

Joint Statement:

**Premier and Minister for the Arts
The Honourable Anna Bligh**

**Attorney-General and Minister for Industrial Relations
The Honourable Cameron Dick**

Tuesday, April 27, 2010

GOVERNMENT TO PROTECT COMMON LAW RIGHTS FOR WORKERS

Premier Anna Bligh and the Industrial Relations Minister Cameron Dick have today announced that the Government will reform Queensland's workers compensation scheme to ensure stability and certainty into the future.

The package of changes to WorkCover Queensland announced today will ensure that the Queensland average premium rate, while increasing, will remain the lowest of any state or territory.

In November 2009, the WorkCover Queensland Board reported to government growing financial pressures due to the GFC and growth in common law claims.

The Board recommended a number of changes including restricting injured workers access to compensation through the courts.

"Our aim is to make sure every Queenslander returns home safely from work, each and every day," the Premier said.

"In the event of a workplace incident causing injury or death, we want to ensure there is a strong compensation scheme in place to support workers and their families."

"This package of changes will mean that all Queenslanders, employers and employees, continue to have access to one of the most stable and secure workers compensation scheme in the country."

"The Government has also announced that restrictions on access to common law compensation claims by injured Queensland workers will not be imposed as part of the changes."

Mr Dick said the suite of changes represented a responsible, well-considered response to WorkCover's financial situation, which had been negatively affected by the global financial crisis.

"We need to ensure the scheme continues to be the most stable and solvent in Australia," he said.

"Feedback from stakeholders has persuaded the government to reject the call for restrictions to be imposed on common law claims made through WorkCover."

Mr Dick said the proposed reforms would address the growth in common law claims and claims

costs, and help secure WorkCover's financial stability.

WorkCover had advised that the reform package will include an increase in the average premium rate from \$1.15 per \$100 of wages paid to \$1.30 in 2010-11.

“Despite the increase in the average premium rate, Queensland employers will still be paying the lowest average premium of any state or territory in the nation.”

“We will be monitoring the implementation and effectiveness of the reform package very closely over the next two years,” said the Minister.

“At the end of 2012, we will assess their overall effectiveness and determine whether further, more significant reforms are needed.”

Mr Dick said measures targeting poor performing companies were also part of the reforms.

“WorkCover and Workplace Health and Safety Queensland will start auditing employers with a poor safety record and if their performance does not improve, we will give WorkCover the power to raise their premiums above the cap.”

The Government will also investigate the possibility of introducing workers' compensation levy system for the construction industry.

Legislation required to implement the reform package is expected to be introduced into Parliament by mid 2010.

Comparison of average premium rate per \$100 of wages

State or territory	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Queensland	1.55	1.43	1.20	1.15	1.15	1.15
New South Wales	2.57	2.17	1.86	1.72	1.77	1.69
Victoria	1.99	1.80	1.62	1.46	1.39	1.39
South Australia	3.00	3.00	3.00	3.00	3.00	3.00
Western Australia	2.25	2.32	2.13	1.85	1.58	1.74
Northern Territory	2.95	2.70	2.40	2.31	N/A	N/A
Tasmania	2.46	2.19	1.95	1.94	1.83	1.97
Australian Capital Territory	3.07	3.32	3.15	N/A	N/A	N/A

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WorkCover reforms – summary of key measures

No restrictions

The Queensland Government has ruled out placing any restrictions on injured workers' access to common law claims for compensation.

Harmonisation with Civil Liability Act

The government will harmonise arrangements with the Civil Liability Act 2003, to ensure consistency across all personal injury regimes. As a result, common law claims brought under the Workers' Compensation and Rehabilitation Act 2003 will be harmonised with arrangements under the Civil Liability Act 2003 in terms of liability (standard of care), contributory negligence and caps on general damages and damages for economic loss.

General damages (pain and suffering) will be capped at \$300,000. General damages make up the smaller proportion of damages awards, and are relatively stable across different personal injury schemes. Damages for economic loss (loss of future earnings) will be capped at three times Queensland Ordinary Time Earnings (QOTE) for the purposes of calculating annual earnings. QOTE is currently \$1132.10 per week (\$58,869 per annum). Three times QOTE is \$176,607. This amount will be the maximum annual earnings a court will be able to take into account when calculating loss of future earnings.

The statutory scheme will remain unchanged.

Increasing onus of proof to prove employer fault

The decision of the Queensland Court of Appeal in *Bourk v Power Serve Pty Ltd* has led to increasing numbers of common law claims based on the perception that strict liability attaches to an employer if a work injury has occurred, regardless of fault. At the request of WorkCover and self-insurers, the Act will be amended to require workers to show that an employer breached a duty to take precautions against a risk of harm that was foreseeable, not insignificant, and in circumstances in which a reasonable person would have taken the precautions.

Costs against plaintiffs whose cases are dismissed

The Act currently allows costs orders only where the court awards more or less than a party's final written offer of damages. This has been interpreted by the courts to mean that if the claim is dismissed, no costs are payable. The Act will be amended to allow courts to award costs against an applicant where a claim is not successful.

Employer excess

The employer excess will change from 65 percent of QOTE (\$740 for most employers), to 100 percent of QOTE (\$1132) or one week of compensation, whichever is the lesser amount. This will provide an incentive to employers to improve injury rates and is comparable with what employers pay in most other states and territories.

Structural review of Institutional and working arrangements

In addition to legislative changes, the government will conduct a structural review of institutional and working arrangements in Queensland's workers' compensation scheme. The review will consider the claims management, common law settlements, rehabilitation and return to work as well as the range of issues raised during the review. These include legal costs and other associated legal matters.

Premium

The WorkCover Queensland board has decided that an average premium rate of \$1.30 should apply for the 2010-11 premium year.