should be placed by the Inquiry is in relation to rehabilitation. Properly managed good rehabilitation practice should result in the following:-

- Earlier return to work than otherwise.
- Assisting the injured worker in maintaining an interest in and motivation for work
- Minimising costs to the Scheme both for weekly benefits and common law claims by virtue of an earlier return to work and the provision of work opportunities within an injured worker's ability provided that such work is acceptable from a medical viewpoint.
- Setting up of a formalised basis for preparation of an individual worker/injury rehabilitation plan for individual injuries in conjunction with the Board, the worker, his medical adviser and the employer.

There is clear evidence that the sooner a person returns to work the better in terms of maintaining an interest in and motivation for work. Rehabilitation is therefore an essential part of the recovery process from the perspective of both employee and employer. With compensation currently based on 85% of average weekly earnings, particularly in certain parts of mining operations there is little or no incentive, or economic imperative to encourage the injured worker to go back to work. Such a result is disadvantageous for both the rehabilitation of the employee and the company's financial situation.

3 2.4 Common Law claims

There was a 48% increase in new common law claims reported in 1994/1995. A further increase of 62% is projected for the 1995/1996 year. This increase is an escalation of an established trend identified by the Workers' Compensation Board in 1991, which has outstripped statutory claims and growth in the labour market.

This unsustainable increase in common law claims is the primary and single greatest cause of the Workers' Compensation Fund's current financial crisis and there is no evidence that it will abate. There is also no evidence that there has been any accompanying reduction in the average cost of settlements or an increase in "nil cost claims".

3.2.5 First 5 days

Apart from the common law problem addressed above, the five day excess at employer's cost is of significant concern to MIM. We also understand that this item has also evoked dissatisfaction amongst many employers.

In this company's view, any benefits (which are yet to be proved) are more than outweighed by the additional costs and administrative and industrial problems associated with the concept.

The present arrangements act as a considerable disincentive for employees to return to work for the first five shifts. This could see employees with certain roster schedules staying at home for up to two weeks. That is clearly a situation which is not conducive to the rehabilitation process from either the employee or the employer's perspective.

3.2.6 Weekly Benefits

MIM strongly opposes the October 1995 amendments wherein the weekly benefit payments were increased to reflect pre-injury earnings. The additional costs to the Fund from mining industry claims are substantial. The mining industry has large quantities of rostered overtime and allowances which can be a major component of employee remuneration. Refer to the examples quoted in section 2.0 above for ISA.

MIM submits that in this regard the changes of October 1995 act as a disincentive for employees to undertake rehabilitation and can be a positive incentive for the overstatement/falsification of claims.

An injured worker who is on compensation based on 85% of average weekly earnings will only be "encouraged" to return to work if remunerated at the employee's full roster rate. Unfortunately, in most cases the nature of work rehabilitation involves an employee working on alternative duties usually on day work. Thus with the full roster rate being paid this would result in the payment of shift allowances and penalties whilst not actually incurring the "disabilities". This has obvious industrial relations ramifications in other situations of temporarily transferring employees off shift work

3.2.7 Stress claims

The Workers' Compensation Board of Queensland's Report on Trends in Statutory and Common Law Claims handed to stakeholders as reading material states that "Stress claims represent the most marked increase in claim numbers over the six year period, particularly for common law claims. MIM believes that this, together with the fact that general medical opinion supports the proposition that most work related stress conditions (other than critical incident stress) do not result in permanent impairment, is sufficient reason to review the retention of this type of claim under Workers' Compensation legislation. Specifically, lump sum claims are inappropriate in this area and may indeed be detrimental to individuals in providing a disincentive to address the causes to allow a return to work with all the attendant problems such as loss of self esteem and avoidance of issues. Clearly stress claims arising out of crisis situations need to be treated differently.

3.2.8 Workers Compensation Board Structure

The Directors of the Worker's Compensation Board are currently appointed by the Minister to represent the primary stakeholders, that is, injured workers and employers, with majority representation being drawn from relevant Government Departments, that is, Health, Treasury and DEVETIR. The Chairman has recently also been the Director General of DEVETIR.

The Director's primary statutory responsibility is to advise the Minister on policy matters and on administration in the best interests of the viability of the scheme. All decisions are ultimately made by the Minister. This means that the direction of the Board both on key policy issues and organisational and administrative issues can be overwhelmed by political influences. There the emphasis is often on short term political influences as opposed to the objects and interests of the scheme as provided by the legislation. This can lead to very poor decision making and poor outcomes.

While it is accepted that Workers' Compensation is a significant social issue, it is strongly submitted that once key policy issues are determined, Government implementation of them should be delegated to a largely independent body with the discretion and ability to implement them in the most effective way.

For example, the operations of the Board have been significantly constrained by two factors in particular :-

Firstly, its management reports to the Director General of DEVETIR which allows Board priorities to be submerged amongst other issues. This also constrains the Board from implementing the most effective systems suitable to that business as it must comply with public favour and department requirements which may be suitable to running a Government department but can be wholly unsuitable to running an insurance business. Further, the advisory nature of the Board's role reduces it to a formality as opposed to the directive vote necessary to ensure a properly supervised management and an efficient and effective organisation.

Secondly, there are strong interest groups such as the legal and medical professions, union groups and employer organisations who have often successfully lobbied governments to reduce the impact of Board decisions on their interest groups. This should not be tolerable where the overriding interest is the viability of the scheme.

3.2.9 Influence of lawyers

The only development in the common law environment which is a likely cause or contributor to the rising numbers of common law claims was the abolition of the majority of advertising restrictions for solicitors in 1994. The trend towards "no win no pay" speculator actions can only exacerbate this problem.

3.2.10 Overuse of the Scheme

The major cause of the unfunded liability in respect of the scheme is the blowout in the incidence of common law claims, in particular in the area of the less serious claims.

The dramatic correlation between the relaxation of solicitors' advertising and increased claims suggests that claims are being encouraged to be made where they otherwise might not be considered necessary, and were previously adequately addressed by the statutory scheme. Indeed the Government's original proposal last year included increases in the statutory benefits to offset the reduced access to common law for such claims.

While it is difficult to suggest that service providers should not advertise their wares, the overall public interest must surely be in maintaining the benefits of the scheme for injured workers with a demonstrable need for compensation and in particular for seriously injured workers requires that this problem be addressed. Restrictions on solicitors "no win no pay" speculative actions in the area of Workers' Compensation Claims should be seriously considered.

The Board's powers of inquiry into fraudulent claims and in respect of investigation of other misuses of the scheme should be broadened to ensure that the available resources are directed to genuinely injured workers.

3.2.11 Dispute Resolution

The court system is a costly and lengthy process for dispute resolution which erodes the resources of the Scheme to the benefit of a few. The Workers' Compensation Board has long expressed the view that the court system has frequently failed defendants, in particular, in respect of issues such as contributory negligence and mitigation of loss. Employers' participation in defence of claims is limited by the current structure.

Plaintiffs, once commencing a court process tend to lock themselves into an adversarial process over which they may have little understanding or control. Costs escalate on both sides and judicial precedents in awarding of damages do not encourage early settlements of claims which in many cases may be in the best overall interests of the injured workers. Injured workers can be advised presently that they have little to lose by pressing on with claims regardless sometimes of the merits of the case.

The trend towards "no win no pay" speculative claims is of great concern.

3.2.12 Merit Bonus scheme

The aim of the existing scheme is to reward good performers and to penalise bad performers. Clearly the size of the penalty charges are a clear incentive to improve ones safety performance.

It is noted that the size of the merit bonus payable in NSW is a much greater than for the Queensland Scheme and therefore offers a correspondingly greater incentive to employers.

MIM's concern with the Queensland Scheme, is that claims paid in a given year usually have no relativity with safety performance of that year, that is payments against claims made in a given year do not necessarily result from accidents in that same year. The net result of this is that the nexus between immediate safety performance and merit bonus is broken and incentive lost.

3.3 What are the solutions

3.3.1 Sharing of pain amongst all stakeholders

MIM recognises that any solution is difficult and impacts on all stakeholders in different ways. There are many options, each with its attendant advantages and disadvantages. The size of the problem is significant and without decisive action will only get considerably worse. A solution will only be found if it genuinely attempts to solve the problem by an equally genuine attempt to "share the pain" amongst all stakeholders on an equitable basis. If all stakeholders understand that there has been a genuine attempt to equitably share the cost of any solution amongst themselves then any solution should be better received.

3.3.2 Maximum effort to restrict rate of increase in premiums.

MIM supports the concept of keeping premium levels in Queensland competitive with other Australian States. MIM, however does not support the concept that premiums should be set at or slightly below the level of other States unless there is an economic justification and only after every effort by all stakeholders has been made to keep premiums at appropriate levels. Generally, this is one measure of performance only and not an overriding objective. Queensland has a quite different employment base for example than NSW. There is no reason why Queensland should not perform substantially better than many other rates. The Queensland Government has long supported the concept of Queensland being a "low cost and tax" State. MIM believes that this should remain the objective of

the Queensland Government. Increases in workers' compensation premiums, like increases in payroll tax, are a clear disincentive to employers to increase their workforce, in fact, they both positively encourage reductions in workforce levels.

3.3.3 Flexibility

MIM recommends the provision of as much flexibility as possible (with appropriate government safeguards).MIM sees the following aspects of the Scheme as being appropriate :-

- Self Insurance by Employers with the capacity to do so.
- Opening up operation of the Scheme to Private enterprise competition, with the Queensland Government retaining overall risk. Care should be taken to ensure that this is done in such a way as to demonstrate the value to be added
- More involvement by employers in claims administration by means such as electronic lodgement of claims, better information access, quicker feedback of claims status and better ability for claims tracking. The permanent "assignment of Workers' Compensation Board officers to particular policy holders would greatly assist this process.
- More involvement by employers in rehabilitation processes and encouragement for employers and employees to participate in return to work schemes.

MIM does not see any of these as being mandatory for employers, but more as making available additional tools to better manage the process thereby benefiting all.

3.3.4.Rehabilitation

The current system of paying weekly benefit payments at either 85% of the injured worker's average weekly earnings for the previous 12 months or the industrial agreement or award rate whichever is the greater is a significant disincentive to injured workers either returning to normal work duties or returning to work for rehabilitative duties.

The current system has no penalty provisions to cover the situation where an employee refuses to participate in a rehabilitation plan.

It is recommended that an employees participation in the process of workplace based rehabilitation where it is available be made mandatory subject to satisfactory safeguards with respect to any reasonable medical requirements that are appropriate for individual injury needs. Failure to participate should result in a cessation of benefits being paid and withdrawal of access to common law claims.

In addition the Scheme should allow for individually tailored workplace based rehabilitation plans which result in:-

- Earliest possible return to work.
- Provision of an interest in and motivation for work
- Preparation of an individual worker/injury rehabilitation plan for individual injuries in conjunction with the Board, the worker, his medical adviser and the employer
- Minimisation of costs to the scheme both for weekly benefits and common law claims by virtue of an earlier return to work and the provision of work opportunities within an injured workers ability to perform always subject to the work being acceptable from a medical viewpoint.

- Driving force to come from an employer with full consultation with, and approval by, the Board.

3.3.5 Common law claims

In MIM's opinion it is clear that a meaningful limitation on common law access is integral to the restoration of the financial viability of the Queensland Workers' Compensation Fund.

The "no fault" workers' compensation system limits an employer's common law right to have its negligence proved before it is liable for an employee's injury. Employees, however, have full access to their common law rights. This situation creates an inherent imbalance and has been recognised in all other mainland Australian states, which have either limited or abolished common law access. Those States, in particular New South Wales, Victoria and Western Australia have been extremely successful in reducing common law claims.

While it is clearly a serious matter to remove or restrict a person's common law rights, it is equally clear that society must retain the capacity to assign to individuals only those rights which are equitable and affordable for everyone.

MIM supports the imposition of a 25% Whole Person Impairment threshold for common law claims accompanied by an increase in the statutory maximum compensation to $130,000. This proposal was also put forward in the Queensland Employers' Submission to the former Government in October last year.

Much is made by certain sections of the community supporting an employees' right to full access to common law. What these sections of the community fail to recognise is that the 'no fault' system of workers' compensation which we have in Queensland totally removes employers rights in relation to employee negligence. Further, courts consistently widely interpret requirements in respect of contributory negligence in favour of plaintiffs. We believe that a moderate restriction on employees access to sue an employer for negligence is a step towards restoring a more reasonable balance. In particular, it would substantially contribute to reducing an unintended overuse of the scheme at the lower end of claims while preserving the benefits for seriously injured workers.

The majority of common law claims currently relate to non-serious injuries, with legal costs comprising more than one third of such claims. The proposed limitation would therefore greatly reduce the number and costs of common law claims.

3.3.6 Reverse change to first 5 days at employer's cost

We are aware that abandonment of this five day excess concept would have a premium effect. Nevertheless we strongly believe that an increase in premium is preferable to retaining the concept. Some of this cost will be offset to the extent that the package of solutions that is implemented encourages an earlier return to work. We therefore recommend a return to the previous basis ie. that the employer should pay for the day of injury only, after which any payment if any would come from the Fund depending on the circumstances of the case.

3.3.7 Weekly Benefits

Weekly Benefits are an essential part of the Workers' Compensation Scheme. The level of benefits paid should be a balance between that which recompenses an injured worker for lost earnings from a work injury absence from work and yet encourages the injured worker to seek a return to work as soon as is medically possible. MIM believes that the level of benefits payable after the 1995 amendments have gone too far, and have certainly caused some unintended consequences. (Refer third paragraph of section 3.2.4.)

We also understand that some organisations are having difficulties in determining what is included in the definition of Average Weekly Earnings which have not been satisfactorily resolved in discussions with the Board.

MIM recommends that the definition of average weekly earnings be amended to exclude the following components :-

- Effect of abnormal overtime
- Roster Allowances
- Incentive based payments

3.3.8 Stress claims

As general medical opinion supports the proposition that most work related stress conditions do not result in permanent impairment and there is similar legislative provisions in Tasmania, New South Wales, Victoria and Western Australia MIM supports the removal of stress injuries from Permanent Partial Disability lump sum payments. MIM does however support the ability of an injured worker to make critical incident stress claims.

3.3.9 Workers Compensation Board Structure

It is strongly submitted that the structure of the Board be changed as follows:

- That the legislation be amended to provide for the Minister to give policy directions to the Board of Directors and that the role of the Board be amended from advisory only to the delegated authority to implement policy and to manage the operations of the Board.

- That the composition of the Board be broadened to facilitate appointment to the Board of a greater proportion of business and other skills mix necessary to ensure the sound direction and efficiency of the organisation. This is not to say that some stakeholder representation is not appropriate.

3.3.10 Influence of lawyers

The nexus between the removal of the majority of restrictions on solicitors' advertising in 1994 and the increase in common law claims is unmistakable.

It would appear that the introduction of "No-Win, No-Pay" type advertising is encouraging employees to bring claims which would not have been otherwise made. It is therefore MIM's submission that it is in the public interest that solicitors' advertising in respect of personal injury should be prohibited, or regulated in accordance with strict standards.

3.3.11 Overuse of Scheme

Limitations on common law access at the lower end of seriousness is the best measure to address overuse where it is clear that substantial numbers of claims are being drawn out of the community where they might otherwise have not be considered worthy of pursuit. Solutions advertising such as "turn your injury into cash" would lose much of its target audience.

The Board should be resourced and empowered to investigate and act upon non-genuine claims.

3.3.12 Dispute Resolution

Alternative dispute mechanisms, at least as a pre-requisite to common law claims, should be considered.

As a minimum, greater disciplines in the current system are required particularly to contrast the time it takes to progress claims with a view to both reduction of costs and earlier compensation for injured workers.

Measures to ensure concepts of contributory negligence and mitigation of loss are properly taken into account in Court Awards.

There may also be merit in a special court for Workers Compensation to ensure the most relevant approach in accordance with the intent of the legislation.

3.3.13 **Merit Bonus Scheme**

MIM believe that the merit/penalty bonus system should be maintained and that it be enhanced by the following changes:-

- Increase in the maximum merit bonus that is possible from 40% to 85%. (the approximate equivalent level that would apply for a company of similar size and industry under the NSW scheme.)

- Amend the basis of calculation for claims in a given year to one which more accurately reflects safety performance in that year thereby resulting in the merit/penalty bonus received/paid being more relative to actual safety performance

APPENDIX 1

FURTHER INFORMATION ON MOUNT ISA OPERATIONS

Background

Mount Isa Mines Limited is Australia's largest mining and minerals processing complex employing more than 3,500 people at its Mount Isa Operations (ISA). ISA operates four underground mines and four surface metallurgical plants as well as a the full range of heavy engineering and other support functions for our core businesses.

ISA has recently expressed a Vision for the year 2000 - aiming to be "among the best in the world" in terms of safety, customer satisfaction, cycle times and cost. Key factors in achieving the safety goals in the Vision have been the establishment of a well resourced Risk Management Team; the implementation of the NOSA safety system lease-wide and the introduction of process improvement initiatives throughout the whole organisation.

The Risk Management Team (Health, Safety and Environment) reports directly to the Executive General Manager at ISA and comprises approximately 90 people in 8 departments - Occupational Health, Safety, Industrial Hygiene, Emergency Response, Environmental Engineering, Environmental Services, and Health, Safety, and Environment (HSE) Systems.

The Safety Department employs eleven safety advisers each of whom are based in strategically important operating areas. Their primary role is to assist managers in the planning of strategies to enable them to better manage their safety performance. They also provide safety training, advice and support for employees in their areas.

Safety Performance

Over the last decade, ISA's safety performance, as measured by Lost Time Accident Frequency Rates (LTAFR), has been slowly improving to the point where performance has reached a plateau at around 16. According to a survey conducted by The Australian Mining Industry Council (AMIC) in 1993/94, these rates were comparable with those achieved by underground mining operations throughout Australia generally, and somewhat better than rates for smelting/refining operations nationally.

A number of initiatives such as Du Pont's STOP programme and ISA's own internal ISAfety programme have helped to achieve improvements in performance particularly in the areas of awareness, hazard identification and personal safety compliance.

Over the next two years (to December 1997) ISA will introduce systems and work practices into the operations to enable the achievement of accreditation under the NOSA safety system, a significant step towards world best practice by the year 2000. Specific objectives under this programme include introduction of systematic measures which will allow ISA to benchmark safety performance against industry safety standards and best practice companies both nationally and overseas.

Hazards and Hazard Management

As is the case with all underground mining and heavy engineering operations, there are many hazards intrinsic to ISA - underground conditions; hot metals; dangerous chemicals and heavy moving equipment.

Extensive programmes have been implemented over the last decade to raise employees' awareness of the hazards inherent in the operation and significant training programmes have improved employees ability to recognise and correct dangerous situations.

Occupational Health Facilities

ISA's Occupational Health Department provides a full medical support service for the operations 24 hours per day, 365 days per year through an on-site medical centre. The department is staffed by 17 professionals including three physicians; ten occupational health nurses; a clinical psychologist; a medical technician and a rehabilitation coordinator. The department has two key functions: the treatment of injuries and the coordination of injury prevention and health promotion programmes.

The focus of the department for the next twelve months will be on achieving best practice standards in both of these areas. Specific goals for 1996 are to achieve cost effective rehabilitation and workers compensation management and to integrate psychological services into the rehabilitation process. These will be supported by activities such as:

- enhancement of existing critical incident stress and employee assistance programmes and their integration into the rehabilitation process;
- provision of monthly accident and injury trends to manager in each work area and the identification of specific training needs arising from recurring injuries;
- application of quality management principles to workers compensation policies and procedures including claims review and intervention.

These measures are directly focussed on reducing the number of accidents and injuries across the site in keeping with ISA's Vision 2000. Indirectly, they will also achieve significant cost efficiencies by reducing both the obvious costs of Workers Compensation pay-outs as well as the hidden costs of accidents and injury.

Rehabilitation programmes

ISA has employed a full time Rehabilitation Coordinator since November 1994 and achieved accreditation from the Workers Compensation Board for our rehabilitation services in November 1993. In addition to an accredited Rehabilitation Coordinator, ISA maintains a team of approximately 10 staff who have been accredited through the WCB Rehabilitation course to facilitate our on-site rehabilitation programmes. Many of these people are based in operating areas and provide support for programmes at the workplace.

ISA's Rehabilitation Policy and procedures have been recognised by the Workers' Compensation Board as of sufficiently high standard to be used as a model for other employers in North Queensland, and ISA has been asked to present its rehabilitation process to North Queensland regional courses.

The ISA programme is not compulsory for employees. However, most employees (95-98%) agree to participate. Reasons for the high participation rate include a high level of management commitment to the programme as well as significant social and financial incentives to return to work in alternative roles as soon as possible after injury. In most cases, employees are able to earn more than the Workers' Compensation Board "stay-at-home" base of 85% of average weekly earnings on alternative duties.

Most (95-98%) employees injured at work see the on-site Company physicians immediately following their accident. Regular follow-up through both the Rehabilitation coordinator and with the local

physicians ensures relatively close contact between injured employees and the company which enables regular assessment and review of the effectiveness of both medical and rehabilitation programmes.

Rehabilitation plans are developed for all employees who agree to participate in the programme. Ideally, employees are placed in alternate roles at their regular work place where they can maintain contact with their supervisors and team mates. Where local opportunities are not available, the employee is utilised in roles elsewhere on the lease.

In the five months to April 1996, 103 employees accessed the rehabilitation programme. Of these, seventy (68%) returned to their normal job within the five months. Seventeen (17%) were placed in a different permanent role and only sixteen (15%) were unable to be placed in a permanent position within ISA.

Most roles within ISA are strenuous and require a high degree of physical fitness. In some cases, therefore, it is very unlikely that employees with severe physical restrictions will be able to be placed in a job on the lease. Examples of injuries for which the likelihood of successful rehabilitation is very small include permanent back and/or neck injuries which preclude the person from heavy lifting; permanent injuries to the upper arm and shoulder, giving the employee limited use of the upper limb; and permanent knee injuries restricting work in areas which require the employee to use stairs and ladders, or walk over broken ground.

Because of the nature of ISA's operations, there are very few roles within ISA that employees with these injuries can complete fully. In these cases, unless the "owning" department can find a job for the person within the area, it is almost impossible to permanently place the employee.

Very little re-training takes place through the rehabilitation programme, even with people who have severe permanent restrictions such as in areas listed above. There are compelling practical and financial reasons for this, particularly where ISA can access other qualified and experienced people.

Claims Experience

Over the last decade, ISA has experienced a significant increase in both the total number of claims against our policy and the annual dollar value of those claims. The number of claims fluctuates from year to year, but there has been a steady increase from around 400 claims for the financial year 84/85 to around 630 claims for 94/95, an increase of approximately 33%. The cost of these claims (in dollars of the day) has risen from approximately $1 m (84/85) to approximately $5.2 m last year (94/95).

Over the same period, the number and cost of common law claims have also increased - from 28 claims in 1984/85 ($0.4 m) to 84 claims in 1994/95 for a cost of $3.5 m. This represents an increase of around 66% in common law claims over the last decade. Since 1988/89, common law claims have made up more than 50% of the total payout against the policy.

Safety statistics for the same period, indicate that there has been a small improvement in safety performance, as measured by the Lost Time Accident Frequency Rates (LTAFR). Together this information would seem to suggest that increasing premiums and claims over the past ten years reflect lower resistance to making claims through the Workers' Compensation Board, and probably also increasing access to common law claims rather than more accidents and injuries.

117

INQUIRY INTO WORKERS' COMPENSATION

QUEENSLAND MASTER BUILDERS ASSOCIATION

POSITION PAPER

A submission by the Queensland Master Builders Association to the Queensland Government Inquiry into Workers' Compensation.

30 April 1996

CONTENTS

- FOREWORD 1
- EXECUTIVE SUMMARY 2
- OVERVIEW 5
- TERMS OF REFERENCE COMMENTS 6

FOREWORD

The QMBA believes that any form of legislation needs to be fair and equitable to all parties.

The recent exposure of the financial difficulties with the Queensland Workers' Compensation Scheme has shown that unless the fundamental principles on which the legislation is based are correct, any attempt to patch up problems will only lead to further problems downstream.

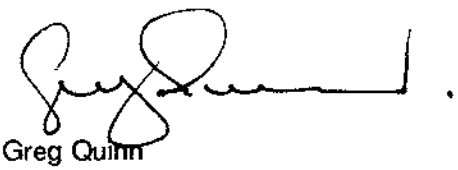
If this Inquiry is to be of any benefit to the building and construction industry in Queensland, then some hard decisions will need to be made.

This submission provides comments on the topics outlined in the terms of reference as they apply to the building and construction industry in Queensland.

The QMBA trusts a mature approach will be adopted and that commonsense will prevail.

We would appreciate and welcome the opportunity to make verbal representation to the Inquiry.

We look forward to positive outcomes.



Greg Quinn
Executive Director

EXECUTIVE SUMMARY

- The Association supports the objectives in their current form within a framework of an efficiently managed system of Workers' Compensation placing emphasis on equity to the employee and cost efficiency to the employer. The objectives may benefit from modernising to ensure a contemporary and appropriate application.

- The QMBA supports a system of weekly payment that is adequate for income support. Further, the system must provide for a return to work by the employee as soon as is reasonably possible depending on the injury, and be supported by an efficiently managed process of review and rehabilitation.

  Accordingly, the QMBA supports the payment of absence due to workplace injuries at a rate of pay prescribed for the relevant classification within an appropriate Award or registered Industrial Agreement. In respect of the period of entitlement for such payments, the QMBA seeks retention of the current 26 week period as contained in the Act.

- The QMBA has no objections to the retention of the existing (increased) entitlements as prescribed in the current Act.

- As part of a rescue package, the employer excessive is unacceptable. The QMBA does not argue against the merits of having the employer accept some responsibility for containing injury.

  The .previous system of the balance of the first day has worked efficiently and it would be appropriate to revert to that standard.

  If, however, it is determined through the Inquiry that the five day excess is necessary, small employers should be allowed to have the option to include this coverage within an "extras" insurance cover, if this is viable.

- The QMBA supports the existing objects contained in the Act in respect of rehabilitation, but considers that the management of the process should be improved so that all injuries receive an assessment within 2 weeks (or some other appropriate time) following the injury. This will ensure that employers who do not have the capacity or resources for a full time safety expert will be actively involved in the management of the rehabilitation of the injured employee and ensure no additional costs arise from the process.

- The QMBA supports any initiative which reduces injuries in the workplace, through education and safety management procedures but expects the cost benefits to be shared within the industry.

- An efficiently managed system of Workers Compensation ensures the interests and rights of both the employee and employer is safeguarded. The employer seeks a fund that is commercially viable and provides for consistency and reasonable stability in respect to premium costs.

- Accordingly, the current system of administration with its existing infrastructure is supported, but with a strengthening and improved accountability by Management. In the alternative, claims administration could be outsourced to achieve the Act's objectives.

- The QMBA has stated it does not support any system which does not provide for reductions in costs.

- To this end the Board's structure should reflect employer, employees and Government, but with Government taking an advisory or observer status. The Board should be chaired either part-time or full-time by an independent Chairperson having total understanding on the business needs and management of the fund.

A representative of the medical community should continue to be included but one who is from private practice i.e. a professional Practitioner with detailed understanding of the treatment and management of Workers' Compensation injuries.

The Board should be responsible directly to the Minister and be independent of the Department with the General Manager reporting to the Board.

- The QMBA considers there needs to be continued a system that provides for recognition of accident prevention and safety management. To this end, common law claims must be considered in the system.

- There is definite merit in combining resources and rationalising existing administrative processes and associated costs. However, a levy is unacceptable. A user pay proposal (with enforcement for non-compliance) remains a more viable option.

Accordingly, amalgamation can only be supported if it provides a more effiicent and effective system with associated cost reductions, and with no form of industry levies.

We agree that there should be a Government contribution to Workplace Health & Safety, but the Compensation Board should not fund the Division of Accident Prevention.

- The QMBA considers the existing system of determining premiums should continue. It allows for the employer within an industry to insure for the industry, but be able to exclude clerical workers, management etc. who are separate from or not exposed to the hazards involved in the employer's business operation. Common Law claims must be included in the calculation of premium rebates to ensure a more equitable distribution and consideration of merit payments.

- The QMBA supports the retention of those payments in respect of death.

However, it does not support, as indicated, retention of:

(i) 85% AWE; or
(ii) Five (5) day excess.

- The QMBA considers rehabilitation should have a strong focus in any system of Workers' Compensation. The process should ensure early consideration of all injuries to ensure the employee resumes normal, or near normal, work as soon as possible.

Early return to work is in the interests of the employee and the employer and an efficient and effective system of rehabilitation will not only assist in respect of safety, but also reduce premiums.

- There is nothing to suggest the need for a dedicated Court system. If the legal areas are regulated sufficiently in respect of progressing claims, this current system is adequate and maintains the QMBA's position in opposing duplication.

- The QMBA is not qualified to make informed comment about damages claims' procedures but recommends that the Inquiry takes specialist advice in this regard.

- Whilst the Association remains concerned with the apparent link to advertising by solicitors with the explosion of common law claims, the Association does not support regulation to restrict private practice.

The QMBA advocates responsibility in advertising and suggests a code for advertising should be introduced by the legal profession to avoid frivolous claims based on opportunity expectations.

- The QMBA supports the use of bona fide independent contractors and encourages the structuring of their operations to increase efficiency and maintain cost effectiveness. (refer MBA 'Housing the Nation' booklet - The Subcontract System). Specifically, the Association supports the current application of the 'worker' definition which allows utilisation of subcontracts as a fundamental cornerstone of our industry.

- Whilst the QMBA believes it is better to take a longer term sustainable view that will place industry in a strong position to meet the challenges of the future, any cost burden which results from this position should be phased in. Any proposal to have industry "foot the bill" in an unrealistic timeframe is not acceptable, otherwise the economic viability of Queensland enterprises will be jeopardised.

OVERVIEW

Background

This submission addresses the QMBA's position to the terms of reference of the above Inquiry.

The QMBA represents in excess of 4,000 members operating within the Building and Construction Industry. These members undertake approximately 70% of construction work in the state and operate in both the commercial and housing industry.

The Association joined with other major employer organisations (refer *Queensland Employers Submission - 4 October 1995)* in opposing the recent amendments to the Workers' Compensation Act and reiterates and relies on that information in responding to this Inquiry.

Performance Based System

It is imperative that the accident compensation system move towards financial penalties for entities with poor safety records and offers financial inducements for those with sound records. The Insurers' concept of **"burning cost premiums"**, that is, to allocate costs of claims to the employers who are the cause of claims, should be more and more refined as part of the process of review of the cost of workplace claims and cost of rehabilitation of workers. Businesses which have a poor claims record are then likely to progressively become uncompetitive because they will be forced to bear a greater financial penalty for their claims record and because of the disruptions to production arising from workplace accidents.

With this background, our submission addresses the points raised in the terms of reference.

Conclusions

The principles espoused embrace the concept of a "level playing field" i.e. as far as possible, universally and uniformly applied rules of market conduct should apply to all industry participants regardless of the form of business operation - whether public or private - and sector of participation - whether housing, commercial or civil. At the same time, it is recognised that competition policy should accommodate social objectives and those parties who initiate and maintain safety programmes should not be disadvantaged.

Having considered all the above, there appears no conclusive basis for changing the composition and control of workers' compensation in Queensland from a central fund.

It would appear that the most crucial aspect of any system is that it establishes and maintains a relationship between employers and employees that is developed in human terms and is economically sustainable.

A key element in this relationship is the definition of worker. QMBA supports the maintenance of the existing interpretation which affords the industry the opportunity to utilise the subcontract system.

The QMBA does not support deregulation without a compensating reduction in cost. At the same time, access for private service providers should not be denied provided the objects of the Act are met.

In any Workers' Compensation system, there is a need to encourage safety and the Claims Experience Rating must be amended to take this into account when calculating both merit and demerit.

The Association believes that it is essential and most desirable for the Board to be reconstructed as a business board (rather than an advisory board).

The Queensland Master Builders Association welcomes the exiting initiatives that will arise through this Inquiry into Workers' Compensation. The potential savings and improvements of these initiatives, both tangible and intangible, are significant and apply to employees, employers, Government and the general community.

TERMS OF REFERENCE COMMENTS

QMBA herein makes the following submissions in regard to the listed *Terms of Reference* as set out below:

1. ***"Review the current objects of the Workers' Compensation Act 1990 to determine their relevance to the needs of the Queensland community."***

Comment

The QMBA considers the objectives of the Act are fundamental to any system of compensation for work related injuries.

It addresses the needs of employee, his/her family in respect of such injuries, but also identifies the importance of safety as a part of the process whilst endeavouring to protect the interests of the employer.

Position

The Association supports the objectives in their current form within a framework of an efficiently managed system of Workers' Compensation placing emphasis on equity to the employee and cost efficiency to the employer. The objectives may benefit from modernising to ensure a contemporary and appropriate application.

2. ***"Report on whether the present system of accident insurance in Queensland provides adequately for these objects as follows:-***

(a) Providing the maintenance of a system of accident insurance providing adequate and suitable cover for workers who suffer injury and for dependants of workers whose deaths result from injury,

(b) Meeting the needs of workers and dependants mentioned in paragraph (a) including the need for adequate income and appropriate medical treatment;"

Comment

Recent amendments to the Workers' Compensation Act 1990, provided for a number of changes to entitlements of an injured worker. The QMBA's response to the issues raised are as follows:

Issue 1 **Receipt of Average Weekly Earnings (AWE)**

The current provisions specify payment of 85% of AWE or Award or registered agreements weekly wages (whichever is the greater) for the first 26 weeks. At the cessation of 26 weeks the employee becomes entitled to 65% of AWE or 60% of QOTE (whichever is the greater).

The QMBA has a fundamental concern with the impact of this provision on the Building & Construction Industry.

In addition to the base Award Rate of pay, employees in some circumstances receive specific allowances for site related conditions. These allowances may be particular to some specific work conditions, and therefore only applicable when exposed to those conditions. Those allowances are contained in the respective Awards operating in the Industry.

The majority of medium to large commercial projects, have in addition to the Award, site allowances which are payable for each hour worked on a particular project. The allowance is negotiated between the builder and unions and does not relate to any specific working conditions.

In addition to the above there are also site rates of pay which may not be contained in an award or registered Industrial agreements.

The application of these allowances and rates of pay can significantly increase an employee's entitlement under the Workers' Compensation Act through entitlements to Average Weekly Earnings compared to other employees employed elsewhere within the Industry under the base Award.

The difficulty the QMBA has is that the application of the allowances etc are not always constant and then when counted as part of A.W.E. may give an employee a higher rate of pay to that which is normally received when at work.

Whilst we are not suggesting that the average employee will not act responsibly in resuming work within a reasonable time (in accordance with the requirements of the Act), this principle has the potential to impact on an employee's resumption of work as there may be more advantage in monetary terms to be on Workers' Compensation than at work.

There is the potential for those who seek to abuse the system and the potential higher rate of pay on Workers' Compensation can only further this abuse by lessening the incentive to return to work and participate in workplace based rehabilitation programmes.

Position

The QMBA supports a system of weekly payment that is adequate for income support. Further, the system must provide for a return to work by the employee as soon as is reasonably possible depending on the injury, and be supported by an efficiently managed process of review and rehabilitation.

Accordingly, the QMBA supports the payment of absence due to workplace injuries at a rate of pay prescribed for the relevant classification within an appropriate Award or registered Industrial Agreement. In respect of the period of entitlement for such payments, the QMBA seeks retention of the current 26 week period as contained in the Act.

Issue 2 **Death Benefits**

Position

The QMBA has no objections to the retention of the existing (increased) entitlements as prescribed in the current Act.

Issue 3 **Employer Excess**

The first five (5) day excess has imposed an additional cost on the employer above and beyond that contained in the premium increases resulting from the amendments to the Act that came into effect 1/1/96.

Position

As part of a rescue package, the employer excess is unacceptable. The QMBA does not argue against the merits of having the employer accept some responsibility for containing injury.

The previous system of the balance of the first day has worked efficiently and it would be appropriate to revert to that standard.

If, however, it is determined through the Inquiry that the five day excess is necessary, small employers should be allowed to have the option to include this coverage within an "extras" insurance cover, if this is viable.

(c) ***"Seeking the participation of injured workers in suitable rehabilitation programs with a view to their early return to productive work;"***

Comment

A number of our members have expressed concern at the management of this process, criticising the time lag before action is taken in respect of rehabilitation.

The Act (sect 151(i)) imposes the responsibility of the Board to take such steps as appear to be practicable to secure rehabilitation.

It is important to address all claims at an early stage to ensure identification and implementation of plan for the rehabilitation of the injured worker.

Where practicable, claims should be addressed at a minimum of 2 weeks following the date of the injury to identify if the nature of the injury is long term and therefore possibly requiring rehabilitation, or short term which may require more stringent assessment of the injury.

The objective is to ensure the early return to work which is in the interests of both the employee and employer, and the community.

Position

The QMBA supports the existing objects contained in the Act in respect of rehabilitation, but considers that the management of the process should be improved so that all injuries receive an assessment within 2 weeks (or some other appropriate time) following the injury. This will ensure that employers who do not have the capacity or resources for a full time safety expert will be actively involved in the management of the rehabilitation of the injured employee and ensure no additional costs arise from the process.

(d) ***"Encouraging safety in the industry;"***

Comment

The current system for merit bonuses in Queensland has some significant flaws. A major flaw in the system is that employers' claims history for the calculation of the merit bonus excludes common law claims and these claims which are excluded are said to be the reason the Fund has a deficiency.

We expect these arrangements will be changed because the trend across all jurisdictions is to match claims performance to premium or premium penalty and to give incentives for a good claims record.

Position

The QMBA supports any initiative which reduces injuries in the workplace, through education and safety management procedures but expects the cost benefits to be shared within the industry.

(e) ***"Protecting the interests of employers in relation to claims for damages because of injury to a worker; and"***

Comment

Comment has been made concerning statutory entitlements and changes to same. If the scheme provided for statutory entitlement alone, the fund could be more efficiently managed with reasonable forecasting of future liabilities. However, inclusion of common law impacts on this.

Because we now have a system of "no fault" compensation which limits employers' rights at law but does not in any way limit the rights of employees, if a moderate level of limitation on access to law was introduced, we believe that it would be a fairer and more effective system.

Access to Common Law should be retained, however, in a form better managed than the current provision for common law contained within the Act.

Position

An efficiently managed system of Workers Compensation ensures the interests and rights of both the employee and employer is safeguarded. The employer seeks a fund that is commercially viable and provides for consistency and reasonable stability in respect to premium costs.

(f) ***"Providing for the efficient and economic administration of the system of accident insurance referred to in paragraph (a)."***

Comment

There is no question that this objective must be part of any system of Workers' Compensation.

The existing Board has the infrastructure to provide the basis to meet this objective. The Association does not support a system that would provide duplication of this without significant benefits that will reduce overall costs.

We would argue that the existing administration requires improvement and greater accountability in the administration of Workers' Compensation.

Position

Accordingly, the current system of administration with its existing infrastructure is supported, but with a strengthening and improved accountability by Management. In the alternative, claims administration could be outsourced to achieve the Act's objectives.

3. ***"Without limiting the scope of the above, report on the most appropriate accident insurance delivery methods for Queensland, in particular:***

a) The advisability of the Board's role as sole insurer;
b) the advisability of the Board's role as both a regulator and service deliverer; and
c) what other systems of accident insurance could better achieve the objects."

Comment

The Inquiry provides the opportunity to review a number of issues covered by the existing Workers' Compensation Act, this matter being one that is important and significant.

The Workers' Compensation Board controls all current processes associated with Workers' Compensation. It is the only sole provider operating within Australia in respect of State Schemes.

The Act does not provide for any other form of provision of Workers' Compensation insurance.

Position

The QMBA has stated it does not support any system which does not provide for reductions in costs.

4. ***"Report on:***

(a) the role and structure of the Board;"

Comment

The current Board is made up of four offices of the Government, two representatives of employers and two representatives of employees.

The future structure of the Board will be dependent on the structure and form of Workers' Compensation resulting from the Inquiry.

However, it is considered that the Board should be more reflective of the group that it is intended to represent. It is however recognised that there would be little potential for success unless the Board reflected a tripartite approach.

Position

To this end the Board's structure should reflect employer, employees and Government, but with Government taking an advisory or observer status. The Board should be chaired either part-time or full-time by an independent Chairperson having total understanding on the business needs and management of the fund.

A representative of the medical community should continue to be included but one who is from private practice i.e. a professional Practitioner with detailed understanding of the treatment and management of Workers' Compensation injuries.

The Board should be responsible directly to the Minister and be independent of the Department with the General Manager reporting to the Board.

(b) ***"Whether there is adequate incentive to encourage safety in industry, including a review of the effectiveness of the merit bonus / penalty system."***

Comment

The present system operates on a merit bonus and penalty scheme based on the claims to premium ratios.

Incentives need to continue in respect of this issue. Responsible employers must have access to reducing premiums based on their safety records.

The QMBA has earlier referred to the need for more effective and efficient processes of rehabilitation. This can be used to provide further incentives for reduction in Workers' Compensation Costs.

Position

The QMBA considers there needs to be continued a system that provides for recognition of accident prevention and safety management. To this end, common law claims must be considered in the system.

(c) ***"any necessary or desirable changes to the relationship between the Workers' Compensation Board and the Division of Workplace Health and Safety;"***

Comment

There is merit in establishing a combined organisation, subject to it providing an improved and cost effective system of Workers' Compensation and accident prevention.

The main concern, however, relates to the funding of the new body. Current arrangements for the Divisions' funding include a range of revenue raising issues including registration fees, certification fees, etc. In addition, there is a contribution paid direct by the WCB.

It has been recommended within the Tregillis Review covering the relationship of these bodies, that the current form of revenue raising be abolished and replaced by a levy. When this draft report, was tabled in 1995, concern was expressed as it was another financial imposition on the industry.

Position

There is definite merit in combining resources and rationalising existing administrative processes and associated costs. However, a levy is unacceptable. A user pay proposal (with enforcement for non-compliance) remains a more viable option.

Accordingly, amalgamation can only be supported if it provides a more efficent and effective system with associated cost reductions, and with no form of industry levies.

We agree that there should be a Government contribution to Workplace Health & Safety, but the Compensation Board should not fund the Division of Accident Prevention.

(d) ***"the most appropriate system for determining premiums;"***

Comment

There may be some need to reduce the number of classifications used for determining premiums, but the principle should be maintained.

Position

The QMBA considers the existing system of determining premiums should continue. It allows for the employer within an industry to insure for the industry, but be able to exclude clerical workers, management etc. who are separate from or not exposed to the hazards involved in the employer's business operation. Common Law claims must be included in the calculation of premium rebates to ensure a more equitable distribution and consideration of merit payments.

(e) ***"The adequacy of statutory benefits paid to injured workers and the dependents of deceased workers;"***

Comment

Comment has been made at item 2(a) & (b) of this submission in respect of these matters.

Position

The QMBA supports the retention of those payments in respect of death.

However, it does not support, as indicated, retention of:

(i) 85% AWE; or
(ii) Five (5) day excess.

(f) ***"the efficiency and cost effectiveness of the current provision for the delivery of rehabilitation services; and"***

Comment

Comment has been made earlier in this submission.

Position

The QMBA considers rehabilitation should have a strong focus in any system of Workers' Compensation. The process should ensure early consideration of all injuries to ensure the employee resumes normal, or near normal, work as soon as possible.

Early return to work is in the interests of the employee and the employer and an efficient and effective system of rehabilitation will not only assist in respect of safety, but also reduce premiums.

(g) ***"the effectiveness of the current damages claims system, including but not limited to:***

(i) whether damages claims should be determined within the existing court system or by a dedicated court system;

(ii) whether procedures for the handling and administration of damages claims are adequate and what changes, if any, are necessary and desirable to better administer these claims; and

(iii) the impact on the Workers' Compensation Scheme of restrictions being placed upon advertising by the legal profession for accident insurance business"

Position

(i) There is nothing to suggest the need for a dedicated Court system. If the legal areas are regulated sufficiently in respect of progressing claims, the current system is adequate and maintains the QMBA's position of opposing duplication.

(ii) The QMBA is not qualified to make informed comment about damages claims' procedures but recommends that the Inquiry takes specialist advice in this regard.

(iii) Whilst the Association remains concerned with the apparent link to advertising by solicitors with the explosion of common law claims, the Association does not support regulation to restrict private practice.

The QMBA advocates responsibility in advertising and suggests a code for advertising should be introduced by the legal profession to avoid frivolous claims based on opportunity expectations.

5. ***"Report on any other issues impacting on the operation, viability, efficiency and effectiveness of the Queensland Workers' Compensation system."***

Comment

The first element in establishing such an adequate and viable operation is to correctly identify all of the people who are workers. Most of us are aware of recent advertising campaigns by the Workers' Compensation Board aimed at encouraging, through peer pressure, all employers to file proper declarations of wages to contribute to the system.

Equally, employers have sought to reduce the cost of their operations by commissioning their employees under the PPS rather than the PAYE system. The use of subcontractors is being attacked in a number of areas (refer significant fall in the number of tax payers who are within the PAYE system).

Unfortunately, the definitions (of worker) in other relevant legislation, such as the Tax Act and the Superannuation Guarantee Act, are not identical. The basic principles for deciding whether an employee relationship exists are, however, the same.

Legislation should be aligned with the objective not to penalise the independent contractor or subcontractor but to ensure that compliance is met privately, i.e. in respect of Workers' Compensation, any 'worker' outside of the system should be mandatorily obliged to self insure. The Inquiry should look at whether the services of the Board could be expanded to provide this insurance cost efficiently as a competitor to private insurance.

Position

The QMBA supports the use of bona fide independent contractors and encourages the structuring of their operations to increase efficiency and maintain cost effectiveness. (refer MBA 'Housing the Nation' booklet - The Subcontract System). Specifically, the Association supports the current application of the 'worker' definition which allows utilisation of subcontracts as a fundamental cornerstone of our industry.

6. ***"Make an assessment of the implications of proposed / recommended changes to the accident insurance scheme on Queensland's position as a low tax State for business."***

Comment

Whilst some of the above measures will increase the cost of the scheme, there is no point in ignoring the reality required to fix the problems confronting the Inquiry.

Position

Whilst the QMBA believes it is better to take a longer term sustainable view that will place industry in a strong position to meet the challenges of the future, any cost burden which results from this position should be phased in. Any proposal to have industry "foot the bill" in an unrealistic timeframe is not acceptable, otherwise the economic viability of Queensland enterprises will be jeopardised.

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01 MAY 1996

MMI

(19)

30 April 1996

Mr J Kennedy
Inquiry Commissioner
Inquiry into Workers Compensation & Related Matters
Level 27, Central Plaza
Queen Street
BRISBANE 4000

Dear Sir

As Australia's leading and largest Workers Compensation Insurer and recognising the particular challenges facing the Queensland scheme, MMI feels obligated to provide commentary on the terms of reference set by the Queensland Government. We therefore have pleasure in forwarding our submission to the Queensland Government's Inquiry into Workers Compensation.

MMI is an active member of the Insurance Council of Australia (ICA) and supports the general thrust of the industry's submission. ICA by its very charter, must of course represent the interests of all its members.

Myself and other key officers of MMI are available at any time to provide further details to the Inquiry.

Yours sincerely

for J P Cullity
General Manager
Workers Compensation

Incorporating:
MMI Limited ACN 000 006 226 MMI General Insurance Limited ACN 000 122 850 MMI Services Pty Limited ACN 002 947 257
MMI Workers Compensation (NSW) Limited ACN 003 087 545 MMI Workers Compensation (Victoria) Limited ACN 059 835 791
MMI General Insurance (N.Z.) Limited Switzerland Insurance Australia Limited ACN 004 133 046
Managing Agents for The Yasuda Fire & Marine Insurance Co. Ltd. ARBN 000 837 801
Australian Representative for Allianz Insurance Group **Allianz**
Co-operative Partner with Skandia Industrial Insurance Co. Ltd.
4341CA (4/95)

MMI

Workers' Compensation

Submission to Inquiry into the

Queensland Workers' Compensation Scheme

April 1996

MMI General Insurance Limited
ACN 000 122 850

EXECUTIVE SUMMARY

The recommendations in this paper include:

- Initial introduction of "managed fund" arrangements whereby Insurers carry out an integrated insurance service embracing all aspects of premium collection, claims assessment and payment and investment of reserves.

- After an initial period to allow stabilisation of the scheme that a thorough evaluation of a competitive underwritten scheme be conducted.

- That access to common law entitlement be subject to an increased injury impairment threshold in connection with an election provision.

- Increasing statutory benefits (Table of Maims) in recognition of restricting access to common law.

- That the Board adopt an experience rated premium system along the lines of the Victorian model.

- The need for transition arrangements to be carefully negotiated between insurers and the Board to ensure an orderly transfer of staff and functions.

- Implementing the key recommendation of the Tregillis review of December 1995.

- Concentrating the Board's role as a regulator, supervisor and auditor rather than as a direct service provider.

- The market share of insurers to be determined by employer choice.

- Introducing a legislated system of workplace based rehabilitation with clear employer responsibility.

- Provide effective competition for the premium rating system for the largest employers by allowing self insurance within a carefully regulated regime supervised by the Board.

INTRODUCTION

MMI is pleased to have an opportunity to make a submission to this Inquiry. The recent experience of Workers' Compensation schemes around Australia shows that periodic major reforms are necessary and the changing direction of Workers' Compensation insurance, nationally, suggests that some key changes are necessary to the Queensland Scheme.

Increasingly, Workers' Compensation insurance is being closely associated with Occupational Health & Safety prevention initiatives and with early post accident rehabilitation. MMI has a strong history of partnership and co-operation with Workers' Compensation Authorities and has significant experience from participating in most working groups of the insurance industry and in all recent major reviews of Workers' Compensation Schemes.

Our submission will demonstrate that the major issues facing the Queensland Workers' Compensation Scheme are:

- the increasing cost of Workers' Compensation insurance.
- a lack of choice of service provider.
- a need for a system of workplace based rehabilitation.
- the high level of litigation.
- an effective premium rating system that caters for small, medium and large employers.

It is proposed that some changes in the benefits and legislative structure can remedy cost issues and that the other major issues facing the scheme could be overcome by introducing private insurers initially via a managed fund type arrangement. Under a managed fund system private insurers can offer cost effective distribution, choice of providers and excellence in service delivery. Managed fund arrangements are now in place in NSW, Victoria and South Australia and this type of arrangement could greatly assist the Board and Government and improve the total performance of Workers' Compensation in Queensland. Recent changes in the Victorian and South Australian schemes have demonstrated insurer capacity to take on increased roles and improve service and performance levels. The initial step to managed fund arrangements could be followed, at some suitable time in the future, by a move to a fully privatised underwritten scheme.

ABOUT MMI

The MMI Insurance Group is an Australian owned company, originally formed by the Chamber of Manufactures of NSW in 1914 as a specialist workers compensation insurer. Today MMI is Australia's largest private sector Workers' Compensation insurer, and is the market innovator in this field. The company pioneered research into the prevention of accidents in the workplace, and is a specialist in the areas of injury management and rehabilitation of accident victims through our subsidiary, Combrook Pty Ltd.

MMI has a total premium income over $750 million from both managed fund and underwritten Workers' Compensation. This income represents approximately 20% of the total Australian pool and approximately 27% of the market available to the private sector.

The Company sets high standards for service to customers and gives continuing support and training to staff to ensure our standards are met.

MMI's approach to Workers' Compensation and our proven track record have been based on principles that injured workers' rights must be handled in an understanding and efficient manner, and that employers' costs are minimised within the constraints of the applicable legislation. The ideal model for a client's total injury management program is one that integrates safety and prevention, claims and injury management with rehabilitation. These are linked to an overall program to promote workplace safety, responsive claims management and prompt return to work of injured workers and to reduce the cause of workplace accidents. Through providing such service, MMI has become the largest private enterprise Workers' Compensation insurer with almost one in five working Australian's covered by MMI nationally.

MAJOR ISSUES FOR THE INQUIRY

1. Cost of Workers' Compensation Insurance

It is apparent that the major reason for this Inquiry was the large increase in the Board's claims liabilities which is primarily due to the increasing number of common law claims and the changing propensity to claim in this manner. This represents a significant change in culture and, based on our experience in other jurisdictions, is likely to be part of a longer term trend. The trend is likely to be irreversible without legislative and administrative action.

Similar changes to the propensity to claim are currently apparent in other jurisdictions and are part of a wider change in community expectations for compensation and the right to pursue recovery for all types of personal injury or mis-adventure. These trends are a challenge for all Schemes and for private underwriters' and will require a combination of benefit design, price response, community education and a proactive response from all stakeholders to improve injury prevention.

2. Choice of Service Provider

MMI's close relationships with employers, including many large national companies and employer bodies, leads us to the conclusion that there is a considerable latent demand in Queensland for employer choice in the field of Workers Compensation and Rehabilitation and the many related activities such as OH & S.

Further through effective tendering of many ancillary services, such as legal work, service levels can be improved whilst simultaneously driving costs down.

Typically, choice of insurance provider will lead to development of additional services to employers targeting their individually expressed needs. These services are already provided in other states in the form of specific account management, provision of extensive accident data, and analysis, prevention advice and rehabilitation services.

In addition, with insurer involvement, it is possible for employers and workers to be given additional choice in the use of other service providers such as solicitors, rehabilitation providers and health professionals based on their demonstrated capacity to perform.

Competition and choice in service provision can be introduced using managed fund type arrangements similar to those applying in NSW, Victoria and partly in South Australia. These type of arrangements allow policy determination by the Workers' Compensation regulator, yet provide the benefits of customer choice, competition in service provision and use of established insurance industry distribution channels.

3. Rehabilitation

It is generally acknowledged that employer responsibility for workplace based rehabilitation produces the best results for workers, employers and the scheme. This position was also supported by the Industry Commission Inquiry into Workers' Compensation.

Despite considerable education and promotion of rehabilitation by the Workers' Compensation Board, current arrangements in Queensland are not based on commercial principles with allocation of costs and are not conducive to full involvement of employers in rehabilitation. There also appears to be insufficient obligation on injured workers to participate in rehabilitation and return to work programs.

Best possible rehabilitation practice is in the interests of injured workers and employers, therefore current arrangements need further refinement and can be based on the positive lessons to be learned from the Victorian and New South Wales schemes.

4. Self Insurance

Currently self insurance is permitted in every jurisdiction other than Queensland and there appears to be no reason why this facility should not be available for large, well managed, financially sound enterprises that can demonstrate a high level of OH & S awareness, "inhouse" safety programs and an ability to properly manage claims.

Self insurance should be regarded as a privilege, not a right, and does require a carefully controlled regulatory regime. It is suggested that self insurance could be offered along the lines of the current NSW model. This would make this facility available for organisations employing more than 1000 in Queensland who could demonstrate:

- financial strength and stability.
- sound OH & S practices.
- sound rehabilitation procedures.
- an ability to manage their own claims.
- satisfactory re-insurance arrangements.

Licences could be issued and reviewed annually following review of financial returns and actuarial projections by a consultant actuary. The Board may also require a bank or other suitable guarantee for the amount of outstanding claims.

It is stressed that the premium pricing system should be such that large employers who elect not to self insure, are not financially disadvantaged by remaining in the main insurance pool. Large employers should have a genuine choice of insurance via the scheme or self insurance.

COMMENT ON THE SPECIFIC TERMS OF REFERENCE

We propose to comment on a number of the specific terms of reference areas. For ease of use, we have provided these below in the order of the terms of reference and using the paragraph numbers provided.

2. System of Insurance

2 (a) Adequate & suitable cover

The current provisions of the legislation in Queensland are supported with the benefits, step downs and other provisions providing suitable incentives for injured workers to return to work.

It is suggested that common law access needs further change and this may also require some amendment to the no fault lump sum provisions.

There appears to be an emerging standard of access to common law being restricted to cases where the whole of person impairment is above 30% and also requiring some form of election by the worker between common law and other lump sum benefits. Similar arrangements are in place in the Victorian, New South Wales and Western Australian schemes and have proved successful in reducing the level of litigation as well as lowering overall scheme cost. In view of the recent history of common law in Queensland, this additional limitation of access could have quite significant effects on reducing the total cost of the Scheme.

We also mention that common law is not helpful in improving rehabilitation and early return to work and further restriction, other than for the more seriously injured, could be justified on this basis.

2(b) Appropriate medical treatment

Current medical treatment and reimbursement arrangements are generally viewed as appropriate.

It is suggested that the cap on the costs of private hospital treatment could be removed as approval could readily be given in advance by the Board or by insurers before the limit is reached.

2(c) Seeking participation of injured workers in rehabilitation

Whilst the monetary benefits and step down provision offer incentives to workers to return to work, it is suggested that there needs to be an increased obligation on workers to participate in suitable rehabilitation. Whilst there is some recognition of this, we understand that there is scope for improved legislative provisions and improved supervision of return to work.

Close connections by insurers with employers and workplace based rehabilitation, have been responsible for considerable improvement in return to work in both NSW and Victoria.

It is suggested that there should be stronger legislative provisions, and supervision of them, which require a worker to participate in reasonable rehabilitation where there is medical clearance and an ability to participate.

More fundamental is the need for a system of workplace based rehabilitation which places obligations on an employer to assist the rehabilitation and return to work process and, wherever possible, make selected duties available. Whilst the Board has been actively promoting rehabilitation education and employer involvement there are, we understand, many employers still not involved in any process or obligation to provide rehabilitation.

We suggest the legislation requires appointment of an on-site rehabilitation co-ordinator for any employer who has in excess of 20 workers. In addition, legislation should provide for the appointment and use of external rehabilitation advice and provider support for employers who have less than 20 employees.

Instructive examples of rehabilitation procedures and practise exist in NSW and these could well be a suitable potential model for the introduction of workplace based rehabilitation in Queensland.

2(d) Encouraging safety in industry

The recent Industry Commission inquiries into Workers' Compensation and OH & S have highlighted the importance of experience responsive premium combined with a firm regulatory regime which places responsibility for workplace safety on employers.

Our experience suggests that industry rating of Workers' Compensation and experience based premiums are generally more effective in inducing employer interest in their own claims experience and in taking their own remedial action. Movement to an experienced based premium system will require considerable education and explanation to employers, as there appears to be some support for the current merit bonus premium system.

We are unable to gauge the effectiveness of the current enforcement and inspectorate activities in Queensland. However, it does appear that the Tregillis review has recommended a number of changes which would make the inspectorate more effective. It is necessary to have a good and active system of enforcement in place to support the legislative regime in OH & S. Integration of workers' compensation and OH & S allows a combination of the policy, legislative and regulatory functions to focus on providing an improved total position for prevention, compensation and rehabilitation. There are many specific areas where better shared data, shared management and better targeting of resources can all assist in promoting improved performance in provision of services and the regulation of OH & S. Over time integration will assist changing the culture of the workplace and so achieve better results for all categories of employers.

Insurers are geared to assist employers in the prevention of workplace injuries. Insurers in other Australian jurisdictions already provide services to encourage employers to participate in injury management and have an existing framework which includes:

- on line access to claims information systems.
- risk management or claims analysis software.
- special claims reports for claim exceptions and risk management.
- employer training.
- safety audits and risk improvement recommendations.
- MMI via its subsidiary, Combrook, provides medico/legal services to claims management.

MMI and the insurance industry are committed to OH & S and to sustainable return to work. Use of the insurance industry in improving safety performance is recommended to the review and this can be easily accomplished within the proposed framework.

2(f) Efficient & economic administration

Historically, the Workers' Compensation Board of Queensland has provided a low cost scheme of Workers' Compensation relative to other state jurisdictions.

However, as mentioned earlier there appears to be increasing demands from employers for a choice in insurance provider and also for additional participation in the claims management process. The likely increasing demands for more information by employers and more participation could well require additional resources in the Board and significant investment in computers and technology.

As shown in other states, it is possible to introduce private insurers as part of the service mechanism and this can both provide improvements in service to employers and retain cost effective management as well as encourage innovation through a competitive market place. Typically, use of insurers can also negate the need for the Board to embark on continued investment in a branch network, computer distribution systems and development and training of staff to deliver the product. It should also be stressed that employers already deal with the insurance industry for all other aspects of insurance for their business.

3. Accident Insurance Delivery Methods

Introduction

Currently there are three basic types of insurance management and distribution methods used around Australia:

i. State underwritten and distributed ie, Queensland and Comcare.

ii. State underwritten and insurer managed and distributed ie, NSW, Victoria and South Australia.

iii. Privately underwritten and distributed by insurer ie, Western Australia, Tasmania, ACT and Northern Territory.

Private sector insurers in Australia carry the risk for commercial and personal lines insurance products amounting to in excess of $12 billion of premium cover. The core competency of the insurance industry is the assessment of risk and resultant pricing to provide effective security for consumers. Flowing from this core competency are significant skills and experience in the areas of minimising claims costs where socially desirable, loss control and accident prevention measures and the investment of reserves including claims provisions.

In the field of workers' compensation insurers carried the underwriting risk in all states and territories in Australia until the mid 1980's. Currently insurers carry the underwriting risk in Western Australian, Tasmania and the two territories.

In the case of Queensland, MMI suggests that whilst an eventual move to an underwritten system will be desirable for employers in the state, that a phased approach be adopted. This view is cognisant of the fact of the current single provider scheme and the resultant lack of high level current experience in the state.

Hence, our company does not recommend an immediate move to an insurance underwritten scheme.

There would be real merit in Queensland adopting a Managed Fund arrangement as an initial step towards a fully privatised underwritten model. The managed fund approach has proven to work well in other major states and provide a base for further outsourcing of activities. This would allow insurers to carry out policy administration, debt collection and claims management tasks to provide an integrated "insurance" service to employers throughout Queensland at an early date.

3(a) Advisability of the Board's role as a sole insurer

There is a considerable latent demand for choice of provider (insurer) by employers and for the benefits of innovation resulting from participation and competition in service which would follow.

There is no particular advantage of operating a workers' compensation system via one central claims manager with bureaucratic and communication issues giving diseconomies of scale. Critical mass can be achieved and a better customer focus and increased service standards can be achieved through decentralised units. The principles of "best practice" of increased service and cost efficiency are most easily achieved through multiple service centres as would be provided by a competitive model with multiple insurers.

The concept underlying "best practice" is that of the competitive model. Competition is clearly a model for introducing both cost efficiency and service standards, both of which are required by employers and workers. Unprofitable (high cost) insurers and uncompetitive (low service) insurers will be unable to maintain market share over time.

Given the pool for the Queensland Scheme, in a national context, and the possible admission of self insurance, consideration could be given to limiting the number of participants in the pool. A range of 7-10 participants is suggested as being sufficient to provide an efficient level of competition so that smaller or fringe insurers are unable to destabilise the arrangements. This number is also amendable to efficient regulatory oversight. Participating insurers should be capable of demonstrating high level understanding and commitment to workplace safety, rehabilitation and a holistic approach to injury management.

It is important to consider that the vast bulk of employers, probably over 80%, would pay a small amount of premium and would already have in place arrangements/needs for other types of insurance. This high administrative burden could be reduced by allowing employers freedom of choice to arrange workers compensation along with their other insurances.

Licensed insurers in a managed fund arrangement are well placed to deliver:

- Occupational health & safety and risk management.
- early return to work and rehabilitation.
- distribution channels and outlets.
- retail service outlets.
- modern computer information systems.
- other insurance products and services.
- investment services.

Licensing of insurers to administer the Queensland Scheme under managed fund arrangements underwritten and supervised by the Board is recommended to the Inquiry as an initial step. This recognises the large change involved in moving from the current system. After a period of successful operation of this form of insurance, a move to a fully privately underwritten system is recommended.

3(b) The advisability of the Board's role as a regulator and service deliverer

Under managed fund arrangements we believe the Board's role as a regulator and potentially auditor would conflict with a role as a provider of insurance service.

Currently in the rest of Australia in both fully privatised and managed fund arrangements, no regulatory body actively competes within the market it regulates.

As shown by previous experience in NSW, Victoria and South Australia, it is possible to move to a managed fund arrangement with insurers handling residual claims and all transfer issues without the need for the Board to continue current insurance business functions.

4. Role and Structure of the Board

4 (a), (b), (c) Role of Board and its relationships

A review of the role of the Workers' Compensation Board of Queensland and its relationship with the Division of Workplace Health and Safety was conducted by Mr Tregillis in late 1995.

The key recommendations of this review are in line with emerging structures in other states of Australia and it appears likely that there will be increasing integration of workers compensation, OH & S and factory inspectorate regulation, supervision & review functions.

Taking an initial step in adopting a managed fund concept using insurer distribution systems does not require significant changes to the recommendations of the Tregillis review. In particular, the supervisory and regulatory role of the Board and its proposed composition should be retained. The functions of the proposed Insurance Directorate would change and it could become the insurer licensing and supervisory area of the Board and also be responsible for pricing and industry classification matters.

4(e) Adequacy of statutory benefits

Current statutory benefits in Queensland are broadly in line with other states in Australia with the exception of the cap on weekly earnings and the amounts available for lump sum table of maims benefits.

A further tightening of the access to common law benefits as proposed through use of a higher impairment threshold (possibly 30% of whole body) and an "election provision" may require modest amendments to the current table of maims benefits. It is suggested that maximum lump sum impairment benefit be increased with these benefits being assessed as at present via the Medical Tribunal.

It is also suggested that the current death benefit be increased in recognition of the lesser access to Common Law.

Retention of the current cap on weekly benefits is suggested, for the present, as it will take some time for the full effects of the recent changes and any changes arising from the current Inquiry to be implemented with results able to be evaluated by the Board's management and actuaries.

If the sum total of the changes suggested in this submission produce lower costs, as they should, then the Board and Government may wish to consider removing or increasing the cap on periodic benefits. Improved return to work should mean that there are only a small number of workers affected by the cap, however, these workers will be those most in need of continuing assistance.

5. Other Issues

Initial introduction of managed fund arrangements into the Queensland scheme would require a number of issues to be dealt with which are not otherwise covered in the terms of Reference. These include:

5(a) Computing and related issues

Private insurers are very experienced in the use of information technology which is fundamental to client servicing, administration and financial management. The Board and every other state authority has a number of information requirements not least of which are accident analysis, actuarial analysis and fraud control. It is therefore important that the Board and insurer data bases operate in a synchronised way in key areas of data exchange.

It is recommended that the Board be the custodian of a central repository of key registers including basic employer details, claimant/claim information and various other service provider information, medical, legal, etc. Interchange of data can be established on line from insurers systems thereby allowing the Board access to all relevant and up-to-date information. Naturally, setting up these systems will take discussion and careful planning between insurers and the Board.

Insurers continue to invest significant resources in the development of information technology systems for all classes of insurance and are able to leverage that innovation across the whole business. Technology is a key element in product differentiation and competition.

5(b) Transition and staffing issues

Private insurers have not been engaged in workers compensation business in Queensland - the large workforce handling this business has been centralised under the Board. The process of outsourcing to the insurance industry should not be underestimated and must take into account the human relations and logistical aspects of any change.

The recent change in South Australia has shown that it is possible to transfer the total portfolio of claims to private insurers and transferring revenue collection is considerably simpler than a claims transfer and was effected in Victoria in 1993 with similar successful results.

In both cases, considerable numbers of staff from the Authorities transferred to insurance companies. We strongly recommend that in the event of a transfer of staff, an application/selection process is conducted rather than an allocation process.

We would suggest a total transfer of old and new claims with old tail claims allocated on a pre-determined basis. This could occur with a negotiated transfer of the required number of Board staff and the requisite assistance of insurer resources from elsewhere, if necessary.

5(c) Allocation of market share

Prospective insurers should first be asked to submit their credentials in workers compensation insurance indicating their capacity to service the whole market or specific segments of it. They should also provide specific proposals for prevention promotion and return to work strategies as well as fundamental premium and claims handling proposals.

Market share can be determined either by allowing employers to nominate their insurer or by the Board assigning employers to meet pre-determined market share allocation. Over time, the system should move to full employer choice of insurance provider.

Market share as determined by employer choice is recommended and was successfully achieved in South Australia where 80% of employers exercised a choice - such a high response indicated employers dissatisfaction with the arrangements in place at that time.

5(d) Investment

Investment of the Board's fund is currently outsourced to the Queensland Treasury Corporation.

Under managed fund arrangements, insurers can be appointed to manage investments as well as claims and premium collections. Insurers have large existing investment funds and have professional investment managers and staff. Since investment profits are a major driver of insurance operations, insurers have a proven track record of investment management.

With collection of premiums and payment of claims, it is unwieldy not to manage cash flow as well as maximise investment funds and returns. We propose that insurers could provide improved investment management as part of an integrated outsourcing of services.

5(e) Insurer consultation

Implementing the proposed changes will, of course, require considerable discussion and negotiation with insurers on all aspects of the transfer, proposed fee arrangements, licensing and on-going activities.

MMI senior executives who have experience in previous changes to managed fund arrangements and experience in workers compensation insurance are available to assist the Board or Government in ensuring that an orderly, smooth and effective transfer of responsibility occurs.

6. Implications of these Proposals

In terms of the cost of operations, it is imperative that the escalating cost of common law claims be halted and desirably lowered. The proposals in this submission should, if adopted, give rise to a lowering of the cost of the Queensland Workers' Compensation Scheme.

On a longer term basis, greater involvement of employers in rehabilitation and return to work will give additional savings.

Introduction of insurers in the form of managed fund arrangements as an initial step should enable administrative costs to be capped and at the same time, provide additional prevention, risk management and advisory services to employers. Once again, this should have a longer term effect on the number of claims and their severity. In addition, the benefits of competitive provision of services will introduce choice for employers and ensure that the system remains responsive to their needs.

Experience in other jurisdictions suggests that the scheme outlined in this proposal could lower current scheme costs and that this cost could be contained on a longer term view. To achieve this goal, it would, of course, be important to maintain constant oversight and regulation by the Board and to retain all current dispute resolution and other management procedures which are essential for a cost effective outcome.

Adoption of our proposals would enable the Queensland scheme to continue its historic position of being one of the lower premium jurisdictions, yet providing reasonable benefits to injured workers.

QUEENSLAND
Nurses' Union
IN ASSOCIATION WITH AUSTRALIAN NURSING FEDERATION QLD. BRANCH
Just Rewards for Professional Care
ADDRESS ALL CORRESPONDENCE TO THE SECRETARY, G.P.O. BOX 1289, BRISBANE, Q. 4001.

03 MAY 1996

119

IN REPLY PLEASE QUOTE:

All enquiries regarding this correspondence should be directed to: Amanda Richards

2 May 1996

Mr J Kennedy
Inquiry into Workers Compensation
& Related Matters in Queensland
GPO Box 374
BRISBANE QLD 4001

Dear Mr Kennedy

The Queensland Nurses Union covers all levels of nurses working in health establishments as well as most other industries.

In 1993/94 the following occured:

* Within the Community Services Industry, Health workers had the highest number of injuries with 42.7 per cent (3,283) of all injuries.

* Ward helpers (Assistant Nurses) and Registered Nurses accounted for 13.7 per cent and 10.3 per cent of the industry's injuries respectively.

* Hospitals (excluding Psychiatric Hospitals) and Nursing Homes constituted the highest classes for compensation payouts $4 861,511 and $2,815,656 respectively.

Queensland Employee Injury Data Base
Summary Report No. 9 1993/94

Injuries are mainly sprain/strain injuries however the number of stress cases up until recently have been rising considerably. The majority of injuries are preventable however there has never been sufficient impetus for the industry to make changes.

Approximately 95 per cent of nurses are female who are reluctant to be assertive when it comes to their own safety. The majority of workers put their patient/resident/client needs first.

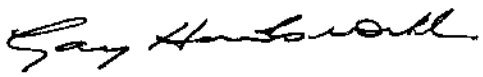
.../2

We therefore have a vast knowledge and understanding of the workers compensation system and take the opportunity to supply the attached submission to the inquiry.

This submission is written from a nursing prospective and should be read in conjunction with the ACTUQ submission.

Should you wish to discuss this further please contact Amanda Richards on 3840 1436.

Yours sincerely



Gay Hawksworth
SECRETARY

Queensland Nurses' Union of Employees

Submission
to

Inquiry into Workers' Compensation & Related Matters in Queesland

conducted by

Mr Jim Kennedy

closing date 30 April, 1996

Prepared by: Ms Amanda Richards
Ph. (07) 3840 1436
Fax. (07) 3844 9387

INTRODUCTION

The fundamental principles that this union believes in are as follows:-

1. A worker has a right to a safe and healthy workplace.

2. Should a worker sustain a work related injury or illness they have the right to expect quality and timely treatment at no cost to themselves.

3. Should a worker sustain a work related injury or illness they have a right to be adequately compensated through a statutory payment system.

4. The worker has the right to expect a high quality rehabilitation program leading to a sustainable return to work, or socialisation out of the workforce, depending upon their injury. Currently nurses claims for Workers' Compensation are extremely high in numbers as well as costs.

5. Should the employer not have met their duty of care to the worker causing a work related injury or illness then the worker should have the right to claim through a court of law for damages.

This union acts on these principles by being represented on various health and safety committees and dealing with individual member issues.

Currently a QNU official is appointed as the Chair of the Division of Workplace Health & Safety's Community Services Industry and is the ACTU representative on the National Occupational Health & Safety Commission's Rehabilitation Task Group.

As indicated in the attached correspondence our members sustain an extraordinary number of injuries which results in us liaising with both the WCB and the Division. We therefore believe we are in a position to provide relevant comment to the Inquiry.

1. **Review the current objects of the Workers' Compensation Act 1990 to determine their relevance to the needs of the Queensland Community.**

Prior to 1990 the workers' compensation legislation did not outline any objectives, therefore the current objectives have only been operational for six years. It is our belief that the wording of the objectives should remain the same as they are still relevant today.

2. **Report on whether the present system of accident insurance in Queensland provides adequately for these objects as follows...**

(a) The current systems as provided for under the Act does cover the majority of our members, only those doing private nursing are not covered.

(b) This section was subject to changes that came into effect as of January 1, 1996, therefore there has not been sufficient time to analyse whether these changes are adequate or not.

- *Adequate Income*

Many of our members are shift workers and therefore a substantial amount of their income is made up of penalty rates which they rely on. The loss of shift and weekend penalties quite often causes an enormous amount of financial strain on their budget. Shift and penalty rates can account for 25% of a nurses income.

Prior to 1 January, 1996 we would often have a need to refer members to financial counsellors in order that they did not lose assets such as their car or house due to the loss of income suffered through a work related injury.

- *Appropriate Medical Treatment*

Medical treatment appears to be comprehensive. However, as a high proportion of our members claims are sprain/strain injuries that usually require physiotherapy, we are concerned at cut off points being placed upon the number

2(b) cont.

of treatments workers are able to have. In many cases treatment ceases which then requires appeal. The appeal is usually upheld however considerable time is lost while waiting for decisions to be made, leading to the workers condition often regressing. We believe however, that there needs to be constant review of treatment that is more timely, in order that treatment can be maintained.

The Act does not take into account natural therapies/medications that are provided by someone other than a Registered Medical Officer etc. More and more people are turning to natural therapies with good results especially in the area of deep tissue massage, and some provision for this should be picked up under the Act.

(c) It is our belief that Queensland and in particular the Health Industry has not fully embraced rehabilitation for injured workers. Quite often Officials of this union have to negotiate with the employer to allow our members to participate in a return to work program. A lot of nurses are unable to return to work until they are "100 per cent ready and able to work"!

Our experience shows that it is the employers who do not have appropriate systems in place to facilitate appropriate rehabilitation of injured workers, even though the WCB provides an excellent employer services section to assist them develop a suitable program.

(d) The Act encourages safety in industry through the demerit system and common law. There are very few health establishments that currently receive any of their merit bonus back on their premiums. It would be only recently that the public system due mainly to the work on the Organisational Stress Projects, has taken any action to pick up any potential savings in this area. Furthermore up until July 1996 the Aged Care Sector had been fully funded for their premiums by the Federal government.

Unfortunately there would be very few programs which actually address the hazard in the workplace that would have resulted through this exercise. Very few workplaces would have a comprehensive Health and Safety Management System in place.

Some hazards are addressed following injuries to workers even though the workplace has been aware of them prior to the incident. This usually occurs after a writ has been served.

2(d) cont.

Common Law has the ability to set up test cases, for example, passive smoking cases. It also has the ability to make an industry start looking at their own workplace when they become aware of decisions. Unfortunately individual employers to not feel the cost of these claims unless the judge orders changes to the workplace as part of their decision. Also there is insufficient publication of outcomes of common law cases.

Private Hospitals however are distinct as they are answerable to a Board and also have a profit margin to take into account. Most have put some sought of system in place, either by way of a Health and Safety System or Rehabilitation Management.

(e) Refer to ACTUQ Submission.

(f) Refer to ACTUQ Submission.

(g) i/ Refer to ACTUQ Submission.
ii/ Refer to ACTUQ Submission.
iii/ Refer to ACTUQ Submission.

3. Without limiting the scope of the above, report on the most appropriate accident insurance delivery methods for Queensland...

It is this unions belief that the Workers Compensation Board should remain the sole insurer.

Our experience when following up claims for members that have moved to Queensland is that there are inconsistencies between insurers in the service provided. Employers change providers which leads to difference in underwriting instructions. Outcomes agreed by one company will not be carried through by another. Therefore the injured worker is disadvantaged.

4. Report on...

(a) Refer to ACTUQ Submission.

(b) Refer 2 (d)

(c) This Union is against any amalgamation of the Workers' Compensation Board and the Division of Workplace Health and Safety as proposed in the Tregallis Review. We believe that any amalgamation would be to the detriment of any pro-active health and safety programs. The Division of Workplace Health and Safety has a claims experience branch that does some very good work based on individual employers claims experience, maybe more resources need to be allocated to this section. It is our understanding that work is currently occurring in the information technology area of the division that will enable the division to better utilise WCB data.

Currently the QNU participates in an Aged Care Health and Safety Committee where both the WCB and the Division are represented. I believe this committee is a good example of how the two areas can work together. Currently we are utilising WCB statistics to identify "hot spots". We will then run focus sessions to further identify the problems. The aim is that this will then be followed up by the Division and WCB officers assisting the work places to put in place appropriate systems.

(d) Refer to ACTUQ submission.

(e) In todays world most workers budget to their expected income, this includes allowances, shift penalties, loading etc. When there is a loss of these 'extra's' it can severely diminish a workers income and cause them severe financial hardship.

Example
RN Level 1 Year 8 Award Based rate is currently $644.50 per week. Enterprise Bargaining increases bring this up to $677.10 per week. On an average this person would work two afternoon shifts per week and most weekends (an additional $213.82), this would bring their weekly earnings up to $890.92. A difference of $246.42.

Under current workers compensation funding (85% of average weekly earnings) this workers would receive $757.28 per week, a loss of $133.64 per week.

Therefore, we believe that the weekly payments should take into account the expected average income of a worker. We believe that this should run for the full length of the claim and not stop at 26 weeks. We have found the claims that extend past 26 weeks have done so because the serious nature of the injury/illness or the lack of appropriate intervention at an early stage of the injury/illness.

(f) Rehabilitation commences from the time of injury with early return to work programs being on of the more sustainable forms of rehabilitation for some workers. The current system does not facilitate early return to work programs, unless the workplace has a very good rehabilitation system in place.

It is our belief that most rehabilitation counsellors do not receive cases until the injured worker has been off work for approximately 6 weeks. This is too long to wait for rehabilitation to commence and often their case load then prohibits pro-active case management.

A lot of GPs do not fully understand the workers compensation system and in some cases hinder workers from participating in return to work programs. It is our belief that they are not aware that they have the last say in what the worker can and cannot do in their return to work programs.

Rehabilitation co-ordinators are not in every workplace and their level of expertise varies. Some co-ordinators develop some very good programs with sustainable results. Others may use it purely to contain costs which in the long run does further damage to workers injury.

Cases that most benefit by early referral such as back injuries or stress related illness can now take some time to have a decision on the acceptance/rejection of their claims. Should these people not be members of a private health fund they are forced to rely on the public health System for assistance which is also fraught with delays. This lengthens the claim time and increases the need for services and therefore increases costs.

Outside providers are also being used to provide services to the Workers Compensation Board. These people do not always have the necessary skills. An example of this is an Occupational Therapist who was called in by the WCB to do an assessment of a work station and system of work. This person did not have the expertise to do this job, therefore this was money wasted.

It is this unions belief that the South Brisbane Rehabilitation Centre provides an excellent service to injured workers. This centre assists people to overcome disabilities as well as recondition people in order that they have a sustainable return to work. One of the reasons for this is that this centre has the ability to simulate the work environment. Many attendees have not only overcome their disability but overcome their fears of returning to work due to their attendance at this centre. This union whole heartedly supports the continuance of this service under the control of the WCB.

The provision of Work Assessment (WAS) and Work Trial programs is also seen as an integral part of the rehabilitation of workers. However under a WAS should a person work shifts they do not receive appropriate compensation, which is seen as a deterrent for people to return on their normal shift e.g. permanent night staff.

(g) Refer to ACTUQ Submission.

5. Report on any other issues impacting on the Operation, Viability, Efficiency and Effectiveness of the Queensland Workers Compensation System.

Definition of "Injury"

Constantly changing definitions to legislate away the issue does not deal with the problems in the work place. It does not deter an injured/ill worker from taking time off work it just transfers the cost to another jurisdiction such as Superannuation funds or Social Security. A rejection of a claim because it does not fall within the 'current' definition of injury often leads to an appeal of the decision a costly exercise which is detrimental to the worker and must lead to inefficiencies and decreased productivity within the WCB.

Stress Related Illnesses

These illnesses are a 'real' workplace problem and in our experience people claiming compensation for stress are usually very ill. Within the nursing industry there appears to be a stigmatism attached to having a mental illness and therefore people are very reluctant to have this illness recorded, and do not claim compensation until the worker is no longer to physically attend work.

Unfortunately in most cases changes do not occur in the workplace until a claim has been made.

This union is very active in supporting people with stress claims to receive appropriate referrals to Psychologists and Psychiatrists as soon as possible.

We are aware that early return to work programs facilitate sustainable outcomes. However resolution of issues causing the stress in the first place needs to occur or commence prior to a worker returning to the workplace. Early contact by co-ordinators can often be detrimental to the worker. Therefore a lot more work needs to be done in this area. This union supports ongoing funding of special projects in this area.

Excess

It is our belief that the implementation of the four day excess is an inefficiency for the WCB. It creates more paper work and requires follow up time by Board Officers. In many cases causes problems for workers who are required to wait for the money to be paid by the employer. Leading in some cases to a four week delay before an "easy" claim has any money paid to the injured worker.

Common Law

As indicated most of our injuries are sprain/strain injuries mainly to the upper and lower back. The majority of which fall below a 20 per cent disability. These workers are unable to continue work in their chosen profession and in most cases any other job. Those who have been injured due to their employer not having met their duty of care to their workers have no option but to take a Common Law action.

Example:-

In March 92, BS sustained an aggravation of a pre-existing lumbar disc degeneration. BS slipped on a shiny floor surface that had been caused by a particular cleaning agent. This hazard had been reported prior to this incident.

At this time BS was 45 years of age, a registered Midwife with long term employment in the Maternity area at this hospital. BS went to the South Brisbane Centre and attempted a return to work program and retraining, but both were unsuccessful due to her injury. Psychological referrals were also necessary due to the loss of profession and in particular working with mothers and new born children.

The maximum weight this worker could lift was 5kg.

BS was referred to an Orthopaedic Assessment Tribunal in April 1993 where it was deemed she had a permanent partial disability with a 7.5 per cent loss of bodily function.

This amounted to $5,487.87.

A settlement was negotiated with the employer and BS received $98,000 clear of WCB refund and costs.

Should Common Law be taken away these people not only lose their health and their profession but in many cases would lose their house etc. and become part of the Social Security System.

CONCLUSION

In conclusion we would like to make the following recommendations.

1. That the objects of the Act remain unchanged.

2. That the Statutory payments be increased to reflect the workers average wage and remain the same until the claim closes.

3. That consideration should be given to the inclusion of natural therapies as a claimable expense.

4. That the 4 day excess currently paid by employers be removed.

5. That a programme of early intervention by the WCB in certain types of claims be implemented.

6. That the South Brisbane Rehabilitation Centre be maintained under the WCB.

7. That access for all injured workers to common law be maintained.

8. That employers who have a Health & Safety System aimed at preventing injuries should be given some form of recognition via their premiums.

9. That the definition of injury not be subject to continued change.

HOUSING INDUSTRY ASSOCIATION LIMITED
Incorporated in Victoria A.C.N. 004 631 752
QUEENSLAND DIVISION

P.O. Box 3553, South Brisbane, Q. 4101. 58 Hope Street, South Brisbane,Q.4101
Telephone: (07) 3846 1298 Facsimile: (07) 3846 3794

30 April 1996

Mr J Kennedy
Commissioner
Inquiry into Workers Compensation
GPO Box 374
BRISBANE Qld 4001

Dear Mr Kennedy

HIA supported the QCCI submission on changes to the Workers Compensation system lodged with the previous Government in 1995. It is also highly likely from what I understand of QCCI's submission to your Inquiry that we will support it also. In particular we would support the limitation of common law claims only to serious injuries, the opening up of the scheme to competition and the retention of incentives for employers with good claims experience.

Against this background this submission focuses only on a few issues which are of special interest to the building and construction industry.

The most significant of these is an ongoing difficulty this industry experiences with defining precisely who it is that the Workers Compensation system aims to cover. The problem relates to the definition of "worker" with the Act. The definition, which seeks to separate workers from contractors causes significant administrative difficulties for building businesses and leaves many businesses unknowingly exposed to significant premium payments and penalties.

The definition of worker has no resemblance to any other contractor/employee in common use eg the taxation distinction in the building industry between PAYE employees and Prescribed Payments System (PPS) contractors. Unfortunately many contractors and sub-contractors wrongly assume that if they are a contractor for taxation purposes then they are also a contractor for Workers Compensation. This causes great confusion.

The Workers Compensation definition of contractor requires that the contractor "supply materials". This then creates enormous confusion in practice about what constitutes supply of materials.

A 1994 Discussion Paper, Workers Compensation - Miscellaneous Issues, prepared by the Workers Compensation Board, recognised the difficulties posed by this definition and proposed to change the definition of worker to align with the tax definition ie a worker would be someone for whom PAYE tax deductions were liable to be made.

Despite our strong support for this change we understand that the proposal was rejected by the former Government on advice from the union movement.

Moving to the taxation based definition of worker would not only introduce certainty and predictability in the system for the industry, it would also eliminate a major source of dispute and disagreement between the industry and the Board's staff.

HIA does not believe that the current shortfall in the Workers Compensation fund is a result of lax workplace health and safety requirements and so sees no need for further controls in this area. What is needed is the continuing development of workplace health and safety systems that are appropriate to the businesses concerned, readily understood by employers and employees, and are practical.

In the building and construction field there has been many sensible developments in this area in recent years but further improvements will continue to be hampered by the workplace health and safety committee structure. By combining the whole of the construction industry into one committee structure there is a real danger that safety requirements suited to one part of the industry will be inappropriately forced onto other sectors. For example a separate housing industry committee to provide direct advice to the Director of the Division of Workplace Health and Safety is a high priority for advancement in the safety area to proceed.

HIA would be happy to provide further detail on any of these issues.

Yours sincerely

Warwick Temby

Chief Executive

HOUSING INDUSTRY ASSOCIATION LIMITED
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01 MAY 1996

120

30 April 1996

Mr J Kennedy
Commissioner
Inquiry into Workers Compensation
GPO Box 374
BRISBANE Qld 4001

Dear Mr Kennedy

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HIA would be happy to provide further detail on any of these issues.

Yours sincerely

Warwick Temby

Chief Executive

COLES SUPERMARKETS AUSTRALIA PTY LTD
A.C.N. 004 189 708

01 MAY 1996

(21)

FACSIMILIE COMMUNICATION FORM

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Queensland 4122

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PO Box 474
Mt Gravatt Qld 4122

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Occupational Health & Safety Department
Brisbane Office

TO:

Date 30 / 04 / 96

Name:	JIM KENNEDY
Company:	WORKERS COMPENSATION QLD COMMISSION OF ENQUIRY
Department:	
Facsimile Number:	(07) 3405 1141

FROM:

Name:	Colin Raph
Company:	Coles Supermarkets Queensland
Telephone No:	(07) 347 8418

Comments:

As part of the commission of enquiry into workers compensation Qld we would like to submit the following for consideration.

Number of pages including this cover note:	4

coles

COLES SUPERMARKETS
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COLES SUPERMARKETS
22nd April 1996

QLD WORKERS COMPENSATION COMMISSION OF ENQUIRY

Following the recent State Government enquiry into the Queensland Workers Compensation scheme the following points have been noted as issues of interest and concern for Coles Supermarkets.

Employer Excess

We agree an excess in some form is an inevitable part of all workers compensation systems throughout Australia. The QLD model bases the excess on the employer paying the first 4 Days plus the remainder of the shift on the day of injury.

The excess on the above model varies from claim to claim, an alternative to this method could be in the form of a fixed dollar charge for each claim thus eliminating the need for wage calculations.

Journey Claims

A review of the No Fault approach to motor vehicle injuries suffered by employees travelling to and from the worksite should be considered.

Motor vehicle injuries that occur where the employee is found to be at fault should not be entitled to claim workers compensation benefits. Claims of this nature should be referred to the Dept of Social Security where the employee can make application for sickness benefits.

Claims where the employee is not at fault should carry through to the CTP insurer but still be eligible for entitlements through W/Comp. The W/Comp insurer should immediately put the CTP insurer on "Notice" and all claim costs recovered accordingly.

Common Law

Entitlement to Common Law needs further review. This remains the most significant area of concern in relation to the overall fund problems currently experienced.

Fair and reasonable access to Common Law should to be maintained but restricted to the more servere cases only.
Consistency in keeping with other state systems should be considered, eg. NSW restrict access to Common Law where there is less than 25% whole person impairment (no access).
Queensland may need to moderate this approach in conjunction with increased statutory benefits with regard to permanent partial disability and lump sum settlements.

Introduction of a conciliation/mediation process for all common law proceedings involving all concerned parties should be implemented.
*Specified time parameters for the completion of all common law actions should be introduced to curtail ongoing legal and administrative expenses.

Merit Bonus

The Merit Bonus scheme should be reviewed in it's parameters in identifying good claims performance. The current system does not identify safety and prevention programmes as a means of rewarding and encouraging employers to reduce claims experience. Possible consideration of the NSCA 5 star audit programme or similar could be adopted.

The Merit Bonus scheme currently ignores the cost of common law. This is a significant disinsentive for employers to manage these costs and should be included in the overall claims experience. As an incentive these costs could be restricted to claims initiated within 5 years from the date of original injury.

An alternative to the Merit Bonus scheme could be that all employers pay premiums based on individual claims experience averaged over a 3 year period.

Claims Management

Claims management structures at WCBQ should be reviewed and an undertaking made to provide an improved level of service to the employer.
Consistency in claims management with regard to providing a dedicated employer based claims and rehabilitation resource centrally located.
Introduction of a conciliation/mediation process on all disputed claims to involve all concerned parties ie: insurer, employee, employer, union representative etc.(No current system exists).

Claims Estimates

In regard to the abovementioned claims estimates need to be introduced into the Workers Compensation scheme as a matter of urgency. Claims estimates for the purpose of budget projections and performance measurement is the basis of standard insurance practise (not currently recognised by WCBQ).

Rehabilitation

A study of the efficient practice of the WCBQ to effectively case manage rehabilitation in contrast to private providers. This area should be opened up to competition.

Claims Investigations

Further funds need to be made available for the efficient followup of disputed claims. Claims investigations should be

contracted out to private companies to achieve optimum results, a study into the efficient practices of WCBQ to handle these investigations should be made.

Private Insurers

We **strongly** believe that the workers compensation scheme in QLD should be opened to competition from private insurers to give all parties an opportunity for an improved service.
Private insurers acting as claims agents would be governed and audited in accordance with the provisions of the legislation.
The WCBQ should take on the role of a regulatory body administering the Act only.

COLIN RAPH
State Claims Manager Queensland

122

01 MAY 1996

Group Insurance & Operational Risk

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Melbourne
Victoria 3001

29 April, 1996

Inquiry Into Workers Compensation
and Related Matters In Queensland
GPO Box 374
BRISBANE QLD 4001

Dear Sir

We refer to the call for submissions and in particular the terms of reference for the inquiry.

The National Australia Bank is a self insurer in all states and territories in Australia except Queensland. Licences have been held in the major states since the late 1920's.

During the period 1985 to 1990 workers compensation legislations in all states and territories underwent substantial change with higher benefits and more emphasis on rehabilitation as well as the prevention of workplace injuries. The National Australia Bank maintained it's self insurance licences during this period and whilst the government schemes in Victoria, New South Wales and South Australia reported a high blowout in the cost of the schemes, which in turn resulted in billions of dollars in unfunded liabilities, the Bank was able to maintain a viable system for less than would have been payable by way of levy or premium charges.

A self insurer is able to maintain a scheme more efficiently due to having a smaller portfolio of claims to deal with, staff details are fully known, the availability of and details of return to work duties are readily available and can be quickly conveyed to the injured worker and treating doctor. Full details of the injured worker's condition are contained on the claim file thereby making modification of duties or return to work duties a simpler task. We are also of the view that as a self insurer, the Bank has been able to give prevention of injuries a higher profile and this in turn has reduced the risk.

From the injured employee's point of view, we believe that claims can be determined quicker and the benefits can also be delivered quicker and more efficiently. As mentioned earlier, by identifying return to work duties earlier, the worker is able to be rehabilitated back into the workplace earlier and it has been demonstrated that return to work is the best form of treatment. Payment of weekly benefits can be made directly to the worker via the Bank's computerised salary system and the worker will therefore not be disadvantaged as a result of their work related injury.

..../2

We therefore submit that self insurance is a more efficient way to deal with work related injuries than a sole government insurer and we also believe that it is more efficient than a multiple private insurer system.

We would be more than willing to provide further information or comment to the inquiry as is deemed appropriate.

Yours faithfully

Glenn Mitchem
Manager
Workers Compensation

01 MAY 1996

MRAEL
GROUP TRAINING COMPANY A.C.N. 010 617 044

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OFFICES IN: • MACKAY • WHITSUNDAY • DYSART

23

Our Ref: RP\65.00\DO
Date: 29 APRIL 1996

Mr Jim Kennedy
Inquiry Commissioner
GPO Box 374
BRISBANE 4001

Dear Mr Kennedy,

INQUIRY INTO WORKERS COMPENSATION

Mackay Region Apprentice Employment Ltd makes the following submission to the inquiry into Workers Compensation and related matters in Queensland and asks the inquiry to consider the following points under the terms of reference.

3.(C) Employees be required to take out additional insurance with the Workers Compensation Board at employees expense. A commitment from employees may make them more safety conscious.

4.(G)(i) Common law claims should be limited to a maximum of say $200,000.

4.(G)(ii) An independent arbitrator at a fixed cost should assess common law claims and eliminate the need for the involvement of the legal profession at high costs and long delays in settlements.

5. Remove back and stress related claims which are currently being abused.

As a Group Training Company employing approximately 500 Apprentices and Trainees, we are aware that the employee must be protected by Workplace Accident Insurance. However the increasing cost to employers, as indicated by the changes to the Act which came into effect 1 January 1996, must be addressed.

Yours faithfully,

Kim Wilson
OPERATIONS MANAGER

A MEMBER OF GTA GROUP TRAINING AUSTRALIA
Queensland & Northern Territory Inc.

01 MAY 1996

(24)

M/s 1017,
Biloela 4715.

26/4/96.

The Enquiry into Workers C mpensation

Dear Sirs,

The problems facing Workers Compensation can be divided Into 3 aspects.

1. The employee who sees the system as a fat cow to be milked for all be can get.

2 the employer , who doesnt give a damn be/is protected by the Board.

3 the Board which seem to facilitate both the above.

The employee. Australians live in a paradise where it can never happen to them. Thay neglect safety and when an accident happens they fall onto a feather bed provided by Compensation. 90% of so called accidents are employee caused, caused either by their own careless ness or their willingness to work in unsafe conditions.

The employee makes no visible contribution to compensation. They never seem to realise that if an employer pays 5% of their wages into compensation that is 5% less that is available to them in the form of wages. If the levy showed on their wage sheetas a deduction from their wages even with a compensatory wage increase, they should become more accident conscious. After all it should be only fair for the employee to insure himself for his own folly.I have been on many so called safety committees as a Commonwealth Veterinary Officer. These committees are often referred to as Committees to protect Idiots from their own stupidity.

The employee has at present the choice of common law claims withthe knowlege that if the claim fails he can fall back on the system . He cant loose. I think it should be that one excludes the other : If a common law claim is made the claimant forfeits all rights under normal pay outs. If memory serves me right this was the system in the early forties.

The Medical syatem also encourages claim, One Doctor of my acquantance regularly asked butchers with knife wounds "how long do you want off" when filling in accident claims.

The Employer: Many employers have the attitude :Ipay into the system why shouldnt my employees claim " After all it costs less for an employee to go onto compo than sick leave. Since each individual injury costs the employer nothing diectly there is no pressure on the employer to try to reduce accidents.

The Board. the attitude seems to encourage the above. I cannot remember the Board ever attempting to recover costs from any party who se carelessness caused the accident.A theoretical case would be a truck driver injured in a road accidentwhere he would would be eligeable for third party insurance rather than workers compensation. If he claimed workers comp does the Board take action to recover its coats from the Insurer. In some of the major claims A pension is more approriat than a lump sum payout.

The present legal attitude is interesting. The concept that if the case is unsuccessful there is no fee. As a Veterinary Surgeon the legal advice to me was that if if I did not charge afee when the animal died I was admitting that I had been negligentand therfore liable to legal claims for such.

The above aspects could be applied to the Moura Disaster If the media facts are taken as published. The actual enquiry results are not available to me. At the enquiry several employees admitted that they had not carried out the safety procedures that were available. The suervisors likewise There appeared to be no emphasis placed by mine management to insist that safety be observed. The union failed to insist that safe working conditions prevailed. The Directers failed in their duty toensure their mine manager insisted on safety procedures be observed. The Mines Inspection Officers did likewise. What happens all the people responsible for the disaster are ignored because The Company has Workers Compensation. A common law claim will be made and met by the compo fund.and the same conditions will continue to go on because the people responsible

Do not have to pay. This basically is the reason why there have been more than one mine disaster at Moura.

The present system encouages accidents. The answer is in making those responsible pay the piper. The new Health and Safety Acts appear to be a step in the right direction. Provided they are enforced.and are not like the Mines Acts in the case of Moura.

My Experience is based on employing labour in our own businesses. Some small time spent in my youth administering workers comp at a Court House. As a member of safety committees on Meatworks as a Commonwealth Veterinary Officer. Attendance and Completion of a course on Workplace Rehabilitation as part of the Compensation process.

Yours Faithfully

A.R. Wells B.V.Sc., Grad DIP of Bus.

01 MAY 1996

125

James Hardie Pipelines

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& Pipelines Pty Limited
ACN 000 835 629

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Gladesville NSW 2111, Australia

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Fax (02) 817 4632

Inquiry into Workers' Compensation
& Related Matters in Queensland
GPO Box 374,
BRISBANE QLD 4001

29 April 1996

Dear Mr Kennedy

James Hardie Pipelines are continually striving toward excellence in business performance. To safeguard sound decisions for both our business and our employees, we actively undertake Workers' Compensation claims management in all States. In Queensland however, we have been particularly frustrated in our efforts to administer and manage our Workers' Compensation claims. We believe there are fundamental faults with the system currently in place in Queensland and have outlined below some of the issues which continually thwart our efforts to manage our claims in an efficient and sound manner .

1. We attend formal Workers' Compensation Claims reviews, at least quarterly, with our insurers in all States other than Queensland. It has been our experience that the Claims Review enables sound claims administration and an opportune forum for claims direction. WCBQ are unable to fulfil this service in an official capacity. There is no clear reasoning from WCBQ, other than it is not part of their service.
2. We are unable to rely on advices received from WCBQ Claims Officers. The quality of their advice is extremely variable in content and quality. This situation is further compounded by the reluctance of Claims Officers to provide written documentation of their advice when requested by our organisation.
3. That WCBQ are unable to allocate a James Hardie Pipelines dedicated claims officer continually creates unnecessary and lengthy delays in claims enquires and management. The current system of allocation of Claims Officer by claimant surname and address is, from our perspective, completely unworkable.
4. Recent changes to existing Workers' Compensation Legislation requires the employer to pay the first five days of lost time through injury. Letters confirming liability status are to be issued by WCBQ. We are assured by WCBQ that liability of an undisputed claim is decided within seven days of receipt of the claim. In reality, we have yet to receive written confirmation of liability status by WCBQ since these changes were introduced. Telephone enquiries in this regard to WCBQ are met with incredulity from Claims Officers. The general consensus being "they would never get anything done if they were to respond in writing to every claim" received.
5. Queensland Legislation currently fails to address Occupational Rehabilitation as normal practice and expectation following work place injury. We have a proactive and progressive Occupational Rehabilitation procedure at James Hardie Pipelines which has been implemented throughout our business locations. The focus of our rehabilitation procedure is to support early return to work in a manner consistent with medical advice.

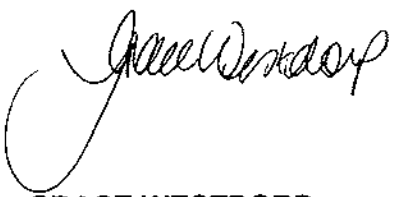
Our efforts to influence participation in occupational rehabilitation and the associated potential positive outcomes, have been hampered by current Queensland legislation which does not intrinsically address early return to work following workplace injury. We believe mandatory employee participation is appropriate when a suitable occupational rehabilitation program is proposed. It is well documented that early return to work is of critical importance to successful rehabilitation. Changes to existing legislation should reflect positive influences for return to work outcomes. We strongly recommend compulsory participation in appropriate early return to work programs. Further, that this Inquiry consider cessation of benefit entitlements as a means of influencing the employee to co-operate in approved Occupational Rehabilitation programs.

6. With regard to the most appropriate accident insurance in Queensland, it is our opinion that the allocation of "Fund Managers" of Workers Compensation monies as in NSW, Victoria and South Australia, appears to be the most equitable system. Insurance Agents as the Fund Managers receive their remuneration through successful audits conducted by the Statutory Authority. This system encourages efficient in-house administration of claims by the Agent and supports active claims management by the employer. The employee equally has opportunity for redress if there is claims administration dissatisfaction with either Insurer or Employer.

7. In our experience, determination of Premium calculation which directly reflects claims experience (as opposed to an Industry Rating) creates greater incentive for efficient management of claims by both Insurer and Employer. This method of calculation of Workers' Compensation Premium also induces significant focus on proactive occupational rehabilitation and in turn, a general reduction in overall cost to business and insurer.

In conclusion, we are of the view that significant changes to Workers' Compensation are required to ensure quality of service which meets the needs of the community in Queensland

Yours faithfully



GRACE WESTDORP
Rehabilitation & Health
Management Co-ordinator

FOR AND ON BEHALF OF:

PETER COWAN
Executive General Manager

SUBMISSIONS BY OXLEY HEALTH PROFESSIONALS PTY LTD TO THE INQUIRY INTO WORKERS' COMPENSATION AND RELATED MATTERS IN QUEENSLAND

April 1996

CONTENTS:

1.0 EXECUTIVE SUMMARY

2.0 SUMMARY OF RECOMMENDATIONS

3.0 BACKGROUND
- 3.1 Direction of the submissions
- 3.2 Oxley health professionals Pty Ltd

4.0 CLASSIFICATION/RATES
- 4.1 Submissions
- 4.2 Recommendations

5.0 DEMERIT CHARGES
- 5.1 Submissions
- 5.2 Recommendations

6.0 LABOUR HIRE AGENCIES
- 6.1 Submissions
- 6.2 Recommendations

7.0 RIGHT TO DAMAGES.
- 7.1 Submissions
- 7.2 Recommendations

8.0 PAYMENT FOR THE FIRST 5 DAYS
- 8.1 Submissions
- 8.2 Recommendations

9.0 CONCLUSION

10.0 REFERENCES

APPENDICES

1. Copy of the notice that appeared in the Weekend Australian on March 16-17 1996.

2. List of licensed private employment agencies including Oxley Health Professionals Pty Ltd as at 1st June, 1995 under the Private Employment Agencies Act 1983 -1985.

EXECUTIVE SUMMARY.

1.0 These submissions are the views of Oxley Health Professionals Pty Ltd, a licensed private employment agency under the Private Employment Agencies Act 1983 - 1985.

Further more, the submissions are as a consequence of specific issues impacting on Oxley Nursing Service, the principal division of the organisation.

Significantly, these submissions highlight the unique status of labour hire agencies under the Workers' Compensation Act in that whilst they cannot direct how the work is to be carried out they are deemed to be the employer.

The recommendations made herein seek to introduce a degree of fairness and additional options for labour hire agencies such as Oxley Health Professionals Pty Ltd.

2.0 SUMMARY OF RECOMMENDATIONS

1. That the premium rates levied on nursing employment agencies accurately reflect the diversity of the placements.

2. That where nursing employment agencies do not direct how the work is to be performed they are not to be penalised with demerit charges.

3. That demerit charges become the responsibility of the particular client organisation.

4. That Section 8.(4) be amended to provide for an agency to be excused from the payments of premiums for Workers' Compensation where the client organisation desires to accept this responsibility.

5. That Section 90 be amended to provide an exception for those labour hire agencies who cannot control how the work is to be performed.

6. That when nursing agencies do not direct how the work is to be performed they are not to be penalised with the payment of the first 5 days.

7. That the payment of the first 5 days becomes the responsibility of the particular client organisation.

3.0 BACKGROUND

These submissions are in response to the publicity that there would be an Inquiry into Workers' Compensation related matters in Queensland.
Appendix 1 is a copy of the notice that appeared in the Weekend Australian of March 16 - 17 1996.
There is evidence that the use of labour hire agencies is increasing and it is submitted that the issues addressed in these submissions are both relevant and important to this Inquiry.

3.1 DIRECTION OF THE SUBMISSIONS.

This presentation by Oxley Health Professionals Pty Ltd will be directed towards the issues that particularly relate to it's role as an employment agency in the health sector, categorised under the Workers' Compensation classification "Nursing Homes and Nursing Services (excluding home nursing services)" (Code No 355004).

3.2 OXLEY HEALTH PROFESSIONALS PTY LTD.

Oxley Health Professionals Pty Ltd has the following trading and non-trading divisions:-

* Oxley Nursing Service
* Oxley Health Personnel
* Oxley Home Care
* Oxley Training Service

Oxley Training Service currently has the role of providing free training to nurses enrolled with Oxley Nursing Service. The emphasis of training is towards competency based modules. A core group of courses focus on

CONT'D

3.2 Workplace Health and Safety issues (eg: back care, risk assessment etc.)

Oxley Nursing Service is the main arm of the Company and is primarily a provider of supplementary staffing (on-call/casual workers) to hospitals. Some work is provided for Nursing Homes or non-hospital sites.

The submissions made to this Inquiry are as a consequence of specific issues imparting on Oxley Nursing Service.

Oxley Health Professionals Pty Ltd is a licensed private employment agency under the Private Employment Agencies Act 1983 - 1985 (Licence number 4727).

To assist this Inquiry in understanding the full breadth of the recruitment industry in this state, Appendix 2 sets out the list of licensed private employment agencies as at 1st June, 1995 under the Private Employment Agencies Act 1983 - 1985.

In addition Oxley Health Professionals Pty Ltd is a member of the following peak organisations who are also making submissions to this inquiry:-

* The National Association of Personnel Consultants, Queensland Branch (NAPC).

* The Queensland Chamber of Commerce and Industry (QCCI).

4.0 CLASSIFICATION / RATES

The Workers' Compensation Regulation 1992 contains a comprehensive Schedule of Rates. These rates flow from Section 9 of the Regulation providing for the "Assessment of premium". In this Schedule, "classification" is defined as :- ".....in relation to an industry or business, means a classification or sub-classification of industry or business set out in column 2 of the table."

"Rate" is defined as:- ".....means the rate of premium payable for insurance under the Act set out in column 3 of the table."

Recently a 10% levy has been imposed on the figures quoted in the Schedule of Rates. The figures quoted in this submission do not include this levy.

4.1 SUBMISSIONS

At the present time, Oxley Nursing Service is levied a premium at the rate of $4.40 ie: the classification of "Nursing homes and nursing services (excluding home nursing services)" (Code No 355004)

A perusal of the Schedule of Rates shows the following classifications:-

Code No.	Classification	Rate $
132003	Benevolent institutions and home nursing services	2.77
279005	Hospitals (public and private) and training homes for nurses (also see nursing)	1.93

CONT'D

4.1 The rate of $4.40 is extremely high in comparison with $2.77 and $1.93 and does not recognise that with some nursing employment agencies, nursing homes would be a very minor component of the recruitment services provided by an agency.

The overwhelming majority of nurses enrolled with Oxley Nursing Service are registered with the Queensland Nursing Council, the registering authority of nurses in Queensland. Therefore, the majority of nurses enrolled with Oxley Nursing Service have undertaken an accredited course, recognised by the Queensland Nursing Council for registration purposes, or have maintained sufficient work experience to maintain annual registration.

It is stated that due to the requirements for registration in the state of Queensland and for the other states of Australia, that nurses are constantly exposed to Workplace Health and Safety issues within the Public and Private sector hospitals. Nursing services/agencies enrol therefore a group of personnel that have an insight into the issues involved.

As Oxley Nursing Service acts as an outsourced provider of services it is argued that the rate of Workers' Compensation charged is at variance to other labour hire agencies by way of charging more to the service provider than to the end user of the service. Hospitals are institutions, as are Nursing Homes, who have Policies and Procedures in place for Workplace Health and Safety with reporting and action mechanisms in place to deal with site issues.

CONT'D

4.1 It is submitted that a global rate of $4.40 is inequitable in those situations where nursing homes form a minor part of the recruitment activity.

It is further submitted that it would be fairer if the premium rates levied could be sufficiently flexible to recognise the diversity of the placements.

4.2 RECOMMENDATION

That the premium rates levied on nursing employment agencies accurately reflects the diversity of the placements eg:

Public/Private Hospitals	$1.93
Nursing Homes	$4.40

5.0 DEMERIT CHARGES

Section 13A.(1) provides:-

"Demerit charges are made on an employer's policy for a period of insurance if during the period, the amount of compensation payable to or for the employers workers is 75% or more of the amount payable as premium by the employer for the period."

Section 13(A) also provides for the various demerit charges to be made on an employer's policy.

5.1 SUBMISSIONS

Oxley Nursing Service recruits personnel for client organisations on the following basis:-

(a) A commission only arrangement where the client organisation insists on remunerating the employee as well as paying the premium for workers' compensation.

(b) A total service where the agency pays the employee direct and in addition pays the premium for workers' compensation Client organisations prefer the total service because administration responsibilities are provided for by the agency.

In respect of (a) above, it should be noted that where the client organisation is a public or private hospital the premium paid by that hospital would be at the rate of $1.93 but in (b), because the agency has the responsibility, the premium is at the higher rate of $4.40. This inequity has already been addressed in Section 4 of these submissions.

CONT'D

5.1 The issue for Oxley Nursing Service is that where personnel are provided for client organisations, the agency has no control over the work site. ie: the agency cannot effectively provide for safe workplace activities as required under the Workplace Health and Safety Act 1995. In other words, the client organisation directs how the work is to be performed.

However, the agency is still penalised under the demerit system even though it cannot directly influence the workplace activities.

In a competitive market place agencies may be required by client organisations to specifically price the component of workers' compensation ie: $4.40. In addition, it is difficult for an agency to globally require higher premiums from client organisations when the market rate is known.

It is submitted that it is inequitable for a nursing employment agency to be penalised with demerit charges where it cannot effectively provide for safe workplace activities.

It is further submitted that demerit charges should become the responsibility of the particular client organisation.

5.2 RECOMMENDATIONS

That where nursing employment agencies do not direct how the work is to be performed they are not to be penalised with demerit charges.

That demerit charges become the responsibility of the particular client organisation.

6.0 LABOUR HIRE AGENCIES

Why does the Workers' Compensation Board charge service providers for Premiums? Because Employment Agencies are 'deemed' to be the employer. Easily administered but not fair and equitable.

Section 8.(4) of the Worker's Compensation Act 1990 provides that:-
"A labour hire agency that arranges, for reward, for a worker who is party to a contract of service with the agency to do work for someone else continues to be the worker's employer while the worker does the work for the other person under an arrangement made between the agency and the other person".

This Section was effective as from 1 December 1994 and was inserted to clarify the status of labour hire agencies with respect to their liability as employers.

In effect, it deems labour hire agencies to be employers even though they cannot direct how personnel are to carry out work for a client organisation.

6.1 SUBMISSIONS

Oxley Nursing Service along with other labour hire agencies are covered by this provision where the agency undertakes to directly pay the personnel on behalf of the client organisation.

As the provision now stands, it does not give an agency the option of paying the wages and having an agreement with the client organisation that the responsibility of workers' compensation lies with the client organisation.

CONT'D

6.1 This would be a less costly option for a client organisation such as a private/public hospital as the premium would be the lower level of $1.93 instead of the hight rate of $4.40.

It is submitted that Section 8.(4) should be amended to provide for an agency to be excused for the payment of premiums for workers' compensation where the client organisation desires to accept this responsibility.

6.2 RECOMMENDATION

That Section 8.(4) be amended to provide for an agency to be excused from the payment of premiums for workers' compensation where the client organisation desires to accept this responsibility.

7.0 RIGHT TO DAMAGES

Section 90 of the act prescribes:-
"If in respect of an injury suffered by a worker there is -

(a) an entitlement to compensation under this Act; and

(b) a right of action against the worker's employer or other person to recover damages independently of this Act;

a claim for compensation under this Act may be made and proceedings to recover such damages may be taken but an entitlement to such compensation does not exist at any time, or in respect of any period, after judgement for damages is given or settlement is agreed in such proceedings."

In respect of (b) it would appear that an employee could take action against a labour hire agency as an employer in terms of Section 8.(4) even thought the agency may not be able to direct how the work is to be performed as is the case in a normal employer/employee relationship.

7.1 SUBMISSIONS

Where Oxley Nursing Service does not control how the work is to be performed it seems inequitable that Section 90 of the Act contemplates a right of action against the agency in those circumstances.

It is submitted that Section 90 should be amended to provide an exception for those labour hire agencies who cannot control how the work is to be performed.

7.2 RECOMMENDATION

That Section 90 be amended to provide an exception for those labour hire agencies who cannot control how the work is to be performed.

8.0 PAYMENT FOR THE FIRST 5 DAYS

Recently, employers are now liable to pay an injured worker for the first 5 days of workers' compensation. It would appear that a labour hire agency cannot be excused from this requirement irrespective of whether the agency directs how the work is to be performed or not.

8.1 SUBMISSIONS

Once again, it is inequitable that nursing employment agencies such as Oxley Nursing Service should bear this cost where they cannot direct how the work is to be performed.

Similar to the demerit charges it is submitted that the payment for the first 5 days should become the responsibility of the particular client organisation.

8.2 RECOMMENDATIONS

That where nursing employment agencies do not direct how the work is to be performed they are not to be penalised with the payment of the first 5 days.

That the payment of the first 5 days becomes the responsibility of the particular client organisation.

9.0 CONCLUSION

Significantly, these submissions highlight the unique status of labour hire agencies under the Worker's Compensation Act in that whilst they cannot direct how the work is to be carried out they are deemed to be the employer.

The recommendations made herein seek to introduce a degree of fairness and additional options for labour hire agencies such as Oxley Health Professionals Pty Ltd.

10.0 REFERENCES

Private Employment Agencies Act 1983 - 1985

Workers' Compensation Act 1990

Workers' Compensation Regulation 1992

Workplace Health and Safety Act 1995

APPENDIX 1.

INQUIRY INTO WORKERS' COMPENSATION

& Related Matters in Queensland

CALL FOR SUBMISSIONS

The Minister for Training and Industrial Relations, The Hon. Santo Santoro MLA, has established a public Inquiry into Workers' Compensation and related matters, to be held under the Commission of Inquiry Act (1950) and headed by Mr Jim Kennedy AO, CBE, D.Univ.

Terms of Reference for the Inquiry are:

1. Review the current objects of the Workers' Compensation Act 1990 to determine their relevance to the needs of the Queensland community.
2. Report on whether the present system of accident insurance in Queensland provides adequately for these objects as follows:
   (a) Providing the maintenance of a system of accident insurance providing adequate and suitable cover for workers who suffer injury and for dependants of workers whose death results from injury;
   (b) meeting the needs of workers and dependants mentioned in paragraph (a) including the need for adequate income and appropriate medical treatment;
   (c) seeking the participation of injured workers in suitable rehabilitation programs with a view to their early return to productive work;
   (d) encouraging safety in industry;
   (e) protecting the interests of employers in relation to claims for damages because of injury to a worker; and
   (f) providing for the efficient and economic administration of the system of accident insurance referred to in paragraph (a).
3. Without limiting the scope of the above, report on the most appropriate accident insurance delivery methods for Queensland, in particular:
   (a) the advisability of the Board's role as a sole insurer;
   (b) the advisability of the Board's role as both a regulator and service deliverer; and
   (c) what other systems of accident insurance could better achieve the objects.
4. Report on:
   (a) the role and structure of the Board;
   (b) whether there is adequate incentive to encourage safety in industry, including a review of the effectiveness of the merit bonus/penalty system;
   (c) any necessary or desirable changes to the relationship between the Workers' Compensation Board and the Division of Workplace Health and Safety;
   (d) the most appropriate system for determining premiums;
   (e) the adequacy of statutory benefits paid to injured workers and the dependants of deceased workers;
   (f) the efficiency and cost effectiveness of the current provisions for the delivery of rehabilitation services; and
   (g) the effectiveness of the current damages claims system, including but not limited to:
      (i) whether damages claims should be determined within the existing court system or by a dedicated court system;
      (ii) whether procedures for the handling and administration of damages claims are adequate and what changes, if any, are necessary and desirable to better administer these claims; and
      (iii) the impact on the Workers' Compensation Scheme of restrictions being placed upon advertising by the legal profession for accident insurance business.
5. Report on any other issues impacting on the operation, viability, efficiency and effectiveness of the Queensland Workers' Compensation system.
6. Make an assessment of the implications of proposed/recommended changes to the accident insurance scheme on Queensland's position as a low tax State for business.

Interested parties are invited to make submissions in writing on all or any of the Terms of Reference listed above to the Inquiry by 30 April 1996.

Submissions will be on the public record and should be addressed to:

Inquiry into Workers' Compensation & Related Matters in Queensland
GPO Box 374, BRISBANE Q 4001

IWC2860

APPENDIX 2.

DEPARTMENT OF EMPLOYMENT, VOCATIONAL EDUCATION, TRAINING AND INDUSTRIAL RELATIONS

LIST OF LICENSED PRIVATE EMPLOYMENT AGENCIES UNDER THE PRIVATE EMPLOYMENT AGENCIES ACT 1983-1985

AS AT 1 JUNE 1995

ALL LICENCES EXPIRE ON 31 MAY 1996

NAME	PLACE OF BUSINESS AT OR FROM WHICH BUSINESS IS OR IS TO BE CARRIED ON	LICENCE NO.
Grahame Thomas Abberton, nominee for Grahame Thomas Abberton and Janet Lynette Abberton, trading as Abberton Business Communications	146 Tourist Road Toowoomba, 4350	4468
Heather Fay Allgood, nominee for Heather Fay Allgood & Karen Maree Allgood, trading as Allgood's Model Agency	21 Ross River Road, Rising Sun, Townsville, 4810	4668
William Thomas Andrew, nominee for Network Australia Organisational Consulting Group Pty Ltd, trading as Network Australia	Level 4, 80 Petrie Terrace, Brisbane, 4000	4435
Gary William Archbold, trading as Research Temps	41 Somerwell Street, Annerley, 4103	4600
Cretun George Astras nominee for Power Entertainment Australia Pty Ltd	Level 5, 140 Bundall Road, Bundall, 4217	4430
Anthony Arthur Auckland, nominee for Three Hens & a Her Pty Ltd, trading as Kohler Auckland Management	78 Enoggera Terrace, Paddington, 4064	4851
Jodi Karen Bache, nominee for June Dalby-Watkins Pty. Ltd.	6th Floor, Jetset Centre, 288 Edward Street, Brisbane, 4000	4771
Raewyn Teresa Bailey, nominee for R B Recruitment Pty Ltd, trading as R B Recruitment	Level 18, 307 Queen Street, Brisbane, 4000	4484
Christine Gail Bagnall trading as Entertainment Widehay	59 Maree Street Torquay, 4655	4687
Gary John Ballinger, nominee for Industrial Manpower Pty Ltd	470 Upper Roma Street, Brisbane, 4000	4397
Linda Fay Bamford, trading as Ford Personnel	Level 3, 38 Cavill Avenue, Surfers Paradise, 4217	4489
Kathleen Mary Barnett, trading as Business and Vocational Employment	Shop 4, Phoenix House, Violet Street, Redcliffe, 4020	4896
Grant Peter Bartlett, nominee for Ensue Pty Ltd, trading as Touring Artist Services	157 Ricketts Road, Ransome, 4154	4478
Loraine Sandra Bayley, nominee for Legal-Ease Pty Ltd	Level 21, Lennons Plaza, 66 Queen Street, Brisbane, 4000	4559
Loraine Sandra Bayley, nominee for Corporate Resource Group Pty Ltd	Level 21, Lennons Plaza, 66 Queen Street, Brisbane, 4000	4606
Adrianne Becker, as nominee for the Cubic Zirconia Trust, trading as Executive Home Duty Service	12-14 Lambus Street, Palm Cove, 4879	4493
Brian Lawrence Beckett, nominee for Workpower Personnel Company Pty Ltd	77 Ingham Road, Townsville, 4810	4642
June Elizabeth Bell trading as Interstate Locum Services	67 Juliette Street, Annerley, 4103	4432
Philip John Bellis, nominee for Wrenbond Pty Ltd, trading as Whitsunday Recruitment Services	7 Dixon Place, Cannonvale, 4802	4464
John Albert Bennett, trading as Salvation Army Employment 2000 Skillshare	46 Arthur Street, Fortitude Valley, 4006	4950
Laurel Margaret Benson, trading as Mackay Secretarial Services	Shop 5, Imperial Arcade, 73 Victoria Street, Mackay, 4740	4852
Alma Dorothy Berigan, nominee for Alma Dorothy Berigan & Kevin Berigan, trading as All Coast Nurses	24 Ernest Street, Labrador, 4215	4490
Yvonne Margaret Berry, trading as Care Time-In Home Respite Service	31 Knutsford Street, West Chermside, 4032	4876
Raymond Stanley Best, nominee for Mount Gravatt College of TAFE	1030 Cavendish Road, Mount Gravatt, 4122	4703
Helen Rita Bichel, nominee for Queensland Health Care Services Pty Ltd	39 Nix Street, West End, Townsville, 4810	4465
Gavin James Bird and Patricia Karen Bird, nominees for Miengrove Pty Ltd trading as Brisbane Nannies and Housekeepers	19 Railway Avenue, Indooroopilly, 4068	4927
Gail Bishop, trading as Kanzma Hospitality	18 Wewak Street, Mount Isa, 4825	4498
Cullen Black, trading as Independent Entertainment Services	Unit 1, 23 Sixth Avenue, Palm Beach, 4221	4477
Julie Ann Blahuta trading as Julie Blahuta Services	Level 21, AMP Building, 10 Eagle Street, Brisbane, 4000	4496
Brendan John Albert Boenning, nominee for Computer People Pty Ltd	265 Coronation Drive, Milton, 4064	4491
Paul Anthony Bosa, nominee for Grass Roots Pty Ltd, trading as Workabout	221 Juliette Street, Greenslopes, 4120	4479
Paul Anthony Bosa, nominee for Evenco Pty Ltd as Trustee for the Evenco Unit Trust	221 Juliette Street, Greenslopes, 4120	4481
Wallace George Bowden trading as Bowden Computer Placements (Qld) Pty Ltd	33 Sanders Street Upper Mount Gravatt, 4122	4718
Heather Lorraine Bowen, trading as Heather Bowen Personnel & Business Services	Suite 2, 1st Floor, Karingal Arcade, 382/384 Ruthven Street, Toowoomba, 4350	4643
Michele Boyle, trading as Able Aunts	34 Yarrawee Drive, Nerang, 4211	4934
Allan George Charles Brathy, trading as Catering Trade Staff	4th Floor, Shaw Arcade, 385 Flinders Mall, Townsville, 4810	4878
Alan John Bridgeman, trading as Gladstone Secretarial Services	196 Beckinsale Street, Gladstone, 4680	4466
Peter Jon Kenyon Broadhurst, nominee for Mackay Region Apprentice Employment Ltd	5-7 Tennyson Street, Mackay, 4740	4800
Terry Brockhall nominee for Dunhill Management Services Pty Ltd	Level 14, 500 Queen Street, Brisbane, 4000	4742
Nadine Elyse Brott, nominee for Dial An Angel Pty. Limited, trading as Home Treasures	Suite 19, Floor 4, Kaybank Plaza, 33 Scarborough Street, Southport, 4215	4755
Nadine Elyse Brott, nominee for Dial An Angel Pty. Limited	3/21 Station Road, Indooroopilly, 4068	4607
Nadine Elyse Brott, nominee for Dial An Angel Pty Ltd, trading as The Original Dial an Angel	3/21 Station Road, Indooroopilly, 4068	4938
Agnes Mary Brown, trading as Checkmate Introduction Agency	Suite 9a, Kings Court, 203 Kings Road, Pinkenba, 4812	4641
Judith Lynette Brown trading as The Casting Couch	Level 1, VACC House, 14 Cribb Street, Milton, 4064	4675
Meryn Elisabeth Brown, nominee for Rundyn Pty Ltd, trading as Charlton Brown Nanny College	221 Bonney Avenue, Clayfield, 4011	4384
Darryl Benfield Burrows, nominee for The Michael Weston Organisation Pty Ltd	942 South Pine Road, Everton Hills, 4053	4492
Malcolm Peter Burrows, nominee for Malcolm Burrows Enterprises Pty Ltd, trading as Vision Human Resources	Level 5, 139 Leichhardt Street, Spring Hill, 4004	4400
John Edward Bushell, nominee for Downing Teal Contract Employment Pty Ltd	11th Floor, 80 Albert Street, Brisbane, 4000	4634
Martin James Buzza, nominee for Martin James and Margaret Doreen Buzza, trading as Company Solutions	29Mayne Road Bowen Hills, 4006	4919
Eivor Bylund, trading as Kelly Recruitment Consultants and Kelly Temporary Services	2nd Floor, 71 Adelaide Street, Brisbane, 4000	4689
Eivor Bylund, trading as Kelly Recruitment Consultants and Kelly Temporary Services,	Suite 4, Level 3, Seabank Centre 12-14 Marine Parade, Southport, 4215	4688
Alan Frederick Camp, trading as Patal Management Services Pty Ltd	437-441 Ford Road, Rochedale, 4123	4551
Alan Robert Carroll, nominee for Alan Robert Carroll and Jane Christine Carroll, trading as Song & Dance Entertainment Service	22 Price Lane, Buderim, 4556	4392
Michael Bernard Carroll, nominee for Carroll Consulting Group Pty Ltd	Level 25, Lennons Plaza, 66 Queen Street, Brisbane, 4000	4611
Gregory John Cartagena, nominee for Creative Talent Enterprises (Australasia) Pty Ltd, trading as Creative Talent Enterprises	Unit 11, 204 Alice Street, Brisbane, 4000	4601
James Andrew Cartwright, trading as Trump Promotions & Management	6 Fitzwilliam Street, Carrara, 4211	4917
Alan Brooksley Casey, trading as All Occasions Entertainment	Shop 17, Market Town Shopping Centre, 390 Kingston Road, Slacks Creek, 4127	4892
Ian Lindsay Caulton, nominee for Recruitment Solutions Pty Limited, trading as Temporary Solutions	Level 17, 307 Queen Street, Brisbane, 4000	4713
Norman Vincent Channer, trading as Queensland Meat Traders Employment Service	8 Hall Street, Chermside, 4032	4433
Dorothy Hannah Channer, trading as Queensland Meat Traders Employment Service	8 Hall Street, Chermside, 4032	4431

NAME	PLACE OF BUSINESS AT OR FROM WHICH BUSINESS IS OR IS TO BE CARRIED ON	LICENCE NO.
Jane Frances Cheke, trading as Downs Home Help and Child Care Agency	253 Herries Street, Toowoomba, 4350	4508
June Clare Chetcuti, nominee for June Clare Chetcuti and David Paul Chetcuti, trading as The Finishing Touch, Model and Promotion Agency	53 Gregory Street, Mackay, 4740	4549
Pamela June Rose Chittenden, trading as P.J.R. Modelling Agency	18 J Hickey Avenue, Gladstone, 4680	4470
Anna Marie Churchill, nominee for Anna Marie Churchill and Paul Anthony Morgan trading as A & P Mega Entertainment	42 Mukune Street, Jindalee, 4074	4931
Bernice Claire Clark, nominee for K.M.L Pty Ltd, trading as Musicians' Union of Australia (Brisbane Branch)	5 Prospect Street, Fortitude Valley, 4006	4471
John Clark, nominee for Forestaff Pty Ltd trading as Forestaff	4/655 Sherwood Road, Sherwood, 4075	4956
Graham Bruce Clelland, nominee for Price Waterhouse Urwick, Management Consultants	Level 10, Waterfront Place, 1 Eagle Street, Brisbane, 4000	4762
Suzanne Lorraine Crain, nominee for BrainTem Pty Ltd trading as SC Management Consulting	Piranha Chambers, 168 Denison Street, Rockhampton, 4700	4946
Terence George Cogger, trading as Ajanta Entertainment Promotions	144 School Road, Kallangur, 4503	4476
Anthea Patricia Collier, nominee for Select Appointments Pty Ltd	Level 6, 157 Ann Street, Brisbane, 4000	4842
Craig Kendall Collins, trading as Collins & McKenzie Agencies	41 Kersley Street, Kenmore, 4069	4926
Nicola Ann Collins, trading as Dove Personnel	Suite 10, 1st Floor, 65 Currie Street, Nambour 4560	4884
Roberta Jamie Greaswell Crok, nominee for Townsville Personnel Pty Ltd	Suite 111/112, 1st Floor, T&G Building, 102 Stanley Street, Townsville, 4810	4816
Keith Bertram Cooper, nominee for Pannell Kerr Forster	Level 21, 307 Queen Street, Brisbane, 4000	4553
Ross John Cooper, nominee for Trinity Consulting Group	Suite 77, Level 24, AMP Building, 10 Eagle Street, Brisbane 4000	4918
Moya Joan Cooper, trading as Overlanders Entertainments	72 Sixth Avenue, Railsworth, 4065	4475
Terence Vincent Corbett, nominee for Strumec Pty Ltd, trading as Strumec Drafting	127A Fernvale Road, Tarragindi, 4121	4520
Tom William Corbett trading as Tom Corbett's Entertainments	10 Mitchell Street, Lawnton, 4501	4759
Peter John Cornish, nominee for Downing Teal Pty Ltd	Level 11, 80 Albert Street, Brisbane, 4000	4513
Stuart William Cotton, nominee for Entec Pty. Limited	55 Little Edward Street, Spring Hill, 4000	4482
Stuart Charles Coward trading as Imperial Hospitality	Unit 1/81 Sixth Avenue Maroochydore 4558	4885
Geoffrey Cox nominee for QRTA Transport Training Services Limited	103 Marshall Road, Rocklea, 4106	4676
Russell Ian Cox, trading as Allied Travel Personnel	11 Brighton Court, Albany Creek, 4035	4709
Jon Richard Crawford, trading as ARS Recruitment	15 Conifer Street, Daisy Hill, 4127	4474
Jennifer Cross nominee for Bremworth Pty Ltd, trading as Queensland Nursing	9 Shadowvale Street Kenmore, 4069	4656
Rodney Wayne Cunningham, nominee for Concept Human Resources Pty Ltd, trading as Concept Recruitment Consultants	2nd Floor, 56 Gordon Street, Mackay, 4740	4640
Rodney Wayne Cunningham, nominee for Concept Human ResourcesPty Ltd, trading as Concept Human Consultants	2nd Floor, Channel 10 Building, 7 Takalvan Street, Bundaberg, 4670	4807
Rodney Wayne Cunningham nominee for Concept Human Resources Pty Ltd trading as Concept Human Consultants	Suite 209, Metway Arcade, 390 Flinders Street, Townsville, 4810	4801
Rodney Wayne Cunningham nominee for Concept Human Resources Pty Ltd trading as Concept Human Resources	2nd Floor, QHDC House, 34 East Street, Rockhampton, 4700	4805
William Thomas Dalby, nominee for Adia Value Engineering Pty Ltd	Level 8, Commonwealth Bank Tower, 71-89 Adelaide Street, Brisbane, 4000	4670
Delma Rita Daley, trading as Northern Nursing & Employment Agency	Suites 13-15, 96 Cleveland Street, Stones Corner, 4120	4545
Carolyn Margaret Dalton, nominee for Provincial Personnel Pty Ltd	Suite 303, Ray White House, 40 Nerang Street, Southport, 4215	4644
Colin James Daly, nominee for Credit Union Services Corporation (Australia) Ltd	895 Ann Street Fortitude Valley 4006	4920
John Davidson, nominee for John Davidson and Associates Pty Ltd	68 Kremzow Road, Brendale, 4500	4509
Robert Victor Davidson, trading as Robert Davidson and Associates	Level 21, AMP Place, 10 Eagle Street, Brisbane, 4000	4398
Wayne Leslie Dawes, nominee for Bayside Personnel Aust Pty Ltd trading as Bayside Personnel Australia	12 Mascot Street, Upper Mount Gravatt, 4122	4891
Frans Karel de Laat, nominee for Colbrook Pty Ltd, trading as de Laat and Co	Level 9, 139 Leichhardt Street Spring Hill 4004	4602
Paul Anthony Delhi, trading as Seymour Productions	29 Le Gayt Street, Wimbur, 4030	4510
Ian Maxwell Dent, nominee for Ibenbridge Pty.Ltd., trading as Able Recruitment	Level 19, 307 Queen Street, Brisbane, 4000	4556
Kathryn Mary Devine, nominee for Brook Street Bureau (Qld) Pty	Level 3, 145 Eagle Street, Brisbane, 4000	4705
Patricia Mary Donovan, trading as P.D's Employment Agency	Shop 8, 48 Macrossan Street, Port Douglas, 4871	4511
James Douglas Doyle, nominee for Northern Cattle Transeeships Incorporated, trading as NCT Rural Services	131 Gill Street, Charters Towers, 4820	4646
Andrew Ian duBoulay nominee for Broadway Productions Australia Pty Ltd, trading as Ah Thai's Entertainment	Level 1, 200 Evans Road Salisbury, 4107	4485
Alexander Frederick Downing nominee for Takedown Management Pty Ltd	Level 12, 379 Queen Street Brisbane, 4000	4603
Nicholas Dozer-Kyriakidis, nominee for Pushworth Pty Ltd, trading as Manick Promotions	105 Summers Road, Jamboree Heights, 4074	4456
Peter Albert Drooyn trading as Australian Institute of Professional Actors	110 Michigan Drive Oxenford 4210	4930
Michael Stuart Alastair Eden, nominee for Meerup Pty Limited	Ground Floor, 5 Eureka Street, Kenmore, 4069	4638
David Neville Elliott, nominee for Toowoomba Personnel Pty Ltd, trading as Toowoomba Personnel	Ground Floor, NZI Building 186 Margaret Street, Toowoomba, 4350	4411
Robyn Mary Emhofer, trading as Associate Child Care Relief Agency	2489 Sandgate Road, Boondall, 4034	4604
Elaine Mary Evans, nominee for Brendan Evans & Associates Pty. Ltd., trading as Hinterland Typing & Temps	9 Hugh Guinea Court, Mudgeeraba, 4213	4749
Darrell Morgan Featherstone nominee for Elite Model Management Pty Ltd	23rd Floor, Lennons Hotel 66 Queen Street, Brisbane, 4000	4434
Darrell Morgan Featherstone trading as Elite Model Management	Level 5, 50 Cavill Avenue Surfers Paradise, 4217	4922
Anthony Paul Ferguson, trading as Global Artists Australia	20 Ashmore Road, Bundall, 4217	4814
Marie Therese Ffrench, nominee for Marie Therese Ffrench and Peter Graham McPherson Ffrench, trading as Early Childhood Educators	14 Lonsdale Place, Wishart, 4122	4879
Maria Finlay, trading as Logan City Employment Agency	Ground Floor, Plaza Chambers, Dennis Road, Springwood, 4127	4673
Thomas Joseph Finn, trading as Finn's Nursing Agency	4th Floor, 139 Leichhardt Street, Spring Hill, 4000	4450
Jan Elizabeth Flatley, trading as Aster Home Nursing Service	64 Tugo's Avenue, Currumbin Waters 4223	4868
Carolyn Foot, trading as Dial-A-Domestic (Sunshine Coast)	8 Bosun Place, Warrulla, 4575	4540
Franca Lucia Forde, nominee for Silforma Pty Ltd, trading as Black & White Brigade	43 Shields Street, Cairns, 4870	4396
Patricia Ann Forster, nominee for Trivalore Pty Ltd, trading as Maiden Emergency Mums	2059 Moggill Road, Kenmore, 4069	4516
Alix Monica Fortescue nominee for A M Fortescue & Russell Andrew Fortescue trading as Designer Training	35 Calala Drive, Strathpine 4500	4699
Peter Jon Frazer nominee for Havencon Pty Ltd trading as A.R.S. Recruitment	10 Acacia Court Mt Crosby, 4306	4515
Stefanie Freichenko, nominee for Goldcam Pty Ltd, trading as Power Personnel	Level 5, 38 Cavill Avenue, Surfers Paradise, 4217	4855
Janet Patricia Gadsden, nominee for Top Office Personnel Pty Ltd	9 Darling Street Ipswich, 4305	4367

NAME	PLACE OF BUSINESS AT OR FROM WHICH BUSINESS IS OR IS TO BE CARRIED ON	LICENCE NO.
David Gardiner, nominee for David Gardiner and Anita Elizabeth Gardiner, trading as Northern Employment Services	9 Duchess Road, Mount Isa. 4825	4504
Annette Louise Gavin, nominee for Sinclair Gavin [Qld] Pty Ltd	11th Floor, 379 Queen Street, Brisbane, 4000	4750
Randall Lloyd George, nominee for Royal International Pty Ltd, trading as Quadran Film & Television	70 Berwick Street, Fortitude Valley, 4006	4677
Bessie Gibson, trading as Tipline Entertainment	91 Tahithan Street, Burleigh Heads, 4220	4561
Dietmer Ede Gogolka, trading as Mediamphy	15 Coten Court, Broadbeach Waters, 4218	4881
Robert Walter Lockhart Gibson, nominee for Autoware Technology Pty Ltd, trading as Gibson Associates	Level 2, 60 Leichhardt Street, Spring Hill, 4000	4671
Rodney Michael Gill, trading as R M Gill & Company	Suite 1, Level 8, 141 Queen Street, Brisbane, 4000	4692
Margaret Ann Gillies, nominee for Margaret Ann Gillies and Kerri-Ann Gillies, trading as C L Agencies	32 O'Keefe Street, Woolloongabba, 4102	4446
Gail Claudette Godfrey, trading as Active Entertainment Management	149 Bryants Road, Loganholme, 4129	4505
Margaret Ida Goody trading as M G Secretarial Services	Piranha Chambers, 168 Denison St, Rockhampton 4700	4684
Alexander Ogilvie Grant, nominee for Employer Services Pty Ltd	1st Floor, 85 Welsby Parade, Bongaree, Bribie Island, 4507	4501
Barbara Patricia Grant, trading as Southside Employment Agency	237A Annerley Road, Annerley, 4103	4366
Tracey Maree Grant, trading as Kool Kids Modelling/Casting Agency	45/63 Olsen Avenue, Labrador, 4215	4503
Linda Maria Grantham, trading as Jan's Nans and Grans	101 Chandler Street, Gatton, 4814	4502
Christine Margaret Green, trading as Headhunters Personnel	48 Elanda Street Sunshine Beach, 4567	4928
Carol Ann Griffiths, nominee for Mayer Consulting Pty Ltd	Suite 3, 10 Benson Street, Toowong, 4066	4418
Margaret Anne Griffin, nominee for Purnell-Webb [Aust] Pty Ltd trading as Purnell-Webb	33 Sanders Street, Upper Mount Gravatt, 4122	4954
Larry Grima, nominee for Able Placements Pty Ltd	Ground Floor, Tandem House 303 Commadon Drive, Milton, 4064	4847
Anthony James Guerin, trading as Total Talent	Room 2 1, Level 2, 109 Upton Street, Bundall, 4217	4911
Simon Anthony Hagen, trading as Townsville Talent and Model Management	11 Florentine Court, Kirwan, 4817	4859
Jennifer Joy Hale, trading as Resource Options	10 Wallumbi Place, Holland Park, 4121	4562
Derek Neil Hall, nominee for Derek Neil Hall and Caroline Elizabeth Hall, trading as Anytime Babysitting	9 Nemira Street, Carseldine, 4034	4371
Pamela Hall, nominee for Hall Masque Consulting Pty Ltd	Level 6, National Bank House, 255 Queen Street, Brisbane, 4000	4619
Patricia Anne Hampson, trading as Looks and Model Management	Suite 3, National Mutual Plaza, Shop 12, Short Street, Southport, 4215	4387
Stephen Broderick Hampson, nominee for Stephen Broderick Hampson and Susan Gayle Hampson, trading as Sales Image	10 Honeywood Street, Sunnybank, 4109	4647
David Andrew Handyside, nominee for Ipswich-Moreton Community Apprenticeship Scheme (Ltd), trading as IMCAS	4 Lobley Street, Ipswich, 4305	4834
Errol James Hanlon, nominee for Wide Bay Group Training Scheme Pty Ltd	13/40 Torquay Road, Pialba, 4655	4944
Donald Maurice Hannay, nominee for Face to Face Consulting Services Pty Ltd	74 Fanny Street, Annerley, 4103	4952
Kerri Mae Hansen, nominee for Centacom Staff Pty Ltd	Level 8, 288 Edward Street, Brisbane, 4000	4857
Kerri Mae Hansen, nominee for Centacom Staff Pty Ltd	1st Floor, 243 Edward Street, Brisbane, 4000	4923
Rana Harvey, trading as Renee's Model Management	4/5-7 Herries Street, Earlville, Cairns, 4870	4499
Dweenjean Harris	Lot 67, Maroochy Waters Drive, Maroochydore, 4558	4532

NAME	PLACE OF BUSINESS AT OR FROM WHICH BUSINESS IS OR IS TO BE CARRIED ON	LICENCE NO.
Christine Michelle Harvie, trading as Baby Bunnies Babysitting	6 Aluminium Drive, Pacific Ranch, Tannum Sands, 4680	4902
Marie Joyce Hawes, nominee for Marie Joyce Hawes and Julie Elizabeth Hawes, trading as Rampage Promotions	5 Glen Nevis Street, Mansfield, 4122	4700
Brett Hayhoe, trading as Hayhoe Enterprises	20 Hall Street, Edge Hill, 4870	4379
John Rudolph Edward Heusmeyer, trading as Book A Band	54 Ernston Street, Newmarket, 4051	4535
Joe Roger Heyse, nominee for CMAS Holdings Pty Ltd	Level 6, Advance Bank House, 10 Felix Street, Brisbane, 4000	4665
Kerry Ann Elizabeth Higgins nominee for Legal Eagles [Qld] Pty Ltd	Level 3, 10 Felix Street Brisbane, 4000	4447
Ann Mary Hilton, trading as Cairns Nursing Agency	22 Miowaraga Street, Earlville, Cairns, 4870	4483
Geoffrey William Hines, nominee for Hines Management Consultants Pty Ltd, trading as Hines Management Consultants, Search and Selection	Level 1, Commerce House, 462 Queen Street, Brisbane, 4000	4506
Gerard Michael Hobbs, trading as G & D Employment Services	Shop 3, Marsden Park Shopping Centre, Chambers Flat Road, Marsden, 4132	4903
Noel George Hockaday, nominee for Ringland Pty. Ltd., trading as The Career Shop	1 Larwood Street Upper Mount Gravatt, 4122	4720
Robert Maurice Hodge, trading as Top Entertainment Promotions	33 Dunmore Street, Toowoomba, 4350	4682
John Charles Hodges, nominee for People to People Strategies	4th Floor, National Bank House, 255 Adelaide Street, Brisbane, 4000	4531
Patricia Muiriin Hogan, trading as Kare for Kids	75 Studio Drive, Studio Village, Oxenford, 4210	4417
Ruth Holmes nominee for R Holmes, Robert William Hannam, and Beverley Ward trading as Teacher Employment Network	11 Commercial Road, Fortitude Valley, 4006	4714
Dennis George Howe, trading as C B C Staff Selection	132 Grafton Street, Cairns, 4870	4388
Annette Louise Hurley, trading as Sky Personnel	Suite 4, The Terraces, 99 Scarborough Street, Southport, 4215	4589
Fay Teresa Ingram, nominee for Fay Ingram Pty Ltd	Suite 4, 5 Dennis Court, Springwood, 4127	4608
Barry Neville Jenkins, nominee for Glenhill Pty Ltd, trading as Barry Jay Entertainments	3 Potter Place, Paradise Park, Southport, 4215	4410
Michelle Mae Johnsson, nominee for Team Human Resource Management Pty Ltd	Level 9, Sherwood House Toowong, 4066	4369
Linzi Pearl Johnston, trading as Speakers Connection	26 Palm Street, Maleny, 4552	4539
Donald Craig Jones, trading as Qld Hotels Association	Level 2, QHA House, 160 Edward Street, Brisbane, 4000	4947
Owen Thomas Jones, nominee for Townsville Regional Group Apprenticeship Scheme Inc.	23 Mackfey Street, Gaubatt, 4814	4380
Carol Kathleen Jorss, nominee for Judy & Carols Horsepond Pty Ltd	194 Gladstone Road, Dutton Park, 4102	4586
Suzanne Miriam Kankkunen, trading as Showtime Theatrical Agency	"Red Gums", Suites 7A & 7B, 104 Compton Road, Underwood, 4119	4593
Nathan James Kelly nominee for Baron Personnel Corporation Pty Ltd trading as Baron Personnel	Level 21, AMP Place, 10 Eagle Street, Brisbane, 4000	4743
Deslee Anne Kennedy, trading as, The BusyBeetle	147 Lakewood Village, Murtha Drive, Elanora, 4221	4527
Robert Khan, trading as Cater Personnel Placements	9 Coronella Street Hendra, 4011	4929
Sidney James Alfred Kidman trading as Silas Farm	3 Russell Street, Woodridge, 4114	4953
Russell Benonas Kimeklis, nominee for Kimeklis Personnel Services Pty Ltd, trading as Manpower	11th Floor, ANZ Centre, 324 Queen Street, Brisbane, 4000	4587
Paul Bernhard King, trading as Paul King - Entertainment and Promotion	30 Granville Street, West End, 4101	4732
Tomoko Koda, nominee for Nihon Brain Centre Australia Pty Ltd	Level 15, 50 Cavill Avenue, Surfers Paradise, 4217	4458
Russell Scott Krause, trading as, Ruzzamatazz Entertainment	15 Ashgrove Crescent, Ashgrove	4907

NAME	PLACE OF BUSINESS AT OR FROM WHICH BUSINESS IS OR IS TO BE CARRIED ON	LICENCE NO.
Colin Thomas Lagoon nominee for Archer Consulting Group trading as Archer Consulting Group	Level 1, South Tower, John Oxley Centre, 339 Coronation Drive, Milton, 4064	4883
Christopher Jim Lancaster, nominee for Lancaster Entertainment Pty Ltd	19 Lilac Court, Currumbin Valley, 4223	4381
Lynette Lane, nominee for Beltgate Pty Ltd, trading as Accountancy Consultants	Level 7, 255 Adelaide Street, Brisbane, 4000	4519
Elfie Jean Mary Therese Lavelle	1 Whitfield Avenue, Springwood, 4127	4528
Nicholas Leavey, nominee for Partac [Qld] Pty Ltd	1030 Cavendish Road, Mount Gravatt, 4122	4894
Gavin Christopher Leak, nominee for Cullen Egan Dell Ltd	Level 10, MIM Plaza, 410 Ann Street, Brisbane, 4000	4686
John Kirwood Ledger, nominee for Beilby Management Services (Qld) Pty Ltd	Level 2, Terrace Office Park, Cnr Brunswick Street & Gregory Tce, Bowen Hills, 4006	4488
Graham Charles Lee, trading as Leetun Agency	15 Launceston Street, Nathan, 4107	4704
Fiona Hayley Lehfeldt, nominee for Scott Robert Lehfeldt and Fiona Hayley Lehfeldt trading as StaffWise	1st Floor, 459 Ruthven Street Toowoomba, 4350	4933
Debbie Lee Lincoln, nominee for Lincoln & Lincoln Pty Ltd, trading as Lincoln & Lincoln Entertainment Agency	12 Mankina Street, Slacks Creek, 4127	4632
Roland John Livingstone, nominee for Livingstone Services Pty Ltd	12th Floor, 500 Queen Street Brisbane, 4000	4457
John David Logie, nominee for Padcrash Pty Ltd, trading as Southside Placements	Unit 3, 69 Springwood Road, Springwood, 4127	4651
Lance Allen Long, nominee for Allhands Hire Unit Trust, trading as Allhands Hire Pty Ltd	221 Juliette Street, Greenslopes, 4120	4890
Deanna Gloria Loterzo, nominee for Western Staff Services Pty Ltd	Level 4, 82 Eagle Street, Brisbane, 4000	4945
Frederick William Ludwig, nominee for Mountain Enterprises Pty Ltd, trading as Biffy The Mountain Entertainments	Woodbury Road, Coolbellie, Via Yeppoon, 4703	4517
John Charles Lyons, nominee for Marketshare Pty Ltd	630 Coronation Drive, Toowong, 4066	4438
Susan Ruth Lyndon, nominee for Retail Association of Queensland	4th Floor, 293 Queen Street Brisbane, 4000	4921
Kim Marie Lyster, nominee for Kim Marie Lyster & Tim Michael Collett, trading as Mighty Management	33 Moran Street, Alderley, 4051	4373
Michael John Machin, nominee for Rodco Pty Ltd, trading as Placements- Australia Management Consultants	499 Adelaide Street, Brisbane, 4000	4550
Peter Stewart Macqueen, trading as Compass Consulting	Suite 4, Level 1, 47-49 Sherwood Road, Toowong, 4066	4522
Duncan John Michael Mar nominee for The Melba Ung Discretionary Trust trading as Executive Recruiters	Suite 20, Level 1, Chancellor Corporate Centre 15 Lutchhardt Street, Spring Hill, 4000	4667
Anthony Gerald Martin, nominee for Alleywood Pty Ltd, trading as Total Performance Group	Suite 3, 1933 Logan Road, Upper Mount Gravatt, 4122	4723
Jeneite Ellaleen Martin, trading as Outback Staff and Busybabies Home Employment Service	39 Brocknell Street, Rockhampton, 4700	4582
Mary Allison Martin, nominee for Career People Pty Ltd, trading as Career People	Level 8, 300 Queen Street, Brisbane, 4000	4910
Darrell May, nominee for The Anthony Darrell Presbacino Company, trading as Brisbane Connections Personal Management	38 Street Street Coorparoo, 4151	4633
Daniel McCluskey, nominee for CQMS Training Pty Ltd, trading as Northern Nanny College	2nd Floor, Dunkheld Gardens, Cnr Brisbane & Victoria Streets, Mackay, 4740	4937
William Francis McCulloch, nominee for Queensland Recruitment Pty Ltd, trading as ARS Recruitment	2 Colonsay Street, Middle Park, 4074	4524
Kevin McDean, nominee for TRS International Group Pty Ltd	Level 14, 113 Wickham Terrace, Spring Hill, 4004	4935
Christine Margaret McGinity, nominee for Accountancy Placements Pty Ltd trading as Accountancy Placements and Medier Personnel	Unit 2, 1106 Ipswich Road, Moorooka, 4105	4904
Forbes Clement McGregor, nominee for Metal Industry Group Apprenticeship Scheme Inc	Suite 5, 119 Leichhardt Street, Spring Hill, 4000	4423
David Anthony McKellar, trading as Damac Consulting Services	c/- De Groot & Co, Bellevue Terrace, Mary Street, Brisbane, 4000	4523
Patrick McKendry, nominee for Retailers Association of Queensland Ltd	293 Queen Street, Brisbane, 4000	4932
Jason Barnett McKey nominee for Profile Personnel Pty Ltd	24 Blackwood Road, Woodridge, 4114	4719
Dianne Mary McLachlin trading as Dianne Marr & Associates	Level 1, 6 Annerley Road, Woolloongabba, 4102	4757
Florence Elsie McLaughlin trading as Capricornia Nursing Agency	Unit 11 52 Breaksper Street, Gracemere, 4702	4767
Pamela Joy McLennan, nominee for D H and P J McLennan trading as Goldfinger Services	14 Long Island Court Robina, 4226	4942
Robert James McMullen nominee for Chandler and Macleod Consultants Pty Limited	64 Sylvan Road, Toowong, 4066	4825
Robert James McMullen nominee for Chandler and Macleod Consultants Pty Ltd	6th Level, Minprac House, 67 St Pauls Terrace, Spring Hill, 4004	4824
John Charles McSweeney	1 Koala Court, Bunya Downs, 4055	4729
Robert George Ian Mellor, nominee for Robert George Ian Mellor & Daphne Grace Mellor, trading as Trenton Management Services	Suite 11, 3rd Floor, Aster Centre, 445 Upper Edward Street, Spring Hill, 4000	4637
Marie Elizabeth Mew, trading as Golden Doves Nursing and Respite Home Care Services	7 Gardenia Court, North Mackay, 4740	4860
Noel Vincent Millar, nominee for AMA (Q) Services Pty. Ltd., Trading as AMA (Q) Services	884 Estrange Terrace, Kelvin Grove, 4059	4820
Gary Victor Mills, trading as International Booking Agents	44 Mathison Street, Virginia, 4014	4408
John Ayres Mills, nominee for Strategies Pty Ltd	Level 1, Homebase Aspley, Cnr Gympie & Zillmere Roads, Aspley, 4034	4422
John Nettlefold Mills, nominee for Coopers & Lybrand (A.C.T.) Pty Ltd	18th Floor, Waterfront Place, 1 Eagle Street, Brisbane, 4000	4454
Alexandra Victoria Mitchell, nominee for Mitchell Consultants Pty Ltd	1st Floor, 433 Upper Edward Street, Spring Hill, 4000	4620
Kenneth William Mogg, nominee for Kedron-Wavell Services Club Inc	Hamilton Road, Chermside, 4032	4605
Franco Domenico Monteverde and Darren Robert Clarke, nominees for Australian Entertainment Resources Pty Ltd, trading as Shawdring Entertainment	17a Skyring Terrace, Newstead, 4006	4763
William John Montgomery-Clarke nominee for Motor Trades Association of Queensland Ltd trading as MTAQ	11-15 Buchanan Street West End, 4101	4724
Michelle Maree Morgan, nominee for D & M Morgan Investments Pty Ltd trading as Emerald Secretarial Services	Pritchard Road, Emerald, 4720	4581
Rodney John Morris, nominee for ALA Enterprises Pty Ltd	183 Tufnell Road, Banyo, 4014	4657
Graham Arthur Moss, nominee for Oxley Health Professional Pty Ltd, trading as Oxley Nursing Service, Oxley Health Personnel and Oxley Training Service	Levels 2 & 3, 54 Jephson Street, Toowong, 4066	4727
Ian Andrew Mott, trading as Talent Bank Recruitment Services	38 Jellicoe Street, Manly West, 4179	4563
Michelle Louise Moule, nominee for Ashton Corporate Services Pty Ltd	Level 1, 1 Park Road, Milton, 4064	4886
Denise Anne Mulhern, trading as Mackay Personnel	Suite 6, 136 Victoria Street, Mackay, 4740	4698
Glen Muller, nominee for Glen Muller and Margaret Mary Muller, trading as Downs Nursing Agency	14 Richards Court, Toowoomba, 4350	4404
Denis Leslie Mulveney, nominee for Johnny Vegn Enterprise Pty Ltd	Ashmore Foodbarn, Ashmore Road, Ashmore, 4214	4368
Andrew Phillip Mumford, nominee for Blake Services Pty Ltd trading as Cover Up	Shop 7, Foundation House, First Avenue, Maroochydore, 4558	4939
Robyn Josephine Murphy, trading as Robyn Murphy Business Centre Pty. Ltd.	The Tower Court, 36 Old Cleveland Road, Capalaba, 4157	4623
Noel Richard Murphy, nominee for Noel Richard Murphy and Roche Murphy, trading as The Workforce Shop, Everton Park	500 South Pine Road, Everton Park, 4053	4525

NAME	PLACE OF BUSINESS AT OR FROM WHICH BUSINESS IS OR IS TO BE CARRIED ON	LICENCE NO.
Graham Keith Nepean-Hutchinson, trading as Australian and International Artists	Level 5, 140 Bundall Road Bundall, 4127	4672
Peter John Newton, nominee for Newton Human Resource Services Pty Ltd, trading as The Workforce Shop, Greenslopes	6/737 Logan Road, Greenslopes, 4120	4731
Fay Nicholson Spice, trading as Club and Hotel Entertainment Agency	209 Venner Road, Fairfield, 4103	4568
Irene Nordbourn, trading as Liaisons Management	71 Ormonde Road, Yeronga, 4104	4870
Diana Mary Nugent, nominee for Diana Mary Nugent, Robert Roy Nugent, Sharon Leanne Margaret Macleod and Donald William Macleod, trading as Top of The Range Domestic Agency	18 Loch Street, Toowoomba, 4350	4537
Anthony Roland O'Brien, nominee for Lyncroft Consulting Group Pty Ltd trading as Lyncroft Consulting Group	Level 27, 345 Queen Street, Brisbane, 4000	4925
Elaine Mary O'Brien, nominee for Elaine Mary O'Brien and Michael O'Brien, trading as O'Brien Drafting and Design	24 Forestlea Street, Bracken Ridge, 4017	4564
Suzanne May Amelia O'Connell, trading as Centre Stage Productions	Unit 4, Biggera Cove, 17 Thelma Avenue, Biggera Waters, 4216	4597
Jennifer Kay O'Connor, nominee for Centacom Staff Pty Limited	146 Racecourse Road, Hamilton, 4007	4507
Maureen Janice O'Keefe trading as Guys & Dolls	76 Southern Cross Drive Scarborough, 4020	4441
Colin Derek O'Neill, trading as C.D. O'Neill & Associates	20 Bimbo Road, Mt Tamborine, 4272	4828
John Campbell McNairn Panos, nominee for Queensland Onstage Entertainment Pty Ltd	Forestry Road, Mt Nebo, 4520	4414
Philumena Mary Parailles, nominee for Queenstate Nursing Service Pty Ltd	Suite 6, Level 1, 35 Astor Terrace, Spring Hill, 4000	4751
Neville Graeme Patterson, nominee for Neville Patterson Consultants Pty Ltd	Suite 99, 9th Floor, Silverton Place, 101 Wickham Terrace, Brisbane, 4000	4560
Lorraine Margaret Paul, trading as Lorraine Martin Personnel	Level 7, 138 Albert Street, Brisbane, 4000	4567
Lorraine Margaret Paul, nominee for Lorraine Martin Personnel Pty Ltd trading as Lorraine Martin Personnel	Level 2, 20-32 Lake Street, Cairns, 4870	4936
Philip Archdale Pearce, nominee for Morgan and Banks Pty Limited	Level 7, Waterfront Place, 1 Eagle Street, Brisbane, 4000	4769
Julie Ann Peterson, nominee for Toquad Pty Ltd trading as Toquad	220 Warwick Road, Churchill, 4305	4949
Lynette Pickering, nominee for Brenfern Pty Ltd, trading as Professional Staff	1st Floor, 91A Grafton Street, Cairns, 4870	4565
Karen Frances Pierce, Trading as Karen Pierce and Associates	4/40 Second Avenue, Maroochydore, 4558	4819
Linsey Mary Pilate, nominee for Pilate Holdings Pty Ltd, trading as Commercial Studies Centre	52 Walker Street, Townsville, 4810	4566
Mark Henry Pollack, nominee for Heaven Sent Help Pty Ltd	Level 1 [West End], 47 Ashmore Road, Bundall, 4217	4598
Violet Annie Perrit nominee for Star Connections Pty Ltd trading as Studio Search	Level 1, 103 Upton Street, Bundall, 4217	4717
Nicki Poteri, nominee for The Australian College of Nannies (Qld) Pty Ltd	Level 1, 380 Queen Street, Brisbane, 4000	4690
Lance Steven Prior, trading as D.J.'s United	55 Sheriff Street, Hermit Park, 4812	4872
Charles William Pywell, nominee for C.P. Project Systems Pty Ltd, trading as Abes Management Services	Unit 9, Westpac House, 3276 Mount Lindsay Highway, Browns Plains, 4118	4376
Thomas Norman Quinn, nominee for Bundaberg Area Community Apprenticeship and Training Scheme Ltd, trading as BACAS	Unit 4, Riverside Enterprise Centre, Quay Street, Bundaberg, 4670	4652
Thomas Norman Quinn, nominee for Bundaberg Area Community Apprenticeship and Training Scheme Ltd, trading as BACAS	82 Woondooma Street, Bundaberg, 4670	4679
Vivienne Alexis Quinn, nominee for Quinn and Associates Pty Ltd	Level 1, GWA House, 10 Market Street, Brisbane, 4000	4752
Leigh Dianne Rachow, trading as "The Academy" Employment Agency	110 Sugar Road, Maroochydore, 4558	4660
Deborah Veronica Rae, nominee for Deborah Veronica Rae & Douglas Smith trading as Key Language & Education Services	3/81 Kent Street, New Farm, 4005	4914
Brendan Oliver Rattigan nominee for Carrington Pty Ltd trading as J & B Employment Consultants	46 Berwick Street Fortitude Valley, 4006	4777
Frederick Raven, nominee for Pymberg Pty Ltd, trading as Raven's Pharmacy Services	Level 3, Natwest House, 103-105 Upton Street, Bundall, 4217	4407
David Edmund Read, trading as Medical Locum Services	6th Floor, 225 Wickham Terrace, Brisbane, 4000	4584
Vincent Lawrence Rehbein, nominee for BDS Technical Services Pty Ltd, trading as BDS Personnel	80 Tribune Street, South Brisbane, 4101	4596
Kim Ritchie, nominee for, Accountancy Placements Pty Ltd trading as Accountancy Placements and Metier Personnel	Level 11, 145 Eagle Street Brisbane, 4000	4798
Yvonne Barbara Robb, nominee for KPMG Peat Marwick Management Consultants	Level 28, Central Plaza One, 345 Queen Street, Brisbane, 4000	4610
John Patrick Robbins, nominee for John Patrick and Lenore Winnifred Robbins trading as Q.V. Entertainment	76 Queen Street, Cleveland 4163	4940
Sandra Robbins, trading as Vivien's Model & Theatrical Management	Level 28, Lennons Plaza, 66 Queen Street, Brisbane, 4000	4395
Lina Carmen Robertson, nominee for Drake Personnel Limited	Level 9, 300 Queen Street, Brisbane, 4000	4462
Lina Carmen Robertson, nominee for Drake Personell Limited, trading as Drake Overload, Drake Industrial and Drake Executive	604-608 Sherwood Road, Sherwood, 4075	4459
Lina Carmen Robertson, nominee for Drake Personnel Limited	Level 1, 26 Marine Parade, Southport, 4215	4461
Lina Carmen Robertson, nominee for Drake Personnel Limited	31 Sturt Street, Townsville, 4810	4460
Clive Desmond Robinson, nominee for C L and C A Robinson trading as Tranquility Entertainment	32 Newport Drive Robina, 4226	4943
Jillian Rollo nominee for Spotz Casting Pty Ltd trading as Spotz Casting & Models	20 Brookes Street Bowen Hills, 4006	4761
Annette Maree Ross nominee for Annette-Maree Ross and Phillip Charles Ross trading as Whitsunday Personnel	Suite 6, 1st Floor Beach Plaza, The Esplanade, Airlie Beach, 4802	4421
Suellen Russel, nominee for Centacom Staff Pty. Limited	1st Floor, 243 Edward Street, Brisbane, 4000	4486
Sarina Russo, nominee for "The Office" - Business Academy Pty Ltd	Sarina Russo Centre 82 Ann Street, Brisbane, 4000	4678
Julie Dawn Ryan, nominee for Housemaids Franchises Pty Ltd trading as Homecare Domestic Personnel	747 Browns Plains Road, Marsden, 4203	4595
Kirsi-Marja Sade, trading as Beauty Skills Academy	240 Logan Road Buranda, 4102	4924
Wilfred Robert Sadler nominee for Industry and Commerce Employment and Training Group Incorporated trading as MITA and APT Training and Personnel	75-77 Russell Street West End, 4101	4822
Brian Frank Sansom, trading as Sunshine Connections	199 Mary Street, Gympie, 4570	4571
Peta Scamp, nominee for Commercial Computer Centre Pty. Limited, trading as Key People	Ground Floor, 221 Logan Road, Buranda, 4102	4575
Stephen Trevor Scheidt, trading as Stephen Scheidt Personnel	36A Badminton Street, Mount Gravatt, 4122	4955
Steven John Schiffmann nominee for Western Suburbs CYSS Inc trading as Ascent Career Business Training College	36 Station Road, Indooroopilly, 4068	4733
Heather Joy Schmutter, trading as Pharmacy Training Academy/ Specialised Training Services	55 Nerang Street, Southport, 4215	4573
Paul Warren Schorr, nominee for Agency Entertainment Pty Ltd	10 Oleander Place, Robina, 4226	4594
Graham Raymond Scott, nominee for Scott Aust. Pty. Ltd., trading as Scott Personnel	Unit 106, 10th Floor, "Silverton Place", 101 Wickham Terrace, Brisbane, 4000	4445

01 MAY 1996

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127

JHC/RNM: 25874

26 APRIL 1996

Mr Jim Kennedy
Inquiry Commissioner
Inquiry into Workers' Compensation
Level 27
Central Plaza One
345 Queen Street
BRISBANE QLD 4000

Dear Mr Kennedy,

Enclosed please find the Society's submission to your inquiry.

A loose-leaf set is also provided in anticipation that you will wish to photocopy the submission for circulation.

I wish you well with your deliberations.

Yours sincerely

J H CLARKE FCPA
DIRECTOR - QUEENSLAND

AUSTRALIAN SOCIETY
OF CERTIFIED PRACTISING
ACCOUNTANTS

ACN 008 392 452

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Australian Society of CPAs
submission to

INQUIRY INTO WORKERS' COMPENSATION

<logo>

Queensland Director - John Clarke
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Fax: (07) 3832-1458
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April 30, 1996

The Australian Society of CPAs

With more than 80,000 members, about 9000 in Queensland, the Australian Society of Certified Practising Accountants is Australia's largest professional organisation and Australia's major accounting body.

About three-quarters of Australian Society of CPAs membership comes from commerce, industry, the public sector and academia.

The remaining quarter holds the dominant position in public accounting particularly as service providers to the business community.

The collective experience of the Australian Society of CPAs places it in a unique and authoritative position to offer comment to the Inquiry into Workers' Compensation.

The comments and suggestions made in this submission represent the overwhelming majority of opinion expressed to the ASCPA Workers' Compensation Inquiry Task Force by CPAs in public practice, commerce and industry.

The submission in brief

This submission will put the following proposals forward for your consideration:

1. *Today's employers should not be required to pay the shortfall in funding for liability which has accumulated during previous years.* **Page 4**

2. *Offer Workers' Compensation business to private insurers and restructure the Workers' Compensation Board as a regulator and government "watchdog" over the industry.* **Page 5**

3. *Introduce private insurers to provide Workers' Compensation cover.* **Page 6**

   (a) *The government to pay one or more private insurers an amount calculated on the actuarially discounted exposure on the current unfunded liability in return for the private insurer/insurers to assume the risk and claims management of the Board's current liabilities.*

   (b) *Private insurance companies accepting the Workers' Compensation business would pay an entry amount to help cover the current unfunded liability.*

4. *Amalgamate the Division of Workplace Health and Safety into the operations of the Workers' Compensation Board where its role would be to provide advice to employers and employees.* **Page 7**

5. *Introduce some penalty or disincentive for the employee, and/or conversely introduce some protection for employers against false claims.* **Page 8**

6. *Introduce a system where only a doctor from a pool of Government-accredited medical practitioners familiar with workplace health and safety would decide the capability or status of injured or ill workers.* **Page 9**

7. *Amalgamate the Workers' Compensation rehabilitation services into the Health Department.* **Page 9**

The submission in brief (continued)

8. *Introduce more flexible premium payment options.* ***Page 10***

9. *Calculate premium amounts on the basis of each employee's individual duties and workplace environment instead of the current system of calculating premiums based on the prime function of the organisation.* ***Page 11***

10. *The flat rate option.* ***Page 11***

11. *Simplify the definition of wages for premium purposes and simplify the definition of employee for coverage purposes.* ***Page 12***

12. (a) *Introduce a system requiring the employer and employee or contractor to both declare the status of Workers' Compensation at the time of being hired in order to establish which party was providing Workers' Compensation cover.* ***Page 13***

    (b) *Introduce a portable Workers' Compensation policy paid by the employee and reimbursed by the employer as part of wages at the relevant premium rate.* ***Page 13***

13. *Offer optional, limited self-insurance by the employer in return for lower premiums.* ***Page 14***

14. *We applaud the provisions of the Workers' Compensation Amendment Bill 1995 which amongst other things requires workers or their dependents to choose between either accepting a Workers' Compensation statutory benefit or commencing a Common Law suit against the employer at their own cost.* ***Page 15***

1. Today's employers should not be required to pay the shortfall which has accumulated in previous years.

We believe the current underfunding crisis is a result of inappropriate premium levels in relation to the policies which existed at the time.

1. As a government body, the Workers' Compensation Board sets premiums to cover costs and to provide some reserves. As a result it appears that resources devoted to research and development have been inadequate.

   It is likely that additional funding into research and development would have identified and resolved the problems which have caused the current difficulties.

2. There appears to be, quite rightly, universal support for the concept of Workers' Compensation.

   However the workplace has changed during the past 80, 40 and even 10 years, not the least of which is the size of the "market" which the Workers' Compensation Board strives to serve.

   We question the ability of a single body - government or otherwise - to manage the volume and complexity of Workers' Compensation today based in concepts of yesterday.

It is unreasonable to suggest that current employers should bear the cost of errors made in the past by the various Queensland Governments of the day. Most of today's employers, especially in small business which employs most people, are not the same employers of years gone by.

It is not as if there is a fixed group of employers who have escaped their obligations in the past and who now are avoiding their responsibilities.

Please refer to *Item 3* with regard to our recommendations on the current unfunded liability.

2. *Offer Workers' Compensation business to private insurers and restructure the Workers' Compensation Board as a regulator and government "watchdog" over the industry.*

After having debated the relative merits of having Workers' Compensation provided by a sole government insurer or a pool of private insurers, the Australian Society of CPAs believes Workers' Compensation should be no different from other forms of accident and health insurance handled satisfactorily and profitably by various private insurers.

One of the main arguments against a sole government insurer is that there is little incentive to contain expenses and so be conscious of claims cost control.

It could be argued that the attitude of government services is changing under the impact of corporatisation but in the long run the government remains a monopoly and its charges will reflect its costs.

In a private organisation, where management and directors are answerable to shareholders and where government ensures competition, market forces drive the incentive to be competitive through cost efficiency.

The Australian Society of CPAs suggests that the Queensland Government could license probably up to four private insurers to offer Workers' Compensation.

Successful applicants would meet relevant requirements such as corporate structure, funds ratios, demonstrated ability to provide the service and successful past history.

The existing Workers Compensation Board would continue as a monitor and regulator of the industry.

In this role, similar in some way to the role of the Insurance and Superannuation Commission, the Board would:

- administer the various statutory requirements including insurer and employer compliance
- review, evaluate and report on industry performance
- administer a disputes settlement process.

3. Introduce private insurers to provide Workers' Compensation cover.

We believe that private insurers would most efficiently manage Workers' Compensation and that the driving force would be competition and we offer two suggestions as to how private insurers could be introduced.

(a) The government could calculate an actuarially discounted exposure on the current unfunded liability. The government would pay this amount to one or preferably more commercial insurers who could satisfy the government as to their financial standing and expertise.

These commercial insurers would assume the risk and claims management of the current unfunded liabilities of the Board.

Claims reported but not paid would become the liability of the re-insurers.

Claims arising from unreported incidents which subsequently are raised within the three-year statutory claims period would continue to be the liability of the Board.

However claims management in these latter cases may be contracted to the re-insurers thereby allowing the Board to have a minimal administrative role in the future.

(b) Private insurance companies accepting the Workers' Compensation business would pay an entry amount to help cover the current unfunded liability.

For any new system to start with a clean slate a substantial carry-on premium needs to be established to protect the existing unfunded liability.

This will enable the Workers' Compensation cover and procedures to continue.

This amount, to be determined in advance by some independent actuarial authority, could be funded jointly and equally by Queensland Government Consolidated Revenue and the private insurers who were successful in gaining a Queensland Government licence to offer Workers' Compensation.

4. Amalgamate the Division of Workplace Health and Safety into the operations of the Workers' Compensation Board where its role would be to provide advice to employers and employees.

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The ultimate cross-subsidy system is a flat rate, similar to that applied to compulsory third party insurance for motor vehicles.

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Ultimately it was decided that although a flat rate should have the effect of reducing the overall rate as a result of more efficient administration, more employers would pay a higher rate in the overall scheme and this would be politically unacceptable.

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The Australian Society of CPAs believes that everyone should have access to common law.

However we believe that in order to manage Workers' Compensation it is essential that workers or their dependents be required to choose between Workers' Compensation or common law and so we urge that the provisions of the Workers' Compensation Amendment Bill 1995 be retained.

We support all of the provisions of this Bill, which received Royal Assent in November last year, but in particular we support the provisions:

- maintaining workers' rights to proceed to common law but requiring workers with less serious injuries to choose between improved statutory benefits and suing their employers;

- requiring injured workers with less serious injuries who choose to proceed to common law to meet their own costs;

Against this background it would be important for any injury or work-related illness to be reported and recorded by a GP who was qualified in workplace health and safety (*proposed in Item No.6*).

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We propose that the current provision be amended to require the employee to forego the first day of pay of any period of compensation and the employer to pay four days of the first five days of compensation.

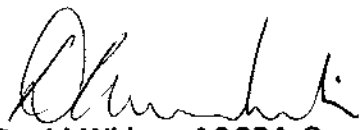
Comment

I trust that the points I have raised in this submission will be helpful in your deliberations and I would be pleased to expand on any of the matters raised.

On behalf of the Queensland Division of the Australian Society of CPAs I wish you well in your endeavours in what I am sure is an unusually difficult task.

I look forward with great interest to your recommendations.

Yours sincerely.



David White - ASCPA Queensland State President

07 JUN

CPA

AUSTRALIAN SOCIETY OF CPAs

QUEENSLAND DIVISION
TOOWOOMBA BRANCH

Suzanne Maloney
Faculty of Commerce,
USQ, Toowoomba Qld 4350.
Ph: (076) 312790, Fax: (076) 312625

127B

27 May, 1996.

Jim Kennedy,
Inquiry Commissioner,
Inquiry into Workers' Compensation
G.P.O. Box 374,
BRISBANE QLD 4001.

Dear Mr. Kennedy,

On behalf of the Toowoomba Branch of the ASCPAs, I submit the following comments and concerns in relation to the Workers' Compensation Inquiry. The branch supports the comprehensive submission prepared by the Queensland Division for the Australian Society of CPAs. The Toowoomba Branch membership works with a diverse range of enterprises in Toowoomba and the surrounding area.

Firstly, the responsibility for safe work practices rests with both the employee and employer. This could be achieved by 1. the promotion of workplace, health and safety issues to both employees and employers and 2. by the introduction of the concept of shared responsibility for the costs of providing Workers' Compensation. This concept will provide some protection for employers against false claims and will stress to employees their responsibility with regard to safe work practices. There are a number of ways the sharing of cost could be achieved.

The employee could utilise a portion of their accrued sick leave on an equal share basis with the employer for the no claim period. This concept does not require any cash forfeiture by the employee but still recognises the joint responsibility of the employee and employer under Workplace Health and Safety.

Another option which would minimise costs of Workers Compensation is to limit the compensation payment to a proportion of the weekly normal wages rate in line with the limit of cover normally extended by private insurers for sickness and accident cover. Employees could be encouraged to take out cover to bridge the financial gap between ordinary weekly earnings and the extent of the cover provided through Workers' Compensation.

Secondly, an improvement in communication between employer, employee and the medical practitioner would reduce the cost of Workers' Compensation and lead to an improved system for the management of Workplace Health and Safety goals. This should ensure that the employer is fully aware of the employees injury and therefore

the employer may be able to put in place mechanisms to prevent injury from occurring in the future. Liaison between the medical practitioner and employer would also improve the rehabilitation process thereby reducing costs. Communication between the medical practitioner and the employer would also highlight the responsibility of the medical practitioner to make themselves aware of workplace health and safety issues. It is essential in a successful workers compensation system to have employer and medical practitioner involvement in the management of claims. To this end, it would be beneficial to introduce a pool of Government accredited medical practitioners familiar with workplace health and safety issues.

Thirdly, it would be beneficial to amalgamate the Division of Workplace Health and Safety and the Workers Compensation Board. To some extent the two departments liaise already. The amalgamation would provide efficiencies in administration and be able to provide a more wholistic service to employers and employees regarding workers compensation and workplace health and safety.

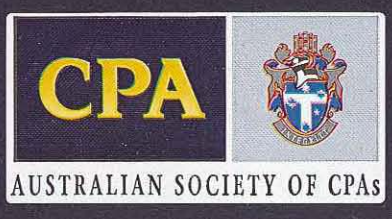
Finally, the introduction of private insurers to the market should result in cost savings to employers through competitive premiums. This may also lead to a more efficient claims management. The Workers Compensation Board could act as a regulator over the industry. Even with the introduction of private insurers, the standard anniversary date should remain the 1 July to ensure consistency with other regulatory reporting requirements.

If you would like to discuss any of these issues further, please don't hesitate to contact me on (076) 312790.

Yours sincerely,

Suzanne Maloney
Chairman
Toowoomba Branch ASCPAs

INQUIRY INTO WORKERS' COMPENSATION



Australian Society of CPAs
submission to

INQUIRY INTO WORKERS' COMPENSATION

AUSTRALIAN SOCIETY OF CPAs

30 April 1996

Australian Society of CPAs GPO Box 1161 Brisbane QLD 4001
Telephone (07) 3832 1194 Facsimile (07) 3832 1458

The Australian Society of CPAs

With more than 80,000 members, about 9000 in Queensland, the Australian Society of Certified Practising Accountants is Australia's largest professional organisation and Australia's major accounting body.

About three-quarters of Australian Society of CPAs membership comes from commerce, industry, the public sector and academia.

The remaining quarter holds the dominant position in public accounting particularly as service providers to the business community.

The collective experience of the Australian Society of CPAs places it in a unique and authoritative position to offer comment to the Inquiry into Workers' Compensation.

The comments and suggestions made in this submission represent the overwhelming majority of opinion expressed to the ASCPA Workers' Compensation Inquiry Task Force by CPAs in public practice, commerce and industry.

The submission in brief

This submission will put the following proposals forward for your consideration:

1. *Today's employers should not be required to pay the shortfall in funding for liability which has accumulated during previous years.* **Page 4**

2. *Offer Workers' Compensation business to private insurers and restructure the Workers' Compensation Board as a regulator and government "watchdog" over the industry.* **Page 5**

3. *Introduce private insurers to provide Workers' Compensation cover.* **Page 6**

   (a) *The government to pay one or more private insurers an amount calculated on the actuarially discounted exposure on the current unfunded liability in return for the private insurer/insurers to assume the risk and claims management of the Board's current liabilities.*

   (b) *Private insurance companies accepting the Workers' Compensation business would pay an entry amount to help cover the current unfunded liability.*

4. *Amalgamate the Division of Workplace Health and Safety into the operations of the Workers' Compensation Board where its role would be to provide advice to employers and employees.* **Page 7**

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6. *Introduce a system where only a doctor from a pool of Government-accredited medical practitioners familiar with workplace health and safety would decide the capability or status of injured or ill workers.* **Page 9**

7. *Amalgamate the Workers' Compensation rehabilitation services into the Health Department.* **Page 9**

The submission in brief (continued)

8. *Introduce more flexible premium payment options.* ***Page 10***

9. *Calculate premium amounts on the basis of each employee's individual duties and workplace environment instead of the current system of calculating premiums based on the prime function of the organisation.* ***Page 11***

10. *The flat rate option.* ***Page 11***

11. *Simplify the definition of wages for premium purposes and simplify the definition of employee for coverage purposes.* ***Page 12***

12. *(a) Introduce a system requiring the employer and employee or contractor to both declare the status of Workers' Compensation at the time of being hired in order to establish which party was providing Workers' Compensation cover.* ***Page 13***

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1. Today's employers should not be required to pay the shortfall which has accumulated in previous years.

We believe the current underfunding crisis is a result of inappropriate premium levels in relation to the policies which existed at the time.

1. As a government body, the Workers' Compensation Board sets premiums to cover costs and to provide some reserves. As a result it appears that resources devoted to research and development have been inadequate.

   It is likely that additional funding into research and development would have identified and resolved the problems which have caused the current difficulties.

2. There appears to be, quite rightly, universal support for the concept of Workers' Compensation.

   However the workplace has changed during the past 80, 40 and even 10 years, not the least of which is the size of the "market" which the Workers' Compensation Board strives to serve.

   We question the ability of a single body - government or otherwise - to manage the volume and complexity of Workers' Compensation today based in concepts of yesterday.

It is unreasonable to suggest that current employers should bear the cost of errors made in the past by the various Queensland Governments of the day. Most of today's employers, especially in small business which employs most people, are not the same employers of years gone by.

It is not as if there is a fixed group of employers who have escaped their obligations in the past and who now are avoiding their responsibilities.

Please refer to *Item 3* with regard to our recommendations on the current unfunded liability.

2. *Offer Workers' Compensation business to private insurers and restructure the Workers' Compensation Board as a regulator and government "watchdog" over the industry.*

After having debated the relative merits of having Workers' Compensation provided by a sole government insurer or a pool of private insurers, the Australian Society of CPAs believes Workers' Compensation should be no different from other forms of accident and health insurance handled satisfactorily and profitably by various private insurers.

One of the main arguments against a sole government insurer is that there is little incentive to contain expenses and so be conscious of claims cost control.

It could be argued that the attitude of government services is changing under the impact of corporatisation but in the long run the government remains a monopoly and its charges will reflect its costs.

In a private organisation, where management and directors are answerable to shareholders and where government ensures competition, market forces drive the incentive to be competitive through cost efficiency.

The Australian Society of CPAs suggests that the Queensland Government could license probably up to four private insurers to offer Workers' Compensation.

Successful applicants would meet relevant requirements such as corporate structure, funds ratios, demonstrated ability to provide the service and successful past history.

The existing Workers Compensation Board would continue as a monitor and regulator of the industry.

In this role, similar in some way to the role of the Insurance and Superannuation Commission, the Board would:

- administer the various statutory requirements including insurer and employer compliance
- review, evaluate and report on industry performance
- administer a disputes settlement process.

3. Introduce private insurers to provide Workers' Compensation cover.

We believe that private insurers would most efficiently manage Workers' Compensation and that the driving force would be competition and we offer two suggestions as to how private insurers could be introduced.

(a) The government could calculate an actuarially discounted exposure on the current unfunded liability. The government would pay this amount to one or preferably more commercial insurers who could satisfy the government as to their financial standing and expertise.

These commercial insurers would assume the risk and claims management of the current unfunded liabilities of the Board.

Claims reported but not paid would become the liability of the re-insurers.

Claims arising from unreported incidents which subsequently are raised within the three-year statutory claims period would continue to be the liability of the Board.

However claims management in these latter cases may be contracted to the re-insurers thereby allowing the Board to have a minimal administrative role in the future.

(b) Private insurance companies accepting the Workers' Compensation business would pay an entry amount to help cover the current unfunded liability.

For any new system to start with a clean slate a substantial carry-on premium needs to be established to protect the existing unfunded liability.

This will enable the Workers' Compensation cover and procedures to continue.

This amount, to be determined in advance by some independent actuarial authority, could be funded jointly and equally by Queensland Government Consolidated Revenue and the private insurers who were successful in gaining a Queensland Government licence to offer Workers' Compensation.

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Comment

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On behalf of the Queensland Division of the Australian Society of CPAs I wish you well in your endeavours in what I am sure is an unusually difficult task.

I look forward with great interest to your recommendations.

Yours sincerely.

David White - ASCPA Queensland State President

01 MAY 1996 (123)

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29 April 1996

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and Related Matters in Queensland
GPO Box 374
BRISBANE QLD 4001

Dear Mr Kennedy

Please find attached three copies of the submission by the Australian Physiotherapy Association to your Inquiry.

Should you require further information, please contact in the first instance:

Ms Amanda Croker
President
Queensland Branch
Australian Physiotherapy Association
Suite 17, Taringa Centre
200 Moggill Road
TARINGA QLD 4068

Phone: (07) 3870 9577
Fax: (07) 3371 5523

Thank you for the opportunity to present this submission.

Yours sincerely

Gavin Hewton
CHIEF EXECUTIVE OFFICER

admn\d503l.h

Change Challenge Choice
NATIONAL PHYSIOTHERAPY
CONGRESS 1996
BRISBANE

INQUIRY INTO WORKERS' COMPENSATION AND RELATED MATTERS IN QUEENSLAND

SUBMISSION BY THE AUSTRALIAN PHYSIOTHERAPY ASSOCIATION

April 1996

Australian Physiotherapy Association
National Office
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EXECUTIVE SUMMARY

The Australian Physiotherapy Association welcomes the opportunity to contribute to the Inquiry into Workers" Compensation and Related Matters in Queensland.

The submission does not attempt to provide detailed comment on specific options for the structure of the scheme in Queensland. Instead, the Association recommends that, irrespective of any changes which might be proposed, such change must be assessed against both a recognition of a social welfare component of the scheme and the fundamental obligations which employers have for the health and safety of their workers. In this respect the Government must ensure that there are minimum standards which should apply to all employers in the rehabilitation of injured workers.

The Board itself should also take an active role in the development of injury prevention strategies in consultation with employers, workers, and health service providers.

In addition to these comments about the underlying philosophy of the scheme, the Association submission also addresses a number of specific issues related to the involvement of physiotherapists as service providers to injured workers. The Association emphasises that the relationship between it, as the body representing the physiotherapy profession and the Board has been a very positive and co-operative one and that this will continue. Nonetheless, there are several areas which should be the focus of future discussion. These are:

- the collection of appropriate data on the extent of and trends in physiotherapy treatment and the analysis of that data;
- the introduction of enhanced information systems which permit that data to be collected;
- amendments to the "prior approval" processes to enable the Board to better monitor services provided by physiotherapists;
- the development of peer review processes;
- the payment of fair and reasonable remuneration for physiotherapy services which reflects the cost of provision of the service and ensures that the cost to the Board is not subsidised by non-compensible patients; and
- consideration of primary contact status for non-medical health service providers.

The Association also articulates its preparedness to provide further information on these and other issues at the invitation of the Inquiry.

1. INTRODUCTION

In many respects, the Industry Commission's inquiry into workers' compensation represented a watershed for the issue in Australia. For the first time there was active debate on whether the, then, relatively cocooned state-base schemes supported or were at odds with the drive to make Australian industry more internationally competitive. Faced with the evidence, the various schemes were generally forced to concede that improvements were not only necessary but possible. Further, faced with the possibility of a national workers' compensation scheme competing with state schemes, State Ministers of Labour agreed to collectively implement a process the object of which was the achievement of greater consistency between each of the existing schemes.

Almost three years down this track, it is timely that the Queensland Government is undertaking its own Inquiry which, under the Terms of Reference, can make some assessment of the progress achieved to date.

The Australian Physiotherapy Association has been involved in the national consistency project and believes that the Inquiry would benefit by being informed of our experiences to date. Nonetheless, irrespective of the outcomes of that project, the Inquiry represents an important opportunity for the Association to raise a number of specific issues in relation to the provision of physiotherapy services to injured workers in Queensland and to make recommendations on how those services can be developed and improved for the benefit of the Queensland Workers' Compensation Board, injured workers, employers and physiotherapists.

In this submission, the Association intends to provide some general comments on the structure of the Queensland workers' compensation scheme. However, the major issues addressed will relate to points 2(b), 2(c) and 4(f) of the Inquiry's Terms of Reference.

2. GENERAL STRUCTURE OF THE QUEENSLAND WORKERS' COMPENSATION SCHEME

Like all government functions, the Queensland workers' compensation scheme should be subject to regular review. The current Inquiry provides such an opportunity at a time when workers' compensation issues are the subject of broader public debate. While the Association does not propose to provide detailed discussion of the operation of the Queensland scheme, there are several general observations which this submission addresses.

The first relates to the role of workers' compensation. As was pointed out at the recent First National Workers' Compensation Symposium, workers' compensation systems face three, sometimes competing, forces. They are:

(i) its position as part of a wider social welfare network;

(ii) the extent to which it is a part of the broad insurance market; and

(iii) whether it represents a market unto itself and is, or should be, quite distinct from (i) and (ii) above.

The Association believes that there is a strong "social welfare" component to workers' compensation. Employers, having accepted the responsibility of employing persons to participate in the conduct of their business, have an equal obligation to ensure that those employees who are injured in the course of that employment are appropriately rehabilitated.

The existing structure of the Queensland workers' compensation scheme provides a consistent framework through which this obligation can be actioned. In this respect, the Association believes that any changes which are proposed to the structure of the scheme should not have the effect of diluting this obligation.

In particular, the Association would caution against any unregulated privatisation of workers' compensation in Queensland on the basis that there is a risk that some employers may make inappropriate trade-offs between their responsibilities to employees and narrower commercial considerations.

Equally, similar issues arise in any proposal which would allow employers unconditional access to self-insured status, for the purposes of workers' compensation.

In both case, there is a need, in the Association's view, for the Government to ensure that there are minimum standards which should apply to all employers in the rehabilitation of injured workers.

Finally, the Association recognises that the focus of workers' compensation schemes must necessarily be on providing the mechanisms for the most effective rehabilitation of injured workers with the object of achieving return to work. Nonetheless, the overall cost effectiveness of schemes will be enhanced by also focusing on the development of injury prevention strategies through a co-operative approach involving employers, workers, the Board and health service providers. Effecting positive behavioural change in the workplace can reduce not only the incidence of injury but the cost of rehabilitation when injury does occur.

3. THE NATIONAL WORKERS' COMPENSATION ENVIRONMENT

The Heads of Workers Compensation Authorities (HWCA) are currently formulating a program aimed at achieving greater consistency in the administration of the various state-based workers compensation schemes. As part of that project, the Australian Physiotherapy Association has been involved in a bipartite working party with representatives of one of the HWCA's sub-groups, the National Medical Services Group (NMSG).

At the instigation of the Association an initial meeting took place with the NMSG as a whole in October 1993 and the formal working party began discussions in April 1995. The Queensland Workers' Compensation Board was not represented on this working party. At that time, the Association identified a number of issues which were pertinent to the provision of physiotherapy services to compensible patients. These items included:

. Schedule of Physiotherapy Services;

. Service Guidelines with specific reference to:
  - Outcome measures, and
  - Data collection;

. Reporting Requirements including issues of best practice and accountability;

. Fee levels including the cost to providers of services to workers' compensation patients; and

. Annual Review processes.

The Association certainly had expectations that a package of positive initiatives could be agreed. It was, therefore, of considerable disappointment to the Association that the outcome of these discussions ultimately fell well short of these expectations.

In October 1995, the NMSG presented to the HWCA a paper setting out recommendations for a National Physiotherapy Service Schedule. The paper alleges that it "presents the comments submitted by the APA" and creates an overall impression of some agreement having being reached with the Association. This is not correct.

The paper focused almost exclusively on fee levels without proper consideration being given to the range of services and processes which those fees are expected cover. Further, the paper contained a substantial number of errors and omissions which the Association has since brought to the attention of the NMSG Working Party. However, because of the differences between the Association and the NMSG on this issue, it is important for the Association to document its position to the current Inquiry.

As detailed in Section 4.5 of this submission, for a number of years the Association has produced a Recommended Schedule of Fees based on a survey of the cost of the services provided by physiotherapists in private practice and which is undertaken by an independent external consultant. The Association remains committed to the integrity and validity of that approach. Nonetheless, the NMSG proposed an alternative methodology which, while theoretically sound, contained a number of factual errors. In responding to the NMSG's model, the Association both stated its acceptance of many of the underlying assumptions and corrected the errors contained in the NMSG's calculations.

The result was a base fee level which was substantially above that anticipated by the NMSG. Rather than further discussing these issues, the NMSG arbitrarily altered crucial assumptions in their own model and subsequently submitted the outcome to the HWCA. In the Association's view this was quite dishonest.

The only conclusion which the Association can reach from this scenario is that the NMSG had predetermined an outcome and had manipulated the process to achieve that outcome. The involvement of the Association in discussions can then be seen as no more than an attempt to gain the Association's imprimatur.

While the status of the NMSG's recommendations to both the HWCA and, ultimately, the Ministers of Labour remains unclear, the Association has reached a number of conclusions regarding the national consistency project. Specifically, that:

(i) the intended focus on achieving "best practice" in terms of the various schemes' coverage, benefit levels, premiums, service delivery, rehabilitation and return to work, dispute resolution, minimisation of fraud and information sharing has, in practice, has been replaced by one of cost reduction only; and

(ii) the underlying differences between schemes in terms of history, structure and operation has resulted in the adoption of a minimalist approach by the NMSG reflecting the lack of agreement on key issues between the representatives of the various schemes.

While the Association supports the intended focus of the national project, on the basis of this experience we have little confidence that the outcomes will meet this objective. In this respect, the current Inquiry provides the opportunity for the Queensland Government to consider its position on continuing to be involved in the project.

4. SPECIFIC ISSUES

There are a number of specific issues relating to the provision of services under the Queensland workers' compensation scheme which the Association believes are important to bring to the attention of the Inquiry.

At the outset, however, the Association wishes to emphasise that there has generally been a very co-operative and positive relationship between it and the Queensland Workers' Compensation Board. This has been evidenced by:

. regular meetings between Association and Board representatives;

. the recent introduction of an "Information Bulletin for Physiotherapists"; and

. the commencement of joint seminars to members of the Association.

The Association believes that these initiatives have been of substantial benefit to both the Board and service providers and that they should be continued.

4.1 Cost of Physiotherapy

Physiotherapists were circularised some 18 months ago with correspondence from the Board outlining its concerns about an apparent escalation in the level of expenses for physiotherapy services. We say apparent because, while the data may show an increase in the absolute level of physiotherapy expenses, there is no supporting information on the source of that increase. For example, an increase could result for a number of reasons including:

. an increase in the number of injured workers requiring physiotherapy treatment;

. an increase in the number of chronic, as opposed to acute, conditions for which physiotherapy treatment is required;

- the substitution of physiotherapy treatment for other types of medical services. This may result in an overall lowering in total case management costs even though physiotherapy expenses have increased.

The Association does note that, following consistent requests for corroborating data, the information which was able to be produced ultimately by the Board showed that while total payments for physiotherapy services increased by 53.5 per cent in the between 1992-93 and 1994-95, the number of clients receiving physiotherapy services increased by more than 40.0 per cent. Our analysis of the information indicates that the average cost per treatment increased by only 4.8 per cent. This represents a fall in real terms.

The Association would share the Board's concern at increases in physiotherapy expenses. However, we do not agree that the only implication or interpretation of that increase must be that physiotherapists are over-servicing. Such a presumption is altogether too simplistic and discredits the entire physiotherapy profession. Any response which seeks to "ration" access to physiotherapy services as a consequence will not be the most appropriate. Instead, the Board should undertake to analyse the data more closely to identify the source/s of this increase before determining whether any remedial action is necessary. The Association is more than willing to assist the Board in such an exercise.

4.2 Data Systems

The lack of detailed information on the source of increases in physiotherapy expenses incurred by the Board indicates a wider problem of inadequate data systems. The overall management of the workers' compensation system depends upon the Board having access to timely and detailed information on the injuries sustained by workers, the services provided to injured workers to effect a return to work and the individual case cost of each compensible injury.

This lack of information is not confined to the Queensland scheme. The Association has highlighted to the NMSG this deficiency as well as the need for all schemes to have a consistent approach to data collection. While the Association recognises that the introduction of such systems may represent a substantial capital cost to all schemes, including the Queensland system, such costs represent an essential investment if the procedures are to better identify problem areas in administration and institute appropriate targeted remedial action. Again, the Association repeats its willingness to work with the Board to identify the specific information needs relating to physiotherapy services.

4.3 Notification Processes

During 1995, the Board undertook an extensive review of the conditions governing the provision of physiotherapy services to injured workers. As a result of that review, the Board instituted a change to the reference point at which prior approval for the extension of physiotherapy services would be required. Previously, prior approval was required for physiotherapy services extending beyond six calender weeks. This has been changed to a requirement that prior approval be sought for physiotherapy management plans extending beyond 15 treatments/services.

While this approach may have some superficial appeal in terms of placing a more rigorous cap on physiotherapy costs before a review by the Board takes place, the Association believes that it is a second-best approach. One of the deficiencies is that, as has been found under the prior approval process used by the Department of Veterans' Affairs, it can lead to injured workers having an expectation of, and a demand for, an entitlement to 15 treatments/services.

As a means of avoiding this situation, the Association has previously discussed with the Board a proposal to introduce a "Notification of Commencement of Treatment" form. Information collected by this form would include, inter alia, the condition/s which are to be treated and an assessment by the physiotherapist of the expected duration of that treatment. Over time, this information could be used by the Board to establish treatment "flags" or clinical pathways for various conditions. The Board would then be able to assess any proposed management plan against these clinical pathways soon after treatment commences and, if treatment is proposed which goes beyond these pathways, the Board can seek early clarification with the individual physiotherapist on the reasons why additional treatment is required on a case-by-case basis. This would provide the Board with a more consistent and predictable framework for approving treatment proposals.

As an additional reporting mechanism, the Association has recommended the introduction of a "progress report" which can be used selectively by the Board as a low cost tool to monitor individual claims at any stage of the treatment process.

The Association recommends that this approach be adopted for physiotherapy services.

4.4 Peer Review

The Association recognises that the development of enhanced information systems by the Board would be part of an overall process which would include the achievement of increased accountability by all groups providing services to the Board, including physiotherapists, doctors, lawyers etc. However, this may involve significant lead times before the benefits of the process are realised.

The Association also recognises that there may be service providers who may be required to be more accountable and warrant more detailed scrutiny. As far as physiotherapists are concerned, the Association has previously offered to the Board the invitation to discuss the establishment of a peer review process. Such a process would involve the determination of an agreed mechanism through which individual providers or specific cases could be reviewed.

In addition, the Association has also identified, through the NMSG, that the Board has access to the Association disciplinary processes as a means by which inappropriate practices, related to physiotherapy services provided to workers' compensation patients can be dealt. Although this mechanism is only available for members of the Association, which represents an estimated more than 80 per cent of practising physiotherapists in Queensland, these processes can be an important source of review where other processes are unavailable or not appropriate.

4.5 Schedule of Services and Fee Levels

The Association has welcomed the introduction of a physiotherapy service schedule which reflects the complexity of condition/s treated. Since the schedule has drawn heavily on the Association's service schedule and descriptions, the Board's decision emphasises the fact that the Board has responded positively to a number of the initiatives proposed by the Association which are aimed at enhancing the level of accountability by physiotherapists.

However, the Association is less than satisfied with the level of remuneration for these services and the basis on which they are derived by the Board. As noted previously, this issue has been the subject of very substantial discussion with the NMSG on which the Board is represented. The lack of any agreed resolution on this issue and the apparent ongoing commitment by the Board to the national consistency project means that the current Inquiry provides an important opportunity for the Association to again argue its case for an appropriate level of fees to be paid for physiotherapy services provided to injured workers in Queensland.

The Association believes that there are three core criteria for the fees paid for physiotherapy services:

- fees charged should be fair and reasonable;
- fees charged should reflect the cost of providing the service; and
- the cost of services provided to work injured patients should not be subsidised by non-compensible patients.

The existing fee schedule administered by the Board meets none of these criteria

The Association has, for a number of years, prepared a Recommended Schedule of Fees for its members. The items which make up the Schedule are service-based (i.e reflecting what is actually done) rather than time-based (i.e. how long it takes to do it). There are four primary service items which relate to:

- the initial assessment and treatment of one area or condition (Initial Consultation);
- the reassessment and treatment of one area (Standard Consultation);
- the reassessment and treatment of a complex condition or two distinct areas (Long/complex Consultation); and
- the reassessment and treatment of an extremely complex condition or three or more distinct injuries or conditions (Extended/complex Consultation).

Based on the extensive clinical experience of those involved in the construction of the original schedule, a specific relationship was determined between each of these primary services. Again, this relationship was not determined on the basis of the time taken to perform the service, but reflected the relative value and complexity of the service.

The Standard Consultation was chosen as the base unit since it was, and is, the most common service delivered by physiotherapists and the relativities established were:

- 1.25 for an Initial Consultation;
- 1.5 for a Long Consultation; and
- 2.0 for an Extended Consultation.

In response to the changing health care environment and the need to better document the specific activities which were anticipated to comprise these items, the Association developed detailed service descriptions which have been included as part of the Schedule since 1994.

Prior to 1991, the fee for the base unit (i.e. the Standard Consultation) in the Schedule was based on a defined percentage (5 per cent) of the level of average weekly earnings applying in a particular State or Territory. The relative values for the other items were applied to this figure to arrive at the appropriate fee for that item.

While this approach provided an independent external measure of fee movement (and, therefore, an added level of validity), there was no relationship to the cost of provision of physiotherapy services. The Association noted that the Schedule of Recommended Fees calculated in this way was generally accepted by purchasers of physiotherapy services, including insurers and compensible bodies. However, following external advice, the Association concluded that the fee level for physiotherapy services should have some direct relationship to the cost of providing that service.

As a consequence, Professor Geoffrey Meredith from the University of New England was appointed to undertake a fee review on behalf of the Association. The first was conducted in 1990 based on 1989-90 data. The results of this first review took effect from 1 July 1991. Professor Meredith has continued annual reviews since that time, the latest having effect from 1 July 1995.

The Meredith surveys have been the subject of considerable discussion and debate between the Association and members of the NMSG, collectively and individually. The Association would emphasise that on the only occasion on which the matter has been independently reviewed in a workers' compensation context, a Review Officer in South Australia found that the methodology used and the outcomes produced were "reasonable".

The Association remains committed to the integrity of the Meredith approach in that it has met an external test of fairness and reasonableness and is based on the underlying cost of providing the service.

In terms of the extent to which the Association schedule reflects the full cost of services for compensible patients, the Association has further argued that there are identifiable additional costs incurred in practices in relation to compensible patients. Aspects of the service which go beyond what is normally required could include:

- increased level of information required of the patient;
- sourcing the required information;
- relativity of injury to occupation;
- level of contact with employer, rehabilitation provider/co-ordinator, doctor etc;
- following up accounts (lost/didn't receive);
- lower motivation of/higher expectations by patients;
- higher appointment cancellation rate;
- language and cultural differences;
- delays/disputes in payment;
- higher reporting requirements;
- communication with lawyers;
- higher general trauma/stress with the patient; and
- poor workplace organisation leading to recurrence of injury.

The Association requests that the Inquiry endorse the criteria for fee determination proposed by it for physiotherapy services to work injured patients in Queensland and require the Board to discuss with the Association the determination of a fee schedule which meets these criteria.

4.6 Primary Contact

Under the existing administrative arrangements of the Queensland workers' compensation scheme, there is a general requirement that access by injured workers to allied health services, including physiotherapy, can only occur upon referral from a general practitioner or medical specialist. This means that there will generally be an up-front charge incurred by the Board for such services, even when a condition will obviously require physiotherapy treatment. This represents potentially avoidable cost to the Board.

The reputation of physiotherapists as primary contact practitioners is now broadly recognised by both the general community and the medical profession. The Association believes that there may now well be scope to more closely investigate the circumstances and conditions under which injured workers may be referred by employers direct to physiotherapists for treatment.

The Association beleives that such an approach may materially assist in enhancing the clinical and cost benefits to injured workers and the Board of early intervention. This could be the subject of more detailed discussion and cost-benefit analysis between the Board and representatives of the various health service provider groups.

The issue of primary contact also has some implications for referrals for X-ray services. Under Commonwealth legislation, physiotherapists are permitted to refer patients for a range of X-ray services without the need for a medical referral. It is unclear whether the Board would similarly allow such direct referral. However, the fact that medical practitioners are charged under current arrangements with the overall patient management function and the existence of professional courtesies between physiotherapists and their referring doctors mean that, where an X-ray for a compensible patient is determined to be necessary by a physiotherapist, a referral is made back to the referring medical practitioner. Again, some cost savings could be made if specific guidelines were developed to allow physiotherapists to directly refer injured workers for X-rays in defined circumstances.

Similarly, physiotherapists are prevented from providing return-to-work certificates to injured workers at the conclusion of treatment. Such certificates can only be provided upon referral back to the referring general practitioners or medical specialist. Again, this may result in avoidable cost to the Board which can be the subject of specific discussion.

A final issue related to primary contact relates to the provision of functional capacity evaluation (FCE) services. There are a number of physiotherapists gaining specific post-graduate qualifications in this area. The Association believes that these physiotherapists are capable of providing a more detailed FCE service which can be differentiated from those provided by other providers. Should the Board conclude that such a service is required, there should also be a recognition that a different level of remuneration may be required for that service. This could be the subject of more detailed discussion with the Board.

4.7 Quality Assurance

The Association is aware that under the Queensland Government's Quality Assurance Policy there is a requirement for all suppliers of goods and services direct to the Government to be quality assured. This Policy applies to those referrals for physiotherapy treatment generated directly from the Board. The Board, in consultation with the Departments of Health and Business, Industry and Regional Development, has identified a number of elements which providers of health services need to address to meet quality assurance requirements.

After almost a decade in development, the Association introduced the Practice Accreditation Program more than five years ago. The Program involves a number of quality assurance standards and has been the subject of very recent discussions with the Board and the respective Departments to have the Program certified as quality assured under the Government's requirements. Such certification will provide the Board with specific mechanism for assessing the quality assurance of physiotherapists.

4.8 Range of Services

Physiotherapists currently provide a wide range of clinical services to injured workers. However, there needs to be an increased recognition by the Board of the expanding scope of the profession's knowledge base and the positive impact that this can have on the service options available to the Board. In particular, the Association submits that the Board should regularly review the range and types of services required for the rehabilitation of injured workers and those providers who have the appropriate qualifications to provide those services. This would increase the flexibility of the Board in terms of access to the most appropriate service rather than the best approximation.

Similarly, the profession is prepared to participate in programs developed by the Board to better educate workplace health and safety officers in the development of workplace rehabilitation strategies.

5. SUMMARY AND RECOMMENDATIONS

The Association supports the Queensland Government's initiative in this inquiry into the workers' compensation system in that State. While much of its submission deals with very particular aspects of the operation of the scheme, there are a number of recommendations which the Association wishes to place before the Inquiry:

(i) there should be some overt recognition by the Government and the Board of the "social welfare" component of workers' compensation;

(ii) no changes should be made to the struture of the Queensland workers' compensation scheme which reduce employers' obligations to provide defined minimum standards of support for injured workers;

(iii) a commitment to the continued development of co-operative relationships between the Board and provider groups;

(iv) the undertaking of more detailed analysis of costs incurred by the Board, in consultation with provider groups;

(v) the introduction by the Board of more sophisticated information systems;

(vi) the Board should encourage workers' compensation authorities in other jurisdictions to collect data related to workers' compensation in a consistent manner;

(vii) the prior approval system should be replaced by a process involving the introduction of "Notification of Commencement of Treatment" and "Progress Report" forms;

(viii) a requirement for the Board to progress discussions on the establishment of peer review processes for service providers;

(ix) require the Board to pay fair and reasonable fees for physiotherapy services provided to injured workers;

(x) undertake a review of the circumstances and the conditions under which injured workers may access health services without medical referral; and

(xi) require the Board to undertake regular reviews of the range and type of services which are able to be offered by providers as a means of ensuring the widest possible options are available to the Board to access the most appropriate services.

The Association wishes to express its appreciation for the opportunity to provide comments to the Inquiry and stands willing to participate further should it be requested.

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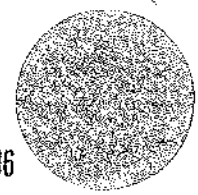
Moranbah Q 4744



April 16 1996

The Chairman
Inquiry into Workers Compensation
& Related Matters in Queensland
Brisbane.

Dear Sir,

I am concerned by what appears to me to be an injustice in the Workers Compensation law in this state,namely the passing of liability to the person who hires a contractor,in the event that the contractor does not have a current policy with the WCB.

If I understand the relevant law,the onus is on the person who employs the labour to cover his employees with Workers Compensation insurance. Why then should the householder be made responsible if the employer defaults?

Attached are copies of my correspondence with various people relating to this problem.
I hope this matter can be fairly resolved in the course of your enquiry or as a result of it.

Yours sincerely,

Will Pascoe

Rob MITCHELL, M.L.A.
Member for Charters Towers

P.O. Box 380,
CHARTERS TOWERS 4820

Telephone : 077 872139
Fax. No.: 077 873919
Toll Free No. : 008 811 103

5th April, 1995

Mr. W. Pascoe,
3 Nonette Street,
MORANBAH 4744

Dear Mr. Pascoe,

Attached is correspondence from the Minister for Employment, Training and Industrial Relations, Hon. Matt Foley, M.L.A.

I trust the information contained therein is of interest to you.

If I can be of further assistance in this or any other matter in the future, please do not hesitate to contact me once more.

Yours sincerely,

Rob Mitchell, M.L.A.,
Member for Charters Towers

Minister for Employment,
Training and Industrial Relations.

G.P.O. Box 69, Brisbane 4001, Queensland
Telephone: (07) 225 2001 Facsimile: (07) 225 2002

Mr R A Mitchell MLA
Member for Charters Towers
PO Box 380
CHARTERS TOWERS QLD 4820

Dear Mr Mitchell

I refer to your letter of 16 February 1995 regarding workers' compensation arrangements in Queensland specifically in relation to contractors.

With respect to your enquiry regarding common law proceedings against an employer who has ceased business, the General Manager, Workers' Compensation Board advises that if the employer held a workers' compensation policy at the time the injury was sustained, the Board would defend the action on behalf of the insured employer.

The Workers' Compensation Act requires that all Queensland employers hold policies of accident insurance with the Workers' Compensation Board of Queensland.

Whilst the employer has the responsibility to insure in terms of the Act, there is also a responsibility for a principal contractor to ensure that sub-contractors undertaking work for the principal are insured in respect of labour employed. The insurance cover provided by the Act indemnifies the principal contractor as well as the contractor where joint negligence is proven. Principal contractors who fail to ensure that contractors have insurance cover run the risk of being charged premium for the hired labour and may be held liable for the costs of any injury sustained by that worker.

The Declaration of Wages and Contracts forms forwarded to all employers annually are accompanied by an explanatory guide which details the principal contractor's responsibilities. Principal contractors who ensure that their sub-contractors who employ hold current workers' compensation policies and advise the Board of either the policy number or details of the uninsured employers are not liable for premium in relation to those workers.

Therefore, by correctly discharging their responsibilities, principal contractors will not be held liable for injuries sustained by employees of sub-contractors.

Should you wish to discuss this matter further, Mr Paul O'Connell, Manager Townsville District of the Workers' Compensation Board (telephone 077 22 1011) will be able to assist you.

I trust that this information has been of assistance in clarifying this issue.

Yours sincerely

MATT FOLEY
MINISTER FOR EMPLOYMENT, TRAINING AND INDUSTRIAL RELATIONS

Rob MITCHELL, M.L.A.
Member for Charters Towers

P.O. Box 380,
CHARTERS TOWERS 4820

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Fax. No.: 077 873919
Toll Free No. : 008 811 103

4th May, 1995

Mr. W. Pascoe,
3 Nonette Street,
MORANBAH 4744

Dear Mr. Pascoe,

In relation to your query regarding common law proceedings against an employer, please find enclosed correspondence I received from Santo Santoro, Shadow Minister for Employment, Training and Industrial Relations.

Mr. Santoro raised this issue during the Workers' Compensation Act Amendment Bill. A copy of this debate is attached.

Also, for your information, notes from the Qld. Parliamentary Library on this issue.

If I can be of further assistance, please do not hesitate to contact me once more.

Yours sincerely,

R Mitchell

Rob Mitchell, M.L.A.,
Member for Charters Towers

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FACSIMILE MESSAGE

TO: MR. S. SANTORO MLA	Attn:	Total Pages: 7

SUBJECT: WORKERS' COMPENSATION OBLIGATIONS

MESSAGE: Under the Workers' Compensation Act 1990 all employers have an obligation to ensure that all persons employed by them and classified as employees are ensured for personal injury caused by accidents on the worksite. However, the applicability of the Act will depend on whether or not the parties involved are defined as employer and employee under the Act. Additionally this is assuming that the injury was sustained after 1990 when the current Act was introduced. If the injury occurred before this date then the Act as it stood at the time would be applicable.

Not being aware of the circumstances I enclose the sections under the current Workers' Compensation Act as to who is an employer and who is an employee.

It is possible under Common Law for a former employee to commence legal action against his or her former employer in the light of the employer not complying with Workers' Compensation obligations to ensure the employee against personal injury sustained during the course of employment. The points that would have to be covered in any case are:
* the nature of the employment relationship (this is determined by reference to case law)
* that the injury occurred and loss was suffered

Prosecution of the employer on the part of the Workers Compensation Board would not assist the former employee in obtaining compensation except that a conviction under such circumstances may be capable of being used as evidence in a compensation case to prove liability.

Date	From	Phone
27/2/1995	WAYNE JARRED	226 7372

employed mariners in employment by a department of government or by or under the Crown in right of the State;

"department of government" means a department within the meaning of the *Public Service Management and Employment Act 1988*, and includes—

(a) Queensland Railways; and

(b) Queensland Electricity Commission;

"dependants" means such members of the family of a worker as—

(a) in the case of a deceased worker—were wholly or partially dependent on the earnings of the worker at the time of the worker's death, or, but for the worker's incapacity due to injury, would have been so dependent;

(b) in the case of an injured worker—were wholly or partially dependent on the earnings of the worker at the time the worker suffered the injury;

"director", in relation to a corporation, includes—

(a) a person holding or acting in the position of a director of the corporation, by whatever name called, whether or not the person was validly appointed to hold, or is duly authorised to act in, the position; and

(b) a person in accordance with whose directions or instructions the corporation is ordinarily controlled;

"employer" means a person (whether an individual or a corporation), or any association or group of persons, or a partnership that employs a worker or workers, and includes—

(a) a person prescribed by this Act to be an employer for the purposes of this Act; and

(b) a person declared by section 2.2 to be an employer in the circumstances prescribed by that section; and

(c) a person by whom a worker is declared by section 2.2 to be employed; and

(d) the legal personal representative of a deceased employer;

worker for the purposes of this Act;

(b) a person to whom, or on whose account, compensation under this Act is payable in respect of an injury suffered by the person as a worker;

but does not include a person declared by section 2.3 not to be a worker for the purposes of this Act.

(2) A reference in this Act to a worker who has suffered injury includes, if the worker is deceased, reference to—

(a) a legal personal representative of the worker; and

(b) dependants of the worker; and

(c) any other person to whom or for whose benefit compensation is payable under this Act because of the injury.

(3) A reference in this Act to compensation under this Act includes—

(a) expenses paid or payable under this Act to or on account of a worker in respect of an injury; and

(b) expenditure by the Board in securing—

(i) medical treatment or assessment of a worker; or

(ii) any other treatment of or benefit for a worker; or

(iii) rehabilitation of a worker; and

(c) amounts paid by the Board by way of deductions for taxation or other obligations of a worker.

(5) A reference in this Act to the clerk of the Magistrates Court includes reference to an officer, other than such a clerk, appointed for the time being by the Governor in Council to exercise and discharge powers, authorities, functions and duties assigned to such a clerk by this Act within any locality in the State.

(6) In the application of a provision of this Act in relation to oral injury, or in respect of a worker who has suffered such injury, a reference in that provision to a registered medical practitioner includes reference to a registered dentist, who in respect of such injury may lawfully issue a prescribed certificate of medical practitioner.

(7) For the purposes of this Act, damage to or destruction of—

carrying goods (other than tools designed for use by hand) or animals; or

(ii) a motor vehicle of any kind used for driving tuition; or

(f) a member of a partnership as defined in section 5 of the *Partnership Act 1891* and as determined in accordance with rules specified in section 6 of that Act; or

(g) a director of a corporation, unless, where the director works for the corporation under a contract of service or apprenticeship, the director is specially insured under or is specially covered by a policy under the director's election to be so insured or covered; or

(h) a trustee, unless the trustee is specially insured under or is specially covered by a policy under the trustee's election to be so insured or covered.

Presumption as to work incident to trade or business

2.4 If under a contract—

(a) work is performed by a contractor who regularly carries on a trade or business such that work of the kind performed under the contract is ordinarily performed in or in connection with that trade or business; and

(b) in the performance of the contract the contractor supplies materials or uses equipment, plant, machinery (other than tools designed for use by hand) or a motor vehicle (being a commercial motor vehicle fitted with a commercial type body) used for carrying goods (other than tools designed for use by hand) or animals;

it is to be conclusively presumed that the work performed under the contract is work incident to the trade or business regularly carried on by the contractor.

Computation of average weekly earnings

2.5 For the purposes of this Act, the computation of average weekly earnings of a worker for work performed is to be made in accordance with the following provisions—

Rob MITCHELL, M.L.A.
Member for Charters Towers

P.O. Box 380,
CHARTERS TOWERS 4820

Telephone : 077 872139
Fax. No.: 077 873919
Toll Free No. : 008 811 103

22nd June, 1995

Mr. W. Pascoe,
3 Nonette Street,
MORANBAH 4744

Dear Mr. Pascoe,

Thank you for your letter dated June 6, 1995.

In answer to your question "Has anything yet been done to correct this anomaly?" I am sorry to advise "no".

My colleagues and I do not believe the State Labor Government considers the point you are making to be an anomaly so therefore nothing will change until such time as the Coalition is returned to Government and anomalies such as this can be rectified.

From my discussions with Mr. Santo Santoro, M.L.A. it seems the "Workers' Compensation Act Amendment Bill" needs to be rectified in many areas and this is one of them.

I feel it is due time such bogus companies and contractors are made more accountable and more thorough checks conducted on their business regulations.

I have received many complaints concerning contractors in many areas who have actually sub contracted the work out, but have left the subcontractors without progress payments who in turn have left outstanding accounts in many centres throughout the Electorate.

However, please be assured I will continue to raise this issue wherever and whenever possible and in due course, anomalies such as this will no longer be an issue.

Thank you most sincerely for contacting me once more.

Yours sincerely,

Rob Mitchell, M.L.A.,
Member for Charters Towers

brought this matter to my attention. I can certainly give him as examples five or six written representations that have been made to me by employers who resent part of their premiums being diverted to fund an advertising campaign that they believe falls far short of the mark. In saying that, I reject any comments made by the honourable member for Mount Coot-tha that employers deliberately seek to avoid legitimate workers compensation claims. I can see the honourable member for Brisbane Central is asking me to wind up. However, I am afraid that when outrageous claims are made by Government members, they have to be countered.

In my capacity as a shadow Minister, I have had many representations made to me about faults in the workers compensation system. I should say that whenever I make specific representations to the Workers Compensation Board for comment, I appreciate very much the assistance and the promptness with which my queries are answered. Perhaps I will pause there for the lunch break and make reference to a couple of issues afterwards.

Sitting suspended from 1 to 2.30 p.m.

Mr SANTORO: Prior to the luncheon adjournment, I indicated that I would raise several specific matters which, in turn, have been raised with me from various quarters in relation to the current operations of the workers compensation system. I now do so in the context of referring the Minister to some cases that he may be able to take on board.

The first case concerns a woman who, as a teacher, suffered a permanent 10 per cent speech disability as a result of carrying out her basic classroom duty of addressing students. The Education Department terminated her employment, and the amount that she has received in compensation is insufficient even to provide for retraining for another role. It seems to me that this person has been hard done by. I appreciate that the workers compensation system must have its limits, but I also believe that, in circumstances where it is conceded that a work-related injury effectively robs a person of his or her livelihood, in particular a livelihood requiring significant skills, there should be some better means of preventing the sort of suffering that has occurred in this instance and, I imagine, similar ones.

In this case, we have a person who trained as a teacher but who can no longer expect employment in her profession. I think that the system must somehow accommodate this sort of situation, perhaps through some form of retraining assistance. The laudable emphasis on rehabilitation and on getting people back to work as promptly as possible which marks modern workers compensation schemes really demands some form of equitable answer to this sort of problem. I would be happy to provide the Minister with some more detail, if he is prepared to look at this case.

Mr Foley: Write me a letter.

Mr SANTORO: I certainly will write the Minister a letter, and I look forward to his response.

Another specific matter concerns a claim for extended compensation, something of which the Minister is officially aware from the correspondence between us. The case concerns an injury to a man caused by a side of beef falling upon him. There was a successful claim for support through workers compensation, which the claimant has sought to extend unsuccessfully on a number of occasions since 1989. While it seems to me that the claimant has exhausted all avenues available to him, one issue that the Minister may like to take on board is whether there needs to be any extension of section 9.20 of the Workers' Compensation Act, which limits the relevance of fresh medical evidence concerning a claim to medical evidence available within one year of the consideration of the claim by the tribunal.

Another specific issue that I wish to raise concerns the loss of consortium. Loss of consortium is not within the cover of a policy under workers compensation, according to a judgment handed down two years ago in the District Court. Clearly, to vary this would imply an increase in premiums, the extent of which is unclear given the lack of knowledge which exists in relation to the number of claims that there might be. I raise the matter here because it is clearly an issue which, however irregular, will arise from time to time. If the Minister has not already considered the issue, maybe he could give the matter some consideration. I would presume there remains the option for victims of this unfortunate problem to seek to establish some rights before the common law.

Finally, in relation to specific issues—and, again, I would be happy to take this matter up with the Minister—an issue has been brought to my attention concerning the vulnerability of people to claims by contractors or subcontractors. In the instance that has been brought to my attention, a person employed by a contractor, who had, in turn, been contracted to supply and apply vinyl cladding

to two homes in Mackay, sought to make a claim under the Workers' Compensation Act in relation to an injury suffered on the job. The complication for the home owner arose because the contractor who employed the injured worker could not be found, which has diverted the injured worker's attention to the home owner, as the ultimate employer of his labour. Clearly, this action, were it to be successful, would make anybody who engages a painter or a chippie to do work on his home liable for a claim. I would hope that the Minister will give some urgent consideration to this case. As I said, I would be more than happy to share with the Minister the correspondence that has been generated in my office about this case.

Before concluding in relation to specific cases, I reiterate the appreciation that I have expressed to the officers of the Workers Compensation Board for the very professional way in which they treat my queries. I do appreciate that I receive answers from the Minister, but obviously the Minister receives the detailed briefings which come back in the form of official correspondence from his officers. I do appreciate the courtesy that is extended to me and, through me, to all of the people who make many representations to me in my capacity as a shadow Minister.

The basic tenet of this legislation, as I said before, is the user pays principle. Government departments, which have not in the past been required to pay workers compensation premiums, will be required to do so. Ultimately, nobody can argue with that, and the Opposition is prepared to support this legislation pending satisfactory explanations from the Minister regarding a number of matters raised before the luncheon recess. In any event, in closing, I think it is also worth observing that, through the extension of the user pays principle in the way envisaged in the Bill, we are seeing another effective reduction in departmental allocations from this Government. The user pays principle has been applied by this Government not only to external consumers of its goods and services but also quite comprehensively within Government, to the extent that we now have many millions of dollars running around within the growing empires of Ministers and directors-general.

We would also like to know whether this latest example of user pays will see more public servants being diverted from front line work to go into administering this workers compensation regime—something that the Minister will hopefully address in the context of my earlier query about how these funds will be managed. With those few reservations, I am pleased to afford the support of the Opposition for this Bill.

Mr BEATTIE (Brisbane Central) (2.36 p.m.): I rise to support the Workers' Compensation Amendment Bill of 1995. There are three great winds in the world. There is the sirocco, which is an oppressively hot and blighting wind blowing through the Sahara from North Africa, across the Mediterranean and into Italy. It is a very hot wind.

Mr Ardill: Blighting.

Mr BEATTIE: It is a very blighting wind; I take that interjection. The second great wind of the world is the mistral, which is a cold wind that blows through France. It is a dry, cold wind. It blows from northern France through the Rhone Valley to the Mediterranean. However, it is a cold wind. The third wind is the honourable member for Clayfield, who has to go down in history as one of the great winds of this Parliament. In years to come, when we think of the sirocco and the mistral, we will also think of "little sirocco", the honourable member for Clayfield. I should warn the House that when the sirocco blows through Italy, it causes depression, suicides, domestic violence and all sorts of difficulties. I warn "little sirocco" that, if he continues in this way, it will have the same ramifications in this State. I believe that the people of Queensland need to be warned about the performance in this House of "little sirocco", who took a total of 45 minutes to say very little.

Mr Stephan interjected.

Mr BEATTIE: The honourable member does not even qualify as a wind; he is a pipsqueak, and he should wait his turn.

Having made that introduction, I now wish to address the legislation. Since 1989, the incidence of workplace disease and injury in Queensland has fallen by 14 per cent, which is an impressive record. However, the economic cost of workplace disease and injury still runs at an unacceptably high $1.2 billion a year. That is too high. Since 1989, under this Minister and this Government there have been a number reforms in the workers compensation area. I congratulate the Minister on that. The legislation before the House today is a continuation of the reforms that the Minister began.

This legislation joins State Government departments with the private sector in the Statewide Workers Compensation Scheme, a scheme aimed at exposing Government departments to the same incentives and penalties as the private sector. As we know,

Will Pascoe

Dip.App.Psych. Dip.C.H.

3 Nonette Street

Moranbah Q 4744

Phone (079)418176

August 21 1995

Mr Rob Mitchell MLA
Charters Towers

Dear Mr Mitchell,

Congratulations on retaining your seat in the State House.

Further to our correspondence of April and May,I thank you for your assistance thus far and now enclose a copy of the latest renewal notice,received today from the WCB.

As I have stated before,I believe it is totally unjust that I should be held responsible for the negligence of another. I engaged the contractor to perform work;he employed the workers; the responsibility for workers' compensation insurance is clearly his. The law,however, places the duty on me. The law must be changed.

The WCB states that they are unable to locate the company or its representative. My dealings were with a Mister FRED LORY who I believe can be contacted on a mobile phone at the Gold Coast and a Mister VIC OLLIS whose present whereabouts I do not know.

Any further representations you may be able to make regarding the correction of this anomaly in the law and the retrieval of the WCB premiums owed by PRESTIGE CLADDING will be greatly appreciated.

I will also forward the information regarding this matter to the relevant minister and the Manager of the WCB.

Again I thank you for your assistance so far and look forward to your continued support in having this matter rectified for the sake of all Queenslanders who may be so unfortunate as to be caught in this situation.

Yours sincerely,

Will Pascoe

Will Pascoe

Dip.App.Psych. Dip.C.H.

3 Nonette Street

Moranbah Q 4744

Phone (079)418176

August 21 1995

J R Hastie
General Manager
WCB of Queensland

Dear Sir,
I was advised several years ago to hold a "minimum" policy with the WCB in case I employed a casual worker to undertake minor maintenance on my properties in Mackay, the responsibility being mine if that person,employed by me,should be injured while in my employ.
I did so and now POLICY NUMBER GW915768018 is relevant.

In November 1993 I contracted PRESTIGE CLADDING PTY LTD, then of Elkhorn Avenue,Surfers Paradise,to vinyl clad both houses in Mackay.
Now the WCB is billing me for the premiums which were not paid by Prestige Cladding. I know this is the law at present but I believe it to be an unjust law and am agitating to have it changed.

In the meantime I offer the following information in the hope that your staff might locate the now vanished Prestige Cladding and retrieve the premiums from those whose duty it was to pay.

My dealings were with Mr.FRED LORY who I believe can be contacted by mobile phone at the Gold Coast and Mr. VIC OLLIS whose present whereabouts I do not know.

I will wait for your reply.

Yours sincerely,

Will Pascoe

Will Pascoe

Dip.App.Psych. Dip.C.H.

3 Nonette Street
Moranbah Q 4744

Phone (079)418176

September 4 1995

The Hon.Wendy Edmond
Minister for Employment,Training,and Industrial Relations
Brisbane.

Dear Ms.Edmond,

Congratulations on your appointment to the Ministry.
I wish you much success.

I am writing to bring to your attention what I believe to be an anomaly and an injustice in the law relating to Workers' Compensation.

In November 1993 I contracted a company,Prestige Cladding, to vinyl clad my two houses in Mackay. My dealings were with Mr.Fred Lory and Mr.Vic Ollis who explained to me that the work was done by contract labour. In good faith I signed the contract agreement and the work was completed. In 1994,however,I received a bill from the Workers' Compensation Board of Queensland for coverage of the workers who were employed on my job.The WCB were unable to contact Prestige Cladding so, according to the law,I was deemed to be the employer. I'm sure you can see the injustice in this. If Prestige Cladding were responsible for providing Workers' Compensation insurance for the workers they hired then surely that company is in breach of the law and for that responsibility to then be passed on to me makes no sense. I simply contracted a company to do a job - how they do that job and who they employ and under what conditions is their responsibility.

I have shown that Mr.Fred Lory,with whom I dealt and who travelled to Mackay to measure the houses,can be contacted

at the Gold Coast (see attached letter to the Manager,WCB) but I have no knowledge of the present whereabouts of Vic Ollis.

In the record of debate in the Legislative Assembly of March 28 1995,pages 11449 and 11450,mention is made of this matter as I have had correspondence with Mr.Rob Mitchell, my local Member,who has made representations on my behalf. Unfortunately the information in the Parliamentary Record is not correct as no one has,to my knowledge,made such a claim. I have brought the matter to the attention of those concerned simply to implore you to have this matter rectified for the sake of all those electors who may be caught in the same situation.

I trust you will give this matter your urgent attention before too many other voters suffer.

I will wait for your reply.
Yours sincerely,

Will Pascoe

Minister for Employment and Training and Minister Assisting the Premier on Public Service Matters

Mr Will Pascoe
3 Nonette St
MORANBAH Q 4744

14 September 1995

Dear Mr Pascoe,

I refer to your correspondence of 4 September regarding concerns about possible anomalies in the Worker's Compensation scheme.

Mrs Edmond has asked me to acknowledge receipt of your letter and advise that a response will be forwarded as soon as possible.

Yours sincerely,

M. L. Jarrett

MADONNA JARRETT
Senior Ministerial Policy Advisor

GPO Box 69
Brisbane 4001, Queensland
Telephone: (07) 3225 2001 Facsimile: (07) 3225 2002

THE WORKERS' COMPENSATION BOARD OF QUEENSLAND

HEAD OFFICE: 280 Adelaide Street, Brisbane, 4000
DX 215

Box 2459 G.P.O., Brisbane. 4001
Telephone No. 231 9500
Facsimile 220 0097
GENERAL MANAGER

19 September 1995

Mr W Pascoe
3 Nonette Street
MORANBAH QLD 4744

Dear Mr Pascoe

I acknowledge receipt of your letter dated 21 August 1995 and note the concerns you have raised.

I am having the matter investigated and will advise you in due course.

Yours faithfully

for J R HASTIE
General Manager

Rob MITCHELL, M.L.A.,
Member for Charters Towers

P.O. Box 380,
CHARTERS TOWERS, 4820

Telephone : 077 87 2139
Fax. No. : 077 87 3919
Toll Free : 008 811 103

19th September, 1995

Mr. W. Pascoe,
3 Nonette Street,
MORANBAH 4744

Dear Mr. Pascoe,

Thank you, once again, for your letter dated 21st August, 1995 enclosing the renewal notice.

You are correct to feel agrieved in this matter. To be held responsible for the negligence for another person is totally incorrect.

Workers Compensation has been the centre of serious discussions over the last few weeks and I enclose, for your perusal extracts from Hansard about this subject.

Also, I have written to Mrs. Wendy Edmond, M.L.A., Minister for Employment and Industrial Relations requesting she look at this anomoly and introduce an amendment to the new "reform package" she and her Departmental Officers are currently investigating.

I shall communicate with you when a reply is received.

Yours sincerely,

Rob Mitchell, M.L.A.,
Member for Charters Towers

THE WORKERS' COMPENSATION BOARD OF QUEENSLAND

ROCKHAMPTON: Level 2, 209 Bolsover Street, Rockhampton, 4700.
P.O. Box 1408, Rockhampton, 4700.
Telephone: (079) 31 4150 Fax: (079) 31 4160

Date: 21 September 1995

WJE & CM PASCOE
3 NONETTE STREET
MORANBAH Q 4744

For Service Telephone: 079 314144

Our Reference: GW915768018

Your Reference:

WORKERS COMPENSATION ACT 1990

Dear Sir\Madam

Further to your letters dated 21st August 1995 and 31st August 1995 addressed to our General Manager, I wish to advise that we have been successful in speaking with Mr Fred Lory and his Son, Peter Lory. As a result of such dialogue it would appear that Mr Vic Ollis was in fact the employer. Furthermore from other information obtained the contractors charge has been reassessed in accordance with Regulation 9(1)C at 33 1/3%.

I note that the 1994/95 assessment has already been issued to you which included the adjustment on the 1993/94 assessment. To clarify the matter I have attached herewith copies of the 1993/94 and 1994/95 assessments.

Yours faithfully,

I.D. ROBERTSON
A/AREA MANAGER
ROCKHAMPTON.

HEAD OFFICE: 280 Adelaide Street, Brisbane, 4000
Box 2459 G.P.O., Brisbane, 4001
Telephone (07) 231 9500 Fax (07) 231 9640

FIRST AND FINAL Premium Notice

WORKERS' COMPENSATION ACT 1990

The Workers' Compensation Board of Queensland
AMENDED RENEWAL NOTICE

Policy Number **GW915768018**

Assessment Year **1993/94**

Period of insurance from **01 JUL 94** to **30 JUN 95**

W J E & C M PASCOE
3 NONETTE ST
MORANBAH 4744

Enquiries
079 314150

Employer
PASCOE, WILLIAM JOHN ELMER & COLLEEN MICHELLE

AMOUNT PAYABLE
$83.50

Due Date
11 OCT 95

Late Payments
Late payment charges will apply where any part of the premium remains outstanding after the due date. Such charges will be included in next year's assessment. Refer over page for an explanation of how these charges are calculated. If the above payment is late the minimum late payment charge will be $4.17 . **Do not pay this amount now.** It will be included in next year's assessment if applicable.

Please Note
SHOULD YOU CEASE TO EMPLOY AND REQUIRE THE POLICY CANCELLED YOU MUST ADVISE THE BOARD IN WRITING. MINIMUM ANNUAL PREMIUM IS $40.00.

Cash should not be sent by mail. Cheques, Postal and money orders should be made payable to **WCBQ** crossed and marked Not Negotiable. Cheques and other negotiable instruments are accepted subject to clearance.

For Policy wording see page 4

Detach the section below and return the bottom section with your payment

J R Hastie General Manager

Please return this section with your payment.

Tick box if you require payment acknowledgement
Machine imprint will appear on reverse after processing ☐

WORKERS' COMPENSATION ACT 1990

The Workers' Compensation Board of Queensland

Enquiries	Due Date		Policy Number	AMOUNT PAYABLE
079 314150	11 OCT 95	3308	GW915768018	$83.50

Employer PASCOE, WILLIAM JOHN ELMER & COLLEEN MICHELLE

W J E & C M PASCOE
3 NONETTE ST
MORANBAH 4744

Mail to
Workers' Compensation Board of Qld.
G.P.O. Box 2772
Brisbane 4001
Please use special envelope supplied

3308915768018 0000008350

LATE PAYMENT CHARGE CALCULATION

Payment of premium after the due date

1. Attracts a minimum additional premium of 5% of outstanding premium.
2. Any part of the premium outstanding after 30 days from the due date attracts a further additional premium charge of 5%.
3. In addition, daily interest is charged at the interest rate prescribed by the Regulation on premium outstanding after 60 days.
4. The charge is included in the following year's assessment.

Addresses

Head Office:
280 Adelaide Street,
G.P.O. Box 2459, Brisbane. 4001
Telephone:(07) 3231 9500
Facsimile: (07) 3231 9640

Mail
All payments to WCBQ G.P.O. Box 2772 Brisbane 4001
All other mail to relevant post box listed below

DISTRICT OFFICES:

BOWEN
Gradgo Shopping Mall
Powell Street
PO Box 985
BOWEN QLD 4805
PH : (077) 862 599
FAX (077) 863 392

BUNDABERG
Floor 5, Wide Bay Capricorn House
Cnr Barolin & Woongarra Streets
PO Box 400
BUNDABERG QLD 4670
PH : (071) 525 433
FAX (071) 523 957

CAIRNS
Tropical Arcade
Cnr Abbott & Shield Streets
PO Box 851
CAIRNS QLD 4870
PH : (070) 513 299
FAX (070) 315 050

DALBY
Shop 7, Stuart Street Centre
Cnr Stuart & Marble Streets
PO Box 753
DALBY QLD 4405
PH : (076) 624 822
FAX (076) 625 490

EMERALD
Mackays' Arcade
Cnr Egerton & Ruby Streets
PO Box 903
EMERALD QLD 4720
PH : (079) 823 144
FAX (079) 824 231

GLADSTONE
Cnr Roseberry Street &
Oaka Lane
PO Box 314
GLADSTONE QLD 4680
PH : (079) 760 760
FAX (079) 726 237

GYMPIE
Shop 3
9 Channon Street
PO Box 323
GYMPIE QLD 4570
PH : (074) 824 059
FAX (074) 828 404

IPSWICH
Level 1, Ipswich Centre Plaza
2 Bell Street
PO Box 575
IPSWICH QLD 4305
PH : (07) 281 0977
FAX (07) 812 2947

KINGAROY
27 Alford Street
PO Box 56
KINGAROY QLD 4610
PH : (071) 623 188
FAX (071) 622 700

LOGAN CITY
2nd Floor, Woodridge Place
6 Ewing Road
PO Box 178
WOODRIDGE QLD 4114
PH : (07) 290 9222
FAX (07) 209 4615

MACKAY
1st Floor, Post Office Square
Cnr Gordon & Sydney Streets
PO Box 486
MACKAY QLD 4740
PH : (079) 518 099
FAX (079) 518 098

MARYBOROUGH
319 Kent Street
PO Box 137
MARYBOROUGH QLD 4650
PH : (071) 223 122
FAX (071) 232 223

MT ISA
75 Camooweal Street
PO Box 1353
MT ISA QLD 4825
PH : (077) 435 371
FAX (077) 437 942

NAMBOUR
Level 1, Centenary Square
52-64 Currie Street
PO Box 84
NAMBOUR QLD 4560
PH : (074) 799 410
FAX (074) 799 420

REDCLIFFE
23 Redcliffe Parade
PO Box 125
REDCLIFFE QLD 4020
PH : (07) 284 2098
FAX (07) 283 2735

ROCKHAMPTON
Level 2
209 Bolsover Street
PO Box 1408
ROCKHAMPTON QLD 4700
PH : (079) 314 150
FAX (079) 314 160

ROMA
79a Arthur Street
PO Box 480
ROMA QLD 4455
PH : (076) 222 144
FAX (076) 224 264

SOUTHPORT
10 Cloyne Road
PO Box 419
SOUTHPORT QLD 4215
PH : (07) 55 835 066
FAX (07) 55 835 065

TOOWOOMBA
Second Level
James Cook Centre
Cnr. Herries & Ruthven Sts
PO Box 32
TOOWOOMBA QLD 4350
PH : (076) 329 000
FAX (076) 393 072

TOWNSVILLE
187-209 Stanley Street
PO Box 1312
TOWNSVILLE QLD 4810
PH : (077) 221 011
FAX (077) 221 677

WARWICK
159 Palmerin Street
PO Box 370
WARWICK QLD 4370
PH : (076) 613 799
FAX (076) 617 128

Employer

PASCOE, WILLIAM JOHN ELMER & COLLEEN MICHELLE

Due Date		Policy Number	AMOUNT PAYABLE
11 OCT 95	3308	GW915768018	$83.50

Keep this page for your records

WORKERS' COMPENSATION ACT 1990

The Workers' Compensation Board of Queensland

HEAD OFFICE: WORKERS' COMPENSATION BUILDING, 280 ADELAIDE STREET, BRISBANE

Premium Assessment Details

AMENDED RENEWAL NOTICE

GW915768018

PASCOE, WILLIAM JOHN ELMER & COLLEEN MICHELLE

Classification	Gross Wages $ 93/94	Rate %	Assessed Premium $ 93/94	Estimated Gross Wages $ 94/95	Rate %	Provisional Premium $ 94/95
ACCOMMODATION PLACES	1	1.67	0.02	1	1.77	39.99
CONTRACT CHARGES (SEE ATTACHED LIST)			192.49			
TOTAL			$192.51			$39.99

Premium Calculation

ASSESSED PREMIUM FOR 93/94		$192.51
LESS PROVISIONAL FOR 93/94	$32.00CR	
PLUS PROVISIONAL FOR 94/95		$39.99
LESS ADJUSTMENTS	$40.00CR	
LESS MERIT BONUS @ 40.00 %	$77.00CR	
(CLAIMS PAYMENTS $0)		
SUBTOTAL	$149.00CR	$232.50
		$149.00CR
AMOUNT PAYABLE		$83.50

For explanatory notes regarding calculations see overleaf

J R Hastie General Manager

1. **ASSESSED PREMIUM** is charged on gross wages, salaries, and other earnings determined by the Board for the year ended 30 June last.

2. **LESS PROVISIONAL PREMIUM** for year ended 30 June last is deducted from the assessed premium.

3. **PLUS PROVISIONAL PREMIUM** is an amount of premium charged provisionally in advance to 30 June following.

4. **LATE PAYMENT -** In accordance with section 60 of the Workers Compensation Act 1990, additional premium will apply where the premium has not been paid by the due date.

5. **ARREARS / ADJUSTMENTS** occur as a result of the non - payment of prior year/s premium or adjustment to prior year/s premium.

6. **MERIT BONUS -** The merit bonus premium discount rewards employers who achieve low claims costs relative to assessed premium. The amount of bonus is deducted in accordance with a sliding scale depending on the ratio of claims costs to premium.

7. **DEMERIT CHARGE -** If an employer's claims to premium ratio is 125% or greater a demerit charge is added to assessed premium. The aim of the demerit charge is to

- provide incentives to reduce claims costs
- encourage safety in workplaces and
- encourage early rehabilitation of injured workers

   Where claims to premium ratio is 75% or greater in the next year, demerit charges again apply and can be as high as 100% of premium.

8. **ADDITIONAL PREMIUM -** In accordance with section 207 of The Workers' Compensation Act 1990, additional premium will apply to a policy where a Declaration of Wages and Contracts is lodged after 31 August.

9. **PREMIUM PENALTY -** If an employer contravenes section 44 of The Workers' Compensation Act 1990 the Board may recover from the employer penalties equal to an additional 100% of unpaid premium and an additional 50% over and above the cost of claims incurred (ie the employer may be required to pay 200% of the premium that should have been paid as well as 150% of the costs of claims incurred)

10. **AMOUNT PAYABLE -** The liability of the employer is held fully protected pending payment of premium by the specified due date.

11. **RIGHT OF OBJECTION TO PREMIUM ASSESSMENT -** You have the right to object to this premium assessment by lodging, within 21 days after notice of the assessment, a written objection to the Board that states fully and in detail the facts and grounds on which you rely.

    Irrespective of whether an objection is lodged, premium must be paid by the due date to avoid late payment charges.

WORKERS' (OTHER THAN HOUSEHOLD WORKERS') COMPENSATION POLICY

This policy is current for the period of insurance stated on the premium notice subject to adjustment of premium at 30 June next in accordance with the employer's actual expenditure on account of wages during the period, and provided the premium shown on the premium notice is paid on or before the due date.

On payment of the premium for the period of insurance, the Workers' Compensation Board of Queensland indemnifies the employer against all sums for which the employer may become legally liable, in respect of injury to a worker employed by the employer, in respect of -

a) compensation under this Act; and

b) damages arising under circumstances creating also, independently of this Act, a legal liability in the employer to pay such damages, other than a liability against which the employer is required to provide under some other Act of Queensland or a law of another State or a Territory, or of the Commonwealth or of another country.

   This policy is issued on the faith of the application and under the provisions of section 37 and 42 of the Workers' Compensation Act 1990 and is subject to the provisions of that Act and Regulation all of which provisions are incorporated in and form part of this policy.

J R Hastie General Manager

Premium Notice Extra Details

WORKERS' COMPENSATION ACT 1990

The Workers' Compensation Board of Queensland

HEAD OFFICE: WORKERS' COMPENSATION BUILDING, 280 ADELAIDE STREET, BRISBANE

Contract Charges

Policy Number **GW915768018**

Employer Name PASCOE, WILLIAM JOHN ELMER & COLLEEN MICHELLE

ASSESSMENT YEAR 1993/94

Contractor Name	Classification	Amount Paid	Amount for Assessment	Rate %	Assessed Premium
PRESTIGE CLADDING PTY LTD					
	BUILDING CONSTRUCT	8000	2666	7.22	192.49
	TOTAL				$192.49

FIRST AND FINAL Premium Notice

WORKERS' COMPENSATION ACT 1990

The Workers' Compensation Board of Queensland
RENEWAL NOTICE

Policy Number **GW915768018**

Assessment Year **1994/95**

Period of insurance from **01 JUL 95** to **30 JUN 96**

W J E & C M PASCOE
3 NONETTE ST
MORANBAH 4744

Enquiries
079 314150

Employer
PASCOE, WILLIAM JOHN ELMER & COLLEEN MICHELLE

AMOUNT PAYABLE
$123.50

Due Date
11 OCT 95

Late Payments

Late payment charges will apply where any part of the premium remains outstanding after the due date. Such charges will be included in next year's assessment. Refer over page for an explanation of how these charges are calculated. If the above payment is late the minimum late payment charge will be $6.17 . **Do not pay this amount now.** It will be included in next year's assessment if applicable.

Please Note

SHOULD YOU CEASE TO EMPLOY AND REQUIRE THE POLICY CANCELLED, YOU MUST ADVISE THE BOARD IN WRITING. MINIMUM ANNUAL PREMIUM IS $40.00.

Cash should not be sent by mail. Cheques, Postal and money orders should be made payable to **WCBQ** crossed and marked Not Negotiable. Cheques and other negotiable instruments are accepted subject to clearance.

For Policy wording see page 4

J R Hastie General Manager

Detach the section below and return the bottom section with your payment

Keep this page for your records

WORKERS' COMPENSATION ACT 1990

The Workers' Compensation Board of Queensland

HEAD OFFICE: WORKERS' COMPENSATION BUILDING, 280 ADELAIDE STREET, BRISBANE

Premium Assessment Details

RENEWAL NOTICE
GW915768018
PASCOE, WILLIAM JOHN ELMER & COLLEEN MICHELLE

Classification	Gross Wages $ 94/95	Rate %	Assessed Premium $ 94/95	Estimated Gross Wages $ 95/96	Rate %	Provisional Premium $ 95/96
ACCOMMODATION PLACES	1	1.77	40.00	1	1.77	39.99
TOTAL			$40.00			$39.99

Premium Calculation

ASSESSED PREMIUM FOR 94/95		$40.00
LESS PROVISIONAL FOR 94/95	$39.99 CR	
PLUS PROVISIONAL FOR 95/96		$39.99
PLUS ARREARS		$83.50
SUBTOTAL	$39.99 CR	$163.49
		$39.99 CR
AMOUNT PAYABLE		$123.50

For explanatory notes regarding calculations see overleaf

J R Hastie General Manager

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- encourage safety in workplaces and
- encourage early rehabilitation of injured workers

   Where claims to premium ratio is 75% or greater in the next year, demerit charges again apply and can be as high as 100% of premium.

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a) compensation under this Act; and

b) damages arising under circumstances creating also, independently of this Act, a legal liability in the employer to pay such damages, other than a liability against which the employer is required to provide under some other Act of Queensland or a law of another State or a Territory, or of the Commonwealth or of another country.

   This policy is issued on the faith of the application and under the provisions of section 37 and 42 of the Workers' Compensation Act 1990 and is subject to the provisions of that Act and Regulation all of which provisions are incorporated in and form part of this policy.

J R Hastie General Manager

Minister for Employment and Training and Minister Assisting the Premier on Public Service Matters

13 FEB 1996

Mr W Pascoe
3 Nonette St
MORANBAH Q 4744

Dear Mr Pascoe

I refer to your letter of 4 September 1995 regarding your workers' compensation insurance policy.

The General Manager, Workers' Compensation Board, advises that the Workers' Compensation Act 1990 provides that a principal, being an employer who engages another party under contract to perform work, is declared to be an employer of every worker used in carrying out work in performance of the contract. In such a case, the cover of the principal's policy extends to indemnify the principal against any legal liability incurred.

I am advised that the Workers' Compensation Regulation 1992 sets out the premium payable in respect of such workers to be based on the contract price and the applicable rate from the Schedule of Rates. The charge varies according to the plant and/or materials supplied in the performance of the contract. These charges are refunded if and when the contractor renews or takes out a workers' compensation insurance policy

The General Manager further advises that a principal who lets a contract in which the contractor employs workers may require the contractor to produce proof of a current policy, such as a policy renewal certificate. If the contractor fails to produce such evidence, it is to be presumed that a policy is not in force. The employer can discharge any obligation by advising the Board of the contractor's name, address and business within 14 days of commencement of the contract. In doing so, the employer is indemnified and the Board is not entitled to recover any moneys in respect of the contractor's workers.

I am advised that you applied for workers' compensation insurance in 1991 to cover any maintenance work performed on rental properties owned by you. A Declaration of Wages & Contracts form has been forwarded to yourself annually. An explanatory guide accompanies the form each year, to assist policyholders such as yourself in completing the Declaration correctly.

GPO Box 69
Brisbane 4001 Queensland
Telephone: (07) 3225 2001 Facsimile: (07) 3225 2002

Enclosed is a copy of the explanatory guide which was enclosed with your Declaration prior to the commencement of the 1993/94 year. Section 4 entitled "Contractors' Schedule" details the action which may be taken by a principal in relation to contractors who employ workers and the fact that failure to notify the Board of an uninsured contractor will result in the principal being charged premium in respect of the labour content of the contract.

The General Manager advises that it appears you did not enquire as to whether workers' compensation insurance was in place to cover the workers engaged by Prestige Cladding.

Investigation were undertaken by the Board to locate Prestige Cladding. This included an Officer of the Board calling to the previous known address of Prestige Cladding, as well as making contact with the Australian Securities Commission. Despite this concerted effort, the Board has been unable to locate Prestige Cladding, and therefore, has been unsuccessful in obtaining any premium. Consequently, pursuant to the Regulations, $192.49 premium was charged under your policy in relation to the contract.

Whilst I can understand your dismay at being charged premium as a result of engaging an uninsured contractor, it is reasonable to expect that principals who engage contractors have a responsibility to verify contractors' compliance with the law. One of the objectives of the Workers' Compensation Act is to provide adequate and suitable cover for workers who suffer injury. The legislation extends liability to the principal to ensure that workers are not disadvantaged by the non-compliance of contractors who might employ them.

I trust that this information has been of assistance to you.

Yours sincerely

WENDY EDMOND
MINISTER FOR EMPLOYMENT AND TRAINING
and MINISTER ASSISTING THE PREMIER
ON PUBLIC SERVICE MATTERS

Enclosure

Rob MITCHELL, M.L.A.
Member for Charters Towers

P.O. Box 380,
CHARTERS TOWERS, 4820

Phone: *077 87 2139 office*
Toll free: *008 811 103*
Fax. *077 87 3919*

14th February, 1996

Mr. Will Pascoe,
3 Nonette Street,
MORANBAH 4744

Dear Mr. Pascoe,

Attached, please find correspondence dated 12 February, 1996 in relation to your Workers' Compensation Insurance Policy.

I am sorry my efforts in this matter were not more successful.

Mr. Pascoe, I am confident the Coalition when returned to government will investigate this whole issue.

In the meantime, should you require further assistance, please do not hesitate to contact me.

Yours sincerely,

Rob A. Mitchell, M.L.A.,
Member for Charters Towers

FIRST AND FINAL Premium Notice

WORKERS' COMPENSATION ACT 1990

The Workers' Compensation Board of Queensland
RENEWAL NOTICE

Policy Number **GW915768018**

Assessment Year **1994/95**

Period of insurance from **01 JUL 95** to **30 JUN 96**

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For Policy wording see page 4

J R Hastie General Manager

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Detach the section below and return the bottom section with your payment

LATE PAYMENT CHARGE CALCULATION

Payment of premium after the due date

1. Attracts a minimum additional premium of 5% of outstanding premium.
2. Any part of the premium outstanding after 30 days from the due date attracts a further additional premium charge of 5%.
3. In addition, daily interest is charged at the interest rate prescribed by the Regulation on premium outstanding after 60 days.
4. The charge is included in the following year's assessment.

Addresses

Head Office:
280 Adelaide Street,
G.P.O. Box 2459, Brisbane. 4001
Telephone:(07) 3231 9500
Facsimile: (07) 3231 9640

Mail

All payments to WCBQ G.P.O. Box 2772 Brisbane 4001
All other mail to relevant post box listed below

DISTRICT OFFICES:

BOWEN
Gradgo Shopping Mall
Powell Street
PO Box 985
BOWEN QLD 4805
PH : (077) 862 599
FAX (077) 863 392

BUNDABERG
Floor 5, Wide Bay Capricorn House
Cnr Barolin & Woongarra Streets
PO Box 400
BUNDABERG QLD 4670
PH : (071) 525 433
FAX (071) 523 957

CAIRNS
Tropical Arcade
Cnr Abbott & Shield Streets
PO Box 851
CAIRNS QLD 4870
PH : (070) 513 299
FAX (070) 315 050

DALBY
Shop 7, Stuart Street Centre
Cnr Stuart & Marble Streets
PO Box 753
DALBY QLD 4405
PH : (076) 624 822
FAX (076) 625 490

EMERALD
Mackays' Arcade
Cnr Egerton & Ruby Streets
PO Box 903
EMERALD QLD 4720
PH : (079) 823 144
FAX (079) 824 231

GLADSTONE
Cnr Roseberry Street &
Oaka Lane
PO Box 314
GLADSTONE QLD 4680
PH : (079) 760 760
FAX (079) 726 237

GYMPIE
Shop 3
9 Channon Street
PO Box 323
GYMPIE QLD 4570
PH : (074) 824 059
FAX (074) 828 404

IPSWICH
Level 1, Ipswich Centre Plaza
2 Bell Street
PO Box 575
IPSWICH QLD 4305
PH : (07) 281 0977
FAX (07) 812 2947

KINGAROY
27 Alford Street
PO Box 56
KINGAROY QLD 4610
PH : (071) 623 188
FAX (071) 622 700

LOGAN CITY
2nd Floor, Woodridge Place
6 Ewing Road
PO Box 178
WOODRIDGE QLD 4114
PH : (07) 290 9222
FAX (07) 209 4615

MACKAY
1st Floor, Post Office Square
Cnr Gordon & Sydney Streets
PO Box 486
MACKAY QLD 4740
PH : (079) 518 099
FAX (079) 518 098

MARYBOROUGH
319 Kent Street
PO Box 137
MARYBOROUGH QLD 4650
PH : (071) 223 122
FAX (071) 232 223

MT ISA
75 Camooweal Street
PO Box 1353
MT ISA QLD 4825
PH : (077) 435 371
FAX (077) 437 942

NAMBOUR
Level 1, Centenary Square
52-64 Currie Street
PO Box 84
NAMBOUR QLD 4560
PH : (074) 799 410
FAX (074) 799 420

REDCLIFFE
23 Redcliffe Parade
PO Box 125
REDCLIFFE QLD 4020
PH : (07) 284 2098
FAX (07) 283 2735

ROCKHAMPTON
Level 2
209 Bolsover Street
PO Box 1408
ROCKHAMPTON QLD 4700
PH : (079) 314 150
FAX (079) 314 160

ROMA
79a Arthur Street
PO Box 480
ROMA QLD 4455
PH : (076) 222 144
FAX (076) 224 264

SOUTHPORT
10 Cloyne Road
PO Box 419
SOUTHPORT QLD 4215
PH : (07) 55 835 066
FAX (07) 55 835 065

TOOWOOMBA
Second Level
James Cook Centre
Cnr. Herries & Ruthven Sts
PO Box 32
TOOWOOMBA QLD 4350
PH : (076) 329 000
FAX (076) 393 072

TOWNSVILLE
187-209 Stanley Street
PO Box 1312
TOWNSVILLE QLD 4810
PH : (077) 221 011
FAX (077) 221 677

WARWICK
159 Palmerin Street
PO Box 370
WARWICK QLD 4370
PH : (076) 613 799
FAX (076) 617 128

01 MAY 1996

130

CONSULTING SURVEYORS QUEENSLAND

30 April, 1996

Inquiry into Workers Compensation
GPO Box 374
Brisbane Qld 4001

Dear Sir,

RE: Surveying Industry

This submission seeks to address two specific points that are particularly relevant to the surveying industry and probably other small industries like ours.

Firstly, premiums for Workers Compensation in the surveying industry appear to have risen at far greater rate than in some other industries in recent years. We believe that small industries such as ours are unfairly treated by the current system of industry specific "pools" and submit that this system should be changed.

Secondly, the number of common law claims appears to be the major component of the increase in claims. We believe that industry involvement in the assessment and investigation of these claims would reduce the incidence and amount of payouts for common law claims.

The surveying industry has established a model for industry involvement in the assessment of claims for negligence in the surveying industry through the Australian Consulting Surveyors Insurance Society which has now been in operation for over ten years. We believe that a similar system would be beneficial in the Workers Compensation area.

The attached submission supports these points in detail.

I would be happy to appear before the Inquiry to explain any points in my submission. I look for ward to the opportunity to do so.

Yours faithfully

Jack de Lange
Executive Officer

Association of Consulting Surveyors, Queensland ACN 010 425 724
1st Floor, Silverton Place, 101 Wickham Terrace, Brisbane, Queensland, 4000
GPO Box 3175, Brisbane, Qld. 4001 – PH: 07 3831 6668 FX: 07 3832 6398

Surveying Industry Pool

The surveying industry in Queensland is perhaps one of the smallest in the State. There are currently around 350 employers contributing to the "Land Surveying" pool in the funds for Workers Compensation.

In the current system, the funds available for payment of claims have to come from the pool of funds available from that industry. Consequently, one major claim can have a devastating effect on the premiums that have to be paid by the remainder of the industry.

We believe that this is not a fair system because the same number of claims in a large industry will have a much smaller impact on premiums required. The logical extension of the current system is that if there were an industry with only one employer, he/she would not need workers compensation insurance at all because the premiums paid would have to cover all claims anyway. It would be cheaper for that employer to pay the claims directly and not have to cover the additional expense of administering an insurance fund.

The following table illustrates a comparative trend in premiums for two pools :–

	Land Surveyors	Clerical
1983/84	1.13%	0.21%
1984/85	1.41%	0.22%
1987	1.76%	0.22%
1990	2.19%	0.24%
1993	2.73%	0.25%
1994	2.84%	0.26%
Dec 1995	3.29%	0.31%

We recognise that the number of claims has increased in recent years, particularly in the area of common law claims.

It is obvious that the increase in incidence of claims in the surveying industry has had a much larger impact on the level of premiums than in the clerical area. This is because of the much greater level of funds available in the clerical pool. One additional claim in the surveying industry will have a disproportionate impact when compared with one additional claim in the clerical area.

We submit that the system of small pools for specific industries ought to be discontinued and all workers covered in a common pool.

Industry Involvement in Claims Assessment

It is noted that the major increase in claims is for Common Law claims. Common Law claims are an attempt to prove negligence on the part of the employer for the injuries caused and their effects.

A similar scenario exists in the area of professional negligence.

More than ten years ago, the surveying industry was aware of the premiums for Professional Indemnity insurance rising steeply with the possibility that this insurance may not even be available some time in the future.

To overcome this problem, the industry set up the Australian Consulting Surveyors Insurance Society (ACSIS) to provide this insurance to the surveying industry. The Society is run by members of the industry with the aid of an insurance broker and underwriter. Since the operation of the Society, premiums for professional indemnity insurance for surveyors have stabilised, and the number of payouts reduced.

The most significant aspect of the scheme is the method of claims assessment. All claims for professional negligence are assessed by a claims panel which is made up of practitioners in the industry. The significance of this is that the assessment is done with a knowledge of the "surveying" requirements of the situation.

In most other situations, settling of claims for negligence is enacted in the usual adversarial legal environment with the main aim to find a monetary compromise which quickly closes the case, often on the steps of the court. The end result is that the premiums for everybody rise.

However, an assessment and investigation by practitioners in an industry who have a knowledge of the work and work practices has a very different focus. Our experience is that the majority of claims investigated by the industry based panel are reduced or waived.

We submit that a similar system would be appropriate in the area of workers compensation insurance.

The New South Wales government has made an assessment of our insurance Society and have urged other professions to follow our model. In addition to insurance cover and claims investigation, the Society also provides loss prevention advice and research. It is our contention that an industry can best do these things for itself because of a knowledge of the industry as well as the legal requirements.

The surveying industry would be prepared to serve as a pilot project for closer involvement of industry in workers compensation, particularly in the areas of claims investigation.

A PEACE UNION

Queensland Teachers' Union

OF EMPLOYEES

Established 1889

Address all correspondence to: The General Secretary, Queensland Teachers' Union, P.O. Box 310, Spring Hill, Q. 4004.
495-499 Boundary Street, Spring Hill, Queensland, Australia.
Phone: (07) 3831 3516 Fax: (07) 3832 3644.

01 MAY 1996

131

In Reply Please Quote: SK:BH – 4/96/007

FAXED 30/4/96

30 April 1996

Mr J Kennedy
Commissioner
Inquiry into Workers' Compensation
GPO Box 374
BRISBANE Q 4001

Dear Mr Kennedy

I refer to your letter of 1 April 1996 inviting the QTU to make a submission to the Inquiry into Workers' Compensation.

The Union appreciates the opportunity to make a submission in relation to the operation of Workers' Compensation in Queensland.

Of particular interest to the Union is the continued provision of compensation to our members for stress related illnesses.

I enclose for your consideration a submission by the Union in relation to the provision of Workers' Compensation for stress related illnesses.

I thank you for the opportunity to make this submission.

Yours sincerely

JOHN BATTAMS
GENERAL SECRETARY

Encl

QUEENSLAND TEACHERS' UNION

SUBMISSION TO THE INQUIRY INTO WORKERS' COMPENSATION AND RELATED MATTERS IN QUEENSLAND

The Queensland Teachers' Union is a registered industrial union of approximately 36,000 members. The members of this union have invested many years in obtaining their qualifications as teachers. Members of this union teach in government preschools, primary schools, high schools and in TAFE Colleges throughout Queensland.

Teachers have the responsibility of fostering and guiding the education of the future generations of Queenslanders. This responsibility is accepted readily by teachers and is seen in the dedication that teachers display towards the students in their care and towards the educational facilities in which they teach. Teachers accept the long hours inherent in their jobs as a necessary part of the professional role they have in the shaping of the future generations. Apart from contact time, teachers spend hours each week outside of formal school times in preparing lessons and materials for lessons, in correcting work, in assessing work, in preparing reports, in assisting students who need help, in participating on school related or school based committees, in coaching, adjudicating or supervising sport and other extra curricular activities, and in revising or formulating subject units in new curriculum areas.

Since the early 1970s in particular, the teaching profession has been subjected to unparalleled change. There has been almost constant change in the assessment methods of secondary students, in the curricula of both primary and secondary schools and in disciplinary responses to disruptive student behaviour. At the same time teachers have become acutely aware that student behaviour management is all too frequently the primary focus now of classroom activity, replacing educational aims vital for the general good of the community. Each day teachers are subjected to verbal abuse, to intimidation and threats, to disrespect, to insolence, and to disobedience that openly challenges the teacher's authority in the classroom.

Not unsurprisingly, teachers are adversely affected by abusive and disruptive behaviour. Over time, their health deteriorates by stress related illnesses and many teachers leave the government teaching service due to the cumulative effect of bad health and disillusionment. Workers in this State since the early part of this century have statutory protection against loss of income caused by work injuries. The Workers' Compensation Act must remain the means by which workers can protect their lives and families from the devastating effect of work injury.

There has been a trend over the recent past to restrict that statutory protection enjoyed by workers for more than eighty years. This union has been at the forefront of efforts to protect workers' rights and to have the full effect of the law upheld by the Workers' Compensation Board. These efforts have been successful in having the Board administer the Act in accordance with law, rather than in accordance with what the Board would have preferred the law to be. In particular, the support given by this union to its members with stress related claims for workers' compensation resulted in the Industrial Court handing down the authoritative decision in Timbs v Workers' Compensation Board which stated how the Act was to be properly applied in workers' compensation claims.

It was disappointing that the response of the Board to that decision was to seek amendments to the Act to restrict the recovery of workers' compensation in stress related illnesses. The Board deliberately sought changes to the workers' compensation system that differentiated between injuries caused by trauma and injuries caused by non traumatic means, such as stress. In doing so, the Board was aware that the workers' compensation system would discriminate against teachers, health workers, police and correctional services workers as workers in these occupations proportionately lodged more stress related workers' compensation claims than workers in other occupations.

One of the insidious effects of the 1994 amendments to the Act was to introduce concepts of fault into the workers' compensation system, which until then was a no fault system of insurance for the benefit of workers. Section 6(3) where relevant is as follows:-

"Injury does not include a personal injury, disease, or aggravation or acceleration of a disease, suffered by a worker because of -

(a) reasonable disciplinary action taken in a reasonable way against the worker in connection with the worker's employment; or

(b) reasonable action taken in a reasonable way to transfer or redeploy the worker in connection with the worker's employment ....."

A worker who has developed a stress related illness as a result of disciplinary action of the employer must prove that the action of the employer was unreasonable as a precondition of recovering workers' compensation for an injury which otherwise is acknowledged to be caused by work. Consideration of what is or what is not reasonable behaviour by an employer or worker is central to the law of torts. This union does not believe that any such considerations should have a place in a statutory workers' compensation scheme. This inquiry should examine the implications of the introduction of fault concepts into the workers' compensation system, particularly when the Act is deliberately manipulated to discriminate against one type of injury over another.

If for genuine economic reasons the rights of workers are to be restricted then a balanced and non discriminatory approach should be adopted. In view of efforts of the Workers' Compensation Board since 1994, this Union is not confident that such an approach will be adopted if further amendments to the Act are directed by the Board. Amendments to an Act which has crucial importance to workers should not be made unless workers by their representatives in the union movement have a real opportunity to participate in the process which formulates amendments. It must not be forgotten that it is the workers who are to bear the burden of change, namely the loss of rights which have been in existence for eighty years. The burden of increased premiums for employers pales into relative insignificance when workers and their families are asked to surrender present financial security for the future security of the Workers' Compensation Fund.

This union submits that the Workers' Compensation Act should be amended to restore stress related injuries to the same status as other injuries under the Act including the removal of any discrete definition for stress related injuries.

The validity of stress related injuries has been accepted longer than workers' compensation legislation has been in existence in Queensland. Stress related injuries are as real and as damaging as trauma caused fractures. There is no valid justification for removing stress related injuries from the protection of the workers' compensation system and for treating stress related injuries in a manner different from all other work caused injuries under that system.

This union submits that the Workers' Compensation Board should manage claims for stress related injuries in a non discriminatory manner and with a sensitivity that takes into account that workers experiencing stress related injuries are psychologically at risk if decisions on claims are delayed.

The method by which stress related injuries are presently investigated is cumbersome and slow. From the experience of the members of this union it takes several months for a decision to be made on a stress related injury claim. More disturbing, however, is the apparent lack of understanding of the Act by investigating officers and by claims clerks who have decision making responsibilities on these claims. All too frequently claims submitted by the members of this union have been rejected by claims clerks on grounds which are abandoned by the Board when decisions are challenged by way of appeal to an Industrial Magistrate. On each such occasion, costs in excess of $2,000.00 are awarded against the Board in addition to the compensation which is then payable to the worker. It would be a saving to the Workers' Compensation Fund if decision makers under the Act were properly trained as to the requirements of law.

This Union welcomes the opportunity to be involved in a process whereby the workers of Queensland can retain the protections and rights accorded to them by a workers' compensation system balanced by financial and industrial considerations.

JOHN BATTAMS
GENERAL SECRETARY
QUEENSLAND TEACHERS' UNION

01 MAY 1996

132

Master Plumbers' Association
OF QUEENSLAND
Union of Employers

Ref. W70\16721

28th April 1996

The Chairman
Inquiry into Workers' Compensation &
Related Matters in Queensland
GPO Box 374
BRISBANE Q 4001

Dear Sir

Thank you for giving the opportunity to the Master Plumbers' Association of Queensland (MPAQ) to provide comment to the inquiry.

Whilst the terms of reference of the inquiry are wide and far reaching, we have confined ourselves largely to addressing those areas that primarily relate to ensuring the return of the Workers Compensation fund in Queensland to a sound and financially viable basis.

Unless drastic action is taken, the ability of employers in Queensland to maintain existing numbers will be seriously threatened. The recent introduction of significant increases in premiums plus a 5 year levy has already lead many plumbing employers to doubt their ability to hire additional staff for the foreseeable future.

We believe that positive changes can be made without significantly limiting employees' rights in respect of workers compensation and rehabilitation.

Members of this Association throughout Queensland implore you to make recommendations to the Government which will see real improvements within the Workers' Compensation system. They demand prompt action.

Our full submission to the inquiry is attached.

Your sincerely

Adrian Hart
Executive Director

SUBMISSION BY MASTER PLUMBERS ASSOCIATION OF QUEENSLAND (UNION OF EMPLOYERS) TO THE INQUIRY INTO WORKERS' COMPENSATION & RELATED MATTERS IN QUEENSLAND

Terms of reference 3:

In respect of reviewing the most appropriate accident insurance delivery methods in Queensland, there seems considerable merit in adopting some form of self insurance.

> Evidence from a variety of sources suggests several persuasive arguments for self insurance. It is argued that it provides greater incentives to maintain safe workplaces, and ensures that the self-insurer has control over rehabilitation and return to work of their own injured workers.
>
> The latter point is critical because our experience has been that employers have often felt neglected and removed from the Rehabilitation process as it is currently administered by the Workers Compensation Fund. The most common complaint has been the inability to obtain information from either medical practitioners or fund employees about the workers condition, or proposed rehabilitation program.

Based on evidence from other states (particularly recent experiences in South Australia), strong consideration should be given to outsourcing claims management.

> Whilst not advocating changing the composition and control of workers compensation from a central fund, considerable benefits particularly in terms of increased efficiency would result from introducing competition in respect of claims management.
>
> It is anticipated that this would increase overall cost efficiency, improve both service delivery and quality yet utilise considerably fewer resources.

Terms of reference 4(c):

The continued allocation of significant grants by the Workers Compensation fund to the Division of Workplace Health and Safety on an annual basis should be reviewed, and in our opinion, postponed indefinitely.

> Whilst the fund is facing severe shortfalls, it continues to allocate annual grants to the Division of Workplace Health & Safety at untenable levels.
> In 1994 the amount was $6.496m, and in 1995 $6.27m.

The Division should be funded from general revenue as is the case with other government departments. There seems to be no significant reason why the fund should sponsor its activities particularly whilst the Division's performance in recent years seems to have had little impact in improving health and safety in the workplace.

Terms of reference 4(e):

In respect of weekly benefits paid to employees, the existing levels in Queensland should be retained.

However, there should be a reduction in benefits from the existing 39 weeks to 26 weeks, consistent with the majority of schemes operating throughout Australia. There is concern that 39 weeks is too long a period of paid invalidity, and reduces the incentives for employees to make a speedy return to work.

In addition, the current requirement for the employer to meet the cost of the first five days of weekly compensation benefits should be abolished, and instead the one day excess should be reintroduced. There is little evidence that the additional excess has any significant impact upon encouraging safety in the workplace, and in fact, may simply discourage employers from notifying the Board of short term injuries.

Terms of reference 4(g):

There is a pressing need to place restrictions on the current unlimited access to common law in the Queensland Workers Compensation system, and also curtail advertising by lawyers for accident insurance business.

Whilst the rights of seriously injured employees to take common law actions should be retained, injured workers whose Whole Person Impairment (WPI) is assessed at less than 25% should be barred from common law. This assessment should not include psychological factors.

The single most important factor contributing to the escalation in the unfunded liability of the fund is the dramatic increase in common law claims in recent years. The restriction to common law access has been a feature of all other schemes in Australia seeking to maintain financially viable schemes.

Employer Associations urged the previous state government over 5 years ago to introduce a 10% whole person impairment limit on access to common law claims. This approach was rejected and ostensibly stop gap measures including premium increases were introduced.

Largely as a result of rapidly rising common law claims during 1994/95, the unfunded liability of the Workers Compensation Fund rose to $114.5m, probably the first time ever the fund was not fully funded.

In addition, stress and psychological conditions should be compensated through statutory weekly payments and not through Permanent Partial Disability lump sum payments.

It is generally accepted in the medical community that the majority of work related stress and psychological conditions do not result in permanent impairment, nor is there significant empirical evidence to suggest that work related stress is the direct cause of chronic psychological problems.

The financial viability of the fund would also be strengthened considerably by placing restrictions upon advertising by the legal profession for accident insurance business. The ability of solicitors to offer contingency fees (no costs unless the claimant wins) has led in an escalation in common law claims. For example, in 1994/5 the number of common law claims rose 48% over the previous year.

In other jurisdictions, notably New South Wales and South Australia, significant cost pressures on statutory schemes have been attributed to increased litigation in regard to lump sum payments, and difficulties with injured workers remaining on long term weekly benefits. The measures discussed above specifically address both these issues.

In the past few years, the fund in Queensland has gone from being financially soundly to massively debt ridden. Unless restrictions are placed, particularly in the area of common law claims, the effect on employers through increased premiums and levies will be disastrous for many years to come. The additional costs to businesses will reduce significantly their ability to hire additional staff.

To ensure equity and fairness amongst stakeholders, there is a dual need to increase the penalties for employees making fraudulent claims, and employers deliberately avoiding premium payments. It is clear that too many participants have been either draining the fund or not contributing their share to its viability.

01 MAY 1996 (133)

QUEENSLAND DEPARTMENT OF MAIN ROADS

From the office of the Director-General

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29 APR 1996

Mr Jim Kennedy
Commissioner
Inquiry into Workers' Compensation
and Related Matters in Queensland
GPO Box 374
BRISBANE QLD 4001

Dear Mr Kennedy

Thank you for the invitation to make submissions to the Inquiry, in your letter of 1 April 1996.

As you would be aware, the former Department of Transport had workers' compensation insurance cover under a Government pool separate to the Workers' Compensation Fund. This meant that the Department was not directly affected by the proposed changes to the Workers' Compensation system (WCS).

In relation to the Inquiry's terms of reference, the Department makes the following comments.

Objects of the Workers' Compensation submission:

- Although the Act encourages workplace rehabilitation, there is a need for greater effort on the part of employees, employers and the Board to align the rehabilitation process with the treatment of workers' compensation claims, particularly in long term rehabilitation cases.

- The importance of preventative strategy to encourage safety in industry can be elevated considerably through:

  (a) improved direction of resources from the Workers' Compensation Fund to the regulatory body; and

(b) preferential premium assessment for employers who demonstrate success in managing the risk of injury and disease. This would be based on qualitative and quantitative data, covering processes and results.

Insurance delivery methods:

The primary advantage of the current sole insurer system lies in providing adequate compensation and common law insurance cover; and encouraging safety in industry, resulting in reduced claims frequency and severity.

However, there is clearly a need to lever improvements in the cost of delivery, without threatening the adequacy of compensation and cover.

We stress that reforms in this area need to tackle systemic issues, notably, the recognition and reward of preventative initiatives, as well as structural changes in the delivery system.

Relationship between the Board and the Division of Workplace Health and Safety:

While there is a need for both specialist advice and services, as well as enforcement, it is clear that these imperatives should be kept in reasonable proximity.

In particular, we urge that the Division position itself as an ally to industry, supporting the introduction of strategies which will improve safety, rather than focussing on compliance.

Yours sincerely

(N A Doyle)
ACTING GENERAL MANAGER (CORPORATE SERVICES)

Consumer Help Against MalPractice

SHARING CARING
Health Promotion
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134

[redacted]

28 April 1996

Jim KENNEDY,
Commissioner,
Inquiry into the Worker's Compensation & Related Matters in Queensland,
G.P.O. BOX 374,
BRISBANE,
QLD.....4001

RE: INCOMPETENCE AND "BASTARDRY" SHOWN BY WCB TRIBUNALS TO GENUINELY INJURED WORKERS

Dear Sir,

As a GP and coordinator of C.H.A.M.P., I have been witness to many examples of injured worker's getting "the rough end of the pineapple" from doctors, who do not listen, who do not examine and who do not treat people as genuine; following quite specific valid work related injuries.

I have also seen many examples of non-genuine workers getting away with unjustified payments for fake or falsified injuries and I have also been responsible for the exposure of a number of such fakes to the WCB.

My more important reason for contacting you is to put in an indication of cases where the injured worker has not been fairly treated.

Case 1. 25 year old male, working in a smallgoods processing plant, whose job involved lifting 25-50 kg bags of meat products up to bench top and turning through 90^0, followed by cutting the top off the bag and lifting the bag higher and tipping it into a mixer as well turning through another 90^0. This resulted in him lifting the equivalent of 5-7 tonnes of products per day in the same repetitive manner for more than 5 years, as well as developing asthma and dermatitis from the exposure to the products.

After seeing specialists, his back condition, (totally worn out lower back joints caused by the work type), was described as "normal wear and tear" by the idiot orthopaedic doctors. (My father in law was one of the doyens of Orthopaedic Surgery in Brisbane and a previous consultant to the WCB, so I am privy to enough information to validate my use of the term "idiot" to generally describe the orthopaedic surgeons). This man, now 36, then went on to be retrained as a Security guard, but could not manage the standing still, then worked in a nail factory, but his back prevented him doing the heavy work, and finally he is working as a farm manger, where he can vary the work to relieve his back. Yes, he was a genuine case, abused by the Worker's Compensation Board and its doctors, but who proved he really wanted to work.

Case 2. A lady who fell on a strip of vegetable material at work, who was mismanaged for

two years by the WCB doctors, until the correct diagnosis was made, and treatment commenced which started her getting better, but the WCB asked me to write out the detail of her condition for the Tribunal panel because they could see the objective Xray/CT evidence, but did not understand it, YET THEY REJECTED HER CLAIM without ever getting the information or even understanding what the injury was!!! During the two years she was seen by Dr. Graham RICE, who treated her nicely for four consultations, then, because she did not conform to HIS pain clinic protocols, he accused her of lying and not doing as she was told. This was patent nonsense on the part of Dr. Rice, because the objective evidence is available for viewing.

Case 3. A lady suffered a severe post-traumatic stress disorder caused by her work at the Beaudesert Council which was rejected by the WCB, but re instituted by the Court. The WCB then held its own medical tribunal and rejected the matter again!

Case 4. A man, aged 24, had his back and right hand severely wrenched at work and was slowly improving with treatment, but developed severe right hand reflex sympathetic dystrophy, (a very painful, swollen, tender and unusable hand and fingers), and this was MISSED by the Orthopaedic hand specialist, despite it being a very well known and recognised condition in such injuries. The man's condition was starting to get better with a specific physiotherapy program, but the WCB rejected his total claim and he has been left to fight it legally.

Then, Dr. Brian Higgins, Senior Medical Officer of the WCB told a large audience of doctors on Monday 1 April 1996, that the WCB "would not even consider a diagnosis of reflex sympathetic dystrophy, because it was too hard to treat", so any person with that problem would be ignored!!!

There are many many more such cases, but it would take too long to detail them.

I would be happy to appear before your Inquiry to address the issues of poor injured worker care by the WCB, because I was asked to submit this information to you by Barrister Peter Gorman, with whom I have shared some legal fights on behalf of the genuine injured workers.

Yours sincerely,

Dr. A. Breck McKay
Coordinator C.H.A.M.P.

01 MAY 1996

135

30 April 1996

Mr Jim Kennedy
Commissioner
Inquiry into Workers' Compensation
& Related Matters in Queensland
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Dear Mr Kennedy

Submission to Inquiry

Enclosed please find Council's submission to your Inquiry.

If you or your staff have any questions on the document, please do not hesitate to contact me or Ben Klaassen in this office. Otherwise I will await your advice on the convening of the Inquiry's Consultative Committee.

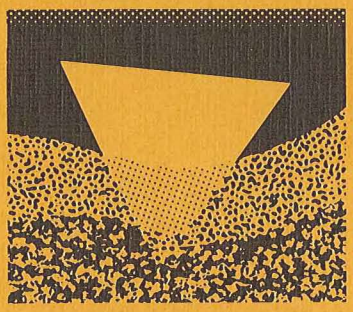
Thank you for the opportunity to have input to this important inquiry.

Yours sincerely

Michael Pinnock
Chief Executive

Queensland
Mining Council Ltd
A.C.N. 050 486 952

SUBMISSION TO THE INQUIRY INTO WORKERS' COMPENSATION & RELATED MATTERS IN QUEENSLAND



QUEENSLAND
MINING COUNCIL

SUBMISSION TO THE INQUIRY INTO WORKERS' COMPENSATION & RELATED MATTERS IN QUEENSLAND

QUEENSLAND MINING COUNCIL
APRIL 1996

CONTENTS PAGE

RECOMMENDATIONS (i)

1. Introduction 1

2. The Nature of Workers' Compensation 4

3. Recent Performance of the Workers' Compensation Fund 5
3.1 The Fund at June 1995 5
3.2 The Previous Review 6
3.3 The Fund Post-June 1995 8

4. Common Law 9
4.1 The Balance of Legal Rights 9
4.2 Legal Costs 11
4.3 Court Awards 12
4.4 Other Failings of Common Law 12
4.5 Recommendations on Common Law 13
4.5.1 Abolition of Common Law 13
4.5.2 Limitation of Common Law 14
4.5.3 Other Common Law Controls 14

5. Premium Setting 16
5.1 Experience Rating 16
5.2 Premium Discounts for Safety Management 17
5.3 Common Law 18

6. Claims Management 19
6.1 Definition of Injury 19
6.2 Rehabilitation 20
6.3 Communication 21
6.4 Medical Certificates 22
6.5 Weekly Benefits 22
6.6 Board Structure 23
6.7 Recommendations in Regard to Claims Management 23

7. The Tregillis Report 25

Attachments 1 - 4

References

RECOMMENDATIONS

1. As a minimum condition, employees' recourse to damages at common law for work-related injury and illness should be significantly curtailed, by means of an impairment threshold or some other effective measure to confine common law to serious injury and illness.

   1.1 That threshold to be set at a meaningful level eg. 25% of Whole Person Impairment.

   1.2 The threshold to relate to physical impairment only, not psychological impairment.

   1.3 Exceptional cases of impairment - those which cannot reasonably be assessed by reference to a Tabled of Injuries - to be accommodated by an overarching descriptive definition of 'serious injury'.

      1.3.1 The interpretation of 'serious injury' in exceptional cases to be a matter for an appropriately constituted Workers Compensation Board Tribunal whose decisions are final and not subject to appeal to the courts, other than that afforded by Judicial Review.

   1.4 The limitation of common law access to be accompanied by appropriate increases in the statutory lump sum payments for permanent partial disability and death.

2. That other measures be introduced to ameliorate common law costs:

   2.1 The Workers Compensation Act be amended to:

   - include a definition of contributory negligence and an explicit direction that judges consider contributory negligence in the awarding of damages;

   - require judges to take account of (i) the degree to which the employee has endeavoured to mitigate the severity and duration of the injury by complying with medical advice and cooperating with employer and/or Workers' Compensation Board provided rehabilitation; (ii) any offer by the employer to re-position and/or re-train the employer for alternative duties; (iii) the demonstration by the employer of the existence of a properly designed, monitored and enforced management safety plan.

2.2 There be statutory compulsion for the prompt notification of common law claims and for early and full disclosure of documents and information, by both sides, prior to the issue of court process.

2.3 There be a statutory requirement for the issue of court process to be preceded by alternative dispute resolution, including mediation by way of a compulsory conference and provision for the appointment, if the parties agree, of an independent assessor of damages

2.4 The parties to an action should be required to exchange final offers of settlement prior to court and should be encouraged - eg. by statutory directions on the awarding of costs - to make those offers reasonable and genuine.

2.5 That a dedicated court system be established to hear workers' compensation cases- or dedicated panels within the established courts - in order to promote a better understanding of workers' compensation issues and effects on the part of the judiciary.

3. That premium setting be reformed so that:

3.1 Premium rates are made, through the adoption of experience rating, to accurately reflect each policy holder's true risk.

3.2 If/where industry rating is retained, merit bonuses are increased to enable greater downward rate flexibility in response to favourable claims experience.

3.3 Front-end discounts are provided for the implementation of legitimate, and regularly audited, safety management and rehabilitation programs.

3.4 If experience rating and meaningful controls on common law claims are introduced, that the present exclusion of common law costs from premium determination is reviewed.

4. That measures be introduced to achieve greater discipline in claims management and effectiveness in rehabilitation:

4.1 That the definition of "injury" in the Workers' Compensation Act be further tightened to give real effect to the intention that employment be a "significant"/ important/substantial contributing factor to the injury.

4.2 That the Board introduced a system of 'approved' company-provided rehabilitation and return to work programs and that:

- incentives be introduced to encourage employers to develop approved programs eg. premium rate offsets and/or reduction in the employer excess;

- injured employees who decline to participate in approved programs, and are certified medically fit to do so, surrender their compensation benefits.

4.3 That the Board implement, to the maximum extent practicable, case management of claims on a company basis, with Board officers assigned to particular policy holders.

4.4 That employers have the right to appoint their own lawyers to defend common law actions (subject to conditions), and to nominate their representation from the Board's pool of lawyers and, where neither of these rights is exercised, to nonetheless have automatic right of access to Board appointed lawyers and, further, that Board lawyers be instructed to consult with employers as a matter of course and to generally conduct more rigorous defenses.

4.5 That the right of the employer to seek a second medical opinion on a workers' compensation certificate be incorporated in the Workers' Compensation Act.

4.6 That weekly benefits (< 26 weeks) be capped - eg. by reference to an (indexed) quantum amount or as a proportion/multiple of State-wide average earnings.

4.7 That the Workers' Compensation Board be corporatised or, as minimum, be restructured to give effect to the principal tenets of corporatisation, namely:

- clarity of objectives, identification of core functions and managerial autonomy;

- the separation of policy/regulatory and commercial/service delivery functions;

- defined limits on the making of ministerial directions to the Board with those directions subject to tabling in Parliament and publication in the Board's Annual Report;

- explicit Government funding of community service obligations imposed on the Board by ministerial direction;

- re-constitution of the Board as a true, independent Board appointed in accordance with clearly specified, competency-based selection criteria.

5. That the proposal contained in the draft report by Mr Tregellis - that the intended Workplace Health and Safety levy be applied to the mining industry - be rejected on the grounds that it is illogical and unfair.

1. Introduction

Workers compensation is a substantial cost for the Queensland mining and mineral processing industry. In 1994-95, the combined net premium paid in the five main mining related categories - underground coal, other underground, open cut, surface administration, smelting and refining - was $i3 million ($30.4m assessed less $17.4m merit bonus). The rises in gross premiums from January this year (inclusive of surcharge) imply an increase in this net amount to $18 million.

This expense is in addition to the substantial amounts spent by the mining companies on safety management and on rehabilitation. While the companies recognises that safety and workers' compensation are integral to their operations, this does not detract from the need to contain their costs - and reduce them if possible - and to apply the funds in the most efficient manner achievable.

For these reasons, the Queensland Mining Council welcomes the Inquiry. An independent, apolitical review of workers' compensation in Queensland is very necessary at this time. The recent alarming increase in common law claims on the Workers' Compensation Fund, and the ineffective response measures enacted by the previous Government, have produced an unsustainable situation.

While some breathing space for the Fund might have been bought at the expense of policy holders - and even that is now highly questionable given the latest assessment of the performance of the Fund - the failure to bring in genuine limitations on common law claims, together with increases in statutory lump sum and weekly payments, is a prescription for ongoing instability, waste, inequity and escalation of premium rates over and above the substantial increases which applied from January this year.

This submission focuses on common law as the most important and most immediate issue facing the Queensland workers' compensation scheme. Council recommends that the Inquiry make rectification of the common law problem a priority objective.

Action on the common law front to re-establish stability should be complemented by new disciplines on claims management - both statutory and common law - and measures to enhance the efficiency of the workers' compensation system and its role in encouraging workplace safety, rehabilitation and return to work. Council submits that:

- There are cogent arguments for abolishing common law rights, although we recognise that total abolition is an option of last resort which the Queensland scheme might not have come to yet.

  Abolition would need to be accompanied by compensating increases in the levels of statutory payments for permanent partial disability and death, and an administrative mechanism for delivering fair compensation in 'special cases' which cannot be properly accommodated by a Table of Injuries.

There would also need to be strict controls on the statutory side - which would come under increased pressure in the absence of common law - to avoid the overuse and waste associated with common law being transferred to the statutory system.

- As a minimum condition, recourse to common law should be limited to the serious injuries and illnesses for which Council believes it was intended. Council suggests application of an access threshold relating to degree of physical (not psychological) impairment, overlaid by a qualitative definition of serious injury to accommodate special cases.

- If common law was to be retained in some form, measures would be necessary to give full effect to the principles of contributory negligence and mitigation of loss in the making of court awards. Council sees merit in the idea of a separate court system for workers' compensation - or dedicated panels within the established courts - to foster a better, more holistic understanding of the system by the judiciary. The largely costless/riskless nature of common law actions for plaintiffs would also need to be addressed.

- The method of premium setting should be more closely aligned with risk/safety performance. Experience rating should be introduced into premium determination, particularly for the larger companies for whom recent claims experience is a credible indicator of safety performance.

  Should the present industry classification system was be retained for all or a class of policy holders, merit bonuses should be increased to enable greater downward flexibility in premiums, and up-front premium 'credits' introduced for employers who adopt legitimate safety management and rehabilitation programs.

- Claims investigation and monitoring should be tightened across the board. Improved communication between the Board (and its agents) and policyholders would assist greatly in this - to the maximum extent practicable, there should be case management of claims on a company basis with Board officers permanently 'assigned' to particular policy holders.

- There should be greater incentives for employers to establish rehabilitation and return to work programs - which should be 'approved' by the Board - and an injured employer who refuses to participate in a Board approved scheme, and is medically fit to do so, should surrender his or her benefits. This should also be a factor which Judges are required to take into account in assessing mitigation of loss obligations.

- The recent increase in weekly benefits resulting from the change in their calculation should be capped to reduce the disincentive for injured employees to undertake rehabilitation and to return to work.

Finally, Council submits that the Government needs to clearly specify what it requires of the Workers' Compensation Board and its interaction with Ministers and the bureaucracy, and then to structure the Board accordingly. A ready model for doing so exists in the form of Corporatisation Policy, with its central tenets of accountability, transparency, clarity of objectives and managerial autonomy.

If the Government eschews this route, and elects to retain the existing avenues for political intrusion on Board affairs, then it will be obliged to accept responsibility for the effects of this on the scheme, and to underwrite any deficiency in the Fund resulting from failure to reasonably address claims costs.

Council believes that the above changes are those which, properly implemented, would address the main deficiencies in the present workers' compensation arrangements. The list is not meant to be exhaustive - we expect that a number of Council's member companies will submit individually on other elements, including the issues of self-insurance and competition in underwriting and claims management.

3. The Nature of Workers' Compensation

Council supports the concept of workers' compensation and the objects of the *Workers' Compensation Act.* However, we believe those objects are being compromised in practice by misuse and abuse of the system - in particular, the overuse of common law and, to a lesser extent, of statutory benefits, ineffective rehabilitation and return to work, and unstable, poorly designed premium rates. We also believe the structure of the Workers' Compensation Board does not equip the organisation to meet the stated objectives of the Act.

The Industry Commission Report on Workers' Compensation in Australia identified the aim of workers' compensation as being to minimise the costs of workplace injury and illness, those costs being the sum of:

- injured workers' lost earnings, pain/suffering and medical/rehabilitation costs;
- employers' premiums and the costs of safety measures, down time and training;
- the social security cost to the general community.

Council subscribes to these objectives. We believe they are most likely to be achieved by a workers' compensation system which:

- provides fair and consistent compensation for injured workers;
- encourages safe management and work practices;
- encourages effective rehabilitation and return to work;
- minimises leakages of premium income to 'non-productive' activities.

The prerequisites for such a system, we believe, are:

- fair apportionment of rights and obligations among the employer, employee, and the insurer/claims manager;
- clear delineation of those rights and obligations and their consistent enforcement;
- good communication among the employer, employee, and the insurer/claims manager based on clear rules consistently applied.

While this submission does not attempt a comprehensive assessment of all aspects of the present Queensland system, these desirable characteristics underlie all of Council's comments and recommendations. Employers in the Queensland mining industry want a workers' compensation system which is fair to their employees and to themselves, and which complements their ceaseless efforts to improve safety at their workplaces.

3. Recent Performance of the Workers' Compensation Scheme

3.1 The Fund at June 1995

The financial problems of the Workers' Compensation Fund which prompted the 1995 review, and the causes thereof, were well documented in the Actuary's Report on the Fund for 1994-95, in the Actuary's summary presentation of that report to the Board and stakeholders in September of last year and in the presentation to employer representatives by the former Minister for Employment, Hon Wendy Edmond MLA, also in September. The aspects which Council saw as being most material to the performance of the scheme are as follows:

- Statutory workers' compensation payments have been historically stable. The frequency of statutory claims - claim numbers as a percentage of the number of private sector employees - declined steadily from 1984-85 (13%) to 1989-90 (10%), before climbing less steadily over the subsequent five years to 1993-94 (11%). Statutory claims frequency remained static in 1994-95.

  Similarly, there has been no noticeable increase in the average size of statutory payments (other than a one-off increase in 1990-91 deriving from legislative changes). In fact average payments fell marginally in real terms from 1991-92 to 1994-95, although this was offset by increases in average medical payments per claim, resulting in a relatively constant average claim size of $2700 over the last five years.

  Clearly the financial difficulties experienced by the Workers' Compensation Fund do not derive from its past or estimated future statutory claims experience.

- The story is very different in regard to common law claims, the number of which have outstripped statutory claims and the growth of the Queensland labour force. The frequency of common law claims - the estimated number of claims ultimately incurred as a percentage of ultimate statutory claims - increased steadily from 1980-81 (0.75%) to 1988-89 (1.8%), from whence it jumped 40% in just two years to 2.5%, before apparently plateauing at that level in 1991-92.

  This levelling off in claims frequency, which was thought to have carried over to the 1993 and 94 financial years, proved illusionary. Instead, a 48% increase in the number of common law notifications in 1994-95 necessitated an upward revision of the previous two years' estimates to reflect a new claims frequency of 3.15% at June 1995 (see Attachment 1).

  The resulting picture is that of a persistent, long-term escalation of common law claims frequency, in which the most recent increase in claims lodged represents a new level of activity but does not indicate a novel, potentially aberrant, direction.

- There is nothing to suggest that the increase in claims numbers will be accompanied by a reduction in average common law claims costs:

    * The Actuary could find no evidence of a likely increase in the proportion of 'nil' claims - being claims for which legal costs might be incurred, but involving no damages in excess of statutory compensation - which has stayed constant at 22% for the last five years.

    * The average size of common law settlements (above statutory payments and net of legal expenses) increased 18% in real terms in the two years since 01992-93 from $68,000 to $80,100 in 1994-95. Further, it is unlikely that this average settlement will reduce, and it may increase further, because of the higher proportion of 'strains and sprains' in recent common law notifications. Historically, the average settlements size for strains and sprains has been above the overall common law average.

    * Legal expenses incurred by the Fund consistently average 30% of settlement costs - $19300 per finalised common law claim in 1994-95 (including nil claims).

- The result was, for end June 1995, a $190 million upward revision in the Actuary's estimate of outstanding claims from $813 million to $1005 million and an increase in the Fund's balance sheet provision for outstanding claims liability, compared to 30 June 1994, of $280 million. Of this amount, all but $14 million was attributable to the increase in common law liabilities and its flow through effect on claims expenses and the Fund's required prudential margin.

These circumstances moved the previous Government, in September last year, to initiate an urgent review of the scheme, focusing on common law costs and entitlements. At that time the Fund had a projected deficit at 30 June 1995 (after merit bonus distribution) of $119 million (later revised down to $114 million). Premium rates, at an average net rate of 1.7% of wages, were below the break-even level of 1.9% and, in the absence of either or both a substantial reduction in claims and an increase in premiums, the Fund's deficit was set to deteriorate further in 1995-96.

3.2 The Previous Review

Attachment 2 shows:

- actuarial costings of options presented by the former Minister to stakeholders at the outset of the review (Columns A and B);

- costing of the outcome of the review (Column C).

The comparison shows how the Government's initial proposals were emasculated during the course of the review:

- The abandonment of the proposals for a 20/25% whole person impairment threshold on access to common law cost $94m-$111m in savings to the Fund in 1995/96.

- The introduction of the irrevocable employee election and abolition of cost indemnity, up to awards of $20,000 (20%), recouped only $19m in savings - a net loss of $75m-$92m, of which $27m-$30m represented legal costs to the Fund.

- The scaling back of proposed increases in maximum lump sum statutory benefits for permanent partial disability, from $130/150,000 to $100,000, produced a net saving of $17m-$33m.

- Average premiums were required to increase by 23 % (to 2.08% of wages) instead of increasing 12% (to 1.90%) to deliver full funding by 2000.

Clearly, the watering down of the initial proposals was done at the expense of policy holders and the recipients of lump sum statutory payments who make up the great bulk of workers requiring compensation for permanent disability, and to the benefit of the recipients of common law awards and the legal profession.

Queensland employers took a constructive position in the review. Council was party to a consolidated employer groups' submission which recognised the need for substantial increases in premiums in return for meaningful limitations on common law access and concomitant improvements in statutory lump sum benefits. Attachment 3 contains a summary of the employer proposals.

The employer groups' main objections to the review outcome were threefold. First, the core element of the outcome - irrevocable election and removal of cost indemnity for lower-end claims - would be ineffective in producing the behavioural change needed to stem the escalation of common law costs and the associated leakage of an ever larger share of fund revenue to the legal profession.

The review preserved the situation in which lawyers had an attractive 'product' to market to the majority of lower-end common law claimants whose pursuit of court-awarded damages remained essentially costless and risk-free.

Second, the outcome placed the entire burden of addressing the Workers' Compensation Fund's unfunded liability onto employers. While the business community accepted the reality of significant premium increases, the quid pro quo of an effective and lasting solution to the scheme's funding problem was not delivered.

Last, the outcome was not a stable one. Whilst the scheduled increases in premiums (inclusive of the surcharge) might deliver an improvement in the balance sheet of the Fund over the subsequent 12 months to two years, this was a piecemeal and high-risk strategy.

3.3 The Fund Post-June 1995

It would appear from the Actuary's latest report on claims experience that employers' concerns about the on-going stability of the Fund were conservative. The Actuary has reported for the nine months to March '96:

- The incidence of statutory claims incurred from the 1994-95 injury year and earlier is slightly higher than expected, but average payment size is as predicted and the number of claims arising from the current injury year is lower than expected.

- The number of common law notifications has continued to escalate at an increasing rate. The Actuary's projected number of intimations for 1995/96 represents another 60% increase on top of the 48% increase in 1994-95. The Actuary now believes the incidence of common law claims is running at around 3½% compared to the June '95 estimate of 3.15%.

- The average size of net common law settlements has continued to increase, up 6% on the 1994/95 average.

It is clear from these latest results that the premium rate increases implemented from January this year will not deliver the Fund back into adequate solvency within five years as intended. In the absence of further premium rate increases and/or measures to reduce claims costs, the Actuary estimates a Fund deficit (below a prudent solvency margin) at June 1999 of between $150m and over $400m.

Council acknowledges that the Actuary's latest estimates do not attempt to account for any beneficial effect on future common law claim numbers that might arise from the substitution effects of the higher lump sums benefits for permanent partial disability applying from 1/1/96; also that the estimates incorporate only a modest (10%) reduction in claim numbers arising from the irrevocable election and loss of cost indemnity applied to injuries assessed below the $20,000 benefits threshold.

However we believe this is not unreasonable and that the Actuary's estimates might just as easily turn out to be conservative as excessive. The picture presented by recent common law claims experience is one of very high, and increasing, average returns to claimants for their investments in common law actions. In any other area this is usually a prescription for the rate of new entrants to rise rather than to abate or decline.

4. Common Law

4.1 The Balance of Legal Rights

During the last review a union official, who was opposed to any threshold on common law access, gave the following example in a television interview. He said that if two people were walking near a building site - one of them a worker at the site and the other not - and they were struck by falling debris, then the non-employee would be free to bring a court action against the construction company but the worker would not. He said that denying the worker that right by limiting his common law access would be unjust.

The example was correct as far as it went. The employee might have been denied recourse to the courts under the threshold proposals depending on the seriousness of his injury. However, unlike the non-employee, the worker would have had immediate access to statutory compensation, initially in the form of weekly payments and payment of medical expenses and with the prospect of a lump sum amount in the event that his injury was deemed to have resulted in a degree of permanent impairment. Further, this compensation would have been available to him regardless of the circumstances of the accident - other than the accident having resulted from his own 'serious and wilful misconduct' - on a no-questions-asked/no-fault basis.

Conversely, the non-employee would not have had the same access to immediate compensation, having to rely on court action in which negligence on the part of the construction company, its agents or employees would need to be proved. The person's contributory negligence, if any, would have been a factor in any settlement or court award, and the nature, size and timing of the outcome would have been uncertain.

This example demonstrates the basic nature of, and reasons for, a no-fault workers' compensation system. The evolution of workers' compensation can be seen as a series of attempts to overcome market failure. In the ideal world of perfect information, complete skills and perfectly competitive labour markets, the employee would foresee all the risks associated with his employment and have compensation for those built into his wage. There would be no need for accident insurance or for a safety net for injured employees, and risk management would be perfect with individual employees and employers bearing the costs of their unsafe behaviour.

This notion of perfect foresight was implicit to a large degree in the old common law doctrine of 'common employment' whereby the injured worker had recourse to compensation only when the employer was clearly at fault; not so when an injury was caused by the employee, fellow workers or by misadventure.

This doctrine proved, of course, to be unsustainable. Uncertainty about the risks and causes of work related injury was great, labour markets had rigidities and the doctrine failed to accommodate social concepts of fairness.

Compensation arrangements progressively stepped back from the pure market model:

- the doctrine of 'vicarious liability' made employers responsible for the injurious actions of their employees against one another and against a third party;

- the 'duty of care' concept was adopted requiring employers to provide safe work places; and finally,

- 'no-fault' liability was adopted.

Queensland's 'duty of care' approach to safety regulation recognises that both employers and employees have an obligation to act in a safe manner and to bear the costs of their negligence. However, it is not practical to run workers' compensation solely on that basis - blame cannot always be apportioned, injured employees cannot afford to wait for the courts to determine liability or to wait on the outcome of protracted settlement negotiations, legal costs would be prohibitive and the resulting delays in awards and settlements would negate their incentive effects on workplace safety.

Hence the compromise of no-fault compensation where the employer automatically funds the cost of compensation, and the possibility of contributory negligence on the part of the employee is disregarded.

Council agrees that no-fault compensation' is preferable on both equity and efficiency grounds. It ensures that compensation is not confined only to those workers who are able to prove negligence on the part of the employer, and that the cost of accidents is borne by the party best placed to influence the level of workplace safety, namely the employer. It is also conducive to a more harmonious work environment.

Nevertheless, sight should not be lost of the fact that the no-fault system involves a surrender by employers of common law legal rights that would otherwise exist. In the absence of such a system, employees would be required to prove negligence on the part of the employer in order to succeed in a claim for compensation. The premise from which the debate about common law often starts - namely, that limiting access involves denial of workers' fundamental legal rights - is unbalanced. (This is accepted even in the USA where litigation is otherwise rampant, but where no common law right of recovery exists under workers' compensation.

The Industry Commission Inquiry into workers' compensation in Australia concluded that common law rights were irreconcilable with the no-fault system. The Heads of Workers' Compensation Authorities have suggested that common law damages should only be available in "very limited circumstances, where statutory benefits are considered inappropriate".

4.2 Legal Costs

Legal costs incurred by the Workers' Compensation Board average around 30% of net common law settlement costs. Of the $854m of outstanding claims liability, estimated by the actuary at 30 June 1995, $535m was common law net settlement cost and $176m was common law legal costs.

The leakage represented by legal expenses is even more marked when account is taken of the distribution of common law actions and of the legal costs incurred by plaintiffs. The preponderance of common law notifications lodged with the Board represent 'lower end' claims relating to less serious injuries - the 25% WPI common law threshold proposed during the last review would have eliminated 65-70% of all new common law claims.

The then Minister for Employment, The Hon Wendy Edmonds, MLA, said of these lower end claims:

> *In the case of less serious injuries, by far the greatest area of common law action, it is not the workers and their families who are gaining the most benefit. In 1994/95, most common law settlements fell into the range of $1 - $20,000. In these cases the average payment to the workers was $11,075. The average cost of legal and other outlays was $10,249. These costs are generally calculated against a set scale of fees in the rules of court. The actual fees workers and their families pay to their legal advisers can be higher.* (Courier Mail, 14/9/95, p.21)

It is not surprising that a direct nexus appears to exist between the most recent rise in common law notifications and the relaxation of regulations applying to solicitors' advertising. Attachment 4 shows the prima facie relationship, and is supported by Workers' Compensation Board analysis which matches common law claim origination with solicitors who are known to heavily promote their workers' compensation services. As the former Premier, Hon Wayne Goss, MLA, said in Parliament on 7 September 1995:

> *We now see advertisements from legal practitioners which state 'convert your injury into cash'. The consequence of those changes (lawyers allowed to advertise) has been a surge in legal claims. It is not at the same level as is seen in places such as the United States, but it is a similar symptom and is getting worse.*

Clearly, if not contained, common law claims will continue to undermine a core purpose of the Queensland Workers' Compensation Scheme, that being to apply the premium income gathered from employers for the benefit of injured workers and their families.

Common law legal costs, particularly those associated with 'lower end' claims, will continue to drive an increasingly large wedge between the settlements paid by the Workers' Compensation Board on behalf of employers and the benefits actually received by injured employees.

4.3 Court Awards

Common law net settlement costs average around $85,000, at last reckoning, and appear to be on an upward trend.

Council believes that Queensland courts are inclined to interpret common law liability as residing strictly with employers and to find against the defendant in all cases, except in the rare circumstance where fraud or deliberate misconduct by the employee can be proved. Judges, we submit, are as susceptible as any other person to feelings of normal human compassion towards an injured person presented before them and to the knowledge that 'insurance will provide'. The result, Council believes, is insufficient application in court determinations of the common law principles of contributory negligence and mitigation of loss, and insufficient appreciation of the aggregated effect of isolated decisions on the workers' compensation system as a whole.

This inclination to apply the common law as if it was a no-fault regime has two main implications. First, more common law actions will succeed than should do so, and damages awarded will be generally higher than they should be, and this will have a flow-back effect on the Workers' Compensation Board's negotiation of out of court settlements. Council believes this describes the present situation.

Second, common law settlements will tend to become standardised, detracting from one of the main arguments in favour of retention of common law - that it enables the tailoring of damages to the individual circumstances of the injured worker in a way that a Table of Injuries cannot. The Industry Commission Report on Workers' Compensation in Australia refers to this standardising effect (D15) as does Arup (1992). They both also note the common observation that courts are inclined to compress the range of awards - overcompensating minor injuries and undercompensating severe injuries.

4.4 Other Failings of Common Law

The Industry Commission found other faults with the real world operation of common law:

- Common law can act as a disincentive to rehabilitation and return to work. With a court hearing pending, or settlement negotiations in progress, a claimant might perceive his or her best interests to be served by staying incapacitated.
  (This is especially so if, as we suggest, there is good reason to expect that the claimant's failure to mitigate his loss will not work against him in court.)

- The delay inherent in common law outcomes means that their usefulness in encouraging greater safety in the workplace is highly questionable. (This is particularly the case if, as in Queensland - and rightly so - common law costs are excluded in the determination of net premiums.)

- Indeed, the common law can actually work against safety improvements if employers fear that such improvements after the event of injury will be used in court as evidence of prior negligence in workplace design.

- The inherently adversarial nature of common law actions is damaging to the relationship between employer and employee, again with negative implications for rehabilitation and return to work.

- "Why should a small proportion of workers obtain additional compensation because they are in the fortuitous position of being able to prove fault?".

Considerations such as these and the basic tension between common law and no-fault compensation prompted the conclusion that:

> *The Commission's preference for compensating for permanent impairment and pain and suffering is to rely on uniform payments based on a common 'Table of Injuries', rather than allowing access to remedies at common law. Such an approach is direct, certain and more immediate.* (p 121)

4.5 Recommendations on Common Law

Council recognises that there is a wide spectrum of options for addressing the common law problem, each with particular qualifications and conditions attached.

4.5.1 *Abolition of Common Law*

In common with the Industry Commission, Council believes there are cogent reasons for considering the abolition of rights to common law damages in return for compensating improvements in statutory payment levels. However, abolition is not our preferred option. It is better we believe to make a serious attempt at modifying the system to make common law work - ie. provide fair compensation for serious injury - thereby enabling it to be preserved.

The case for abolition, if pursued by the Inquiry, should be subject to the ability to deliver on two important conditions: First, there would need to be means introduced for accommodating special cases of permanent disability - the concert pianist who loses a finger - which could not be fairly assessed by a Table of Injuries.
The Industry Commission suggested establishing a special tribunal to which exceptional cases could be referred for a decision on whether Table of Injuries payments were appropriate.

Second, there would need to be strict controls on statutory payments. In the absence of common law, pressure on the statutory system would increase. While that would be appropriate, the issue would be one of degree. It would be self defeating for the waste and excesses associated with common law simply to be transferred to the statutory system. The upward adjustment of benefit levels would need to be mindful that one of the main aims of removing common law would be to suppress the overcompensation of less serious injuries, and to enable proper compensation of severe, lasting disabilities to become more affordable.

Similarly, the new arrangements would need to give effect to the aim of stemming the diversion of funds into legal expenses and other transaction costs - the role of lawyers in appeals from Board decisions would need to be, if not eliminated, then kept to a minimum and made a matter of last resort.

4.5.2 *Limitation of Common Law*

As a minimum condition, common law access should be restricted to the more seriously injured, for example by means of an impairment threshold. The threshold would need to be sufficiently high to eliminate the majority of claims presently being lodged - it is understood that a 25% Whole Person Impairment limit would eliminate 65-70% of claims - and applied by reference to physical impairment only - we would want to avoid the situation experienced in other jurisdictions where substantial defendant and claimant resources are absorbed in attempts to use psychological impairment as the top-up needed to get claimants 'over the line'.

Under a limited common law regime, exceptional cases could be accommodated by overlaying the Table of Injuries threshold with a descriptive definition of serious injury. This must not be allowed to become simply another arena for legal dispute, delay and waste however. Interpretation of the definition, should be confined to a Workers' Compensation Tribunal, the decisions of which would be final and not subject to court appeal other than that afforded by Judicial Review.

4.5.3 *Other Common Law Controls*

There is a suite of other measures for bringing greater discipline to the common law area, in an attempt to achieve realistic damages and reduce unnecessary legal costs. Many of the following were contained in some form in the *Personal Injuries Proceedings Bill 1994* - which did not become law - and in material presented by the Workers' Compensation Board to employer groups during the previous review.

- A legislative attempt should be made to counter the disinclination of the courts to factor contributory negligence and mitigation of loss into rulings and damages awards. The Workers Compensation Act should be amended to:

    * include a definition of contributory negligence and an explicit direction that judges consider contributory negligence in the awarding of damages;

* require judges to take account of (i) the degree to which the employee has endeavoured to mitigate the severity and duration of the injury by complying with medical advice and cooperating with employer and/or Workers' Compensation Board provided rehabilitation; (ii) any offer by the employer to re-position and/or re-train the employer for alternative duties; (iii) the demonstration by the employer of the existence of a properly designed, monitored and enforced management safety plan.

- There should be statutory compulsion for the prompt notification of common law claims and for early and full disclosure of documents and information, by both sides, prior to the issue of court process.

- There should be a statutory requirement for the issue of court process to be preceded by alternative dispute resolution (ADR), including mediation by way of a compulsory conference and provision for the appointment, if the parties agree, of an independent assessor of damages.

  (The Industry Commission Report on Workers Compensation in Australia noted that ADR was a feature of best common law practice. In 1994-5, mediation fees incurred by the Workers' Compensation Board were $16,400. Legal costs and other outlays for defendants and plaintiffs came to almost $32 million.)

- The parties to an action should be required to exchange final offers of settlement prior to court and should be encouraged - eg. by statutory directions on the awarding of costs - to make those offers reasonable and genuine.

Council sees control measures like these as being important complements to a limited common law regime. They are not, and could never be, substitutes for the abolition of limitation of common law rights.

5. Premium Setting

The role of premium design in encouraging safety in the workplace can be overstated. The primary motivation for improved safety should, in the majority of cases, be the beneficial effects of a reduced incidence of injury and illness on the health of the business - on the strength of the employment relationship, on the level of lost time and industrial disruption and, ultimately, on the productivity and profitability of the enterprise. This seems to describe the situation in key sectors of the mining industry - eg. the coal industry - where there appears to be a direct (common, if not causal) relationship between an improving safety record and increasing productivity.

Nevertheless, the desire to minimise workers' compensation costs is an important motivation for improved safety. The Industry Commission Report on Work, Health and Safety (1995) cites evidence from North America which suggests a strong link between workers' compensation premiums and workplace health and safety (specifically fatality rates being inured from the influence of claims management and fraud). While the Commission says that similar evidence is not available in Australia, it notes that significant declines in new claims in a number of jurisdictions have followed the introduction of incentives, such as experience-rated premiums and bonus/penalty schemes. (pp 180-81)

5.1 Experience Rating

Council submits that, to the greatest extent practicable, workers' compensation premiums, and variations in premium rates, should accurately reflect an enterprise's true risk and changes in safety performance over time. This efficient outcome would also be an equitable one in which cross-subsidisation among enterprises would be reduced to the minimum level that was realistically achievable.

Council submits that the present method of premium setting in Queensland does not adequately fulfil this condition. While the combination of industry rate classifications and merit bonuses and demerit penalties goes some way to matching premium costs with risk, the closeness of the fit is limited by the fact that the net premium(s) paid by an enterprise will be affected by:

- the claims performance of the other employers in its rate class ie. the class rate; and

- the claims performance of the State-wide pool of employers ie. the rates of rebate on offer as determined by the funds available for merit bonus distribution in any year.

For example, under the present arrangements an underground coal mine might record a claims to premium ratio of less than five percent for, say, ten years, but would still be paying at the end of that time a net premium rate for its mine workers of 5% of wages ie. substantially above its apparent long-run annual cost of claims.

The Workers' Compensation Board's internal review of its premium setting practices (Knight) provides a good summary of the deficiencies of the present arrangements:

- the large number of industry classifications (so that net premiums have some relationship with enterprise risk) making for costly administration and compliance;

- the operation of the industry classes in blunting safety incentives, as mentioned above;

  (In 1994-95, the mining industry's net premium contribution to the Fund was $13m. The total compensation paid to the industry - statutory and common law was $5.8m [on claims lodged only in 94-95].)

- inequities resulting from (i) cross-subsidisation within industry classifications (ii) the 'highest applicable rate' rule disadvantage to employers which span two or more industry classifications, and (iii) inconsistency of rates among classifications describing similar activities.

Council broadly agrees with the criteria for premium setting suggested by Knight, but with the qualification that we would place less emphasis on simplicity than Knight than appears to do. The problem of employers not understanding the safety incentives of more complex systems might be a matter of communication and the information contained in premium notices - as long as the Board explains to the policy holder why its premium rate has fallen, increased or remained static, it might not be necessary for employers to completely understand the mechanics of the premium to appreciate its effects.

Simplicity should not be too greatly favoured over design features which deliver other, higher order effects like efficiency and equity. This is particularly relevant for the fair treatment of smaller employers when experience rating is contemplated. Fairness might dictate that the effect of experience on premiums be weighted by size - to reflect the relationship between work force numbers and experience credibility - resulting in a more complicated, less transparent system.

Subject to this qualification, we find much to commend in Knight's recommended system. In terms of the above coal mine example, the new rate scale and method of adjustment would enable the enterprise to progressively ramp down its premium costs to the minimum suggested rate of 0.25%.

5.2 Premium Discounts for Safety Management

Council favours the concept of up-front premium discounts for employers which implement safety management systems. This is one way to inject additional safety incentives into premium setting for smaller policy holders for whom experience rating might be deemed to be inappropriate or is substantially watered down.

It would be important, however, to ensure that rewards were not given simply for 'paper compliance' ie. that the safety systems were genuine and subject to a prescribed (internal) audit program, and that there was capacity for discounts to be 'clawed-back' if a system did not translate into improved claims performance.

5.3 Common Law

Council agrees with the present policy of excluding common law claims from the calculation of bonuses and penalties - particularly in respect of smaller companies for whom common law claims can have a markedly skewed effect on assessed claims performance, and particularly given the vagaries and excesses of the present common law arrangements.

We concede, however, that, should experience rating be introduced and common law access meaningfully limited, the question of inclusion of common law claims in premium rating should be re-examined.

6. Claims Management

Council's members perceive a laxity in claims management by the Workers' Compensation Board, and by Board appointed claims assessors and lawyers. Ironically, the Board apparently perceives the same laxity on the part of employers - encouraging employers to give more attention to claims management was the stated intention of the five day excess which arose out of the previous review. Council believes where there is such mutual will, means must exist for giving effect to it.

Council recognises that there are diminishing returns to claims management. Slavish attention to policing claims, particularly short duration claims, can cost more than it is worth, demanding more of Board resources than is returned by way of savings in the number and duration of claims.

Nevertheless, that there is a lack of discipline in verifying the validity of claims, that much rehabilitation is ineffective and wrongly targeted and that rorting of the system has reached unreasonable levels, are common complaints among our member companies.

There is also a perception that the management of the Board has developed, to a degree and perhaps understandably, a 'defeatist' attitude - that the political compromises reflected in the *Workers' Compensation Act*, and the attitude of the courts, and the criticisms levelled by vested interests such as the legal and medical professions, have frustrated Board officers and management in the operation of their duties.

While the companies acknowledge that their own efforts in managing claims could be substantially improved, they see little incentive within the present system to encourage company-based rehabilitation and return to work programs, and they see positive disincentives for injured employees to participate in such programs where they do exist. Generally there is sense of frustration and of a loss of control by the companies and by the Board.

Council's suggestions for restoring greater control are an amalgam of legislative and structural changes and changes in attitude and management approach.

6.1 Definition of Injury

The Industry Commission Report on Workers' Compensation in Australia observed that "there has been a tendency for legislation to limit what qualifies as a compensable injury or illness, while judicial interpretation has tended to expand coverage" (p.99). Arup notes that Australian courts have been progressively expanding the meaning of employer negligence at common law (p.6).

Council believes that the change in 1994 to the definition of "injury" in *the Workers' Compensation Act* - requiring employment to be a significant contributing factor to the injury - was meant to reflect the ordinary meaning of "significant" as being something which is important or substantial.

However, the Courts' tendency to interpret such language broadly has resulted in considerable uncertainty. It seems to be the courts' wont in cases of uncertainty, to give the benefit of the doubt to the plaintiff and in so doing establish that it is sufficient merely for an employee to be at work at the time of the injury for the test of significance to be satisfied. Understandably, this has translated to the Board's application of the definition and, as a result, largely negated the purpose for which the amendment was made.

If it is intended to exclude the weekend football injury which is limped to work on Monday, or is exacerbated by ordinary use at work, then the test should be that employment be the sole or principal causal factor.

6.2 Rehabilitation

Council acknowledges the Board's commitment to rehabilitation and its achievements in a reducing average return to work time. However, the effectiveness of Board delivered rehabilitation is necessarily limited by:

- the unavoidable administrative lags between the time when an injury occurs and/or rehabilitation could commence, and when rehabilitation does commence;

- the fact that the rehabilitation is at least one step removed from the employee's workplace, and is therefore less likely to have relevance to the particular requirements of the enterprise in getting the person back to work.

Council is aware that the Board recognises there is no substitute for properly resourced and run employer-provided rehabilitation programs, and we acknowledge the efforts of the Board in providing training programs for that purpose. But we feel that insufficient incentive exists for employers to develop their own programs. (We do not believe that compulsory company-provided rehabilitation is the answer because, for many companies, Board programs will still be the most viable and effective option.)

Further, we believe that there are actual disincentives to employees participating in such programs where they available. The prospect of receiving substantial reward from staying injured, which is offered by unlimited common law access, is one such disincentive already mentioned. Another, discussed later, is the recent change in weekly benefit calculation from award/base contract rate to a proportion of the worker's average weekly earnings.

Others key disincentives are:

- the fact that injured employees may decline the offer of company-based rehabilitation without jeopardising their benefits;

- the regrettable tendency for company-provided rehabilitation to become an industrial issue and its purpose frustrated.

(One member company advised that a rehabilitation program at one of its mines had been 'boycotted' by the principal union on site. One suggested reason was that the program was working well and presented the company in a favourable light before its work force, which the union did not want. Another was that the union had a philosophy that "someone hurt on the job was entitled to remain off work until he was completely well".)

The workers' compensation experience most familiar to Council's members is where an employee does not turn up for work one day - the explanation for which arrives some days later by way of a notice of the compensation claim - and the employee is not seen again until his injury 'has taken its course'.

Council believes that employers and the Board need to work together to create a more inclusive system involving all the affected parties.

6.3 Communication

It is this 'disappearance' of employees into a seeming vacuum that strikes many of the companies as symptomatic of a lack of control in claims management and of the disruption caused by the interaction of the workers' compensation system with the workplace. Aside from the factors frustrating company-based rehabilitation, already mentioned, the main problem seems to be one of poor communication.

The companies report that the Board does not consult them on the circumstances of claims or their likely validity. Companies seeking to follow up claims have to deal with a different Board officer in each case, either in the same or different branch offices. They feel that the process is disparate and that lack of coordination and communication prevents the Board from understanding the companies and what is available from them by way of rehabilitation and alternative duties and/or how best to relate rehabilitation to the needs of the enterprise.

In regard to common law claims, the companies complain that they "hardly ever see the lawyer", and then only briefly and immediately prior to a case going to court. Board appointed lawyers seem to consider themselves acting solely on behalf of the Board - even though the company is named as the defendant in the case - and as being obliged to follow the instruction of, and communicate with, only the Board.

The lawyers are also thought to rely too heavily on the Loss Assessor's report, often to the exclusion of other pertinent facts that the company could provide if properly consulted and which might having a bearing on aspects like contributory negligence and/or mitigation of loss. Many of Council's members feel they have good cause to question the effectiveness of defences presented on their behalf.

6.4 Medical Certificates

Council believes that medical certificates can be too easily come by, particularly in small, closely knit mining communities where everybody knows everybody else and local doctors are under more than usual pressure to support claims. Conversely, the getting of second opinions by employers is typically untenable for industrial reasons - companies believe that, without legal backing, any attempt to question a medical certificate or request a second opinion would quickly see the work force 'on the grass'.

6.5 Weekly Benefits

Council believes the change in the calculation of weekly benefits from base award or contract rate to a proportion of average weekly earnings will work against attempts to encourage injured employees to participate in rehabilitation and to minimise their time away from work.

While we believe that we understand the rationale behind the change - to bolster the 'income support' function of weekly payments and to catch up with most of the other States - we question whether the effect of the change in some industries was appreciated.

For miners, the change meant substantial increases in weekly benefits, mainly because of the large overtime and allowances component in mine workers' earnings. The typical coal mine worker benefited to the extent of an **additional $390 per week for the first 26 weeks off work** - up nearly 50% from just over $800 to $1200 per week - while in the metalliferous sector there are examples among the more highly paid underground workers of increases of up to **170% or in excess of $830 a week**. This contrasts starkly with the extra $45 (11%) going to the average boner in the meat industry which the then Minister, Hon Wendy Edmond MLA, cited at the time of the change.

While the increase in payments was offset to some degree by the accompanying reduction in the benefit step down period from 39 to 26 weeks, the effect is not significant - some 95% of statutory claims are concluded within that 26 week period.

Council submits that, in regard to weekly benefits, balance needs to be restored between income maintenance and incentives to return to work by limiting the new higher rates.

6.6 Board Structure

Council believes the recent history of the common law issue exposes a fundamental failing in the organisational make-up of the Workers' Compensation Board and its interface with the Government.

As early as 1991, the Board identified the emerging trend of escalating common law costs and warned that failure to take prompt action would necessitate more drastic measures later on. The release by the Board at that time of an options paper on common law was the first occasion for politically motivated inaction, which was followed by others in the subsequent four years - common law driven premium rate increases and merit bonus reduction; the watering down of legal cost control measures in the *Personal Injuries Proceedings Bill*; and then failure to enact the Bill - which culminated in the inadequate outcome of the most recent review and delivered the Workers' Compensation Fund into its present parlous financial position. Council believes the cause derives from a coincidence of related factors:

- the lack of a clear commercial charter for the board (or least clear delineation of its commercial and non-commercial objectives) and of managerial autonomy in the delivery of that charter;

- the scope for political intrusion on Board policy and administration, and the lack of transparency of political directions;

- the fact that the Board is not a true Board, but a **Ministerial advisory committee**, the membership of which is sectoral rather than skills based.

Council believes that the Government needs to decide what it wants the Board to be and to do, to clearly specify that in the Board's charter, and to then itself act accordingly. If the Government wants to retain effective day to day control of the Board and to use it to deliver social and/or political outcomes, then the Government is obliged to accept responsibility for the effect on the Fund, and to stand ready to underwrite any deficit resulting from its failure to reasonably address claim costs.

Council notes that the means by which clarity of objectives, managerial autonomy, and political transparency and public accountability might be delivered already exists in the form of Corporatisation Policy.

6.7 Recommendations in Regard to Claims Management

Council recommends:

- That the definition of "injury" in the *Workers Compensation Act* be further tightened to reduce the scope for liberal court interpretation, and for the simple effect of the passage of time, to erode Board policy and widen the intended application of the Act.

- That the Board introduce a system of 'approved' company-provided rehabilitation and return to work programs and that:

  * incentives be introduced to encourage employers to develop approved programs eg. premium rate offsets and/or reduction in the employer excess;

  * injured employees who decline to participate in approved programs, and are certified medically fit to do so, surrender their compensation benefits.

- That the Board implement, to the maximum extent practicable, case management of claims on a company basis, with Board officers dedicated to particular (for practical reasons perhaps only the larger) policy holders.

- That employers have the right to appoint their own lawyers to defend common law actions (subject to guidelines about cost and interface with the Board), and to nominate their representation from the Board's pool of lawyers. Further, that where neither of these rights is exercised, employers nonetheless have automatic right of access to Board appointed lawyers, and that those lawyers be instructed to consult with employers as a matter of course and to generally conduct more rigorous defenses.

- That the right of the employer to seek a second medical opinion on a workers' compensation certificate be incorporated in the Workers' Compensation Act.

- That weekly benefits (< 26 weeks) be capped - eg. by reference to an (indexed) quantum amount or as a proportion/multiple of State-wide average earnings.

- That the Workers' Compensation Board be corporatised or, as minimum, be restructured to give effect to the principal tenets of corporatisation, namely:

  * clarity of objectives, identification of core functions and managerial autonomy;

  * the separation of policy and commercial functions;

  * defined limits on the making of ministerial directions to the Board with those directions subject to tabling in Parliament and publication in the Board's Annual Report;

  * explicit Government funding of community service obligations imposed on the Board by ministerial direction;

  * re-constitution of the Board as a true, independent Board appointed in accordance with clearly specified, competency-based selection criteria.

7. The Tregellis Report

Council wishes to take this opportunity to reiterate its opposition to the proposal contained in the draft report by Mr Tregellis that the intended Workplace Health and Safety levy be applied to the mining industry. We submit that the proposal is illogical and unfair.

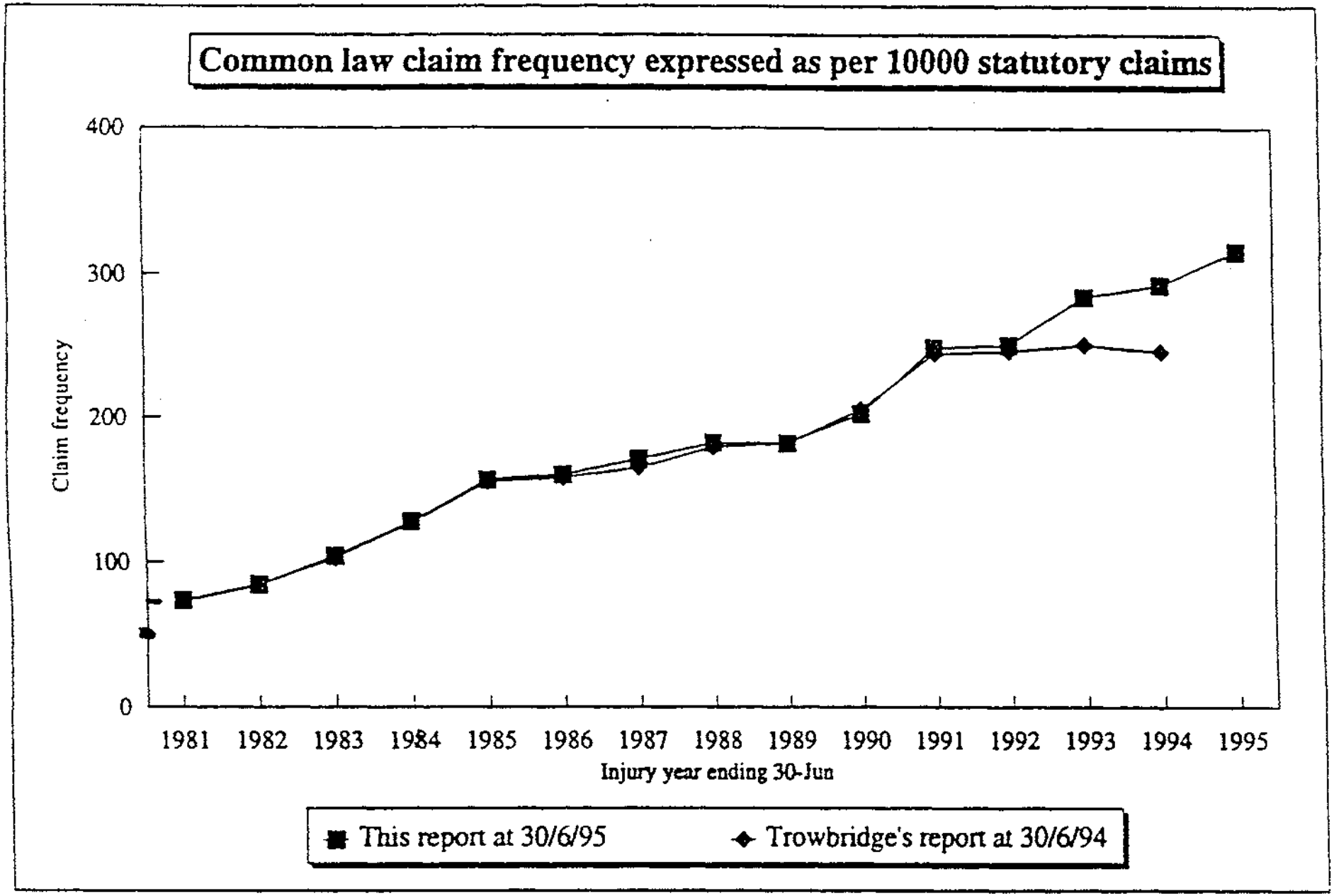
Council believes that the case for application of the levy to mining is not well made in the draft report. The proposed levy is intended to replace fees presently collected under the *Workplace Health and Safety Act* and funds granted annually to the WH&S Division by the Workers' Compensation Board.

Our main point is that the mining industry is not subject to the WH&S Act and receives no services from, nor has any obligation to, the Division of Workplace Health and Safety. Council fails to see the logic in the proposed arrangement, and in this regard is not helped by the report which merely says that application of the levy to mining would be "equitable" and its exemption from the levy would "add complications to the collection arrangement". We do not accept that major cost impositions should be made on any industry to simply for administrative convenience.

Council does not believe that requiring the mining industry to pay approximately $1 million a year for services which it would not receive qualifies as equitable. The recommendation that the revenue received, from mining employers be returned to the industry to be used on health and safety programs does not assuage our concern. The recommendation is without detail and we question whether it has been properly thought through. Mining safety is regulated by the Minister for Minerals and Energy and the industry's safety inspectorate is contained in the Department of Minerals and Energy. The mining industry contributes at least $500 million a year to consolidated revenue by way of mineral royalties (including the royalty elements contained in coal rail freight charges). In these circumstances, we suggest it would be inappropriate to request the mining industry to contribute additional funds for a regulatory function and safety services which it already receives and indirectly funds.

We seriously question the argument that mining not be exempted due to complications in the collection arrangements. The Workers' Compensation Board could do it easily. Compared to its normal administrative task of servicing some 300 odd premium categories, excluding mining companies from a levy applied to workers' compensation premiums would be a simple matter.

Further, we submit that the non-application of the Workplace Health and Safety Act to mining provides the ideal basis for exempting mining from the levy. It is simple and irrefutable and would establish no damaging precedents in respect of the application of the levy to other sectors subject to the Act.


Common law claim frequency expressed as per 10000 statutory claims
400
300
200
100
0
Claim frequency
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
Injury year ending 30-Jun
This report at 30/6/95
Trowbridge's report at 30/6/94

Previous Workers' Compensation Review
Proposals and Outcome

Benefit	Change to 1995-96 Cost		
	(A) 20% WPI CL Threshold & $130,000 Lump Sum Max. **$M**	**(B) 25% WPI CL Threshold & $150,000 Lump Sum Max.** **$M**	**(C) Election/No Cost Ind'ty < $20,00 & $100,000 Lump Sum Max.** **$M**
Death	+5	+5	+5
Weekly	+21	+26	+19
Employer Excess	-16	-16	-16
Lump Sums	+27	+37	+11
Total Statutory	**+36**	**+52**	**+19**
Common Law Net Settlements	-67	-81	-6
Legal Costs	-27	-30	-4
Abolition of Cost Indemnity	N/A	N/A	-9
Total Common Law	**-94**	**-111**	**-19**
Total Scheme	**-58**	**-49**	**-18**
Premium Rate for Full Funding by 30/6/2000 ($165m net assets)	**1.90%** (approx)	**1.94%**	**2.08%** (approx)

Sources: Costings provided by the Minister for Employment (Sept/Oct '95) adjusted - (A) to reflect 5 yr funding period, (C) to reflect final decision on weekly benefits.

Employers' Joint Recommendations to
Sept/Oct '95 Workers' Compensation Review

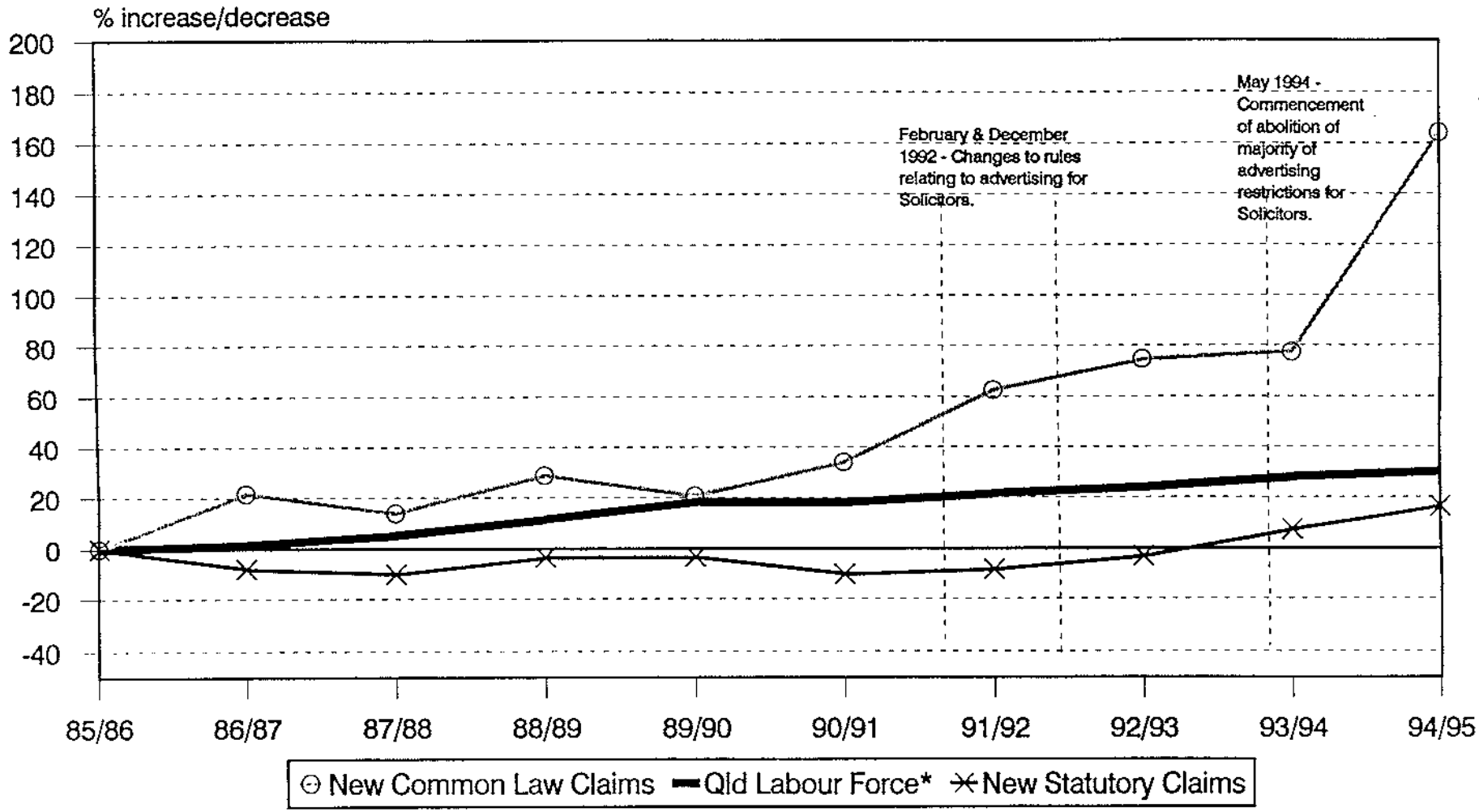
The employer groups recommended, in summary:

- That a threshold of 25% WPI be set for access to common law.
- That the maximum lump sum PPD payment be increased to $130,000
- That there be no change to the method of determining weekly benefits at base award/contract rate.
- That the employer excess remain unchanged at day of injury.
- That the Board seek to restore the Fund to a prudent solvency margin over a period of five years, rather than three years.
- That the Government rescind stamp duty on premium transactions during that transition period and terminate the Fund's present annual grant to the Division of Workplace Health and Safety.
- That the resulting increase in employer contributions take the form of a separately identifiable 'surcharge' - rather than simple premium increases - to be subject to review at the end of the transition period.
- That the above measures be implemented to take effect on 1 January 1996.
- That the merit bonus rebate be distributed as planned.
- That all the parties need to recognise that measures arising from the current review, as critical as they are, will be limited in scope. A comprehensive review of other core elements of the Queensland scheme is needed and should follow soon after.

Workers' Compensation Board of Queensland

New Statutory and Common Law Claims - % increase over base year (1985/86)

Illustrating changes in rules for advertising for Solicitors.



*Source: Australian Bureau of Statistics - Civilian Labour Force - Seasonally Adjusted Series

1. Arup C., *Best Practice Research Program Policy Research Paper No. 5: The Common Law and WorkCare*, Victorian Workcover Authority.

2. Latham C. & Gould A., *Workers' Compensation Board of Queensland Outstanding Claims as at June 1995*, Coopers & Lybrand.

3. Department of Training and Industrial Relations, Division of Workers' Compensation, *Facsimile from K. Lee*, 30 April 1996.

4. Hon Wendy Edmonds MLA, Minister for Employment, *Letter to Queensland Confederation of Commerce and Industry*, 25 October 1995.

5. Industry Commission, *Workers' Compensation in Australia*, AGPS, February 1994.

6. Industry Commission, *Work, Health and Safety*, AGPS, September 1995.

7. Queensland Employers, *Submission to the Workers' Compensation - Common Law Review*, October 1995.

8. Survey of Queensland Mining Council members, April 1996.

9. Victorian Workcover Authority (ed), *Comparison of Workers' Compensation Arrangements in Australian* Jurisdictions, Heads of Workers' Compensation Authorities, January 1996.

10. Workers' Compensation Board of Queensland, *Presentation to Employers*, 1 September 1995.

11. Workers' Compensation Board of Queensland, *Annual Report 1995*.

01 MAY 1996

Australian National Audit OFFICE

137

F96/115

24 April 1996

Mr J Kennedy AO CBE D.Univ.
Inquiry into Workers' Compensation
and Related Matters in Queensland
GPO Box 374
BRISBANE QLD 4001

Dear Mr Kennedy

AUDIT OF WORKERS' COMPENSATION CASE MANAGEMENT IN THE AUSTRALIAN PUBLIC SERVICE

I refer to the advertisement in the Australian Financial Review of 22 March 1996 calling for submissions to the Inquiry into Workers' Compensation and Related Matters in Queensland.

The Australian National Audit Office (ANAO) has recently undertaken an audit of the rehabilitation case management activities in agencies within the Australian Public Service (APS). A major focus of the audit has been the production of a Better Practice Guide for the case management of injured employees. The Guide represents a distillation of the better practice observed in the agencies reviewed into a single consistent set of proposals. The ANAO considers the Guide will assist to raise the efficiency and effectiveness of case management activities in Commonwealth agencies, leading to improved return to work outcomes and concomitant savings in workers' compensation costs.

Although the ANAO acknowledges the differences between Queensland and Commonwealth workers' compensation jurisdictions, I believe the report may provide input to the Inquiry on matters dealing with the rehabilitation of injured employees. Particularly the report and Better Practice Guide may be of assistance to the Inquiry in relation to the Terms of Reference 2(c) and 4(f).

The audit Better Practice Guide will be tabled in Parliament early in May. I will send the Inquiry a copy of the report and Guide after its tabling.

Yours sincerely

Warren J Cochrane
Group Director
Performance Audit

Address all mail to: GPO Box 707 CANBERRA ACT 2601
Centenary House 19 National Circuit BARTON ACT 2600 Phone (06) 203 7300 Fax (06) 203 7777

01 MAY 1996

(36)

Mr Leonard Falknau
20 Koongalba Street
Yandina Q 4561

30 April 1996

Inquiry into Workers' Compensation & Related Matters
in Queensland
GPO Box 374
Brisbane Q 4001

Dear Sir/Madam

Re: Inquiry into Workers' Compensation

Reference is made to the advertisement in the Sunshine Coast Daily of 20 March 1996 in which interested parties were invited to make a submission in writing to the above inquiry.

I sustained an injury to my right elbow at work on 16 February 1995. The injury caused me a considerable amount of pain in the elbow and paraesthesia in my fingers of my right hand. The medical opinion was that the paraesthesia I experienced within my ulnar nerve would tend to suggest that I may have sustained some sort of traction injury to my ulnar nerve.

The Orthopaedic Surgeon that the Workers Compensation referred me to thought my injury would heel in time. I got sick of waiting and receiving handouts from Workers Compensation so I went and received a second opinion from Dr Mark Welsh.

Dr Welsh operated on my elbow on 8 January 1996 and reported that he released the ulnar nerve throughout its length. There was evidence of severe compression just above the epicondyle. The nerve was inflamed over a distance of 5 cms.

The operation was successful to the point that I now have feeling back in my fingers, however, I still have extreme pain in my elbow. Dr Welsh believes now that there is a possibility of a chondral loose body or chondral flap and wishes to operate once more.

As stated above, my injury was sustained on 16 February 1995. Workers Compensation quite willingly paid my weekly wages for almost one (1) year before approving my operation and did not help with rehabilitating me into the workplace - they were directly responsible for me loosing my job because they hassled my boss about rehabilitation.

I have been through two Tribunal Hearings. After the first I was classified as totally incapacitated from work and my injury was temporary. The second tribunal came to the conclusion that I have a permanent disability with only 2 percent incapacity.

I have exactly the same immobilisation as before, but now I have feeling in my fingers and the tribunal changed by incapacity to work from 100% to 2% but have given me no reason for such a dramatic difference in classification.

I have now been cut from Workers Compensation completely. I have no job to return to even if I could return to work. Workers Compensation have given me no training to return to a job that I would be able to do (such as a computer operator).

It would have cost the Workers Compensation Board more money to have the second Tribunal hearing than to approve my second operation. The money they paid me for the first 10 months while I was requesting an operation would have paid for me to be trained in another area or the second operation.

To sum up, Workers Compensation have paid out approximately one years wages and one operation to me for nothing because I am still no good to any employer, or for the matter to a certain extent to my family. I would hate to think how much money my claim has cost the tax payer, not only for my wages to be paid, but for the administration of my file and I am still in the same situation I was in 18 months ago, but now I don't have the support of Workers Compensation.

I have been left in a situation where I have no job, no income (my wife earns $350/week which is to much for any Social Security Benefits). I have to find $250/wk for housing repayments. I have a 15 month old son to support. I still have extreme pain in my elbow and I cannot bend it for the last 20 degrees. I have no training in any other area that I can possibly work in. I cannot afford the next operation myself. I am in this situation because I injured myself while at work.

I have attached a summary of everything I have been through. I truly believe that there are some major problems in the administration of Workers Compensation. I used to believe that Workers Compensation was for the employer and employee, I now believe that it exists purely for political purposes because it certainly has not helped me or my employer.

Yours faithfully

Leonard Falknau

SUMMARY

* I was employed by the Emperial Hotel in Eumundi as a Duty Manager. I had worked there for approximately four (4) years.

* 16 February 1995 at 9:30 pm sustained an injury to my right elbow while changing a keg. There is no reasonable basis upon which you can get a wheelbarrow or some other lifting device in the cold room and use it to lift kegs. The kegs weigh about 60kg.

* I had to swing the full keg over the top of another one to put in on line, while doing this I felt a click in my right arm in the elbow area. Since that time I had no feeling in my fingers and considerable pain in the elbow area.

* 2 May 1995 I began work assessment scheme voluntary every Tuesday night because I wanted to get back to work. I was given duties which aggravated my arm.

* 26 May 1995 my boss said he would contact me when he wanted me back.

* 30 May 1995 Tuesday I turned up to work however someone else was doing my shift. I have not been back to work since or spoken to Steve Pike (boss) since 26 May 1995.

* While I have been off work I have bought a computer to learn and spend a lot of time at my parents place as they help me with child care. (My wife and I stared a family and she was to work during the day - which she does and I was to work at nights and look after our son during the day).

* I started my own business before I sustained the injury but was unable to keep the business going because of my injury.

* 17 March 1995 I was examined by Dr Peter L Winstanley - he believed that the cause of the pain was a 'soft tissue sprain-type injury to his elbow. The paraesthesia he experienced within his ulnar nerve would tend to suggest that he may have sustained some sort of traction injury to his ulnar nerve'.

* 23 March 1995 I received a letter detailing work assessment program from 21 March 1995 to 14 April 1995 from Workers Compensation.

* 19 April 1995 I received a letter detailing work assessment program form 18 April 1995 to 18 June 1995. Supposed to be 4 hours a day with no lifting or heavy duties.

* 19 June 1995 received a letter to have an officer of the board interview me.

* 21 June 1995 received a letter requesting a medical examination.

* 30 June 1995 had medical examination by a legally qualified medical practitioner employed by the board.

* 30 June 1995 I received a letter telling me to have an examination by Winstanley on 20 July 1995.

* 20 July 1995 another examination by Winstanley. He suggested being assessed by the Orthopaedic Tribunal and that I was not a surgical candidate.

* 28 August 1995 Dr Mark Welsh, Orthopaedic Surgeon Examined me. Believed there is a mechanical problem medially. He wanted me to consider exploration of the area and release the nerve. He also believed there was a possibility of a chondral loose body or chondral flap.

* 5 October 1995 received a letter advised that initial compensation rate applies for a 39 week period and this is due to expire on 16 November 1995. From 17 November 1995 I was to receive a new gross rate based on prescribed base rate (which was approximately $100/wk less).

* 9 October 1995 received a letter telling me to attend the tribunal.

* 6 November 1995 appeared in front of the Orthopaedic Assessment Tribunal to decide:-

    1. Whether any incapacity for work resulting from the injury of 16 February 1995 is total or partial.

    2. Whether any incapacity is permanent or temporary.

    3. and if the worker has suffered a permanent partial disability resulting from the injury (a) the nature (b) the extent of that disability.

    The tribunal determined that the incapacity for work resulting form the injury of 16 February 1995 was total and the incapacity was temporary and Surgery was approved for Dr Welsh.

* 8 January 1996 I had surgery. The ulnar nerve was released throughout its length. There was evidence of severe compression just above the epicondyle. The nerve was inflamed over a distance of 5 cms. Dr Welshes prognosis in the long term would appear to be good and he believed I would gradually gain mobilisation.

* 19 January and 5 February 1996 I was reviewed by Mark Welsh. The numbness had gone completely however full extension still brings on pain. The prognosis is now moderate to good and the condition is not stable or stationary.

* 26 February 1996 received a letter telling me to go to the Tribunal on 11 March 1995 to answer the same questions as before.

* It was found this time that the incapacity for work is partial and that my injury is permanent and the extent is two percent.

* 15 March 1996 I received a cheque for 1499.51 being settlement figure. I rang Workers Compensation and was advised that I get no training for a new job. My old job is not there as the Emperial Hotel have filled it. I now have no job and still have an injury.

01 MAY 1996

(138)

Anglican Diocese of Brisbane
Social Responsibilities Committee
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Anglican Church of Australia
Diocese of Brisbane

[redacted]

30 April 1996

Mr J Kennedy AO CBE D.Univ
Inquiry into Workers' Compensation
& Related Matters in Queensland
GPO Box 374
BRISBANE Q 4001

Dear Mr Kennedy,

Submission - Inquiry into Workers' Compensation and related matters in Queensland

Interested parties have been invited to make submissions on all or any of the Terms of Reference of the Inquiry into Workers' Compensation and Related Matters in Queensland. The Terms of Reference call upon the Inquiry to make recommendations about the accident insurance system for Queensland employees. The need for an inquiry arises due to solvency difficulties which apparently affect the current Workers' Compensation fund. This has been attributed to an increase in the number of common law claims which have been instituted in recent years. One of the real options which the Inquiry will consider is whether to recommend that accident compensation be taken away from the courts altogether, and have the needs of all injured employees be met out of a statutory scheme, whether the employee be injured by reason of a negligently unsafe work system, or not.

The Social Responsibilities Committee of the Anglican Diocese of Brisbane views Workers' Compensation as an issue of social responsibility, and whilst making no submission as to the system of accident insurance now appropriate to Queensland, the Committee does have some observations which it regards as important, and which need to be addressed by the Inquiry when considering its Terms of Reference.

Workers' Compensation is an issue of social responsibility; an issue of justice, and not just an economic issue. Any proposals for change must be carefully evaluated from all

perspectives. The Committee is concerned that the Terms of Reference appear to emphasis economic factors over any others. For example, the Inquiry is specifically requested to "Make an assessment of the implications of proposed/recommend changes to the accident insurance scheme on Queensland's position as a low tax State for business". Whilst the level of insurance premiums paid by business is clearly a most important issue, it must be balanced with other factors.

This Committee is concerned with the possibility that, for no better reason than because liability insurance premiums would be too high, a class of persons would be denied access to the common law justice system in order to decrease those premiums - a move which would appear to be an abrogation of society's duty to provide justice to all. What if pharmaceutical companies were to complain that their liability insurance premiums were too high, and that the right of consumers to sue for the effects of negligently released drugs should be curtailed? To preclude recourse to the Courts could be an encouragement to prematurely release drugs which may have ill-effects. Surely, it is submitted, the same is true of workplace safety, (provided there is a fair merit bonus/penalty system of premium ratings).

Whilst there can be Workplace Health and Safety legislation, there is no guarantee that such legislation will always be adequately policed, or that its deterrent effect is better than the incentive of the possibility of common law actions for negligence. Only last week, the head of the Commonwealth organisation WorkSafe Australia warned of the cuts which may effect that organisation under the new Federal government. Accidents can only be prevented if there are systems in place to prevent them, and it is of utmost importance that the accident insurance system encourages them to be put in place.

It seems to the Committee that if a major concern of the Inquiry is to ensure Employer's liability insurance premiums are not too high, then measures must be examined which will reduce premiums without eliminating Employer's liability. Whilst this Committee does not submit that further restriction of access to common law not be considered, it is submitted that such other measures be first considered.

<u>Submission</u>: This Committee recommends that other ways of ensuring a viable and efficient accident insurance system should be fully considered before restricting access to the Courts.

The blow out of the unfunded liability of the fund is blamed on the increase in common law claims. For some reason, this was not anticipated by the Workers' Compensation Board, and proper provisioning was not made. The following remedial measures should be investigated by the Inquiry:-

1. Installing persons with extensive insurance industry experience on the Workers' Compensation Board, in recognition that it is essentially a liability insurer.

2. Separating out the accident insurance and the liability insurance functions of the Board, and opening liability insurance to private insurers.

3. Implementation of the Personal Injuries Proceedings Bill, and other measures to streamline common law processes, both before institution of proceedings and then after institution of proceedings, up to entry for trial.

Whatever system is in place, it is essential that it is just. Aside from economic matters, this Committee notes that, unlike many statutory schemes, assessments of compensation made by Courts do consider the injured employee as an individual person. The Court makes as fair an assessment of compensation it can based upon the injured person's particular circumstances. At common law, a tortfeasor takes his victim as he finds him, whilst at the same time balancing this by excluding compensation for damage which is too remote. So, for example, a professional piano player who loses a finger would receive a far greater common law award of damages than a lawyer who loses the same finger, but which does not prevent him from working. Many statutory schemes assess the injured body rather than the person, so that in our example, both piano player and lawyer would receive the same compensation.

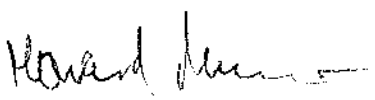
Submission: This Committee recommends that the mechanism for assessing of compensation in any proposal be a fair one which looks at the individual person as a person, rather than as an object.

As a society, we have a responsibility to look after those who are injured and need assistance. Employers also have a duty to their employees, both to ensure they are not injured, and to look after them if they are.

It would not be just for employers as a group to put some of the burden of that responsibility upon the rest of society. Thus any shift of the cost burden of workplace injury from employers to the Social Security system would, in our submission not be just.

Submission: This Committee recommends that any proposed changes to the current workers' compensation system should be carefully examined to ensure that they would not result in an increased resort to the social security system by injured employees.

Yours faithfully,



The Rev. Howard Munro
Chairperson, Anglican Social Responsibilities Committee

QUEENSLAND HOTELS ASSOCIATION
QHA HOUSE, 160 EDWARD STREET BRISBANE 4000 GPO BOX 343, BRISBANE 4001
PHONE: (07) 3221 6999 FACSIMILE: (07) 3221 6649

01 MAY 1996

139

30 April, 1996

Our Ref: 124/3/1/1

Mr J Kennedy, A.O., C.B.E., D. Univ.
Inquiry Commissioner
Inquiry Into Workers Compensation and Related Matters in Queensland
GPO Box 374
BRISBANE Q 4001

Dear Sir

Further to the Association's letter of 10 April 1996 advising that it intended to make a submission to the Inquiry, I have pleasure in enclosing herewith a copy of the submission for your consideration.

A person from the Association is available to speak to the submission if you condiser this to be desirable.

Yours faithfully,

MICHAEL HUDSON
General Manager

M:\WPWJN\GENCORR\KENNEDY.LET

SUBMISSION BY THE QUEENSLAND HOTELS ASSOCIATION TO INQUIRY INTO WORKERS' COMPENSATION AND RELATED MATTERS IN QUEENSLAND

APRIL 1996

INTRODUCTION

The explosion of common law claims on the Queensland Workers' Compensation fund in recent years has put the previous sound financial position of the fund in jeopardy. Interim premium increases have temporarily addressed the problem but the continuing rise in claims means that this solution will soon be rendered ineffective. In the present context, it is unclear that any premium raising scenario will be able to stay ahead of the rise in claims.

The Association is committed to improved workplaces which in the longer term will do much to reduce the outgoings from the Fund. The hotel industry has been a leader in addressing the provision of safe workplaces and the Association has prepared very detailed health and safety resources specifically for the tourism and hospitality industry including a comprehensive *Health and Safety Handbook*, a detailed *Audit Framework*, industry specific employee induction manuals and numerous other reference and resource materials.

The Queensland Hotels Association is pleased to make this submission to the Inquiry which submission directly addresses all of the six Terms of Reference. The submission has been prepared in a positive and forward thinking perspective and is designed to assist the Inquiry in establishing a basis for the continued sound operation of the scheme which has been the pride of Queensland and the envy of other States over many years.

EXECUTIVE SUMMARY

- The Queensland Hotels Association is the peak body representing the hotel industry in the State. This submission to the Inquiry into Workers' Compensation and Related matters in Queensland addresses all of the Terms of Reference.

- The Association's submission has been structured around nine recommendations to enhance, improve and financially better the Workers Compensation Scheme.

- *Recommendation 1:* A Whole Person Impairment threshold of 30% be adopted for access to common law.

- *Recommendation 2:* Lawyers' fees be capped so that the worker gets the maximum benefit from a common law award.

- *Recommendation 3:* The existing merit bonus scheme be expanded to include reductions in employer excesses and that a range of bonuses be instituted for employers installing accredited and independently audited workplace health and safety programs.

- *Recommendation 4:* The management of the scheme be widened to include self management, self insurance and the participation of private insurers.

- *Recommendation 5:* The employer excess of five days be returned to the previous position of one day.

- *Recommendation 6:* The rate of weekly benefits to be paid should be at the award rate.

- *Recommendation 7:* The Workers Compensation Board's role be reconfigured to act in an independent manner for the best interests of the Fund and not act only in an advisory role to the Minister.

- *Recommendation 8:* The Workers Compensation Board be reconfigured for greater employer representation.

- *Recommendation 9:* The Workers Compensation Board develop closer ties with the Division of Workplace Health and Safety.

CONTENTS

		PAGE
1.	THE ASSOCIATION	1
2.	THE HOTEL INDUSTRY	1
3.	THE ASSOCIATION'S SUBMISSION	2
4.	THRESHOLDS FOR COMMON LAW CLAIMS	2
5.	RESTRICTIONS ON LEGAL FEES	3
6.	INCENTIVES FOR SAFE WORKPLACES	4
7.	SCHEME MANAGEMENT AND PRIVATE INSURERS	4
8.	EMPLOYER EXCESS	5
9.	BENEFIT LEVELS INDUSTRY	6
10.	ROLE OF THE WORKERS' COMPENSATION BOARD	6
11.	EMPLOYER INPUTS	7
12.	DIVISION OF WORKPLACE HEALTH & SAFETY LIAISON	7

1. THE ASSOCIATION

The Queensland Hotels Association has represented the interests of the hotel industry in Queensland for over 110 years. Over 1,100 hotelkeepers are represented in Queensland who collectively employ over 25,000 Queenslanders.

The Queensland Hotels Association is a state organisation consisting of some 24 Divisions covering all parts of the State and two Residential Divisions.

The Queensland Hotels Association is the peak body representing the hotel industry with the aim of enhancing and protecting its interests. Thus the Association is a vital segment of the State's economy.

The Association sees its role as making a positive contribution to the well-being of the community through effective and responsible representation of members' interests.

2. THE HOTEL INDUSTRY

The hotel industry that the Association represents may generally be referred to as hotels, taverns, resorts and other retail licensed establishments which are engaged in the provision of accommodation, gaming operations, recreational and entertainment facilities, the selling of beverages and the preparation and serving of food and drinks.

As the foregoing suggests, the hotel industry in Queensland is very diversified with QHA members ranging from the Conrad International Hotel and Jupiters Casino on the Gold Coast to the outback Birdsville Hotel.

The hotel industry is a service industry. As a service industry the hotel industry is labour intensive as well as capital intensive and this position has not changed over recent years. Even improved technology in hotels has not had any reduction in staffing levels.

The hotel industry is very much a people industry - its success depends on excellent service provided through well trained workers operating in a secure atmosphere of mutual benefit and trust. Workers conditions, environment and career structures are important perspectives of the industry. Workers Compensation, as an important safeguard for the industry's most valuable resource, is a high priority for the industry.

3. THE ASSOCIATION'S SUBMISSION

The Association's submission has been structured around nine recommendations to enhance, improve and financially better the Workers Compensation Scheme. The recommendations collectively address all of the terms of reference of the Inquiry.

4. THRESHOLDS FOR COMMON LAW CLAIMS

Recommendation 1: A Whole Person Impairment threshold of 35% be adopted for access to common law.

The fundamental problem with the Fund is the recent explosive growth in common law claims which shows no sign of abating. Much of the evidence for this growth points to the relaxation on solicitors' advertising being a major contributor but the Association also recognises a more aware and litigious society in general which is prepared to press for its full rights under the law.

There are only two ways to address this explosion. The first is to cap the quantum of common law awards. This is not a position that the Association would wish to support as society must have the ability to provide for those most desperate in need in a proper manner.

The second way is to restrict common law access only to those whose injuries are likely to affect their ability to support themselves and their dependents in an adequate manner for the rest of their lives.

The proposal to restrict common law access is with substantial precedent. Common law restrictions range from complete abolition in the Northern Territory and South Australia to limited access in New South Wales (25% threshold), Victoria (25% threshold), Western Australia (30% threshold) and in Commonwealth and Seafarers Schemes (10% threshold).

The recommended threshold for Queensland of 30% would ensure that only those in most desperate circumstances would have access in this manner with those less impaired being dealt with by the statutory formulae.

Our proposal also recommends an education program with the medical fraternity to provide for consistency of assessments of impairment and an appeal process against assessments. As well, substantial enough statutory limits will have to be applied so that those not eligible for common law access will not be disadvantaged in any way according to the level of their impairment.

5. RESTRICTIONS ON LEGAL FEES

Recommendation 2: Lawyers' fees be capped so that the worker gets the maximum benefit from a common law award.

Much of the evidence points to the growth in claims being due to vigorous marketing of prospective claimants by the legal fraternity and its preparedness to work on a no-win / no-fee basis. The realities of business life means that lawyers are building into fees for successful cases a sufficient margin to cover the losses on unsuccessful ones. This has resulted in the situation where in the case of smaller claims the worker can receive less that half of any award.

Anecdotal evidence suggests that lawyers are not completely open with potential plaintiffs regarding the likely fees in the event of a successful claim. The lawyer is in a position of power with the plaintiff who would possibly not have the financial resources to bring a claim unless on a contingency fee basis. The Association is of the view that the unfortunate circumstances of an injured worker should not be used to permit lawyers to operate in a manner that is not in accordance with society's values.

The Association recommends two restrictions. Firstly, the total of lawyers fees and outlays should not exceed half of any award. This would ensure that the worker who has to suffer the injury and the effort of mounting the claim is not left with a pittance if successful.

Secondly, a limit should be placed on the contingency component of any fee to not exceed 25% of the standard fee. This will ensure that lawyers are more circumspect about which cases they take on in the first instance and do not clog up the courts and disturb the actuarial provision position of the fund with claims with little chance of success.

6. INCENTIVES FOR SAFE WORKPLACES

Recommendation 3: The existing merit bonus scheme be expanded to include reductions in employer excesses and that a range of bonuses be instituted for employers installing accredited and independently audited workplace health and safety programs.

The Association proposes changes that directly reward both the workers and employers for the establishment and maintenance of safe workplaces. It is proposed that employers be awarded both premium rebates and employer excess reductions for installing accredited and independently audited workplace health and safety programs.

Common law claims can not arise unless negligence is proved on the part of the employer. As well as restricting and discouraging common law claims, it is important for the scheme to actively encourage employers to maintain safe workplaces and working habits. Rewards in the form of premium rebates and shortened employer excesses are the most likely methods to achieve these ends.

This is an initiative that does not detract from the immediate improvements to the fund that have come from the recent premium increases as it would take some time before rebates to be applied while employers established their accredited systems. In the medium term the cost of the rebates to the Fund will be overtaken by savings in Fund outgoings on behalf of these businesses.

7. SCHEME MANAGEMENT AND PRIVATE INSURERS

Recommendation 4: The management of the scheme be widened to include self management, self insurance and the participation of private insurers.

Self management occurs where by agreement with the Board an employer or group of employers are given the authority to process all of their workers compensation claims and pay workers at the prescribed rates. The liability remains with the Board. The positive outcome is that greater control over claims and the timing of return to work is effected. As well the workplace, as a less remote institution than the Board, is less likely to be the victim of less genuine claims than the workplace itself.

Self insurance is where the employer meets the cost of claims itself to the scale of payments specified by the Board. This scheme would be suitable for employers with work forces large enough to spread the risk and who are willing to realise the savings that can be achieved through the savings in Board administration charges. As well the rewards for the development of safe workplaces are much more tangible and immediate than any merit bonus system.

The step to self insurance is minor since the introduction of the merit bonus and penalty scale systems. The structure of the merit bonus system means that the Fund only pays around 20% of any claim with the remaining 80% paid by the employer through the loss of merit bonuses. Essentially the existing Fund is one for catastrophes only with 60% of premiums going to this risk with the remaining risk being effectively self insured by the employers.

Private insurers are already successfully involved in the underwriting and / or administration of workers compensation in the States and Territories of Australia, except for Queensland. In these areas private insurers are working satisfactorily in conjunction with the central fund to adequately and efficiently administer workers compensation. Private insurers would provide the competition necessary to produce more efficiencies in the overall system. Employers could enjoy premium rebates from private insurers for placing all of their insurances with one insurer.

8. EMPLOYER EXCESS

Recommendation 5: The employer excess of five days be returned to the previous position of one day.

The Association is concerned that the lengthened employer excess is the first step towards unlimited employer-funded sick leave. The Workers' Compensation Board admits that vigilance over small lost time claims is lower than desirable and this will have the result of encouraging employees to be ready to take a few days off more frequently in the knowledge that the Board is unlikely to pursue the claim when it is making no contribution towards the lost time payments.

The costs of lengthened employer excess can not be passed on to consumers in the hotel industry. A large proportion of lost time accidents are for less than one week and the hospitality industry has a high incidence of workers taking all available time off. With lessened Board vigilance on absences less than five days, the workers may well see this excess as an opportunity for extra leave.

9. BENEFIT LEVELS

Recommendation 6: The rate of weekly benefits to be paid should be at the award rate.

The additional costs to hotel keepers arising from benefits being paid at 85% average weekly earnings rather than at the award rate are substantial especially as there are times when significant overtime work is carried out. The Association considers that payment of benefits at the award rate would be an incentive for workers to undertake rehabilitation and return to work and also as an incentive for workers not to overstate or falsify claims given the predictable seasonal nature of the hotel industry and the attraction of workers' compensation payments at a higher rate than the award after the season peak has passed.

10. ROLE OF THE WORKERS COMPENSATION BOARD

Recommendation 7: The Workers Compensation Board's role be reconfigured to act in an independent manner for the best interests of the Fund and not act only in an advisory role to the Minister.

The Fund needs a single minded focus on the financially sound provision of an exhaustive accident insurance scheme for the State's workers. It should be comprised of the best available people drawn from backgrounds and experience to render the most efficient and cost effective operations of the Fund. In recent times the Board has acted in an advisory role to the Minister only with final decisions in respect of policy and administration resting with the Minister. This lack of independence of action has most probably restricted its capability to operate the Fund in the most prudent manner possible.

There have been occasions when Board recommendations relating to the strategic and commercial future of the Fund have been overridden by political considerations, one example of which was the Government's decision not to adopt the recommendation of the Board's actuaries in 1991 that common law access be limited in the interests of the long term viability of the Fund.

11. EMPLOYER INPUTS

Recommendation 8: The Workers Compensation Board be reconfigured for greater employer representation.

The key to the future of the Fund is the provision of safer workplaces by employers. This will not be achieved through legislation or penalties but by co-operation, training, education and incentives. The employers are the major stakeholders of the Fund and those with the capacity to influence its future security and efficiency. Employer input at a much more substantial level is essential.

This can be achieved in two ways. Firstly, a greater proportion of Board positions should be allocated to employer representatives. This will have the effect of ensuring that the employer perspective representing those who provide all of the income of the Fund is properly considered and open up more adequate communications mechanisms from the Board to this stakeholder group.

Secondly, the Workers Compensation Act should be amended to ensure the Board appropriately considers the position of recognised employer groups in the development of policy and the running of the Fund.

12. DIVISION OF WORKPLACE HEALTH AND SAFETY LIAISON

Recommendation 9: The Workers Compensation Board develop closer ties with the Division of Workplace Health and Safety.

In principle, it is desirable for the Division of Workplace Health and Safety to amalgamate with the Workers Compensation Board so that recommendations on and programs for safer workplaces can be acted on in a manner that will benefit the Fund itself and the employers who provide all of the income of the Fund.

If this occurred, actuarial assessments of safety programs could be built into the premium structure of the Fund to continue to encourage the development of safer workplaces.

Bar Association of Queensland

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Your ref:

Our ref: DO'C:ab

29 April 1996

Mr Jim Kennedy AO, CBE, D. Univ
Inquiry Commissioner
Inquiry into Workers' Compensation and
Related Matters in Queensland
Level 27
Central Plaza One
345 Queen Street
BRISBANE Q 4001

Dear Mr Kennedy

Re: INQUIRY INTO WORKERS' COMPENSATION AND RELATED MATTERS IN QUEENSLAND

I enclose the Bar's Submission in relation to your Inquiry.

The Association has sought to provide you with an analysis of the key issues facing the Workers' Compensation system in Queensland. We would be happy to elaborate or address in further detail any matter arising from the Submission or your Terms of Reference. My Association stands at the ready to assist you in any way that it can.

The Association thanks you for allowing us to participate in the review process and trusts that the Submission will assist you in your deliberations.

Yours faithfully
BAR ASSOCIATION OF QUEENSLAND

WALTER SOFRONOFF QC
President

INQUIRY INTO WORKERS COMPENSATION AND RELATED MATTERS IN QUEENSLAND

SUBMISSIONS

BAR ASSOCIATION OF QUEENSLAND

OVERVIEW

1. The Government control of a monopoly of Workers' Compensation in this State commenced with the *Workers' Compensation Act 1916*. Thereafter, for almost the entire subsequent 80 years, the scheme was thought to work well and had the public's confidence.

2. Generally speaking, the scheme has been affordable for industry and has delivered a range of benefits which have met with community satisfaction.

3. There is an element of public policy in the scheme. It is just not a system of insurance or compensation to suit business and to generate profits from private insurers. It has proved to be flexible with time (with different and increased benefits from time to time) and has also provided revenue from which the State could fund initiatives associated with workplace health and safety. In addition, the constitution and makeup of the Board with involvement from Government, Industry and the workers has (subject to some comments that will be made below) contributed to public confidence in the system and a broad degree of bipartisan support the scheme has had within this State.

4. The public policy that has been served is the protection of workers and their families and the promotion of industrial safety. It is remarkable

that, in Queensland, the scheme has done so well for the community for 80 years when the history in other States has been littered with "reforms" that have proved increasingly expensive and increasing dissatisfaction, sometimes dissatisfaction by all of the interested parties - industry, workers and the Government.

5. My Association supports the existing scheme and its continued management of and supervision by the Board. However, there should be some reform to the makeup of the Workers' Compensation Board to take into account the recent "crisis". There should be at least one person on the Board who has considerable experience and proven expertise in prudential insurance management.

6. The amendments made to the *Workers' Compensation Act of 1990* that commenced operation on 1 January 1996 have not yet produced any direct effect. The effect of these amendments may not be fully felt for three years or more. It is my Association's view that time should be given to take stock of the practical effect of those changes. It should reasonably be anticipated that the changes will make a substantial reduction in the number and cost of common law damages claims in the future.

7. The alternative of opening up the market to private insurers should be considered only if the recent reforms fail to achieve any saving to the community. My Association suggests that the consideration of this should be deferred or looked at again in four or five years when the true effect of

the amendments and the results of more prudential management might better be seen.

8. These submissions deal with:-

- the objects of the current Act and makes suggestions to broaden those objects;
- the arguments for and against the common law system and supports the continuation of the common law system;
- recent increases in awards;
- Use of Caps and Thresholds;
- privatisation of the scheme;
- increases in the number of claims;
- Establishment of a separate Workers' Compensation Court;
- The use of mediation in dispute resolution;
- the increase in claims numbers.

Objects of the Scheme

9. The Workers Compensation Board of Queensland ("the Board") is currently set up pursuant to *Workers Compensation Act* 1990 which is an act "to provide for compensation and rehabilitation of injured workers and for related purposes". Those related purposes include the provision of compensation to the dependants of injured workers who have died in the course of their employment. Reprint 4 of the Act sets out the objects as currently perceived. Broadly these may be classified as:-

(a) the provision of compensation;

(b) to provide rehabilitation to enable a return to work;

(c) to take steps to prevent work related accidents and illnesses;

(d) to provide a cost effective system of accident insurance;

(e) to protect the interests of employers;

10. Current thinking sees a need for an expansion of the role of the Board to encompass a need to improve outcomes for injury and disease prevention. Such an object would enable the Board to obtain data regarding the potential risk of injury to workers and to implement changes to work place health and safety. Such an expansion would not only benefit Queensland workers and their families but also provide information to enable the Board as insurer to properly estimate the level of premiums required to meet the foreseeable risks. The National Data Set for Compensation-Based Statistics developed by National Occupational Health and Safety Commission will assist the Board in developing consistent and reliable data on work related injuries and diseases. This has all been done within the common law system of compensation.

11. Commentators on workers' compensation have seen a need for two further objects of workers' compensation legislation, namely admonishing those who inflict injuries and minimising the costs of Injury Prevention and Loss. The latter object is not the cost of the parties to litigation but rather the total cost of industrial accidents to the community. These matters are dealt with in more detail below.

12. The Industry Commission Inquiry into workers compensation in Australia released its draft report to which the Queensland Government made submissions dated 1 October 1993. In those submissions the Government expressed the view that nationally agreed "best practice" principles should apply to effecting improvements in the Queensland workers compensation scheme. Those best practice principles supported by the former Government included:

(a) making individual employers increasingly responsible for the costs of workplace injuries as a means of encouraging health and safety and reducing overall costs to the community of injury and disease.

(b) supporting the development and implementation at the workplace level of hazard based prevention standards developed in tripartite forums at national and State level.

(c) setting premium rates based on past experience.

(d) the maintenance of a low delivery cost workers' compensation system.

(e) the availability of a non-litigious dispute resolution mechanism.

(f) continuous improvement in the culture at work places aimed at a rehabilitation and return to work approach.

(g) the maintenance of a fully funded scheme.

13. My Association endorses these intentions but adds that the setting of premiums should not only be based on past experience but also on a perception of trends and predictions for the future.

Retention of Common Law

14. The former Government's commitment to the Industry Commission was to the retention of unlimited common law rights for injured workers in Queensland. It said in its submission to the Industries Commission at page 3:-

> "It is considered that the provision for injured workers to claim common law damages is a 'safety net' which provides the opportunity to be fully compensated for serious injury where employer negligence is a contributing factor."

15. My Association endorses those submissions. It is the Association's submission that common law rights should be fully maintained for the following reasons:

(a) access to common law has existed in Queensland as a well entrenched right;

(b) no good reason has been shown to demonstrate why, in the interests of good government, it should now be denied especially to workers when it has been so thoroughly and recently investigated and retained for other accident victims;

(c) the Association is unaware of any broad based community support for the abolition of common law rights. Indeed both the Coalition and the Labor parties were united in the view put forward to the people of Queensland that common law rights would be retained by each of them;

(d) the Insurance Council on behalf of its members is not advancing a case for the abolition of common law rights. Its members therefore see there is capacity to operate the system prudentially and this is not done for altruistic reasons;

(e) the common law system can satisfy the objects of the legislation as it does in Motor Accident cases. Indeed the Board is better placed than CTP insurers to effect timely rehabilitation;

(f) governments have responded to the community demand and have encouraged the availability of community legal education, publicity of legal remedies, the advertising of legal services all of which raise the awareness of the community of the right to access common law. This has contributed to the increase in claims and the expectation they will be dealt with in accord within the current system.

16. The main arguments for and against a common law scheme have been discussed many times. See the Discussion Paper, February 1995 prepared by Mr Gary Johns, the then Special Minister of State for the Commonwealth of Australia and Best Practice Research Program Policy Research Paper No. 5 "The Common Law and WorkCare" by Chris Arup. These arguments are dealt with in this submission and my Association's comments on the arguments against common law are set out under the heading "Response" in each case.

Arguments that are made in favour of common law and supported by my Association are:

17. Common law has the capacity deal with compensation claims on an individual basis - it is thus able to take account of the particular circumstances which apply in each case. Many examples exist and mention need only be made of one. In *Morrison v Woodhouse* (unreported de Jersey J. No. 41 of 1988 Mt. Isa and later Full Court No. 10 of 1991) the court awarded $400,000.00 damages. The Board's statutory scheme assessed the loss which it constantly referred to as "a mere soft tissue injury" at $8,377.00 and on trial and Appeal the issues of liability and quantum were strenuously argued by the Board. The damages assessment is the only way in which the individual employee's needs can be measured and provided for. A statutory rule of "one rule for all" does not tailor the benefits to the needs. All it gives is the same for that worker as every other worker gets - regardless of the needs of the individual.

18. The ability to sue a negligent employer is a well entrenched right of all workers, a right which should not simply be legislated away by governments. The sudden impact of permanent injury on an otherwise fit worker cannot be underestimated, nor it's impact on the expectations of the worker's family and friends. There is a well recognised need to vindicate a worker's position especially in cases where liability is denied and where quantum is grossly underestimated. There is a need to admonish a negligent employer and the common law does satisfy this

need. It is true that some employers have been reluctant to admit they have fallen below the standard expected of them and if the belief becomes entrenched there is little incentive to effect improvements in the safety of the workplace. A judgment by an independent Court does serve to bring the truth home.

19. Access to common law, as an alternative to statutory rights, provides an essential safeguard for injured workers against reductions in statutory benefits. If anything is clear it is that the high claims costs for lower end of the range awards could be avoided by having statutory benefits at a realistic levels.

20. Common law provides a fair and impartial forum for determining what an injured worker's entitlement to compensation should be. Assessments by an arm of the paying authority acting on behalf of the employer are not seen either as independent or fair. Assessments may be delayed or expedited by the authority as it suits in a way that is not reviewable. Access to the Court on the other hand for procedural fairness and an independent assessment represents justice being seen to be done.

21. A common law settlement or judgment is a final, non-reviewable decision about the compensation that is payable to an injured person. This means that the claimant faces no future uncertainty about their continuing entitlements. The claimant is also free from the scrutiny of the authority testing the continued entitlement to benefits. The claimant is able to get

on with his life without the constant reminder of the trauma which affected him and his family. It is a common opinion given by doctors that once the litigation is over the effects of the injuries will be significantly reduced. This has the effect of reducing the damages which might otherwise be awarded.

22. Common law plays an important role in setting precedents in relation to issues such as causation in the workers' compensation arena. If the courts have expanded the concept of negligence in the workplace the expansion has been endorsed by the whole community and all governments have responded by introducing Workplace Health and Safety legislation designed to improve safety standards. Breaches of this legislation ought to be rigorously prosecuted in order to impose the burden on recalcitrant employers and serve as an education process that a safe workplace is what the community demands. This will have the effect that injury prevention can be improved at a minimal cost. The State can recover revenue from fines to further the aims of the legislation. It is noted in this context that Workplace Health and Safety Legislation is now under the same umbrella as Workers' Compensation. Such action will serve to satisfy the object of the legislation that the costs of injury prevention be minimised. In a mixed system of statutory benefits for no fault and common law access, the availability of common law acts as an incentive to maintain the statutory benefits at a realistic level. If they are allowed to drop below what is reasonable, as had occurred in Queensland, the common law becomes a very attractive option.

23. Common law provides the cost efficient mechanism for the joinder of third parties to actions for contribution. Employers often join manufacturers or occupiers to recover contribution for injuries caused to workers. This right of contribution may be lost in a no fault scheme with the consequence that the burden will not be properly shared. Alternatively a separate common law action will need to be mounted to seek contribution. It is difficult to see the fairness in permitting the employer access to common law for recovery of contribution whilst denying the remedy to the worker. Further, the assessment of quantum in a contribution proceeding at common law will necessarily be different to that assessed under a no fault scheme. It follows that in every contribution proceeding there will need to be a common law assessment of damages. It will only be on the basis of such an assessment that contribution will be awarded. The costs said to be saved in abolishing access to common law for injured workers will in such cases be illusory.

The main arguments made against common law are:

24. It is argued that there is a significant element of uncertainty of outcome associated with common law claims, both in terms of success or failure of the claim, and in relation to the amount of damages that a successful plaintiff can expect to receive.

Bar Association Response:

25. It is difficult to see how this is so bearing in mind that the great majority of common law cases are settled by agreement. Neave, M and Howell, L, *The Adequacy of Common Law Damages*, Adelaide, University of Adelaide,1991 suggest over 90% of claims are settled without court assessment. In the majority of cases, fault can be established quite easily and cheaply. Officers of the Board have been heard to say liability is established in 98% of cases.

26. One reason for it being difficult and costly is that the Board has managed to make it so in the past by refusing to obtain, and act upon, early and competent legal advice. In fact, the entry into this field of forensic engineers called for the purpose of proving negligence, has proved a great benefit in providing expert advice to employers about precautions which they ought to take but have not bothered to take in the past, and telling unions how their members can be made safer. Inevitably, investigation of "fault" demonstrates things wrong with the system of work, and while accidents cannot be avoided, negligence can be and ought be avoided. This has been of great benefit for the safety of workers generally. See the litigation over asbestos exposure which contributed to the improved standards of safety in the work place.

27. It is also argued that the delay in a common law action often means that the unsafe system is allowed to continue unchecked for years until the court has pronounced judgment. If the Board, in a timely way

commissions an expert report suggesting an unsafe system it could be expected that liability would not legitimately remain in issue. There would not then be the delay suggested. The Board could also be expected to seek instructions from the employer and in this way the opinion would be passed onto the employer. An expert opinion obtained by the worker must be provided to the Board and this ought to be passed onto the employer. It seems prudential for an insurer to advise it's insured of suggestions made to improve the safety of the workplace.

28. So far as the claim that assessments are difficult to predict it can be seen that in some jurisdictions there is restricted access to common law for non pecuniary loss. In those jurisdictions predictions have to be made to make competitive offers. It has been acknowledged that whilst uncertainty in the assessment was present initially now parties "feel more confident in estimating the kinds of awards for non pecuniary loss which the courts would make in different kinds of injury cases." See Arup. If this is so it is difficult to reconcile with the argument that assessments can not be confidently made in a pure common law scheme.

29. It is argued that the nature of the common law method of determining damages often results in an inaccurate assessment of the injured person's future needs. While, in theory, common law damages provide full compensation for negligently-caused injuries, plaintiffs at common law are in fact frequently inadequately compensated. This is particularly so in cases of severe injury.

Bar Association Response:

30. A study by Neave,M and Howell L., *The Adequacy of Common Law Damages*, Adelaide, University of Adelaide,1992 is often cited in support of this assertion. The authors found 2 plaintiffs who were institutionalised as a result of their injuries. Neither could pay for their care from compensation eight years after settlement. This is not sufficient data to base the argument. There is no evidence of which I am aware that this is a frequent event. For every one example for the proposition there will be more to the contrary. It is accepted that victims could be expected to want more as it is realistic that insurers would prefer to pay less. Workers who are plaintiffs put in charge of a very large sum of money reasonably need advice in the management of that sum. Persons under a disability have the Public Trustee manage the sum at a cost. That cost is an allowable head of damage. Other persons whose capacity is not impaired can also claim the cost of a financial adviser. The sad cases found by Neave ought not occur in these circumstances but if they are it is not common law that is to blame but the foibles of humanity.

31. It is argued that Common law claimants frequently find themselves in the position of having to accept inadequate out-of-court settlements in order to avoid the additional expense and delay of a hearing.

Bar Association Response:

32. Delays in hearing are matters of procedure and these can be addressed by Legislation and Court rules. This has been done in the Motor Accident Insurance Act 1994. It is expected to avoid delay in most of the cases that would otherwise be litigated. There is no reason in principal why this cannot be done in a workers case. In the great majority of cases the defendant insurers were rightly blamed for the delay in the hearing of cases. This is so because liability was not admitted in a timely way because of the perceived advantage in being able to extract an extra % of contribution from the injured worker. In more recent times insurers took the view that early settlements were claims cost effective and liability should be admitted. It has not been apparent to the Bar that the Board has endorsed this policy. If the Board offers an inadequate sum which is accepted by the worker it is difficult to see how the Board was fulfilling its function according to law. If this is an argument by the Board, it is difficult to see how it is justified in taking advantage of an injured worker. It is a fact of life that most plaintiffs actions are accepted by lawyers on a speculative basis. Very many doctors and engineers and therapists act in the same way. In these circumstances it is difficult to accept the argument that workers will feel obliged to accept an inadequate offer to avoid "the additional expense ... of a hearing".

33. It is argued that actions for negligence involve a very high level of legal costs - sometimes as high as 50% of the total settlement.

Bar Association Response:

34. The Boards "legal costs" are incurred on the instructions of the Board. The 1995 Annual Report indicates that legal costs including outlays for both plaintiffs and defendants amounted to 22.3% of the total payout. This must be reduced by the 1996 amendments. There are also other ways reductions can be made and these are discussed. There must be a higher costs/damages ratio for minor injury claims. This is because the minor injury claims produce small damages for a significant amount of work. The only necessity for spending all that money arises from the fact that the Board has not taken advice, and paid up in the first place when it should have done. The low end costs have been addressed in the 1996 amendments to the Act. It cannot be doubted that this will significantly reduce the bottom line. The amendments also put at risk the costs of a plaintiff who does not accept a proper offer. It has not been suggested that the costs of administrating a no fault scheme is either nil or indeed cheaper than a common law system. My Association has not seen a study where the claims costs of a no fault scheme have been thoroughly analysed taking into account the costs of administration and the long term costs of providing care for a severely injured person.

35. The costs of pursuing a large common law claim are made greater by the failure of the insurer to make timely admissions of certain heads of damage. This can be remedied by a prudential approach and pro active claims management. It is not the common law damages system which is

the problem - it is the administration of the Board as insurer who have been involved in it. This has manifested itself in refusal to obtain and act upon advice, or to consider settlements, at an early stage, and indeed, quite often, the holding out of the plaintiff from his money until the very day of trial, when sometimes for the first time the Board will face reality and start talking settlement. In about 1991 the Board had a policy that it would not settle actions on the day of trial whatever the facts emerged and however great its exposure might be. This policy included instructions to solicitors, the barristers opinions should be obtained on a limited basis and for fees that have not altered to this date. This attitude was not that of a wise insurer. These attitudes, not the system itself, have resulted in high costs by way of legal costs, outlays, and expert witnesses. If proper investigations were made, early opinions obtained, and proper admissions made early, the present system would be well nigh perfect. Serious cases are often the hardest fought and therefore more costly for the simple reason that the Board does not want to accept that an injured worker is entitled to a large judgment.

36. The 1995 Annual report shows that a mere $16,400.00 was expended in Mediation Fees. The failure of the Board to make use of mediation is in stark contrast to that of other insurers in the other main field namely Motor Accident claims. Experts suggest that 80% of cases mediated have resulted in settlement. This is not revolutionary, it is simply that the Board has shown no inclination to take advantage of the process. This is discussed in more detail below.

37. Losers at common law must bear their own legal costs.

Bar Association Response:

38. This is correct and is part of the adversarial system. It does not happen very often to plaintiffs because of the parsimonious offers made by the Board. Too often barristers and solicitors advice about the likely quantum of an award is ignored and a lower offer is made on instructions from the Board. The Board has not seen fit to seek to recover its costs in cases in which it has been successful. There is a view that an understanding had been reached between the unions and the Board that the Board will not seek to recover it's costs. If this is so and it extends to fraud cases it seems a strangely inequitable understanding. This system also serves the object of providing admonition for failure.

39. It is argued that the adversarial nature of the common law negligence action is incompatible with the goal of timely and effective rehabilitation, and may act as a disincentive to employers to make improvements in workplace safety.

Bar Association Response:

40. It is said that the delays and adversarial nature of the system are a disincentive to rehabilitation. That is just not right. The thing that is a

disincentive to rehabilitation is putting somebody on a weekly benefit, in such a fashion that he has no security at all, but must maintain his injury in order to justify the weekly payment to him. That is the explanation for the "blow out" in WorkCare in Victoria. People given a proper lump sum early in the piece by the Board, would then be able to plan their lives. The worker should be given his independence quickly and then would be free to get on with his own life and make the best of things, or to sue. Of course, it would not be worth his while to sue unless he had a serious injury - the de facto threshold would prevent it. There is an incentive for the employer as far as the premium level is concerned to avoid accidents - via bonus payments. If the fault concept is removed, that removes, at least partly, that incentive for the employer to take proper care of his workers.

41. An industrial accident investigated by a Workplace Health and Safety Officer results in the preparation of a report which identifies the cause and the necessary improvements to the system. This is a long time before litigation is contemplated. A reluctance to effect improvements is not then for fear this will be seen as an admission of liability but simple thoughtlessness. The CTP insurers initial approach to contributing to rehabilitation was sceptical as they believed that if they did not have early notice of the injury the incentive in the victim to rehabilitation would be lost. Here in Workers' Compensation, the insurer knows almost immediately there is a need and a scope for rehabilitation. It can act in the most timely way possible.

42. Common law claims are such a small percentage of total claims it is reasonable to believe these are the most serious cases where the lump sum is grossly insufficient to adequately compensate for the injury. It is said statistics demonstrate that a sizeable proportion of claimants are off work at the time of settlement. It simply cannot be assumed that this is because they are resistant to rehabilitation whilst ignoring the fact that the seriousness of the injuries are themselves resistant to rehabilitation. Too often the Board has failed to act upon legal advice that it is necessary to call as a witness the rehabilitation officer/s to say the plaintiff was at discharge capable of working in a variety of occupations and an officer to establish the availability of these jobs and the wage payable. On discharge from a rehabilitation centre it should be obligatory for the team to report that the worker is or is not fit to return to work in a number of identified fields and the reasons why in each case. It will also be necessary for the report to identify the income the worker would be able to expect to earn from such employment and the availability of such work. It simply is not sufficient to merely complete the rehabilitation therapy and leave the worker to his own devices without follow up to determine if the absence from work is because of the continuing impact of the injury. If a worker is resistant to rehabilitation it is usual to have evidence that the worker is engaged in fraud. In the absence of evidence it is difficult to justify the argument.

43. There is a growing recognition amongst employers that they not only owe a duty to return injured workers to the work force but also that the implementation of this policy is good for the company in terms of being

seen as responsible to the workers and because it promotes industrial harmony. CSR has in many cases been able to modify employment for injured workers. This has resulted in the worker returning to work being fulfilled as a human being and having damages reduced. CSR has developed a strong culture to support the injured worker and this alone provides the incentive to continue the policy. There was initial doubt as to the bona fides of CSR's policy but the consistency of the policy company has largely extinguished those doubts. Other employers have similar policies. See for example MIM and Woolworths Limited.

44. It is argued that it is generally preferable that benefits under statutory workers' compensation schemes, without a common law component are paid to injured workers on a no-fault basis. The existence of two parallel systems for providing compensation for workplace injuries creates inequities and arbitrary distinctions between workers with similar injuries.

Bar Association Response:

45. This has been dealt with above. It is difficult to understand why a worker is not entitled to the same recourse to common law rights as his neighbour suffering the same injury through a motor car accident. The CTP insurers have rushed for the work under the new scheme. This is because they consider they can provide the service and do so consistently with their duty to their shareholders.

46. It is argued that the inadequate compensation of injured workers which frequently occurs in common law cases results in cost-shifting to injured workers, and to Commonwealth and State health and social welfare programs, as injured workers must rely on Government programs once their settlements and their own savings are used up. In addition, a high incidence of 'double dipping' (where both compensation and social security or health care benefits are paid in respect of the same injury-related costs) is associated with common law cases, a practice which places an additional burden on Commonwealth and State programs."

Bar Association Response:

47. The first point has been dealt with above. The second point is without justification. The Social Security Act imposes a burden of the assumption that 50% of the award is related to economic loss. On this basis an assessment is made that for a time the victim is disentitled to benefits. In addition to this the victim is required to repay to the DSS a sum calculated to represent a just reimbursement of pre trial payments. Similar legislation exists with respect to Medicare.

Increases in Awards

48. The fact is that wages have risen. The major component in most cases is the economic loss component. The damages are based not on what the

worker was getting at the time of the accident, but what he would be getting now if still employed in that capacity. It is interesting to observe that the Courts have thought workers are worth that much more. If with the fact of increases in damages, one cares to look for an increase in statutory compensation, there has been no increase over this period in real terms save for those contemplated in the 1996 amendments. In fact the worker is probably worse off than he was 10 years ago so far as the relationship between the benefits under the Act and the cost of living is concerned. At common law loss of earnings are assessed on what in fact the worker might have earned. If under the statutory scheme the injured worker is paid less than his full wage, then the longer he is off work the greater the difference will be between that which he might be assessed at common law should he establish negligence.

49. In the most serious cases the largest component is that for "care". My Association has consistently advised the Government of the problems which may be faced by insurers in making adequate provision for care under the law as it stands. No action was taken to introduce limiting provisions in relevant legislation as was done in New South Wales. The whole community has taken the view that victims of very serious injuries are better placed in the community than an institution and governments have properly acted upon this strongly and correctly held view. The community simply will not tolerate the hiding away in an institution people who can live a useful life in the broader community. This does cost more money but it is a cost the community wishes to pay. It will do

this by way of extra premiums on insurance policies or for prices for goods and services provided by the employer.

Caps and thresholds.

50. No evidence has been seen for the introduction of caps or thresholds in Queensland. Thresholds have simply not worked in other jurisdictions. Queensland has it's own de facto threshold in that the plaintiff must recover more than he received under the statutory benefits scheme before he can recover a judgment at common law.

Private insurers

51. The provision of workers' compensation is primarily the role of government. My Association believes that the Board should continue to be the sole insurer provided it adopt a more prudential approach to insurance, has the backing of Government to increase premiums and takes advantage of the 1996 amendments. There should not be any difficulty now that premiums are at a realistic level and statutory benefits are at a proper level. If the private insurers believe they can make it work without change there is no reason why a restructured Board cannot. The risk for the community in passing the obligation to the insurers is that for the first 3 years those insurers will have little liability. It is when the claims begin to bite that there will be a call for increased premiums as occurred elsewhere. There is no compelling reason to think the community will be

better off with the private insurers as the provider of services and compensation under a beneficial statute.

A Dedicated Workers' Compensation Court

52. My Association does not support the establishment of another Court to hear and determine claims for compensation. The reasons for this can be summarised as:

(a) The existing trial courts of the State are the Supreme and District Courts. The Judges of those Courts individually have decades of experience in cases involving claims for damages in work related injuries (both when at the Bar and on the Bench). It would be difficult (if not impossible) to identify a pool of persons with the equivalent ability or experience in trials to be appointed to a dedicated Workers' Compensation Court.

(b) No reason has been advanced for establishing another Court. The Supreme and District Courts have the public's confidence. The Judges are independent and impartial. Proceedings in those Courts are open to the public, on the record, and subject to appeal.

(c) There would be considerable wasted and duplicated resources in establishing another Court. Resources for Courts are already limited and it is doubtful that the community would accede to the extra

expense involved in establishing another Court.

(d) A specialised Court would probably increase costs and uncertainty in certain cases. Examples would include jurisdictional disputes, appeals and cases where a person has sustained more than one injury (for example, at work, and in a motor vehicle accident).

(e) The Supreme and District Courts hear and determine claims for damages in all other actions for personal injury (motor vehicle accidents, product liability cases, occupier's liability cases and assaults). Comparability in awards for damages for personal injuries would be at risk with another Court. This would affect confidence in the Courts.

Mediation

53. The Board's report for 1995 shows that mediation fees had been paid in the previous years as follows:

1993/4	$10,535.00
1994/5	$16,400.00

54. These small sums suggest that the Board has only paid lip service to mediation as a means to claims resolution and to containing the costs of litigation. There has in fact been a reduction in the use of mediation to

resolve disputes. In 1991/2 $22,619.00 was expended whilst in 1992/3 a mere $6,625.00 was spent by the Board. An explanation should be sought from management on the reluctance to engage in mediation to resolve disputes.

55. The experience of my members is that the Board is often reluctant to mediate or to negotiate early. There is a "culture" with some claims officers antithetical to mediation. Rarely will the officers of the Board attend a mediation, thereby losing a valuable opportunity to resolve the case and to make a face to face assessment of the plaintiff in the case. The contrary is the case with the major motor vehicle insurers. Their claims officers are much more "pro-active". They attend and participate in mediations more readily and more often.

56. One motor vehicle insurer regularly visits provincial cities conducting conferences with plaintiffs and their lawyers. Settlement rates of about 90% are often achieved. In each case savings of many thousands of dollars in trial preparation and costs are achieved. My Association proposes that in every case (perhaps with the exception of where there is strong evidence of fraud) a mediation should be held before a Certificate of Readiness for trial is signed and filed. It may be thought that this should be done prior to a common law action being allowed to commence. The claims officer should attend the mediation. Before such mediation, Counsel's advice on liability and quantum should be obtained. My Association believes that if this became the practice of the Board, not only would cases settle earlier,

there would be considerable savings in legal costs.

The Effect of Advertising by Lawyers

57. The Board's report for 1995 shows that there was a substantial increase in the number of common law damages claims made in the 1994/5 year as compared with the previous two years. It is suggested that one of the reasons for the increase in the number of common law claims has been the fairly recent changes to the professional rules of solicitors and barristers permitting advertising.

58. It should be recalled that Federal and State Government initiatives forced this upon the profession and that the profession somewhat unwillingly agreed to permit its members to advertise. The wisdom of these "pro-competitive" reforms is now being questioned as a result of the statistics referred to above.

59. The current rules of my Association (adopted as at 11 April 1995) provide as follows:

> "115(a) A barrister may advertise.
>
> (b) An advertisement must be factually true and verifiable and must not be of a kind that is or might reasonably be regarded as:
>
> (a) false, misleading, or deceptive;
>
> (b) in contravention of any legislation;

(c) vulgar, sensational, or otherwise such as would bring or be likely to bring a court, the barrister, another barrister or the legal profession into disrepute."

60. It is still not a common practice for barristers to advertise and it is unlikely that barristers' advertising has had much effect upon the claims as is asserted.

61. Nevertheless, it is likely that advertising in some form will remain a fact. Any unilateral move by one State Government to ban or restrict the mode of advertising might be the subject of constitutional challenge.

62. Further, it is difficult to maintain that it is in the public interest that members of the public should not be informed factually and responsibly that they might have rights and that they ought to see a lawyer to investigate whether they have a legitimate basis for a claim.

63. It is too early to say whether the increase in the number of claims will be maintained or whether the figures referred to above were one off as opposed to indicative of a future trend. What is clear, however, is that there has been a steady increase in the incidence of common law claims (as a percentage of the total number of statutory and common law claims) and this was evident to the Board in 1992 when the trend over the previous decade indicated that the incidence of claims increased from 0.8% in 1982 to 1.7% in 1992. It should be borne in mind that the Board's report for 1995

also disclosed that there was a substantial increase in the total number of new claims (statutory and common law) registered in the year 1994/5 compared with the previous years. It seems to my Association that the controversy that has surrounded the concern as to the increase in the number of common law claims has overlooked the fact that the number of claims overall increased at the same time. The reason for this increase in the number of compensable accidents should be the focus of the Board's concern, rather than concentrating upon a resolution focusing on only part of the resultant problem.

It is instructive to review the number of workers' compensation injury cases filed in the District Court in Brisbane over the last few years. These are set out below with the 1995 year broken down month by month. The great increases are seen in the months when the media has published details of the problems in funding and statements that the common law system should be abolished. People file claims earlier than they would otherwise so they might be dealt with under the current scheme for fear they might miss out.

1992	489	
1993	601	
1994	581	
1995	914	
1996	199	to 24 April 1996

1995	
January	31
February	69

March	57
April	61
May	74
June	88
July	81
August	92
September	75
October	123
November	104
December	59

64. **Reasons for the increases in claims**

- This submission has dealt with the argument that lawyer advertising may have contributed to the increase in the number of claims.
- The Board has also been responsible by its own press releases. It is, in our view strange for an insurer to encourage claims to be made saying that it is wanting to deal quickly with claims and pay workers promptly.
- The submissions have dealt with a community fear the system is going to be changed and the response by initiating claims procedure. Publicity that a Personal Injuries Proceedings Bill will restrict the way claims are to dealt with also encourages an increase in the number of claims at a time lodged earlier than they may otherwise be lodged or at all. Publicity of the proposed restriction in common law access as revealed in the Board's Common Law Briefing Paper 4 February 1992 served to cause interested parties to file claims earlier than they may otherwise be lodged or at all.

- The community is now better educated about their rights of action coupled with an increased awareness of individual rights. It is submitted there is now in the community a growing unwillingness to assume personal responsibility for injuries.
- The Board has allowed the large gap to exist between statutory benefits and common law awards. This serves to make an action for common law damages much more attractive as there is little risk the award will be less than the total of the statutory benefits.

65. Finally it must be recognised that it has been a common theme in the Annual Reports over the last 5 years that common law claims have been increasing in number and in proportion to total claims costs. It was recognised that these increases have been steady from the early eighties. It seems that no effort was made until recently to increase premiums to a realistic level in the face of steadily increasing exposure to liability. Further it seems the Board has distributed back to employers the bonuses which ought to have been retained as provision against future liabilities. It seems to my Association these are the fundamental reasons why there is currently the unfunded future liability.

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President
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