"OF THE PEOPLE, BY THE PEOPLE, FOR THE PEOPLE"[1]

WORKERS' COMPENSATION IN QUEENSLAND: THE RISE AND FALL OF A POLICY COMMUNITY

Paula Cowan B.Com. (Hons)
Griffith University

Department of Politics and Public Policy
Griffith Business School
Griffith University

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[1] Although this is not an original phrase, it was the motto adopted by the State Government Insurance Office when it commenced business.

ABSTRACT

The central question posed in this thesis is w*hy has the Queensland model of workers' compensation been so enduring?* The legislation remained largely intact from 1916 until 2001, with the exception of the years from 1996 to 1998. This was so despite the fact the central feature of a state-controlled monopoly that underpinned this model was always potentially divisive in line with the variances between liberal-conservative traditions and social-democratic ideals that subsisted in broader political culture.

In addressing this question of longevity, this thesis explores the capacity of an initially contentious piece of legislation to draw strong support from former opponents, and the argument is put forward that it is best explained through the development and operation of a policy community that fostered a shared set of core values relative to broad workers' compensation policy preferences. These core values were compulsory state monopoly, no fault insurance and full access to common law. Thus, the longevity of the legislation is attributed to the continued support by key stakeholders of these core values.

The thesis also demonstrates that policy community relations deteriorated during the 1990s as governments responded to broader political pressures precipitated by reform agendas. Inconsistencies in core values and policy outcomes for each stakeholder emerged as governments attempted to assert unprecedented control over the direction of workers' compensation in order to meet broader political goals. The legislation was threatened as relations within the policy community proved unsustainable when existing core values were contested.

STATEMENT OF ORIGINALITY

The material in this thesis has not been previously submitted for a degree or diploma in any University. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

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ACKNOWLEDGEMENTS

Only engage, and then the mind grows heated –

Begin it, and then the work will be completed!

Johann Wolfgang von Goethe (1749-1832)

This thesis is the result of a long journey during which I often recounted the above quote, and even more often doubted its wisdom.

Throughout this journey I have met many people who have provided support and inspiration. First my thanks to my supervisors Professor Patrick Weller and Dr. Robyn Hollander who both provided supervision that went far beyond the call of duty. Pat, I could not have completed the thesis without your continued support and your great ability to see the 'big picture' each time I was carried away with detail. Your generosity has been immense and I am deeply grateful. Thanks to Dr. Robyn Hollander for her spirited suggestions and critical analysis in relation to this thesis. Robyn, your ability to maintain serious facial expressions when confronted with some of my initial chapter drafts and to extract something positive out of each, has been remarkable. I also wish to thank Dr. Glenda Maconachie for her friendship, willingness to offer advice whenever sought and for her great editing skills.

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And von Goethe was right.

ABBREVIATIONS

AA	Australian Archives
ACTU	Australian Council of Trade Unions
AEU	Amalgamated Engineering Union
ALP	Australian Labor Party
AMA	Australian Medical Association
ARU	Australian Railways Union
AWA	Australian Workers' Association
AWU	Australian Workers' Union
BWIU	Building Workers' Industrial Union
CEPU	Communications, Electrical and Plumbing Union
CFMEU	Construction, Forestry, Mining and Energy Union
CSR	Colonial Sugar Refinery
EARC	Electoral and Administrative Review Commission
ETU	Electrical Trades Union
FCU	Federated Clerks' Union
IWW	International Workers of the World
MIM	Mount Isa Mines Holdings Ltd
MTIA	Metal Trades Industry Association
NAA	National Archives of Australia
NCP	National Competition Policy

PAYE	Pay as You Earn
PLP	Parliamentary Labor Party
POA	Professional Officers Association
PSGOA	Public Service General Officers Association
QCE	Queensland Central Executive
QCU	Queensland Council of Unions
QICAR	Queensland Independent Tribunal of Administrative Review
QLP	Queensland Labor Party
QPD	Queensland Parliamentary Debates
QSA	Queensland State Archives
QTC	Queensland Treasury Corporation
SEQEB	South East Queensland Electricity Board
SGIO	State Government Insurance Office
TLC	Trades and Labour Council
WCBQ	Workers' Compensation Board of Queensland
WWF	Waterside Workers' Federation

CHAPTER ONE

INTRODUCTION

In developed countries workers' compensation is recognised as a right provided to those who sustain an injury or contract an illness/disease as a result of their employment. However, this right was not always accepted. Its ultimate acknowledgement resulted from long and bitter struggles that involved different interests and power relations in different jurisdictions, not the least of which was embedded in the struggle between the extent of economic recompense and moral values relative to the worth of a human life.

The struggle over workers' compensation can also be posited within the broader territories of Australian political culture, where liberal-conservative traditions have contended with social-democratic strands of thought. In line with a broader political history that saw Australia's initial development as separate and legislatively independent colonies[1], workers' compensation legislation developed on a State-by-State basis. As a result there are six State, two Territorial and one Federal Acts.

The import of British law and models of government into Australia from white settlement in 1788 resulted in the matter of compensation for work-related injuries and illnesses being a focal issue in Australian work relations from early colonial times. Initially, lack of recompense for loss of income through work-related injuries and illness was a central tenet of antagonism between employers and employees. From the workplace, this discord

[1] Colonies became States at Federation in 1901.

was taken up in both parliamentary and judicial jurisdictions. Initial outcomes overwhelmingly benefited employers, as each jurisdiction clearly favoured the maintenance of laissez-faire industrial and economic doctrines that dictated minimal market intervention, including in the labour market. Over time, social, industrial, political, ideological and economic forces conspired to enable legislation to be enacted. This is the story of the development of one such piece of workers' compensation legislation in one of the Australian states, Queensland, from 1916 to 2001.

The *Queensland Workers' Compensation Act* and its successor the *WorkCover Queensland Act* have always been identified as unique and, at times, innovative. The central features of the legislation, a no-fault compulsory state monopoly scheme, have withstood the rigors of eighty-five years of social, political, economic and ideological pressures. It remains unique in that it is the only state monopoly scheme in Australia, and no other scheme in Australia has remained so economically viable for such a period of time. With a span of almost a century, the scheme has faced as many, and at times more pressures than workers' compensation schemes in other States, yet its overall continuity stands in stark contrast to those schemes.

Key social, political, economic and ideological conditions all posed significant challenges in the development of the legislation. The impact of some of these, for example the depression in the 1920s, deregulation in the 1970s, and public sector reforms of the 1990s, posed enormous threats to schemes throughout Australia, yet the Queensland model adapted while the others did not. This thesis asks: *Why has the Queensland*

workers' compensation model been so enduring?

Context

During the 1880s, expansion in Queensland industry, particularly rural industries, brought a demand for labour that state-sponsored immigration could only partially alleviate. Labour issues such as improved factory legislation, eight-hour days and trade union recognition through direct confrontation between employers and employees, achieved little in the way of improved safety or economic relief of injured workers. When workers looked to the judicial system for redress, particularly for financial recompense for injuries and illnesses sustained during the course of their employment, they found little support as the courts used a series of restrictive doctrines against which employees had no defence. Similarly, employees found only insufficient relief through political avenues. Limited suffrage and lack of labour representation in the parliamentary arena were not conducive to regulatory intervention, and notions that colonial economic development would be hampered by any such intervention dominated.

As workforce numbers grew so did labour unrest, and trade unions were able to gain a foothold within the colony. Increased agitation by labour and trade unions, as well as the occurrence of a number of serious work-related accidents in areas such as the State railways,[2] provided impetus for intervention, primarily as a preventative mechanism. However, the government was reluctant to impose any significant workplace regulatory

[2] For example twenty-three deaths were officially recorded during construction of the Cairns-Kuranda railway. See Maconachie G., 1997, 'Blood on the Rails: the Cairns-Kuranda Railway Construction and the Queensland Employers Liability Act', *Labour History*, No. 73, November pp. 77-92.

apparatus, and reasoned that the most effective means of providing workplace safety was the imposition of insurance on employers. This economic impost would, it was assumed, ensure employers maintained safe workplaces, or suffer the financial cost of higher insurance premiums.

The initial foray by Queensland regulators into the realms of workers' compensation was the *Employers' Liability Act 1886*. The central obligation within the legislation was the requirement that employers maintain insurance in order to provide compensation for personal injuries suffered by employees, although the remainder of the legislation outlined circumstances under which the employer's responsibility would be diminished. The legislation was largely symbolic and did little to relieve workplace tensions. On rare occasions when injured workers managed to meet the limited legislative criteria, insurance companies launched actions against insured employers, or contested cases in courts to thwart employees.

As the colony developed other factors changed as well. In particular trade union membership intensified as industry expanded. Pivotal trade unions such as shearing unions were forging stronger intercolonial ties. This expansion, combined with extended electoral suffrage, facilitated increased political mobilisation of the trade union movement. In turn, the composition of parliament changed as the impact of these combined to establish labour representation, initially in the Legislative Assembly from

1888, and later expanded to the Legislative Council from 1903.[3] Each contributed towards setting in place a series of events that turned a draconian piece of legislation into one of the most progressive in the world at that time. Pivotal in these events was the 1915 election of an Australian Labor Party (ALP) government.

Central to the electoral platform of the ALP was the introduction of a comprehensive no-fault workers' compensation scheme. Not so clear was the plan to make insurance under the scheme the sole realm of government, although insurance was certainly a central tenet of a proposed system of state enterprises the Labor Party pledged. In government, the ALP introduced a no-fault state monopoly compulsory system of workers' compensation, the passage of which came via the somewhat fortuitous ineptness of the Legislative Council.

Between 1915 and 2001 three separate periods of legislative development are discernible. The first period encompasses the initial twenty-five years of the legislation from 1915 to 1940. This era was dominated by Labor governments and remains the period of most rapid legislative expansion. The second period occurred between 1960 and 1988. Marked by a change from Labor to Conservative power, this period is significant because one government, the Bjelke-Petersen government, was in office for nineteen of those years. This period is important as one of legislative stagnation but structural change. The administration of workers' compensation shifted from semi-autonomous organisation to

[3] Membership of the Legislative Council was through appointment by the Queensland governor on the advice of the government. The Liberal/Labor government led by Premier Kingston made the first Labor appointments (4 members) to the Legislative Council in 1903. See Murphy D.J., 1980, 'Abolition of the Legislative Council' in *Labour in Power. The Labor Party and Governments in Queensland 1915-57.* Murphy D.J. Joyce R.B., & Hughes C.A. eds., University of Queensland Press, p. 96.

government department.

The final era spans the period from 1989 to 2001. Marked by the return to power of the Labor Party for all but two years, this period reflects the significant changes to ALP structures and ideology during thirty-two years in Opposition. It was during this era that the workers' compensation scheme was most under threat from a number of different directions. Financially it faced its worst crisis with massive deficits, and it could not escape the momentum of public sector reform, competition policy and changed industrial relations mechanisms that permeated throughout Australia generally. It was during this period that the first substantial re-writing of the legislation since its introduction in 1916 was undertaken.

Argument

Explanation for developments in, and the longevity of, the legislation in this case cannot be simply related to the identification of power holders at a given time. It is argued that central to the continuity of this workers' compensation model was the level of malleability of policy processes that underpin the ability of the legislation to accommodate changes that presented throughout its history. It is contended that over time, certain proclivities of policy-making processes helped to propel the legislation beyond its original uncomplicated notions of which "wants" to adopt and towards a more complex agenda of managing competing values, interests and resources that have been interconnected at times, and disconnected at others. The central reason posited for this unique continuity is that the management of policy entanglements has been effected, not

at the macro level of government, but at the meso level of sub-government via a policy community.

This thesis provides evidence to support the proposition that the form of the initial legislation facilitated the development of a policy community. Rhodes identifies a policy community as a meso-level concept in which the number of participants is limited and a reasonable level of consensus in relation to basic values is maintained.[4] Implementation as a state-run enterprise and operation as a monopoly conducted on a no-fault basis, limited the number of key insider stakeholders to the State as administrators of the scheme, employers who had legal obligations to insure workers under the scheme, and employees who received benefits under the scheme. Abolition of private workers' compensation insurance and a limited role for lawyers in the system effectively sidelined each of these stakeholders in this policy area. This division remains a theme throughout the research period as private insurance interests in particular, continued to lobby for entry into the scheme.

Methodology

The issue of workers' compensation has been largely unexplored in Queensland. As the legislation spans a period of eighty-six years, a more in-depth analysis can best be provided by focusing on a mix of historical periods to provide what Neuman[5] describes as a "moving picture" that facilitates examination of legislative change and the

[4] Rhodes, R.A.W., 1997, *Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability*, Open University Press, UK, p. 44.
[5] Neuman, W.L., 2000, *Social Research Methods. Qualitative and Quantitative Approaches*, 4th ed., Allyn and Bacon, USA, p. 30.

concomitant events and social relations that influenced each. Utilisation of comparative historical method provides an account of dynamic trends, looks at ways relationships develop and dissolve, and allows questions of change and continuity to be addressed.

Comparison of the three different eras outlined above allows the importance of different influences to be evaluated. As Rhodes argues, the comparative method "…allows valid generalisations provided that there is a theoretical statement against which to compare case studies."[6] In this study, the statement posited is that the development of workers' compensation legislation in Queensland and its longevity can be attributed to a tight cooperative policy community. Criteria suggested by Poole are used to analyse sources and address the central question: environmental structures and processes are considered, economic, political and social factors are incorporated, explanatory variables are emphasised and an historical as well as contemporary dimension is considered.[7]

To test the proposition that a policy community was highly influential in both the development and continuity of the workers' compensation model, a review of the literature relative to models of policy networks and policy communities is conducted. This creates a central framework within which the empirical evidence relating to workers' compensation can be applied. Added to this central framework 3 key questions will be posed to provide a contextual basis for legislative development in each era. These questions are:

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[6] Rhodes, R.A.W., 1995, "The Institutional Approach" in *Theory and Methods in Political Science*, Marsh, D. and Stoker, G. eds., Macmillan, p. 56.

[7] Poole, M., cited in Bean, R., 1994, *Comparative Industrial Relations: An Introduction to Cross-National Perspectives*, 2nd ed., Routledge, London, p. 4.

- What broader pressures influenced development of the legislation during each era? In this, focus will be concentrated in four areas – social pressures (including industrial relations pressures), political pressures, ideological pressures and economic pressures.

- What challenges, if any did the legislation face during each era?

- How did the policy community adjust to the pressures and challenges?

Sources

A wide variety of sources, both primary and secondary, were reviewed to establish a picture of workers' compensation across the three eras and in the period preceding the 1915 legislation.

Public record sources were used extensively. Government statutes, Queensland Parliamentary Debates and Annual Reports provided substantial detail in relation to legislative changes. Each of these sources provided vital primary data upon which analysis can be built. For example, the statutes and the parliamentary debates provided information in respect of outcomes, and these in turn provided the basis for further research to determine the influences that shaped each outcome. Cabinet records are also a relevant source in a study such as this, although records of the Queensland government Cabinet were not kept until 1957. Cabinet records from this time up to the first few years of the Bjelke-Petersen government, including minutes, submission material and official decision files have been examined, however these do not include any record of discussions or briefings. As Tait notes of Cabinet practices during the time:

> …as papers for a Monday morning Cabinet meeting were only circulated at 1.00pm the previous Friday it was unlikely the Minister had read all the documentation – and, since copies were not given to most departmental heads, Ministers could not rely on a comprehensive set of public service briefing notes.[8]

Other public data sources included State Government Insurance Office (SGIO) records and correspondence. Although there are a considerable number of files and documents deposited with the Queensland State Archives (QSA), these contained mostly correspondence relative to individual claims and issues relative to administration of the SGIO. Little of the communications relating specifically to workers' compensation that passed between the Insurance Commissioner/General Manager and controlling Departments[9] was included in the records.

The poverty of these records holds implication for this study, not the least of which is the level of certainty with which explanations can be proposed. Consequently in some instances causal connections can only be suggested. However, Neuman[10] argues that at times the inability to unequivocally establish causality can be acceptable in circumstances where appropriate associations can be provided. This holds true in this study, as the records accessed, while not abundant, are sufficient to draw valid associations.

The SGIO had an in-house journal *Insurance Lines*. The journal commenced publication in 1917 and, in line with its centrality in operations of the SGIO, workers' compensation features prominently in its pages. There are wide-ranging articles on legislative progress

[8] Tait, S., cited in Davis, G., 1995, *A Government of Routines*, Macmillan, p. 65.
[9] The SGIO was initially placed under the Department of Justice until 1921 when it was moved to Treasury. In 1978 it was relocated to the Department of Labour Relations.
[10] Neuman W.L., 2003, *Social Research Methods. Quantitative and Qualitative Approaches*, 5th ed., Pearson p. 57.

in other Australian States and in other countries, and extensive reportage of health and safety issues generally. The operation of, and amendments to, the legislation are reported comprehensively, and depict an organisation committed to the issue of workers' compensation.

By 1932 however, the SGIO appeared comfortable and secure with workers' compensation and a shift emerged that focused more upon life insurance. Motivational articles on how to sell insurance began to dominate the pages of *Insurance Lines*. A few years later a further shift appears as the journal includes propaganda elements with articles that urged the assistance of the medical profession to identify 'malingerers.'[11] By the time of the SGIO's 50th anniversary, workers' compensation did not even rate a mention in the success of the organisation, despite its pivotal role therein. Life insurance was lauded as the key to the organisation's achievements.[12]

Queensland Labor Party records and Queensland Central Executive files provided useful evidence. The Australian Workers' Union (AWU) newspaper *The Worker* proved a valuable source, particularly during the first era under investigation. Its silence on the issue of workers' compensation during the other two eras provides a stark contrast. As the largest general union in Queensland this source provided trade union and employee perspectives. The newspaper's focus on workers' compensation waned from the mid 1920s, and thereafter the issue tends to be reported as an advisory service, informing

[11] See 'The Co-operation of the Medical Profession,' in *Insurance Lines* Vol. XX, No. 10 April 1938, p. 18.
[12] See '1918 – 50 years of Progress – 1968. A Lifetime of Success' in *Insurance Lines* Vol. VI, No. 1, July/Sept 1968, pp. 12-13.

workers of changes in the legislation and acting as a reminder of procedures involved in the lodgment of claims. Other trade union sources proved somewhat inconsistent. Records of the Public Service Union were easily accessed, but mining unions' records were not available for investigation. Finally, an interview with Ms Grace Grace, President of the Queensland Council of Unions, proved a valuable source for both the second and third eras under investigation.

Employers' records, particularly the Brisbane Chamber of Commerce journal *The Voice of Business* rarely focussed upon the issue of workers' compensation, apart from the lead up to the passage of the legislation in 1916. By the 1960s references to workers' compensation were generally couched within arguments of unfair competition created through the operation of government and semi-government organisations such as the SGIO.[13] Overall, these sources proved significant in supporting the proposition that a tight cooperative policy community was a primary factor influencing the development and continuity of the Queensland workers' compensation model.

Broader sources such as political biographies of former Premiers, key government members and officials were relatively rich sources of information. In particular, they provided interesting evidence in support of an individual government's level of commitment to workers' compensation as well as broader political influences. Press reports and media articles in various newspapers throughout the three periods provided additional context and commentary.

[13] See "Unfair Competition to Private Enterprise" in *The Voice of Business*, Brisbane Chamber of Commerce, Oct. 1967, p. 2.

The thirty-year limitation placed on access to government documents prevents the development of an account of the issues from internal documents from 1972 onwards. Consequently, the character of sources is different in this period. More reliance is placed on reports and reviews that provide different levels of material conducive to the articulation of policy. As the nature of sources changed, the thesis had to rely more on media and official versions that provided little information in relation to what stakeholders, including government, wanted, but provided more detail of actual outcomes. Consequently, much detail in respect of policy positions remains obscured at this time.

Chapter outline

To investigate the three eras of workers' compensation legislation in Queensland and address the central question posed, the thesis has been structured into 8 chapters. The next chapter analyses the literature on policy sub-systems to assist explanation of how governments dealt with policy development in relation to workers' compensation legislation. It defines the institutional parameters within which policies were made and identifies the stakeholders who influence policies. A variety of models has been developed that attempt to facilitate such identification as well as helping to define what draws stakeholders together, how they interact and the effect of their interaction on the legislation. Corporatist, policy network and policy community models, focusing specifically on Rhodes'[14] policy community model, are explored to best conceptualise the nature of the sub-system in relation to workers' compensation policy, and to determine

[14] Rhodes, R.A.W., 1997, *Understanding Governance*…pp. 35-45.

the roles played by employers, employees and government in the development of policy in this area.

Chapter Three provides an historical overview of legislative development in workers' compensation in Queensland prior to the introduction of the *Workers' Compensation Act 1916*. It explores the development of the *Queensland Employers' Liability Act 1886* and the *Queensland Workers' Compensation Act 1905*, and highlights social, political, economic and ideological factors that influenced these initial forms of legislation. Macro-level policy development is illustrated, initially between government and employers. However, the increased influence of trade unions soon becomes apparent. This in turn provides a basis upon which contrasts can be drawn with the development of the *Workers' Compensation Act 1916*, and the shift to meso-level policy making that evolved.

The first era, that of the *1916 Act* and the twelve legislative amendments that were effected between 1916 and 1940 is the focus of Chapter Four. Politically, Labor Party governments dominated this era. Trade union influence was significant and amendments often directly reflected this predominance. However, the needs of employers were also incorporated. The chapter explores the role of the Insurance Commissioners in the early operative years of the workers' compensation scheme, and argues that their role, and in particular that of the inaugural Commissioner John Goodwyn, was pivotal in fostering support for the legislation among both employers and employees. This subsequently facilitated the development of a policy community. Evidence emerged during this era of a

shift away from long-held preferences for private insurance, as neither employer stakeholder groups nor the conservative government, in power briefly between 1929 and 1932, were inclined towards legislative amendment that would allow entry to private insurers. Instead, each developed a stronger inclination to favour state monopoly insurance.

Chapter Five explores the terrain of the second era, that of conservative government between 1957 and 1989. Legislative amendments slowed in number, however changes to the broad political, economic and social landscape impacted significantly on the workers' compensation scheme. This was particularly the case during the premiership of Sir Joh Bjelke-Petersen. For example, the structure of the SGIO was increasingly modified throughout this era and culminated with its privatisation. All ties between it and the workers' compensation fund were severed. Most importantly, evidence presented in this chapter clearly shows institutionalisation of the policy community brought a significant level of stakeholder compliance and less dynamic policy development. The stakeholders shared broad policy preference for a no-fault state monopoly scheme, and communication between the parties remained amicable despite considerable broader antagonisms over other industrial issues. Each continued to view the legislation overall as a positive sum game, despite increased discontent over individual issues such as the lack of accountability of medical tribunals, and the deterioration of administrative functions of the scheme.

Chapters Six and Seven explore the third and arguably the most volatile era of legislative

development. The period represents the first period of political instability in Queensland for almost a century from the Goss Labor government (1989 to 1995), to the Borbidge National/Liberal Coalition government (1995 to 1998), and through to the Beattie Labor government (1998 to 2001).[15] As governments during this era embarked upon extensive public sector reforms and enhanced economic efficiency principles, the impact on workers' compensation legislation was enormous. Chapter Six examines how both the economic stability of the fund and the policy community collapsed as the Goss government introduced broader public consultative mechanisms to assist policy development. The Borbidge government continued this process, the outcome of which was the re-writing of the legislation as the *WorkCover Queensland Act 1996*. This Act provided formal recognition to wider stakeholder interests, including limited self- insurer interests and lawyers. Interests were no longer aggregated within a tight cooperative policy community.

Chapter Seven represents somewhat of a 'reinvention' of the legislation as it explores the Beattie government's amendments aimed at restoring balance between the rights of injured workers, the need for competitive and affordable employer premiums and the maintenance of an economically viable fund. The chapter argues that the Beattie government recognised the value of cooperation among stakeholders. The legislative amendments introduced by that administration attempted to re-establish amicable relations with stakeholders and directed policy towards enhanced statutory provisions as a means of maintaining the fund's industrial and economic viability. However, evidence

[15] The Beattie government continues in office however this thesis only covers the period up to 2001.

presented in the chapter clearly shows that the issue has come full circle and has been returned to the industrial arena with little vestige of the policy community remaining.

Chapter Eight provides an analysis of the data and a conclusion to the question of why the Queensland workers' compensation model has been so enduring. It also considers the implications of recent changes to the policy community for the future of the Queensland workers' compensation model, as well as providing directions for future research in the area.

CHAPTER TWO

WORKERS' COMPENSATION, GOVERNMENT AND POLICY-MAKING

The concept of workers' compensation legislation was born out of the failure of employers, politicians and the judiciary to recognise the value of human life. Initially the need for unhindered growth of an industrial society premised upon a market economy, together with a limited notion of citizenship, placed responsibility for workplace injury and illness solely with the injured party. Employers rejected notions of responsibility for workplace accidents and illnesses and were generally supported by the courts in this rejection.[1] However, by the beginning of the 20th century, changing patterns in society such as expanded voting rights and increased trade union influence threatened these established beliefs. Employers were forced to lobby governments to enshrine established common law practices in legislation.

Initial moves by governments to address the issue, for example Employers' Liability Acts somewhat appeased capital/employers, but were unsatisfactory to other sections of the community, particularly workers. However, expanded notions of social rights of citizenship, including the quality of life issue of health also gained momentum and precipitated a shift of the issue into the realm of 'justice'.[2] Justice, in this context, meant recognition that there was a responsibility owed to those injured.

[1] A more detailed discussion of this support is provided in the next chapter.

[2] Macintyre, S., 1985, *Winners and Losers: the pursuit of social justice in Australian history*, Allen and Unwin, Sydney, pp. 118-19.

Instead of financial responsibility for work-related injuries and illnesses being recognised as within the realm of *private* dependency of employees, increasingly employers were identified as owning primary responsibility for financially compensating work-related injuries and illnesses that occurred to their workers during the course of their employment.

This ideological shift towards justice for those incapacitated through work coincided with an expansion of state activity in accordance with the welfarist concept of social justice. In place of a dominant belief that social provision by the state undermined self-reliance came recognition that the state had a duty to undertake more positive measures for the welfare of citizens. Consequently, the state became the vehicle for the application of social justice ideals.[3] In Queensland, governments felt increased pressure to formally acknowledge this recognition by new and stronger legislation. As well as taking a formidable role by developing significant workers' compensation legislation, the state intervened even further by making itself the sole provider of insurance and administrator of the system under the provisions of that legislation.

The purpose of this chapter is to construct a framework for analysing the longevity of a state monopoly system of workers' compensation. The pivotal role of the government as the administrator of a state monopoly insurance scheme dictated that this thesis concentrate on issues of public policy and policy processes. It is the impact of policy processes that determines the directions and dominant philosophies of workers' compensation legislation. When these processes are visible over a substantial period of

[3] ibid. p. 143.

time, as is the case in Queensland, the changing dynamics of public policy processes cannot be ignored. Consequently, the conduct of the policy process and policy-making that eventually culminates in state action offers a visible means of understanding the development of workers' compensation legislation in Queensland.

Included in the discussion of policy making and policy processes is a comprehensive review of literature relating to policy sub-systems. The literature reviewed encapsulates a variety of concepts and applications of theories and models related to public policy and policy processes, especially the concepts of policy networks/communities, to provide a vehicle for explaining the logic of Queensland's workers' compensation legislation.

Workers' Compensation Policy

Macintyre has noted an Australian propensity to rely upon government to take a leading role in areas of social policy as a means of resolving problems.[4] While this is the case, the development of policy-making processes in this country, including social policy areas, has become both confusing and complex, a vast web of relationships, issues, players and ideologies which sometimes are interconnected, while at other times disconnected. In relation to workers' compensation policy in Australia Arup argues the field is fraught with competing interests and constituencies.[5] In particular he says there is tension:

[4] Macintyre S., 1985, *Winners and Losers…* p. 143.
[5] Arup C., 1993, 'A Critical Review of Workers' Compensation' in *Work and Health. The Origins, Management and Regulation of Occupational Illness,* Quinlan M., ed., Macmillan, p. 264.

> …between the need to support industrial production and promote the operation of the labour market and the pressure to assist those who are incapacitated for work and to afford them some dignity in the process.[6]

Therefore, in constructing workers' compensation schemes, governments are faced with a number of different and conflicting policy objectives, including adequate compensation for injury and illness, appropriate income provision, fair distribution of premium responsibilities, economic viability of the scheme, broader economic efficiency, rational administration of programs and rehabilitation.[7]

Bohle and Quinlan argue that the simultaneous pursuit of conflicting policy objectives in relation to workers' compensation is difficult, as the achievement of one objective may undermine another. For instance, a policy aimed at the provision of ample medical treatment and income security to injured workers (economic policy objective) may be at cross-purposes with one which encouraged greater preventative measures at the workplace (social and industry policy objective). The requirements for premium income from employers to support the first policy could provide a disincentive for employers to closely address workplace safety policy.[8] Consequently, policy decision-making in the area of workers' compensation is necessarily complex. It is to the subject of policy decision-making that this discussion now turns.

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[6] Arup C., 1990, 'Workcare: Administrative Rationality, Legal Process, and Political Reform' in *Australian Journal of Labour Law*, 3, p. 159.
[7] Arup C., 1993, *A Critical Review…*p. 264.
[8] Bohle P., & Quinlan M., 2000. *Managing Occupational Health and Safety. A Multidisciplinary Approach,* 2nd ed., Macmillan, p. 318.

Public Policy Processes

Bridgman and Davis define public policy as "...the instrument of governance, the decision that directs public resources in one direction but not another. It is the outcome of the competition between ideas, interests and ideologies that impels our political system."[9] They further posit that policy is "…an authoritative response to a public issue or problem."[10] Consequently, they define its features as:

- Intentional – government goals are pursued through the application of identified public or private resources
- Structured – players are identifiable and there is a recognisable sequence of steps
- Political – expresses the electoral and program priorities of the executive.[11]

Therefore, public policy is "…the complex interplay of values, interests and resources,"[12] and policies "…represent victories or compromises encapsulated as programs for action by government."[13]

Different interests compete to shape, intervene and challenge the policy decisions of government. However, Khan notes policy is seldom the product of general public discussion. There are simply too many issues for the public to deal with.[14] Even after a decision has been made, the complexity of the process usually requires significant discretion on the part of policy-makers that, in turn, means the policy process is never quite concluded. "Few processes are entirely authoritative, fewer decisions ever quite

[9] Bridgman P., & Davis G., 1998, *Australian Policy Handbook*, Allen & Unwin, p. 3.
[10] ibid. p. 4.
[11] ibid.
[12] Davis G., Wanna J., Warhurst J., & Weller P., 1993, *Public Policy in Australia*, 2nd. ed., Allen & Unwin, p. 4.
[13] ibid.
[14] Khan R.C., 1982, 'Political Change in American Highway Politics and Reactive Policy-Making' in *Public Values and Private Power in American Politics*, Greenstone J.D. (ed), University of Chicago Press, Chicago, p. 142.

final."[15] Consequently, the decision-making processes that are pivotal in public policy-making can be both diverse and disparate. Davis et. al. state:

> There is no single best way of making choices, no method guaranteed to deliver the right answer every time. Values, interests and resources, mediated through institutions and determined by politics, are too volatile a mix to allow agreement on process. [16]

Instead, understanding of these processes usually incorporates an analysis of 'who', or which groups, influence policy-making. Heclo argues the processes "…are too complex to be explained as a predicate of some 'maker'." He says it is not only the 'who' in terms of contributors that is important - how contributions are related is just as relevant. Examination cannot be confined only to how things work, but how those workings changed through time.[17]

An attempt to understand the complexity of policy change over such a long period of time as the nine decades of Queensland workers' compensation requires some initial analysis of group dynamics and the nature of power relationships that governed these associations. In its simplest form, the concept is one of a relationship between government and interest groups. This brings into focus the role of these interests or stakeholders in relation to the policy process.

Pluralism

In its simplest form pluralism posits that society is compartmentalised into groups that comprise individuals with similar interests. All stakeholder groups are able to participate

[15] Davis G., Wanna J., Warhurst J., & Weller P., 1993, *Public Policy in Australia,…* p. 157.
[16] ibid. p. 157.
[17] Heclo H., 1974, *Modern Social Politics in Britain and Sweden*, Yale University Press, p. 9.

in the policy process, although the manner in which they pursue their interests, and the consequences of their efforts are diverse.[18] However, the literature relating to pluralism is notable, mostly for its diversity and inability to formulate a definitive conceptual construct. Polsby argued that pluralism exists when society is:

> …fractured into congeries of hundreds of small special interest groups with incompletely overlapping memberships, widely differing power bases, and a multitude of techniques for exercising influence on decisions salient to them…[19]

Dunleavy and O'Leary posit that parties and interests transmit grievances into the policy process that initiates government action to address the problems raised. Groups that dominate in one issue area will not dominate other areas. Consequently, a large and diverse range of groups will have access to decision-makers.[20] Beer expands upon this and argues those who are not able to form a group or obtain access to government may still influence the policy process through the electoral process where politicians are more likely to take note of relevant issues or grievances.[21]

Dahl's studies in the United States led him to argue that very few groups who were organised and persistent lacked the opportunity "…to influence some officials somewhere in the political system in order to obtain at least some of their goals."[22] Crossman described pluralism as a complicated network of groups and interests. He

[18] Hogwood B.W. and Gunn L.A., 1984, *Policy Analysis for the Real World*, Oxford University Press, pp. 56-58.
[19] Polsby N.W., 1963, *Community Power and Political Theory*, New Haven: Yale University Press, p. 118.
[20] Dunleavy P., & O'Leary B., 1987, *Theories of the State: the Politics of Liberal Democracy*, Macmillan, p. 25.
[21] Beer S., cited in Smith M.J., 1989, 'Changing Agendas and Policy Communities: Agricultural issues in the 1930s and the 1980s' in *Public Administration*, Vol. 67, Summer, p. 149.
[22] Dahl R., 1967, *Pluralist Democracy in the United States*, Rand McNally & Co., p. 386.

argued that political democracy was not found in electoral politics, but at the meso-level organisation of a network of popular interests into pressure groups.[23]

Over time however, expansion in areas of governance brought these traditionalist pluralist constructs into question. Jordan argues that pluralist theory has become "…a multiplicity of ideas about interest groups, loosely tied together by a pluralist tag."[24] Despite the complexities of this theoretical construct, Jordan subsequently argued against outright rejection of pluralism, preferring to build upon and improve its basic tenets.[25] Instead, he argued in favour of a "non-theory of pluralism" to "…accommodate different stories in different policy areas" because, Jordan argues, "[P]olitical outcomes are the result of processes and not simply the consequence of structures."[26]

Dahl acknowledged the inadequacies of broad pluralist theorisation and queried the ability of all groups to influence decision-making. He argued some groups might have more resources and better access to decision processes, and broader patterns of societal inequalities may be replicated in these processes.[27] Dahl also argued that the public agenda may be distorted by focussing on options that provide short-term benefits to a small contingent of powerful interest groups at the expense of the long-term interests of larger numbers of less influential groups.[28]

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[23] Crossman, R., cited in Jordan A.G. & Richardson J.J., 1987, *Government and Pressure Groups in Britain*. Clarendon Press, p. 55.
[24] Jordan G., 1990, 'The Pluralism of Pluralism: An Anti-theory?' in *Political Studies* Vol. xxxviii, p. 301.
[25] ibid.
[26] ibid.
[27] Dahl R., 1985, *A Preface to Economic Democracy*, Polity, p. 45.
[28] ibid.

Other theorists, such as Lindblom adopted neo-pluralist views that were centred more closely on the role of the state in pluralist theories. Whereas theorists such as Polsby afforded a neutral or 'umpire' role to government, others such as Lindblom argued that government was often the major participant in the relationships between competing societal interests. Lindblom argued that in capitalist societies governments could not remain neutral, as their interest in a prosperous economy was central to their re-election. To promote such economic growth governments needed to pay special attention to the business community and consequently often addressed the needs of business over those of other groups.[29]

More recently, Atkinson and Coleman have argued that although traditionalist pluralist explanations of policy being derived from interests that are organised in broader society have not been completely eclipsed, there is an increased recognition in recent policy process studies that assumptions of responsive politicians and compliant bureaucrats contained within those traditionalist views are not sustainable.[30] Instead, Atkinson and Coleman argue that as governments have grown in size and complexity, state institutions have come to play an autonomous role in shaping public policy. They define state institutions as active agents "…molding society and serving the interests of office-holders sometimes as much as, or more than, the interests of citizens."[31]

[29] Lindblom C.E., 1965, *The Intelligence of Democracy*, Free Press, pp. 13-17.
[30] Atkinson M.M., & Coleman W.D., 1992, 'Policy Networks, Policy Communities and the Problems of Governance' in *Governance: An International journal of Policy and Administration*, Vol. 5, No. 2, p. 154.
[31] ibid.

Rhodes[32] and Laffin[33] argue that because it is faced with a vast array of interests, government is forced to aggregate some interests in its development of policy. However, the policy process literature is divided in its attempts to explain this aggregation of interests and its policy impact. Howlett and Ramesh argue that the capabilities of the state are determined both by its internal organisation and its links with the society whose issues it is supposed to address. To implement policies effectively, the state needs the support of prominent social groups. In capitalist societies business and labour groups are among the most significant in determining a state's policy capabilities as each plays a vital role in the production process.[34] Thus the relationship between government, business and labour has become institutionalised, or corporatised. Richardson and Jordan argue that corporatism has emerged "…as a system where government 'organised' cooperation rather than leaving it to pluralistic bargaining and compromise."[35]

Corporatism

Schmitter defined corporatism as

> A system of interest intermediation in which the constituent units are organized into a limited number of singular, compulsory, non-competitive, hierarchically ordered and functionally differentiated categories, recognized or licensed (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and supports.[36]

[32] Rhodes R.A.W., 1997, *Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability*, Open University Press, p. 9.
[33] Laffin M., 1997, 'Public Policy-Making' in *Politics in Australia*. 3rd ed., Smith R. ed., Allen & Unwin, p. 54.
[34] Howlett M., & Ramesh M., 1995, *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford University Press, pp. 65-66.
[35] Richardson J.J., & Jordan A.G., 1979, *Governing Under Pressure. The Policy Process in a Post-Parliamentary Democracy*, Martin Robertson, p. 161.
[36] Schmitter P.C., 1977, 'Modes of Interest Intermediation and Models of Societal Change in Western Europe' in *Comparative Political Studies*, 10, 1 p. 9.

Jordan defined corporatism more succinctly as "…attempts at macro-level and cross-sectoral political management."[37] Grant notes that debates on corporatism represent attempts to "…understand the reciprocal relationships that have developed between the state and major organised interests in Western countries in the post-war period."[38] Under this model, policy is shaped by the interaction between the state and groups institutionalised within, and mediated by, the state. Of central importance in this model is the autonomous role of the state. It also highlights the development of institutionalised patterns of relationship between the state and society, particularly societal groups representing labour and capital such as trade unions and employer associations.[39] With such institutionalisation, relations between the state and stakeholders become less sporadic. Although individual bargains are still discrete exercises they occur within an acceptance of the long-term nature of the relationship among each stakeholder group. For example, in bargaining rounds each is aware of future rounds and the process reflects this continuity, rather than elimination.[40]

It is possible to detect some elements of corporatist-type arrangements in policy processes in the development of workers' compensation legislation. The most apparent is that the three key stakeholders in this policy system are the state, employer groups and trade unions. However, as Crouch notes corporatism in relation to industrial issues is often superficial. He argues the relations between capital and labour are a "…dense web

[37] Jordan G., 1990, 'The Pluralism of Pluralism…p. 299.
[38] Grant W., 1985, 'Introduction' in *The Political Economy of Corporatism*, Grant W. ed., Macmillan, p. 1.
[39] Howlett M. and Ramesh M., 1995, *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford University Press, pp. 37-38.
[40] Crouch C., 1985, 'Corporatism in Industrial Relations: A Formal Model' in *The Political Economy of Corporatism*, Grant W., ed., Macmillan, p. 70.

of interactions…" consequently, to label an individual piece of behavior, such as cooperation over workers' compensation legislation, as corporatist, bears, in his analogy, the same relation as "…a single swallow does to summer."[41]

In Queensland, workers' compensation has been somewhat unique, as the relationship outside this issue between employers, trade unions and the government has remained largely adversarial, with a history of protracted industrial unrest. For a corporatist structure to be justified, the reciprocal nature of negotiations in Queensland would be duplicated in other industrial policy issues. Consequently this thesis contends this lone example of cooperative relations among the stakeholders does not provide sufficient evidence of a corporatist state.

Secondly, the institutionalisation of both trade unions and employer associations has never been complete in Queensland. Grant argues that within a corporatist model these groups are

> …singular, non-competitive, hierarchically ordered representative organisations…[that] …develop a symbiotic relationship with the state, so that the legitimacy of the state becomes in part reliant on the active consent of recognised interest organisations.[42]

In Queensland, neither trade unions nor employer associations have the capacity to exercise total authority over their members, nor has the State been reliant upon the active consent of these groups. In fact, several governments have made significant policy changes without the consent of either trade unions or employer associations.

[41] ibid. p. 86.
[42] Grant W., 1985, 'Introduction' in *The Political Economy of*…p. 10.

Atkinson and Coleman note the central criterion of corporatism is the organisation of societal interests.[43] Political interests are organised into hierarchies of groups that bargain with government over critical policy issues. Atkinson and Coleman argue that "[I]n its most complete form, these hierarchies incorporate all organized interests into peak organizations capable of entering into tripartite negotiations of investment and production decisions. Thus we have a combination of hierarchy and network."[44]

The concept of networks within the policy process highlights another dimension of power in relations to the policy process – that of sectoral or meso-level influence over policy agenda. Whereas both pluralist and corporatist constructs are situated within the macro-level of the policy arena, policy network concepts, and its derivative, policy community concepts move beyond interest group relationships to a meso-level of relationships.[45] Smith says in these circumstances

> …the agenda is not open because policy (in certain areas) is made by a relatively few people who do not allow access to the general public or to groups who do not conform to their cognitive order. Rather than there being an open agenda, it is the policy community which determines the issues that are discussed and so it is difficult for new ideas to gain access.[46]

However, prior to any analysis of policy networks or policy communities it is noted that terminologies and their meanings differ in understanding and application to similar concepts. These differences, for the most part, are divided between those developed in the United States of America (USA) and those developed in the United Kingdom (UK).

[43] Atkinson M.M. & Coleman M., 1992, 'Policy Networks, Policy Communities…p. 165.
[44] ibid.
[45] ibid. pp. 156-57.
[46] Smith M.J., 1989, 'Changing Agendas and Policy Communities: Agricultural Issues in the 1930s and the 1980s' in *Public Administration* Vol. 67, Summer, p. 150.

Jordan acknowledges there are "…shades of meaning of terms and [the] different meanings given to one term."[47]

Policy Networks and Policy Communities

The concept of policy networks was initially developed in the USA by critics of pluralism.[48] It was based upon observations that interest groups, congressional committees and government agencies had developed systems of mutual support through constant interaction over legislative and regulatory matters. Thus participants in policy-making were joined in a complex and informal process.[49]

Jordan says "…though the idea of 'network' is now a commonplace in studies of policy-making, there is a lack of substance to the term."[50] Borzel suggests there are two different schools of policy networks in the field of public policy. The first, 'interest intermediation school' identifies policy networks as a "…generic term for different forms of relationships between interest groups and the state." The second, she terms the 'governance school' where policy networks are a "…mechanism of mobilizing political resources in situations where these resources are widely dispersed between public and private actors."[51]

In the USA, the development of patterns of mutual support among interest groups, congressional committees and government agencies were identified as policy networks.

[47] Jordan G., 1990, 'Sub-Governments, Policy Communities and Networks-Refilling the Old Bottles' in *Journal of Theoretical Politics*, Vol. 2, Sage Publications, p. 319.
[48] See for example Truman D., 1951, *The Governmental Process*, Knopf.
[49] Jordan G., 1990, 'Sub-Governments, Policy Communities and Networks… p. 320.
[50] ibid. p. 319.
[51] Borzel T.A., 1998, 'Organizing Babylon – on the Different Conceptions of Policy Networks' in *Public Administration*, Vol. 76, Summer, p. 255.

Peters called these 'iron triangles' - a metaphor for the iron-clad control these stakeholders had over the policy process.[52] Peters describes relationships within an 'iron triangle' as:

> Each actor in the iron triangle needs the other two to succeed, and the style that develops is symbiotic. …In many ways they all represent the same individuals, variously playing roles of voter, client, and organisation member. Much of the domestic policy of the United States can be explained by the existence of these functionally specific policy subsystems and by the absence of effective central co-ordination.[53]

Other theorists add to the concept. Benson described a policy network as "…a cluster or complex of organisations connected to each other by resource dependencies and distinguished from other clusters or complexes by breaks in the structure of resource dependencies." [54]

Rhodes elaborates upon this by adding that networks "…have different structures of dependencies, structures which vary along such dimensions as memberships of professions and the private sector for example, and there is interdependence (for example between levels of government) and resources." [55] Rhodes and Marsh argue that the policy network is a meso-level concept of interest group intermediation that can be adopted to fit with different models of power distribution in liberal democracies.[56] This is necessary as within any political system mechanisms operate differently across different policy areas. Hence, industrial relations policy mechanisms may work

[52] Peters G., 1986, *American Public Policy*, Macmillan, p. 24.
[53] ibid.
[54] Benson J.K., 1982, 'A Framework for Policy Analysis' in *Interorganizational Co-ordination. Theory Research and Implementation*, Roger D.L. & Whetten D.A. & Associates eds., Iowa State University Press, p. 148.
[55] Rhodes R.A.W., 1990, 'Policy Networks - A British Perspective' in *Journal of Theoretical Politics*, Vol. 2, Sage Publications, p. 304.
[56] Cited in Borzel T.A., 1998, 'Organizing Babylon … p. 256.

differently than environmental policy mechanisms. These differences across policy domains prohibit generalisations that could be facilitated in varying degrees, in pluralist and corporatist models. Policy network and policy community concepts "…are sufficiently elastic to stretch across a variety of policy sectors."[57]

Heclo expanded the concept through the inclusion of uneven distribution of power. He agreed that some policy areas had become organised as institutionalised systems of interest representation, however, others were less rigid and still managed to impinge upon the policy process in other ways. Accordingly he developed a model based on a continuum with iron triangles at one end and what he termed 'issue networks' at the other. The latter were much less stable, had a constant turnover of participants and were less institutionalised than iron triangles.[58]

In the early part of the 1980s Rhodes drew upon Heclo's model to provide a comprehensive analysis of the development of policy networks in Britain. Rhodes notes that aspects of his British work are "parochial" which signals the possibility of limited application in jurisdictions other than Westminster systems. [59] In developing his own continuum Rhodes placed policy communities at one end, in place of iron triangles, and issue networks at the other. While Rhodes' model of policy communities carries similar characteristics to Heclo's iron triangles it extends conceptualisation of the term. The characteristics of Rhodes' policy community are

[57] Atkinson M.M. & Coleman M., 1992, 'Policy Networks, Policy Communities…p. 157.
[58] Heclo H., 1978, 'Issue Networks and the Executive Establishment' in *The New American Political System*, King A. (ed) American Enterprise Institute for Public Policy Research, p. 102.
[59] Rhodes R.A.W., 1990, 'Policy Networks… p. 293.

- A limited number of participants with some groups consciously excluded
- Frequent and high quality interaction between all members of the community on all matters related to the policy issues
- Consistency in values, membership and policy outcomes which persist
- Consensus with the ideology, values and broad policy preferences shared by all participants
- All members of the policy community have resources so the links between them are exchange relationships. Thus, the basic interaction is one involving bargaining between members and resources. There is a balance of power, not necessarily one in which all members equally benefit but one in which all members see themselves as in a positive-sum game. The structures of the participating groups are hierarchical so leaders can guarantee compliant members.[60]

Richardson & Jordan conceptualise a policy community as

> Agreement will be sought within the community of groups…and all in that community will have an interest in more resources. [There are] strong boundaries between subject matters and indistinct, merged relationships between departments and relevant groups within individual policy areas. [61]

The key point is that policy-making is fragmented into sub-systems. Boundaries are between sub-systems — not between the component units of the sub-system.[62] Consequently, a policy community becomes a means of mobilising bias. A social arrangement develops among component units which prevents discussion of issues that threaten the existence of the policy community.[63]

Grant et al provide a clear differentiation between policy communities and policy networks. A policy network consists of those groups who share common interests and beliefs in relation to a policy problem. A policy community is a much broader term and

[60] Rhodes R.A.W. 1997, *Understanding Governance…* pp. 43-44.
[61] Richardson J.J. & Jordan A. G., 1985, *Governing Under Pressure. The Policy Process in a Post-Participatory Democracy*, Basil Blackwell Ltd., New York, p. 43.
[62] ibid. p. 44.
[63] Smith M.J., 1989, 'Changing Agendas and Policy Communities:…p. 150.

draws in those policy networks that may have different beliefs as to how an issue can best be addressed, while still sharing a common interest in the issue overall. For example, in relation to workers' compensation, individual trade unions may form a trade union policy network or networks, while the relevant policy community would include employer associations and government as well.[64]

For all their variations, these theories have a common thread — that government rarely acts as one institution when making policy choices. It tends to endorse decisions made by sub-sectors of government. Each policy area tends to function separately from other parts of government.[65] Lowi argues that in this way individual or group interests, rather than the broad public interest, are advanced in society via the use of the legitimacy of government. Thus the principles of democracy are subverted as group self-interest prevails over those of the general public. This he terms "…a legitimate use of coercion."[66]

Rhodes argues that policy community models are important firstly because they are a consequence of limited participation in the policy process and they define the roles of actors. Secondly, they influence the behaviour of actors. Thirdly, they privilege certain interests by deciding which issues will be included and excluded, and then favouring certain outcomes. Finally, they replace public accountability with private government.

[64] Cited in Jordan G., 1990, 'Sub-Governments, Policy Communities… p. 327.
[65] Sabatier P.A. & Jenkins-Smith H.C., 1993, 'Policy Change over a Decade or More' in *Policy Change and Learning. An Advocacy Coalition Approach*, Sabatier P.A & Jenkins-Smith H.C. eds., Westview Press Inc., p. 23.
[66] Lowi T.J., 1969, *The End of Liberalism: Ideology, Policy and the Crisis of Public Authority*, Norton, p. 37.

In all, the concept of policy community is an analytical device for examining how power is exercised in modern society and who benefits from its exercise. [67]

The role of the bureaucracy and the methods of policy-making employed have also impacted on the development of policy networks and communities. As government was limited in scope the role of the bureaucracy was often clerical in nature.[68] There was little rationality in policy processes as each department tended towards autonomous policy-making.[69]

As government developed and became more complex so too the nature of bureaucratic systems and their ability to direct policy changed. Pross argues networks evolved as a response to changes in the relationship between government and the economy in the modern state, particularly the expansion of bureaucratic influence and a corresponding declining role of political parties in policy-making. Business and political leaders became increasingly dependent on professional advisors that sparked a shift in policy-making influence from the political executive to the bureaucracy and its affiliated groups. As government expanded the subsequent growth of specialised bureaucracies lead to a dispersion of power. The authority of the political and administrative executive radiated downwards to the middle ranks of the bureaucracy.[70]

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[67] Rhodes R.A.W., 1997, *Understanding Governance*… pp. 9-10.
[68] Coaldrake P., 1989, *Working the System. Government in Queensland,* University of Queensland Press, p72.
[69] Wettenhall R., 1986, *Organising Government: The Uses of Ministries and Departments*, Croom Helm, Sydney, pp. 148-49.
[70] Pross A.P. 1986, *Group Politics and Public Policy*, Oxford University Press, p. 46.

Richardson and Jordan also argue the bureaucracy itself became a pressure group. It has its own interests to pursue however it can. Competition for administration territory, competition with Treasury for resources and competition for legislative time and priority lead Richardson and Jordan to argue there is little distinction between a government department pushing its own interests, and the pressures of external interest groups.[71]

Rhodes argues the common perception of the Westminster model of government characterised by parliamentary sovereignty, strong Cabinet government, majority party control of the Executive and an institutionalised opposition has shifted. Traditional structures have been replaced by a "differentiated polity" which has resulted in "…functional and institutionalised specialisation and the fragmentation of policies and politics". It is the organisation of this differentiated polity that accommodates selective groups. Government is confronted by "…self steering interorganisational networks" which means "…centralisation, must co-exist with interdependence."[72] Put simply, government decision-making became fragmented. Consequently policy processes changed.

Longevity of policy communities

Marsh and Smith argue policy communities persist because "…they are characterized by a large degree of consensus, not necessarily on specific policy but rather on policy agenda, the boundaries of acceptable policy."[73] Smith too, argues that once the agenda

[71] Richardson J.J. & Jordan A.G., 1979, *Governing Under Pressure.*..pp. 41-42.
[72] Rhodes R.A.W., 1997, *Understanding Governance…* pp. 5-7.
[73] Marsh D. and Smith M., 2000, 'Understanding policy networks: towards a dialectical approach' in *Political Studies,* 48, (4), p. 6.

is set the policy community is strengthened as issues that threaten the interests of those within the community are excluded.[74] This raises the question of just how agenda change may be achieved if limits are placed to exclude other pressure groups, particularly if new problems arise that cannot be solved by resort to existing policy options available within the policy community.

Kuhn argues that, in order to prevent a possible return to a pluralist paradigm that may result as outsiders are brought in to help resolve a problem or problems within the policy community, the established policy community will try to prevent new issues being raised in the first place.[75] It may well be deemed more acceptable to continue functioning within a problematic system, than to risk splitting the closed policy community open to broader influences.

Therefore, according to Smith, agenda change within a policy community is unlikely to be sudden.[76] Instead, it is most likely to occur at the ideological level as it is this aspect of policy communities that is most vulnerable. Smith[77] argues, if ideological change is proposed by other pressure groups, those groups within the policy community may well be able to resist such change. However, it becomes more difficult to resist change if it stems from new constraints or perceptions in relation to external circumstances, for example changes that impact from broader public sector reform processes.

[74] Smith M.J., 1989, 'Changing Agendas and Policy Communities:…p. 150.
[75] Kuhn T., 1970, *The Structure of Scientific Revolutions*, University of Chicago Press, pp. 156-57.
[76] Smith M.J., 1989, 'Changing Agendas and Policy Communities…pp. 162-63.
[77] ibid.

Richardson identifies attempts to introduce new ideas and policy frames as 'policy viruses' as they have a "…virus-like quality and have an ability to disrupt existing policy systems, power relationships and policies."[78] He argues further that:

> …governments themselves have been key players in destabilizing long-standing policy communities …the paradox of this destabilization by governments is that it may have reinforced other trends that have in turn weakened the control which governments have over private actors and events.[79]

Conclusion

As interest groups promote and articulate different societal views, they provide government with mechanisms to assess public needs. Governments, in turn, utilise interest group support to justify policy or legislation. However, in assessing public needs, governments are faced with a multitude of competing interests that, for the most part, require some aggregation. This, in turn, raises important questions in relation to who actually influences policy and how access to the policy process is determined.

This chapter has set out three different forms of interest group aggregation that take place in the public policy process. It highlights that interest group access is gained at either the macro or meso-levels of the policy process. Two of these concepts, pluralism and corporatism are both macro level constructs. However this chapter has argued that each of these concepts has the ability to provide only a generalised framework for the analysis of workers' compensation legislation.

Instead, it is within the meso-level constructs of policy sub-systems, particularly that of policy communities, that provides a more exact explanation of the aggregation of interest

[78] Richardson J., 2000, 'Government Interest Groups and Policy Change' in *Political Studies,* Vol. 48, p. 1018.
[79] ibid. p. 1021.

groups. Policy communities are specific arenas where policy issues are discussed and stakeholders negotiate in relation to their specific interests — albeit within the context of institutional arrangements that also exist. Consequently, utilisation of a conceptual construct of a policy community provides the most appropriate framework within which Queensland workers' compensation legislation and policy administration can be analysed.

CHAPTER THREE

QUEENSLAND'S HERITAGE

This chapter provides an historical overview of the development of the initial *Employers' Liability Act* in 1886, the *Workers' Compensation Act* 1905 and the introduction of the *Workers' Compensation Act* of 1916. Importantly, the 1886 and the 1905 Acts demonstrate the failure of government policy aimed at improving workplace safety as a means of lowering the need for recompense in relation to injury and illness. This failure, coupled with increased government awareness of the growing working-class electoral constituency, precipitated a shift towards a policy that employers should share the cost of compensating injured workers. The 1916 *Workers' Compensation Act* reflected that focus, and consequently denoted a shift from a preventive function to one based solely on compensation.

Broader social, political, ideological and economic pressures were pivotal in each developmental stage of Queensland workers' compensation legislation. Social pressures in particular underpinned policy decisions and legislative outcomes. Of crucial importance was the increased demand for labour in Queensland that expanded both the numbers of workers and the levels of discontent in relation to issues such as workers' compensation. As labour became more organised, pressures on government to address industrial issues in general forced the introduction of the *Employers' Liability Act* in 1886 and the *Workers' Compensation Act* in 1905. However, this chapter also demonstrates that although government was forced to respond to mounting social pressures these two initial legislative attempts were ineffective and

served only to enhance the determination of an increasingly powerful trade union movement to secure further legislative change in this area.

Political pressures were also substantial during this time. The inability to procure desired industrial goals, coupled with defeats in large strikes in the maritime and shearing industries brought a resolve by the trade union movement to seek political power to achieve solutions and improve the conditions of labour in general. The extension of industrial power into political power was achieved during the period between the 1880s and 1915 when the first Labor government was elected in Queensland.[1] This expansion in political power was crucial as it was the Labor government that introduced the *Workers' Compensation Act* 1916.

This chapter demonstrates how ideological pressures impacted on the development of each of the three Acts as governments faced enormous difficulty adhering to initial notions that responsibility for workplace injuries and illnesses rested with those injured. Broader industrial rights such as the eight-hour day movement precipitated shifts in existing concepts of justice and rights that in turn, impacted on other industrial areas. The impact was particularly important in relation to workers' compensation legislation as the acknowledgement of social justice rights raised debate as to whether society or employers should bear responsibility for injury compensation. Evidence presented in this chapter indicates both employers and employees called upon the regulatory capabilities of the State to address the issue of responsibility. Employers demanded the State abolish their responsibilities for work-related injuries and illnesses and employees called for increased employer responsibilities in this area.

[1] The Labor Party had formed a short-lived coalition with conservative parties on 1-7 December 1899, however the Ryan Labor government in 1915 was the first elected Labor government in Queensland.

The outcome was a no-fault government monopoly scheme embodied in the *Workers' Compensation Act* 1916.

There were also pressures centred around who should bear economic responsibility for injuries suffered during the course of employment. Increased industrial pressure by trade unions for some form of income security for work incapacitation was set against free market ideologies that advocated minimal economic imposts upon employers. As the numbers of those suffering loss of income through work injuries or illnesses rose, governments were forced to address the issue of where responsibility lay for income support for these workers.

This chapter also highlights the policy-making practices that dominated at this time. In addressing the broader question of this thesis of why the 1916 W*orkers' Compensation Act* endured for such a long period of time the issue of policy processes is pivotal. This chapter seeks to demonstrate that each of these three Acts was created through macro-level policy development. The *Employers' Liability Act* and the 1905 *Workers' Compensation Act* reflect policy development between government and employers, and the 1916 *Workers' Compensation Act* reflects a shift to development of policy between government and trade unions. All three reflected policy-making practices in line with traditional concepts of Westminster style of governance. These concepts encompassed parliamentary sovereignty, strong cabinet government and accountability through elections.[2] As distinct representatives of capital and labour, the dominance of the Conservative and Labor Parties left little scope for relationship building with groups apart from their own constituents. Instead, the issue of workers'

[2] Gamble A., 1990, "Theories of British Politics" in *Political Studies* XXXVIII, p. 407. Executive government in this context encompasses State Premier, Cabinet and public service.

compensation simply provided another arena where industrial conflict could be played out. The first two Acts, introduced by Conservative governments were clearly favourable to employers and offered little to employees. The third Act, introduced by the Labor Party, was preferable to employees and placed new constraints on employers.

Origins of the legislation

Initial colonial legislation in relation to compensation for work-related injuries or illnesses reflected philosophies prevalent at that time, particularly that of laissez-faire. In the British parliament, for example, this philosophy was articulated by a member who suggested workmen were:

> …thinking and responsible beings - that they were best capable of discovering danger, and could prevent it far sooner than their employers, and that they should rather form societies to make provision for themselves in case of accident, than rely upon legislation of this kind, which treated them as children and slaves more than as persons capable of taking care of themselves.[3]

A notion predominated that employees, rather than employers were responsible for health and safety, and any loss should be borne by the injured unless that party could prove fault on the part of another.

In Britain, the first successful recorded case of a worker claiming compensation for a work-related injury was *Priestley v Fowler* in 1837. Initially, the plaintiff was awarded £100 damages, however the decision was overturned on appeal to the Court of the Exchequer. In addition to its historical significance, *Priestley v Fowler* was important because it established three pivotal precedents that became known as the

[3] Bartrip, P.W.J., & Burman S.B., 1983, *The Wounded Soldiers of Industry*, Clarendon Press, p. 134.

unholy trinity.[4] The first of these was the *Doctrine of Common Employment.* Under this doctrine, an employer could not be found liable for injury suffered by an employee, if a fellow employee caused the injury.[5] The second precedent was the principle of *volenti non fit injuria* (voluntary assumption of risk) that held a worker was entitled to decline any service in which danger was perceived. No servant was bound to risk safety in the service of a master.[6] The third arm of the 'unholy trinity' was the *Doctrine of Contributory Negligence* whereby onus was placed upon the injured party to prove they did not contribute to the injury or illness through their own behaviour or neglect.[7] These precedents offered little protection to workers who suffered work-related illness or injury and the issue remained an area of conflict between capital and labour in Britain for some time.

Australia

Australia's initial labour force consisted of convict labour and this state-controlled form of labour had no rights. However, the economic growth of the colonies was so rapid that, before long, convict labour proved inadequate. The introduction of free immigrant labour, coupled with released or assigned convict labour led to the growth of a free labour force.[8] As significant numbers of this labour force were imported from Britain, the antagonisms of that group over issues such as workers' compensation were transported here as well.

As the economy became increasingly dependent upon private employers, colonial

[4] The term was used by Murphy J. in *Commissioner for Railways (Q) v. Ruprecht* (1979). See Merritt A. 1986, *Guidebook to Australian Occupational Health and Safety Laws,* 2nd ed., CCH Australia, p. 115.
[5] Merritt A., 1986, *Guidebook to Australian Occupational Health and Safety Laws,* 2nd ed., CCH Australia, p.11.
[6] ibid p. 12.
[7] ibid p. 14.
[8] Quinlan M., 1986, 'Keeping Colonial Workers in their Place: State Regulation and Labour in Australia 1828 – 1860', A paper presented at the Law and History Conference, Griffith University, pp. 4-5.

governments were anxious to provide labour as cheaply and efficiently as possible. With a significant proportion of the labour force deemed convict or 'unwilling' labour, legislation aimed at allowing employers to control the labour force was enacted. Laws reflected their British origins. They offered little by way of employee rights and protections.[9] Injured workers had limited recourse for compensation as Australian courts applied the same restrictions to the employers' duty as did British courts.

The lack of legislative support for injured workers, existing in an atmosphere of excess demand for labour was conducive to the growth of collective worker resistance. However, the new trade unions were different from their traditional counterparts. Whereas previously it was predominantly craftsmen who were unionised, expansion brought semi-skilled and unskilled workers into the union movement. Further, from the late 1870s a series of intercolonial Trades Union Congresses were initiated.[10] These served to enhance the coordination of expanding labour movement activities.[11] As in Britain, the lack of compensation for work related injuries, occasioned by the shortcomings of the *doctrines of common employment, volenti non fit injuria* and *contributory negligence* was an important issue for workers. Merritt argues Australian courts "…subjected the employer's duty to the same restrictions as did English courts…"[12] consequently, many courts failed to grant workplace injury claims the consideration workers thought they deserved.

This failure by the courts, and employers' refusal to take responsibility for the problem of work incapacitation, placed increased pressure on governments to provide

[9] ibid p. 5.
[10] Cass G., 1983, *Workers' Benefit or Employers' Burden - Workers' Compensation in New South Wales 1880 - 1926,* University of New South Wales, p. 8.
[11] Johnson W.R., 1988, *A Documentary History of Queensland,* University of Queensland Press, p. 314.
[12] Merritt A., 1986, *Guidebook to Australian.*..p. 49.

a solution. As each Australian colony was a separate entity with its own government, the legislation developed on a colony-by-colony basis. As a result, laws relating to compensation for work-related injuries and illness were shaped by the distinct economic, political and industrial circumstances relative to each colony.

Queensland

Queensland's colonial dependence upon pastoral capitalism resulted in a narrow primary export base (predominantly wool, timber, minerals, meat and tallow). Any expansion in these industries brought acute labour shortages.[13] The 1880s were generally economically prosperous. During the years 1882 - 84, the Queensland government embarked on a successful immigration program. However, between 1885 – 1886 Queensland (along with pockets in other colonies) experienced significant unemployment. Distribution of labour was uneven, and labour scarcity in remote parts of the colony, because of the harsh conditions imposed by both nature and employers, resulted in government reaction to recruit further immigrants. As the number of workers increased, discontent in relation to issues such as the high levels of work-related injury and illness manifested among the working classes.

In political terms, a clearly recognisable class system existed within Queensland. Land ownership and capital were concentrated within a small but influential capitalist class, while a large working class of both ex-convict and immigrant labour was almost politically powerless. These societal divisions, coupled with restricted suffrage, afforded the working class limited influence within parliament. Parliament itself was divided between rural conservatives (squatters and pastoralists) and town liberals

[13] Quinlan M., 1989, 'Pre-Arbitral Labour Legislation in Australia and its Implications for the Introduction of Compulsory Arbitration' in *Foundations of Arbitration*, Macintyre S and Mitchell R eds, Oxford University Press, p. 27.

(supporting small firms).[14] The labour movement lobbied vigorously against electoral inequalities, such as plural voting,[15] in favour of one person one vote.[16]

As labour became more organised industrial unrest increased, and consequently government was forced to respond to the growing antagonism between capital and labour over a number of issues, including that of work-related injuries and illnesses and the constraints of the common law doctrines that served to deny most workers recompense for such injuries and illnesses.[17] As an initial legislative response, the Queensland government introduced an *Employers' Liability Act 1886*. In introducing the Bill, Sir Samuel Walker Griffith said it was intended to "…extend and regulate the liability of employers to make compensation for personal injuries suffered by workmen in their service".[18] In practice, the Act only marginally improved protection over that received by workers under common law.

Section 4 of the Act limited an employer's liability for injury caused to a workman.[19] Section 4(1) stated that a workman was entitled to compensation if any machinery, vehicle or plant were found to be defective or unfit for use.[20] Section 5(1) however, narrowed this by stating that a workman would only be entitled to remedy if such defect had not been discovered or if, owing to the negligence of the employer or some

[14] Joyce, R., 1990, 'Samuel Walker Griffith' in *The Premiers of Queensland*, Murphy D., Joyce R., and Cribb M. eds., University of Queensland Press, p.145. There was no direct representation of labour within the Queensland parliament until 1888. The first attempt at labour parliamentary representation in Queensland was made via the candidature of W.M. Galloway, Secretary of the Seamens' Union and first President of the Brisbane Trades and Labour Council. The attempt was not successful, but the struggle for representation was just beginning.
[15] Under this system individuals could vote wherever they held property.
[16] Johnston W.R., 1988, *A Documentary History…* p. 312.
[17] For articulation of this discontent see *The Worker*, particularly 30th Sept. 1905, and the *Brisbane Courier* 7 Oct. 1899, 17 Nov. 1899, 24 Aug. 1900.
[18] Griffith S. (Premier) *QPD*, 29 July 1886, p. 210.
[19] Gender specific terminology in accordance with that used in legislation.
[20] *Employers' Liability Act* QVR 24.

person charged with the duty of remedying it, the defect was not attended to.[21]

Section 5(3) of the Act encapsulated the common law doctrines of *volenti non fit injuria* and *contributory negligence*. It stated that where a workman was aware of a defect or negligence, and failed within a reasonable time to report it, then unless the workman was already aware of the employer's knowledge of such defect, no compensation would be allowed.[22] Section 5(4) narrowed entitlement to compensation further if workers contributed to the injury by their own negligence or unfitness for work.[23]

Government priority in drafting this legislation centred upon an imperative that employers should not be severely financially disadvantaged by the Act. One member, Norton, suggested the object of the Act was not to give workmen more rights than other people, only the same rights. In particular he argued it aimed to overcome the common law limitations relative to the duty of care rights of injured employees.[24] He summed up by saying the object of the Act was to make employers more careful, and he was certain the more stringent the clauses were made, the greater precautions they would take to ensure the safety of employees.[25] However, with common law principles embodied within the Act, this was unlikely to occur, irrespective of stringency. In common law practice these principles had no significant impact in forcing employers to improve safety, so there was little reason to believe this would change simply because the same principles were embodied within legislation, particularly as no penalties were placed on employers in this regard.

[21] ibid
[22] ibid
[23] ibid
[24] In this, Norton was referring to the circumstances in which members of the public were entitled to compensation

Overall, the *Employers' Liability Act* proved inadequate. Few injured workers had the financial resources to obtain legal representation because of the expense involved, particularly in defending claims of contributory negligence. Any actions brought were protracted and costly, and generally, the only 'winners' were lawyers.[26] Insurance companies contested many cases upon technicalities that added to the expense. Bernays wrote "The theory of the Act (Employers' Liability) was excellent: the practice was abominable".[27]

Of six actions (reported in the press) brought by injured workers in Queensland during the period 1886 - 1897 under the *Employers' Liability Act 1886,* only one resulted in a decision in favour of the plaintiff. In the case of *Stewart v Mobsby & Gibbs,* Stewart was a painter killed in a fall from a scaffold. Initially, the defendants were found to be wholly negligent in not providing safe scaffolding. The wife of the deceased was awarded the sum of £375, plus costs. Mobsby & Gibbs held an insurance policy under the *Employers' Liability Act* with the Queensland Mutual Insurance Company. The company refused to honour the policy, claiming Mobsby & Gibbs had breached the conditions of their policy by failing to maintain a safe workplace. Mobsby & Gibbs were declared insolvent shortly thereafter, and the plaintiff received nothing.[28]

Other inadequacies soon became apparent. For example, to evade the monetary

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while employees were not as in cases such as rail accidents where passengers were entitled to compensation while railway employees such as engine drivers were not.

[25] Norton A., (Member for Port Curtis) *QPD,* 19 Aug. 1886, p. 430.

[26] *QPD,* 1888, pp. 275 -76.

[27] Bernays was a member of the Queensland Legislative Assembly when the Employers' Liability Act was introduced. See Bernays C.A., 1918, *Queensland Politics During Sixty (1859 - 1919) Years,* A.J. Cummings Govt, Printer, Brisbane, p. 471.

[28] *Brisbane Courier,* 5 Nov. 1890.

responsibilities of the Act, employers coerced employees into insuring themselves. Although technically within the bounds of the 'contracting out' provisions of the *Employers' Liability Act*, the practice was defended upon the grounds that employees were "willing to contribute" to the insurance costs of their employers. Newspaper reports point to the prevalence of this when it was reported that the Bulimba Divisional Board, an early form of local government, employed these practices.[29]

While the enactment of legislation itself could be seen as a 'win' for employees, the vagueness and brevity of substance only brought gains for employers, insurance companies and lawyers. Negligible change was effected in terms of addressing social justice issues. Although mindful of the increasing power of the labour movement that needed to be appeased, government nevertheless remained wedded to the economic doctrine that capital (employers) should not be financially overburdened, and effectively neglected the needs of labour. Hence, the government drafted the legislation in a manner that ensured established principles, particularly contributory negligence were incorporated so as to limit the costs to employers.

Queensland's Progress

At Federation in 1901 the colony became a State. By 1905 Queensland was exhibiting positive signs of recovery from the depression with the beef, sugar, wheat and gold industries leading the way.[30] For example, some 38% of workers were involved in primary production such as agriculture, pastoralism and mining and only 10% of

[29] *The Daily Observer,* 10 June 1887, noted its abhorrence of members of the Board who had feigned friendship with workers on election day, then took advantage at a time when an overcrowded labour market left workers unable to protect themselves.

[30] Dyster, B., and Meredith, D., 1991, *Australia in the International Economy in the Twentieth Century*, Cambridge Press, p. 57.

workers were engaged in secondary production.[31] This recovery continued through to 1915. The trade union movement also gained strength in Queensland after setbacks precipitated by the 1891 and 1894 maritime and shearing strikes. High on the agenda of the union movement was the objective of gaining parliamentary representation that began with the election of William Hamilton, David Bowman and Herbert Hardacre as representatives of the Labor Party, in 1893.[32] An ideological shift was also occurring during this time as Australian governments began to adopt a more interventionist role in the market process in place of the previous laissez-faire principles. For example State and Federal governments enacted conciliation and arbitration legislation, and the Harvester Judgment in 1907 brought legal regulation of wages and ended arbitrary wage determination based upon a capitalist rationale of the employment relationship.[33] No longer could economic issues and profit motives be the sole determinants in policies relating to the employment relationship. Instead, human need became a valid criterion for many industrial issues.

From 1899, improved workers' compensation legislation was on the Parliamentary Labor Party's agenda. From Opposition it introduced Bills into the Queensland Legislative Assembly each year between 1899 and 1905 — the first two in 1899 and 1900 by Andrew Fisher. Although all were unsuccessful they signify the importance the Labor Party placed on the issue. In 1901, 1902 and 1903 the government also introduced workers' compensation Bills, but they too failed to pass the Queensland Legislative Assembly when government members broke ranks to vote against them. Arguments against all Bills centred round the form and extent of coverage of the

[31] Evans R., 1987, *Loyalty and Disloyalty. Social Conflict on the Queensland Homefront 1914-18*, Allen & Unwin, p. 15.
[32] Thomas Glassey, an active trade union member had been elected, as an Independent, to the Queensland Parliament in 1888, however the Labor Party first contested an election in 1893.
[33] Castles F., 1985, *The Working Class and Welfare: reflections of the political development of the Welfare State in Australia and New Zealand 1890-1980*, George Allen & Unwin, pp. 11-15.

proposed legislation. For example, in the 1901 Bill there was disagreement over the maximum benefits levels, and in the 1903 Bill the government remained firm that shearers would not be included.[34] Debates within the parliament over this issue show several Conservative members were calling for amendments to Bills presented by their own party, which indicates the level of difficulty encountered by all political groups in relation to this legislation.[35]

Features of these Bills are relevant as they recur in future legislation. Concepts introduced in these Bills included no compensation payable for injuries that required less than two weeks absence from work. This in effect meant workers would still bear principal economic responsibility as a larger portion of injuries sustained fell within this category. Some debate centred around who constituted a 'worker' as Members of Parliament scrambled to protect industries in which they held interests. For example those with pastoral interests attempted to have shearers exempted from the proposed legislation.[36] Also, there were no attempts to prohibit the use of the three common law principles, particularly that of *contributory negligence*, to further diminish employers' responsibilities in this area.[37]

In 1905, a Bill proved successful. Called the *Workers' Compensation Act*, the most important aspect of this legislation was its reversal of focus. Rather than focusing upon persuading employers to improve workplace safety, the Bill focused upon compensation for workers. Even the title was changed from '*workmens'* to

[34] Rutledge A., (Attorney-General) *QPD*, 5 Dec. 1901, p. 2271. Story G.W., (Member for Balonne) *QPD* 1 Sept. 1903, p. 436.
[35] Story G.W. (Member for Balonne), *QPD*, 27 Aug. 1903, pp. 433-35. McCartney E.H. (Member for Toowong), *QPD*, 1 Sept. 1903, p. 438.
[36] Story G., (Member for Balonne) *QPD* 1 Sept. 1903, p. 436.
[37] Ryland G., (Member for Gympie) *QPD* 5 Sept. 1901, p. 655.

'workers'[38] because it extended the parameters of those able to claim under the Act, although many such as domestic servants, gardeners and stablehands still remained outside its scope.[39] It also expanded the range of the legislation by adding the words *"…or other hazardous work"* to further clarify what type of work undertaken identified a 'worker'.[40]

There were changes in political allegiances that influenced support for this Bill. A coalition of Conservative and Labor members had formed government in 1903 with Arthur Morgan as Premier. This united small business and worker representatives against representatives of the agricultural and pastoral industries. This coalition was particularly important because it facilitated the Labor Party's push for improved workers' compensation legislation. It also brought expansion in the types of industries incorporated within the Act. For example, commercial, manufacturing, building and engineering industries were incorporated within the definitions of both 'employers' and 'workers' under this legislation, where previously they had remained outside its jurisdiction.[41]

Limitations under the Act remained much the same as before. Injured workers were ineligible for compensation under the Act if the injury sustained required a period of less than two weeks absence from work. Contributory negligence remained a key factor in the legislation and an injury that could be attributed to the wilful misconduct of a worker was ruled ineligible for compensation. A third factor was that no compensation was due if workers were injured while proceeding to and from their

[38] For example mine managers were 'workers' however they were not 'workmen'. *QPD*, 26 Oct. 1905, pp. 1356 – 57.
[39] S3(1)(3)(4) *Workers' Compensation Act*, 5 Edw. VII No 26 1905.
[40] ibid S3.
[41] ibid S3 (1) (3) (4).

place of work.[42]

As with the *Employers' Liability Act,* this legislation proved quite inadequate in practice. The most obvious limitation was the exclusion of any claim for an injury that required less than two weeks absence from work as a large number of injuries fell within this category.[43] A second limitation stemmed from the omission of contractors and domestic servants from the definition of 'worker'. This was particularly relevant in the mining industry where large numbers of miners were employed on a contract basis and were classed as contractors under the Act. The ability of employers and employees to contract out of the Act left many without adequate coverage.

Another point of significance to insurance related to the issue of self-insurance. Although employers were required to provide insurance coverage for workers, provision was included within the legislation for contracting out of the Act by way of a mutually agreed insurance policy between an employer and their workers.[44] In practice, this provision proved particularly inadequate for employees' needs. For example the Colonial Sugar Refinery (CSR) had contracted out of the Act by funding its own 'in-house' scheme of insurance.[45] However, this scheme was extremely limited compared to those offered by general insurance companies. Under the CSR scheme sickness benefits were provided for the family of the employed, however there were no benefits for accidents involving workers.[46] There were calls within the parliament to prevent the vagaries that stemmed from this type of self-insurance, however proposed amendments in this regard, including the introduction of state

[42] ibid S4.
[43] An amendment in 1909 decreased this period to three days.
[44] S12 *Workers' Compensation Act* 5 Edw. VII No. 26 1905.
[45] Ryland G., (Member for Gympie) *QPD,* 14 Sept.1911, p. 971.
[46] Ryland G., (Member for Gympie) *QPD* 14 July 1910, p. 50.

insurance, failed.[47]

In terms of power relations at this point, government favoured the interests of capital, represented in this instance by employers, the insurance industry and lawyers. Disinclined to effect change within the status quo, the government adopted the tactic of addressing relevant issues such as expansion in definition of 'worker', in the full knowledge that the inclusion of contributory negligence principles would stand as an inhibitor of claims in relation to these issues. Effectively, the legislation was symbolic rather than pro-active in addressing the economic inequities occasioned by work-related accidents and illnesses.

Although the 1905 Act was accepted by labour as a step in the right direction, there was also sufficient evidence to continue to push for more changes. For example, during the ten years this Act was in force 200 disputed cases came before the North Brisbane Police Court alone. When aggregated across the whole of the State estimates of such disputes numbered in the thousands. In most cases there were excessive delays, uncertainty and expense to workers.[48]

However, the momentum for further legislative change in this area stalled in 1907 when a split between those in the labour movement who advocated direct industrial action and others intent on utilising parliamentary processes to advance its causes,[49] forced a Liberal/Labor coalition government out of power at a time when favourable economic conditions held promise of a redistribution of social wealth and state capital

[47] Mann J., (Member for Cairns) *QPD* 14 July 1910, p. 53.
[48] *State Government Insurance Office Annual Report* 1916-1917, p. 4.
[49] Fitzgerald R., 1984, *From 1915 to the Early 1980s. A History of Queensland*, University of Queensland Press, p. 5.

formation.[50] This political setback was followed by a series of strikes during 1911-12 that drew the Labor Party's attention away from issues such as workers' compensation. However, the aftermath of this round of labour upheaval brought recognition for a new set of Labor leaders. As a result, E.G. Theodore, W. McCormack and T.J. Ryan were propelled to dominant positions in the Party.[51] In the years between 1913 and 1915 these leaders set about regaining Labor Party electoral support.

Their endeavours proved successful when in May 1915 the electorate returned, by a clear majority, its first elected Labor government to the Queensland Legislative Assembly. The leader of this government was T.J. Ryan. Ryan had won the loyalty of both the industrial and the political arms of the labour movement and was not troubled by rivals within caucus, or by any major dispute with trade union leaders in the upheaval of the previous few years.[52] The Labor Party platform included promises to reform workers' compensation legislation.

The Labor Party agenda for workers' compensation

Armed with the experience of injured workers and families being left largely unprotected, primarily through ineffective insurance provisions contained in previous legislation, the Ryan government was determined to monopolise workers' compensation insurance and lock out private insurance companies.

[50] Between 1903 and 1907 there was a coalition of Liberal and Labor parliamentary members in the Legislative Assembly led by Labor Premier Kidston. However, a split between the industrial and political wings of the ALP, principally in relation to communist ideologies resulted in Kidston and other Parliamentary Labor Party PLP members disassociating themselves from the Labor Party. See Fitzgerald R. & Thornton H., 1989, *Labour in Queensland from the 1880s to 1988,* University of Queensland Press, p. 12.

[51] Fitzgerald R., and Thornton H., 1989, *Labour in Queensland from the 1880's to 1988,* University of Queensland Press, p. 13.

[52] Murphy D.J., 1990, 'Thomas Joseph Ryan. Big and Broadminded' in *Premiers of Queensland,* Murphy, D.J., Joyce, R., and Cribb, M., eds., University of Queensland Press, p. 264.

Access to common law remedies was favoured, however the emphasis focused upon extensive, no-fault coverage for a majority of workers in a bid to end the influence of the three common law principles, particularly that of contributory negligence. Chief among arguments offered in relation to this aspect of the proposed Act was that it was paramount that compensation be available to dependents of an injured worker, regardless of the circumstances or time of the injury.

The Ryan Labor government introduced a new Workers' Compensation Bill into the Legislative Assembly on 24th August 1915. A key component of this Bill was extended coverage of both employers and employees. The term 'employer' included persons, firms, institutions, associations, clubs, societies and corporations employing workers, while the term 'worker' was set out as:

> Any person (including a domestic servant) who has entered into or works under a contract of service or apprenticeship, or otherwise, with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, or is oral or in writing.[53]

This move afforded coverage for workers who had been refused coverage under previous Acts — domestic servants, miners and seamen. However, casual workers were excluded from the Bill, as were members of the police force, anyone who earned over £400 per year, contributors under the Public Service Fund Act of 1912, and members of employers' families dwelling in their house.[54]

Rates of compensation payable were also amended. As well as increased sums being

[53] S3(1) *An Act to Amend the Law with respect to Compensation to Disabled Workers* 6 Geo V No. 35 1916.
[54] ibid S3(1).

awarded, a scale was introduced which allocated an amount payable according to the nature of the injury. This ended the indiscriminate awarding of vastly different amounts of compensation for similar injuries. The principle underlying these increased amounts was that workers who were entitled to reasonable levels of compensation for occupational accidents and injuries were less inclined to exercise common law rights to sue for damages. Although the latter was likely to bring a larger payout, certainty was not guaranteed. In essence, certain compensation, even though fixed at approximately one-half of average wages would be of greater benefit to affected workers than the uncertainty of a larger amount that may, or may not, be secured through the courts.[55]

In a move to make this legislation the exclusive statutory mechanism for workers' compensation, the *Employers' Liability Acts* and the 1905 *Workers' Compensation Act* were repealed, along with avenues of appeal to any other relevant acts such as the Factories and Shops Act.[56] Compensation was to be made payable for injuries that necessitated three or more days loss of income, which meant workers no longer had to fund their injury during the initial two weeks incapacitation.[57] Another inclusion in the legislation was that of journey claims. Vigorously opposed as outside the responsibility of employers, the Bill nevertheless contained a clause that included eligibility for compensation in relation to injuries suffered on the way to and from the place of work.[58]

However it was Clause 7 of the Bill that was the most contentious. Setting up a

[55] State Government Insurance Office Memorandum, 1 July 1918, p. 1. QSA JUS A7126.
[56] These had been retained in the previous Workers' Compensation Act 1905.
[57] S9 (2) *An Act to amend the law…*6 Geo V No. 35 1916.
[58] ibid S9 (1).

model of state monopoly insurance the clause read:

> *…it is obligatory for every employer to obtain from the insurance commissioner a policy of accident insurance for the full amount of the liability to pay compensation under this Act to all workers employed by him;*[59]

Despite vigorous attempts by the Opposition in the Legislative Council to prevent it, this clause was included in the legislation — thanks largely to the incompetence of that upper chamber. In its zeal to avoid a state-run scheme, the Legislative Council added a clause to the effect that employers could insure with private insurance companies, however they neglected to delete the previous clause which required all employers to take out a policy with the government insurance office.[60] Despite appeals by private insurance companies, led by the Australian Alliance Assurance Company to the British Privy Council, the original clause was allowed to stand.

This legislation represented an idealism and enthusiasm that permeated through the reformed Labor Party at that time. During debate in the Legislative Council, an Opposition member asked plaintively "Why should we be the first to make the experiment [of compulsory monopoly insurance] and run the risk of failure?"[61] The reply from Labor's William Hamilton was simply "If you never make an experiment, you never progress".[62] These characteristics became the driving force in the Ryan government's approach of transforming policies into legislation. To this extent, the Ryan government was reformist — offering a break from the past. What began as a policy based on an idealistic belief in workers' entitlement to no-fault, state-controlled insurance, became a reality through the optimism of an inexperienced Labor Party in the face of strong, if inept, Opposition.

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[59] ibid S7.
[60] see *QPD* 21 Dec.1915, pp. 3172-75.
[61] Hawthorn A.G.C., (Member for Enoggera) *QPD*, 30 Sept. 1915, p.1024.
[62] Hamilton W., (Member for Gregory) *QPD*, 30 Sept.1915 p. 1024.

The Act can be described as innovative and components were later used as the basis for legislation in other jurisdictions. For example, the Federal government saw merit in this new legislation. In a Cabinet document approving an ex gratia payment of £75 in addition to the sum of £25 allotted under Commonwealth scheme to a worker who had lost an eye in an industrial accident, the Attorney General pointed out that under the new Queensland legislation such an injury would bring a considerably larger payment. The Attorney-General stressed "I think we should provide a Schedule in the Federal Act on lines somewhat like that of Queensland."[63] When the Federal government later introduced a Workers' Compensation Ordinance of the Northern Territory it based the legislation on the Queensland Act, including coverage for industrial and mining diseases.[64]

Once enacted, the legislation remained in place for 80 years,[65] and the core features of state monopoly insurance remain in the current legislation. However, with the introduction of monopoly insurance the role of government changed. Where previously it had chosen to remain an independent umpire in this area as with the *Queensland Employers' Liability Act*, it now became a key player, with its own interests to protect.

[63] Commonwealth Dept. of Treasury. Correspondence Files. NAA CRS A571. Item No. 22/22533.
[64] Commonwealth Dept of the Interior. Correspondence File. NAA CRS AA31. Item 48/618.
[65] Although the Goss government repealed the Act in 1990 it replaced it with an almost identical act and retained the same title.

State Government Insurance Office[66]

Prior to the 1915 Queensland election the Labor Party developed a set of platforms that centred round the introduction of a series of state enterprises in private business activity areas such as butcheries, hotels, fruit canning, fish marketing, sawmilling and insurance.[67] Added to this platform was the concept of state monopoly insurance as a solution that would ensure workers were adequately compensated for work-related injuries and illnesses. In the case of workers' compensation the provision of state monopoly insurance in the *Workers' Compensation Act* of 1916 was influenced by welfarist connotations of social justice and economic short-comings of previous legislation, particularly the lack of surety of compensation through private insurance.

The State Government Insurance Office (SGIO) is significant because it was the administrative vehicle through which workers' compensation legislation was set up. The office opened in Parbury House, Eagle Street, Brisbane on the 2nd May 1916, but it was prevented from conducting workers' compensation insurance business through an interim injunction in relation to a Privy Council appeal over the disputed compulsory state insurance clause in the Act. In the interim, in line with the government's state enterprises strategy, legislation was introduced to expand the types of insurance transactions offered to include life and household insurance in addition to workers' compensation, and business began. The appeal to the Privy Council by private insurance companies was lost and the SGIO also began transacting workers' compensation insurance on 1st July 1916.[68]

[66] Initially called the State Insurance Office (SIO) its name was changed in 1917.
[67] Fitzgerald R. and Thornton H., 1989, *Labor in Queensland.*.., p. 70.
[68] Rowley B., 1986, 'John Goodwyn and the Foundation of the SGIO, 1916-20' *The 1986 Clem Lack Memorial Lecture*.

From such tenuous beginnings the SGIO rapidly proved a strong competitor to established private insurance companies, particularly in the areas of life and household insurance.

Discussion

Social pressures were substantial during this era and increased demand for compensation for incapacitated workers was also symptomatic of the larger struggle for recognition and increased economic equality within the employment relationship, which accompanied broader notions of state intervention. Workers turned to the state as a "…countervailing force to the employers' industrial supremacy, seeking state power so that employers could be made to yield what they would not offer."[69] Resistance by the capitalist/employer classes to this shift exacerbated industrial unrest and forced government to take an even more interventionist role, arguably for the broader good of society.

As a second factor of influence in Queensland, a large active trade union movement precipitated by a continued influx of labour forced industrial issues to be addressed through remedy in the political arena. The Australian Workers' Union (AWU) was an amalgam of bushworkers' unions - primarily shearers' and labourers' unions that, by 1916 had become the largest trade union in Queensland after further amalgamations with sugar and mining unions.[70] As much of the work carried out by these workers was at best semi-skilled, security of employment was nearly always tenuous. Added to this was the seasonal nature of much of the work, particularly for shearers and

[69] Mcintyre S., 1985, *Winners &Losers: the pursuit of social justice in Australian history*, Allen & Unwin, p. 51.
[70] Fitzgerald R and Thornton H., 1989, *Labor in Queensland.*.. p. 9.

cane-cutters, that left many workers vulnerable.[71] The diverse nature of these occupations, coupled with the geographic vastness of Queensland had brought only limited industrial success via direct organization methods such as strikes, and led to a belief within the labour movement that the struggle for industrial rights could best be achieved through parliamentary means.[72]

Political pressures stemmed from the rise of political labour. For the Labor Party, AWU affiliation brought electoral support in non-metropolitan areas.[73] In turn, unions affiliated with the Labor Party were granted delegate representation in the Queensland Central Executive of the party, at Labor-in-Politics Conventions and were entitled to vote in the selection of parliamentary candidates. For a union the size of the AWU this translated into considerable influence in relation to party matters both in terms of structure and policy. In turn, this trade union influence in relation to workers' compensation was strongly reflected in the Labor Party's policy platform prior to the 1915 election and it was carried through the introduction of the 1916 *Workers' Compensation Act.* For example, coverage for pastoral industry workers, particularly shearers, was an integral part of the 1916 Act whereas these workers had been deliberately omitted from the previous two Acts reflecting the extensive pastoral interests held by members of previous governments.

Other issues relevant to policy development also influenced the shape of legislation during this time. As Titmuss[74] argues, the concept of social justice and its political interpretation are a product of value systems. Those determining social justice issues

[71] ibid pp. 40-41.
[72] Johnston W.R., 1988, *A Documentary History…* p. 319.
[73] Fitzgerald R. and Thornton H., 1989, *Labor in Queensland…* p. 41
[74] Titmuss R.M., 1974, S*ocial Policy. An Introduction,* Pantheon Books, p. 132.

by formulating policy have their own values, which influence that policy. In Queensland, the early employers' liability legislation was formulated by almost homogeneous attitudes, as the make-up of the parliament was restricted to those from the capitalist/employer classes. Adherence to Westminster system traditions, particularly strong cabinet government, electoral accountability and majority party control of executive government by Queensland legislators also facilitated policy development that favoured employers. This influence is particularly visible in the *Employers' Liability Act* and the 1905 *Workers' Compensation Act* when, as stated above members of cabinet, and parliament generally, were drawn almost exclusively from the employer/capitalist classes. As well, the electorate to which government was accountable consisted mainly of employer/capitalist classes, as restrictive voting rights limited working classes access to the electoral process. By 1916 there was a much wider representation within the parliament through expanded voting rights and Labor Party government. The result was a widening of issues and attitudes towards social justice that were reflected in the workers' compensation legislation introduced in that year.

Ideological pressures that influenced early Queensland legislation in the area of employers' liability and workers' compensation reflected broader Australian laissez-faire concepts of the employment relationship that held little recognition of the value of human life. There was continued reluctance by legislators to recognise employers were better placed than employees to bear the cost of the continued high toll of injuries and illnesses.[75] Instead, there was continued adherence to a notion that responsibility for such injuries rested solely with the injured. It was not until

[75] Johnstone, R., 1997, *Occupational Health and Safety Law and Policy. Text and Materials*, LBC Information Services, p. 62.

expansion in notions of social rights of citizenship, including broader industrial rights such as the eight hour day were addressed in the latter half of the 19th century that these types of issues were re-categorised and became issues of justice rather than private matters that concerned only the individual. This expansion in the concept of justice to include components of the employment relationship underpinned recognition there was a responsibility owed to those injured, although debate was divided as to whether employers or society should bear this responsibility.

This shift away from absolute laissez-faire ideology was replaced by recognition the state should play an active role to ensure the application of justice, in this instance to safeguard living standards and reduce workplace inequalities. However, in adopting these changing attitudes towards social justice, Queensland legislators were forced to juggle a number of competing interests. In relation to workers' compensation the primary conflict was between the cost to employers of compensating injured workers, and economic recompense to employees who were unable to earn a living through work-related injury or illness. Employers sought to stifle moves towards recognition of broader responsibilities in this area and lobbied for state intervention that would absolve them from responsibility for workplace injuries and illnesses. Employees also looked to the state for legislative acknowledgement of social justice rights. In both instances the reliance was upon the regulatory capabilities of the state.[76]

Economic pressures proved complex during this time. Although the 1916 legislation reflected expanded social justice principles, a second conflict arose as the system of workers' compensation was also defined as a form of income security. As the

[76] Macintyre S., 1985, *Winners and Losers…* p. x

numbers of those rendered unable to adequately support themselves as a result of work-related injuries or illnesses increased, the issue of responsibility for the economic support of these members of society came to the fore. Accordingly, the economic aspect of the issue meant decisions were linked to ideologies of free market economics, often at the expense of social justice principles.

The dominance of economic considerations in relation to workers' compensation may also reflect its legal origins. Compensation, despite social justice principles, is valued in monetary terms. The essence of such compensation is the loss of earning capacity that, in turn, places emphasis on the labour value of the injured. While statutory workers' compensation schemes often emphasise labour value by limiting their scope to medical expenses and loss of earnings, common law often increases the scope of compensation to include monetary values for pain and suffering, decreased future earning capacity and reduced enjoyment of life — something often excluded from statutory schemes. [77] In the Queensland W*orkers' Compensation Act* there was a firm emphasis upon monetary values with the inclusion of a schedule of benefits.

Also, as industrial society was underpinned by economic considerations, there was a constant struggle between social justice values, and economic values. With the vested interests of employers and employees preventing any kind of natural equilibrium between these two forces, the state was forced to intervene. Intervention then, brought with it the economic attitudes and agendas of the legislators. While at the outset the 1916 Workers' Compensation Act was a product of the pro social welfarist Ryan government, successive government economic policies continued to struggle

[77] Arup C., 1989 'A Critical Review of Workers' Compensation' in *Work and Health. The Origins, Management and Regulation of Occupational Illness*, Quinlan M., ed., Macmillan, p. 264.

with social policies.

As a further issue, the adoption of the term 'insurance' brought the perception of qualities existing within private or general insurance to workers' compensation. The overriding quality of insurance, a quality which gives it respected status, is the expression of personal thrift via a financial contribution — a premium. Normally, the exercise of this 'personal thrift' gives an entitlement of monetary benefits as a reward for such thrift. However, in the instance of workers' compensation, the entitlement of monetary benefits is not provided to the contributor of the premium, the employer, but to a non-contributing third party, the injured worker. Hence there is a notion that such third party is receiving assistance, rather than an entitled monetary benefit for contribution. When the state assumes responsibility for administration of the scheme, the notion of assistance is linked to the welfare state.[78]

Conclusion

Organised labour's inability to secure equitable outcomes from common law remedies in relation to workplace injuries and illnesses gave rise to plans for more direct legislative intervention. This chapter charts the passage of early legislative intervention in respect of work-related illnesses and injuries, and provides an overview of the development of workers' compensation legislation in Queensland up to and including the introduction of the *Workers' Compensation Act 1916.*

Prior to the 1916 Act, legislative intervention in this area was incorporated in the *Employers' Liability Act 1886* and the *Workers' Compensation Act 1905.* These two

[78] Marshall T.H., 1970, *Social Policy,* Hutchinson University Library, p. 50.

Acts intended to provide preventive as well as compensatory functions. By setting out certain insurance conditions, governments envisaged insurance companies would operate on a merit-based system, with monetary rewards in the form of reduced premiums for low incidence rates. This, in turn, would provide an incentive for employers to expend resources on safety as a sound economic measure. Employers did not respond in the appropriate manner, due mainly to the fact that insurance companies introduced across the board charges, not merit-based systems.

It took thirty years from the point of introduction of the *Employers' Liability Act* in 1886 for workers to be finally provided with adequate coverage for injuries or illnesses sustained in the course of employment. During those years workers' compensation remained a constant sauce of industrial conflict in Queensland. Various themes emerged at the outset that, as well as proving pivotal in shaping the initial 1916 Act, have remained constant features throughout the development of the legislation. This chapter has sought to contextualise the importance of these themes as for example, early restrictive common law precedents instilled a desire for no-fault mechanisms. Also the inability of private insurance mechanisms to induce employers to improve workplace safety or to provide adequate monetary compensation to injured workers was a catalyst for a shift to a compulsory state monopoly insurance model that was introduced in the 1916 *Workers' Compensation Act*.

A crucial feature of the state monopoly ideological perspective in the introduction of the *1916 Workers' Compensation Act* was that other stakeholders, principally private insurance companies, were not influential in the initial stages of policy development. Had laissez-faire ideology triumphed and expunged the state monopoly component of

the legislation, it is plausible to argue that given the previous history of this type of legislation in Queensland other stakeholder groups' interests, principally those of private insurers would have had to be accommodated in policy development.

On a broader level the previous intensity of antagonisms between stakeholders, particularly capital and labour over this issue, has been highlighted to assist understanding of how crucial the development of cooperation in the form of a policy community was to the longevity of the 1916 Act. To further highlight the influence of political factors on the 1916 legislative reforms, this chapter has emphasised the rise of the Labor Party, the ideology of the reformist Ryan government with its socialist-based platform, and to a lesser extent the ineptness of the Legislative Council. However, it was not until the introduction of this Act that government found value in stakeholder cohesion to assist policy development in this area that a policy community developed. It is to the operation of this Act that we now turn.

CHAPTER FOUR

"…EVEN IF A PACK OF FOOLS WERE IN CHARGE THE INSTITUTION COULD HARDLY HAVE SUCCEEDED LESS WELL."[1]

This chapter investigates the implementation and operation of the *Workers' Compensation Act* from its introduction in 1916 to 1940. It traces the progress of the first twelve amendments and argues the rapid expansion of the legislation was facilitated through the operation of the SGIO as a state enterprise. The chapter demonstrates how, in the face of social, political, ideological and economic pressures, the idealism of a new Labor government, strongly committed to social justice principles, designed and implemented legislation that brought immediate advantages to hostile stakeholders. Social pressures centred around the continued sustainability of significant working-class and trade union power that had transformed into political power, as relations between militant unions and the Labor government were tested.

At times the Labor government was forced to address industrial unrest that was not always resolved in favour of trade unions and led to schisms between itself and some militant trade unions such as the Australian Railways Union (ARU). As a result the broader atmosphere within which industrial issues were addressed was not always amicable. However, this chapter shows that, in relation to workers' compensation, trade unions and government were able to transcend broader hostilities that emerged during this era. Put simply, discord over workers' compensation at the workplace level dissipated after 1916. Issues related to workers' compensation moved quickly from the macro-level of industrial and electoral arenas, towards meso-level of policy

[1] Fihelly J.A. 'State Insurance History forgets Founder' in *Sunday Truth* 15 Aug. 1937.

negotiation between employees (and employers) and government. Satisfactory relations within the policy community replaced workplace antagonism over this issue.

The chapter argues that political pressures also contributed to the development of a policy community. Firstly, politically the era was dominated by Labor rule that resulted in continued trade union influence. As the trade union movement had been central in determination of the form of the original Act in 1916, as time went by there was no inclination to change patterns of direct communication between the parties that had been established at the outset. The Labor Party governed from 1915 to 1929 under Premiers T.J. Ryan, E.G. Theodore, William Gillies and William McCormack. The only non-Labor government operated from 1929 to 1932. By this time however, employers were reasonably satisfied with the operation of the legislation and increasingly failed to respond to conservative electoral promises to change the legislation, principally by ending the state monopoly component. The Labor Party was returned to government in 1932 and remained in office until 1957.

Ideological pressures centred around Labor's belief that the state could best facilitate the conduct of the legislation, although this position was unpopular, particularly with employers. However, evidence presented in this chapter shows the elimination of private insurers from the field and establishment of a state monopoly workers' compensation scheme was a central contributing factor to the suspension of hostility between employers and employees over this issue. This aspect alone, however, was insufficient to ensure long-term legislative success.

Economic pressures that influenced the development of the legislation were two-fold.

At the macro level the Australian economic environment impacted on the fund during the years of the Great Depression as increased levels of business closures reduced premium income while benefit levels continued to rise. At the micro level, continued trade union demands for compensation for mining and industrial diseases that were endemic brought challenges for fund administrators as they endeavoured to maintain the economic viability of the fund. This chapter highlights the willingness of fund administrators to both subsidise reasonable premium rates for employers and provide adequate benefits for employees. Thus from the outset economic management of the fund was focused upon addressing stakeholder needs rather than profit maximisation. This management strategy drew employers and employees together, tentatively at first, into a form of policy community, to resist a significant challenge posed by insurance companies to be included in the legislation.

What becomes clear in this chapter is that the administration of the legislation in the early years was just as important as the form of the legislation itself. In this, the role of the SGIO, and particularly of the Insurance Commissioners was crucial. Administration of the workers' compensation fund, particularly in the initial years, was heavily skewed towards leniency for both employers and employees. Consequently, as each stakeholder drew benefit from the legislation they became more supportive of it.

Exclusion of all except key stakeholders, coupled with the Labor governments' willingness to accommodate the needs of both of these, was conducive to the development of a policy community. This chapter shows that, in turn, stakeholder support quickly became a central factor that enabled the legislation to both withstand

immense pressures that inevitably surfaced, and permitted rapid legislative development during this time. Stakeholders soon realised that cooperation was a useful tool both to exclude others, principally private insurers, from the arena and as an effective means of avoiding industrial unrest over this issue.

This chapter initially traces each of the Ryan, Theodore and McCormack Labor governments. It provides a detailed account of the amendments to the legislation and highlights the rapid legislative expansion during the earliest years of operation of the *Workers' Compensation Act*. The chapter then looks briefly at the legislative amendment that was introduced during the short term of office of the Moore government, principally to highlight the shift towards support for the legislation by the conservative parties. The return of the Labor Forgan Smith government and the amendments to the workers' compensation legislation introduced between 1932 and 1940 are set out. It also provides a comprehensive account of the economic progress of the fund to highlight the precarious position that the fund faced during this initial legislative era, as well as the contribution that good economic management of the fund made towards building trust amongst those who utilised the scheme. Although there were several additional amendments to the legislation between 1940 and 1957 when the period of Labor government ended these are not all detailed, principally because the scheme assumed a level of operational predictability as the finances of the fund stabilised as did stakeholder relationships.[2]

[2] There were thirteen amendments to the workers' compensation legislation between the years of 1940 and 1957. Most of these were administrative changes, however worthy of note was an amendment in 1944 where the word "*accident"* was repealed and in its place a definition "*personal injury arising out of or in the course of employment*" was inserted to allow the payment of compensation to workers who suffered from a condition brought about by employment, rather than an accident. This included industrial deafness however only those who suffered work-induced hearing loss after 1st January 1945 were eligible for benefits. See S2 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1943," in certain particulars*, 9 Geo. 6 No. 2. In 1949, maximum benefits were increased from 662/3% to 75% of the basic wage. See *An Act to Amend "The Workers' Compensation Acts, 1916 to 1948" in certain particulars*, 13 Geo. 6 No. 51 1949.

The chapter provides detailed discussions in relation to the role of the Insurance Commissioner and the development of cooperation among stakeholders. Thereafter the chapter provides an analysis of the impact of legislative development and highlights the point that the arrangements set in place during these initial years were pivotal in development of the policy community and the longevity of the workers' compensation scheme.

T.J. Ryan Government 1915 –1919

As articulated in the previous chapter, shortly after its election the Ryan government introduced no-fault state monopoly workers' compensation legislation. Throughout his term as Premier, Ryan maintained an active involvement in workers' compensation policy development, often leading the fight for amendments in parliament as he took leading roles in both the 1916 and 1918 amendments.[3]

Legislative amendments

The first amendment to the *Workers' Compensation Act* 1916 was introduced in December 1916 – five months after it became operational. It was by far the most important and proved the most costly in the following years. It granted benefits to sufferers of recognised industrial and mining diseases, notably miners' phthisis. The government had deliberately avoided the inclusion of diseases in the original Act as a tactical measure to ensure that the key features of the initial legislation, particularly compulsory state insurance, were not jeopardised.[4]

[3] T.J. Ryan resigned from the Queensland parliament in 1919 and took a seat in the federal parliament that same year.
[4] *QPD* 25 Aug 1915, p. 413. *Brisbane Courier* 13 July 1916, p. 6.

The prevalence of mining diseases was a financial burden on governments as diseases, particularly miners phthisis took a heavy toll on workers. As workers experienced significant difficulty accessing the meager amounts of compensation due to them, affected workers and their families sought incapacitation benefits.[5] Minister without Office Fihelly made the point that "…the Home Secretary has been supplementing the Commonwealth Invalid Pension by a substantial amount, and through the State Children's Department he has also given very generous allowances to the children of those concerned."[6]

As well as the government's eagerness to redirect financial responsibility away from the public purse, the driving force behind this amendment was the trade union movement. Labor Party MPs from mining regions lobbied strongly for the amendment. Member for Ipswich David Glesden,[7] a former 1st Secretary of the Queensland Colliary Employees' Union who simultaneously held the position of Queensland Miners' Treasurer while in parliament, was instrumental in this campaign.[8] Glesden lobbied Fihelly directly for mining disease coverage, particularly miners' phthisis. The Attorney-General promised such a Bill would be introduced as soon as possible.[9] The Rockhampton Record newspaper reported "…one of the largest political deputations in the history of Queensland…" met with the Minister to discuss the plight of sufferers of industrial disease and miners phthisis.[10] Fihelly later noted in parliament that mining members had prevailed upon the government to

[5] Thomas P., 1986, *The Coalminers of Queensland. A Narrative History of the Queensland Colliery Employees Union. Vol. 1 Creating the Tradition*, Queensland Colliery Employees Union, p. 34.
[6] Although he held office as Minister without Office at the time the *Workers' Compensation Act* was introduced, Fihelly, along with T.J. Ryan undertook most responsibility for drafting and introduction of the legislation. Fihelly J.A. (Member for Paddington) *QPD*, 22 Dec 1916, p. 2846.
[7] Glesden later held the portfolios of Labour and Industry, Mines and Attorney –General in the Queensland parliament.
[8] Thomas P., 1986, *The Coalminers of Queensland.*.. p. 401.
[9] *Rockhampton Record*, 18 July 1916.
[10] ibid.

provide direct help to those afflicted.[11]

As well as a Schedule setting out benefits for sufferers of mining-related diseases and their families, the amendment introduced a regulatory system premised upon medical certification that workers were free from mining diseases listed in the Table of Diseases. All employers in mining industries were required to provide workers with certificates that declared them clear of relevant diseases. No worker could be employed in the industries set out in the Schedule without a certificate.[12] The motive for such requirements, in addition to provision of benefits, was to avoid a continued economic burden that might jeopardise the fund as a whole.

The Australian Workers Union (AWU) also lobbied to extend workers' compensation coverage to those suffering other types of industrial diseases.[13] Workers in areas such as woolcombing and sorting, handling of hides and skins, operations involving lead, arsenic and mining, quarrying and stonecutting suffered a number of work-related illnesses and this amendment provided similar benefits to those set out for victims of mining diseases.

The benefits provided for victims of mining and industrial diseases under this amendment included a funeral allowance in the case of death, and a monetary

[11] Fihelly J.A., (Member for Paddington) *QPD*, 22nd December 1916 p. 2846.
[12] S8 and S 9 *An Act to Amend "The Workers' Compensation Act of 1916" by Making Better Provisions for a Period of Two Years from the 1st day of July 1917 for Compensation in Respect of Certain Industrial and Mining Diseases, and for Other Consequential Purposes* 7 Geo. 5 No. 26 1935.
[13] *The Worker* 12 Dec. 1918, p. 19.

allowance to widows and children under fourteen.[14] For those incapacitated there was a minimum allowance of £2 10 shillings a week with a maximum of £400 pounds — payable either as weekly benefits or as a lump sum.[15] This was a significant shift as insurance companies had always opposed the payment of lump sum payments. Weekly allowance had usually proved more economical because of the early death of the recipient.[16] In terms of residency, eligibility for compensation was limited to those who had been continuously resident in Queensland for one year either prior to or after the 1st July 1917. This was to prevent an expected initial influx of miners already affected by relevant diseases as the benefits were more generous than any available in other States.

As with the initial legislation the Legislative Council refused to accept the Bill, insisting its operation be limited to two years. The Legislative Assembly accepted the amendment, with a conviction that "…once the Bill was on the statute-book it would never be removed therefrom."[17] The principal reasons for limiting the legislation to two years were to see if the provisions would be abused by affected workers outside the State moving here in an attempt to benefit,[18] and there were also fears of adverse effects on future capital investment in the State's mining industry.[19]

In a clear attempt to avoid employer antagonism, premium increases to cover these diseases were limited to only those employers engaged in the relevant mining and

[14] *Queenslander* 23 Dec. 1916, p. 39.
[15] S2 *An Act to Amend "The Workers' Compensation Act of 1916" by Making Better Provisions for a Period of Two Years from the 1st day of July 1917 for Compensation in Respect of Certain Industrial and Mining Diseases, and for Other Consequential Purposes* 7 Geo. 5 No. 26 1935.
[16] *QPD*, 22 Dec. 1916, p. 2847.
[17] Fihelly J.A. (Member for Paddington) *QPD*, 22 Dec. 1916, p. 2871.
[18] *QPD*, 22 Dec. 1916, pp. 2836-37.
[19] *QPD*, 18 Oct. 1918, p. 3341. The government also argued this was another example of the inadequacy of the Legislative Council and its abolition was desirable. This was achieved in 1926.

industrial industries. However, even affected employers were spared the full economic brunt of increases. Instead, the government argued, as the diseases were so prevalent, to make industry bear the whole cost would be crippling, and it agreed to subsidise the fund in its initial stages. To maintain stakeholder support for the legislation the government realised it could not place full economic responsibility with employers, as it was contrary to both employer and employee interests. The added financial burden would not be popular with employers and it would most likely adversely affect employment levels in the industry. Consequently, the State offered £10,000 per annum to the fund for the first three years to ease the initial premium burden for these employers.[20] The premiums levied would be the same for all employers regardless of the number of claims by affected workers.[21] The amendment also ordered a separate fund be established for these diseases. Known as the Section 14B Miners Phthisis fund, it proved to be an astute administrative move that ensured the general fund was minimally affected by the increasing incidence of disease.

In the first year of the Section 14B fund's operation a level of administrative independence was evident when the Insurance Commissioner reported the setting of rates was 'experimental' and, despite reserves of £5000 he was not prepared to recommend any premium reduction at this point as claims were increasing.[22] This was contrary to statements made by Justice Minister Fihelly who, in the lead up towards the state election, took advantage of the fund's early success to gain political advantage by promising mining companies a 10 percent reduction for the year. He also indicated there could be a 15 percent bonus the following year.[23] The Insurance

[20] *State Government Insurance Office Annual Report,* 1916 – 1917, p. 6.
[21] *QPD* 22 Dec 1916, p. 2874.
[22] *State Government Insurance Office Annual Report,* 1917-1918, p. 6.
[23] *The Worker,* 18 Oct 1917, p. 22.

Commissioner prevailed.[24] There is no evidence in the SGIO Annual Reports that Fihelly's promises were fulfilled.

Immediately after enactment of the amendment the AWU began a campaign to have the mining diseases amendment extended beyond the initial two years. It argued Labor governments would always need to be re-elected so long as the legislation remained limited by time.[25] This campaign gained momentum prior to the State election in 1918.[26] Although the introduction of the Workers' Compensation Act and its benefits, including the amendment to cover industrial and mining diseases were used extensively as campaign material, there were no new promises made by the government for further amendments other than extending the time limits of the mining diseases fund.[27]

Although keen to address key constituent needs, this initial amendment is evidence the government was wary of simply addressing the needs of employees without regard for the effect on employers, not only those engaged in the mining industry, but other employers as well, as the prevalence of mining-related diseases in particular would significantly increase premiums if the full costs were passed on to employers. As a first step, limiting premium increases to mining industry employers only, through a separate fund, avoided broader employer antagonism. As a second step, provision of initial premium subsidies to mining employers also minimised any friction over the issue.

[24] There is no mention in SGIO Annual Reports that such a reduction was introduced. All other categories where premium deductions were provided were set out in the Reports.
[25] *The Worker*, 25 Jan.1917, p. 9.
[26] *The Worker* 3 Jan. 1918, p. 16, 21 Feb. 1918, p. 11, 21 Feb. 1918, p. 14.
[27] *The Worker* 12 Dec. 1918 p. 17, 21 Feb. 1918 p. 14, 20 Mar. 1919 p. 18.

A second amendment in 1916 formalised mechanisms introduced during the period of appeal to the British Privy Council in relation to the unsuccessful attempt by insurance companies to halt the governments' provision of state monopoly insurance in the original Act. While prevented from issuing workers' compensation insurance policies, the government thought it financially prudent for the SGIO to commence operations in other areas of insurance.[28] The preamble to this amendment sought *"…to Authorise the Carrying on by the State of Queensland of all classes of Insurance not Already Authorised by the Workers' Compensation Act and to Regulate the carrying on of Insurance Business in Queensland by the State and other Interests."*[29]

Effectively, in its attempt to stymie the potential loss of one form of insurance, the insurance industry helped create a path for the State to expand the SGIO and thus become a serious competitor in all areas of insurance. Fihelly later admitted he had been "…casting a covetous eye upon life and fire insurance, particularly the latter" from the beginning.[30] Although in this admission Fihelly appears to have been somewhat coy, as the introduction of a state fire and life insurance enterprise had been written into the Labor Party's platform in 1898.[31]

Despite its absence as a campaign issue during the 1918 election campaign, a raft of proposed amendments to the legislation was put forward towards the end of that year after the re-election of the Ryan government. Although described as "…a machinery

[28] Thomis M.I. and Wales M, 1986, *From SGIO to Suncorp,* University of Queensland Press, pp. 12-23.
[29] *Qld. Government Gazette No. 8,* 3 Jan.1917. Amendment No. 27.
[30] Fihelly J.A., cited in *Sunday Truth* 'State Insurance History Forgets Founder' 15 Aug. 1937.
[31] Murphy D.J., 1968, 'The Establishment of State Enterprises in Queensland 1915-1918' in *Labour History*, Vol. 14, May, p. 13.

measure, dealing with the internal working of the office…"[32] these amendments were the catalyst for one of the most bitter sessions of parliament that culminated in a somewhat uncharacteristic outburst by Premier Ryan. Chief among the reasons for the outburst was the obstinacy of the Legislative Council in relation to an attempt to expand the definition of *'worker'*. The government sought to include casual workers, members of the police force, contributors to Public Service superannuation schemes, salesmen, canvassers, collectors, others who worked on a commission basis and contractors under the Act.[33] A vast number of casual workers were employed in rural industries, as were those who worked on a commission basis and as contractors. In particular the Opposition argued vehemently against the inclusion of casual workers in the legislation. Central to these arguments were that the calibre of person (usually males) who took this type of work were not worthy of compensation. For example, one member argued:

> The class of man who takes on casual work is usually an improvident man. Out West he is generally known as a "drunk". In his sober moments he goes round looking for odd jobs, and he is a careless sort of man. He is not only careless about himself, but he is casual in every direction. It does not seem right that a man who does not take care of himself should be included in the definition of 'worker.'[34]

In practice, a large portion of work in the pastoral industry in particular was carried out by casual workers and contractors — most were pieceworkers, paid according to the amount of work performed. Difficulties had arisen due to the lack of clarity of the definition of *'worker'* under the Act. In the event of injury, employers had developed a habit of claiming the worker was included in the relevant workers' compensation policy, or there was intention to include such worker. Consequently, their premium

[32] *Brisbane Courier* 27 Dec. 1918 p. 4 and 14 Oct. 1918 p. 6.
[33] *QPD* 18 Oct. 1918 p. 3309.
[34] Vowles W.J., (Member for Dalby) *QPD* 18 Oct.1918 p. 3311.

levels were often negatively skewed and the fund provided benefits for workers with no corresponding premium having been received.[35] By adding a specific obligation under the Act, those who employed contract labour were obligated to hold an insurance policy for those contractors.[36] Eventually the Legislative Council which still counted a considerable number of pastoralists among its members compromised, and agreed to the coverage of contractors where the total of the contract between the parties exceeded £5. However, this eliminated most sub-contractors as their employment would rarely have exceeded this sum.[37]

By way of contrast, in relation to "salesmen, canvassers, collectors and other persons in receipt of commission" the Legislative Council stood firm, despite the angry outburst from Premier Ryan "…who breathed out fire and brimstone…" but was nevertheless forced to give in on this clause or risk losing the entire Bill.[38] Ryan argued that the department would reduce bonuses instead to provide compensation to these groups via the Governor in Councils' authority to dispose of the profits of the department as it saw fit.[39] He reasoned that members of the Legislative Council were again protecting the interests of the large insurance companies[40] who were employers of salesmen, collectors and commission workers, in standing firm against this group of workers.[41]

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[35] *Workers' Compensation Acts Amendment Bill. Reasons for Recommending the Various Amendments* Document prepared by Goodwyn (Insurance Commissioner) 8 Oct. 1918. Justice Dept Correspondence. QSA A7126
[36] ibid
[37] *QPD*, 6 Nov. 1918, p. 3599
[38] *Brisbane Courier*, 8 Nov. 1918, p. 6.
[39] ibid
[40] The Secretary (Minister) of Mines W. Hamilton stated he had documentation that indicated four-fifths of the members of the Legislative Council were connected with insurance companies in one way or another, either as directors, agents, auditors or solicitors. See Cowan P., 1993, *Workers' Compensation Legislation in Queensland 1886-1916. Meeting the interests of courts, employers, workers or the state*, Honours thesis, Griffith University.
[41] *QPD*, 7 Nov. 1918, p. 3629.

The propensity of the Legislative Council to favour certain interests was particularly obvious when the Legislative Assembly attempted to delete the redundant Clause 7 of the original legislation that permitted employers to take out insurance policies with private insurance companies.[42] Conservative members remained adamant that technically employers could insure with private insurance companies, and in the future – when the present Labor government was replaced – this interpretation could be enacted upon.[43]

Overall, during this initial legislative period, the vigour with which the legislation was both amended and administered brought gains for both employers and employees. Financial administration of the fund brought approval from both employers and employees as premiums were maintained at levels more favorable than previously offered by private insurance companies and benefits' coverage was expanded considerably.

E.G. Theodore Government 1919 - 1925

After Ryan's resignation, Edward Granville Theodore became Premier. Theodore, although radical in terms of his goals for the wider labour movement, was also more moderate in his general outlook. Like Ryan, he offered no support to Industrial Workers of the World (IWW) factions within the Labor Party that called for revolutionary take-over of the State. Instead, he recognised the power of capitalism and understood that improved labour conditions would be best achieved through

[42] This was negated by the next clause 8 which required all employers to take out a policy of workers' compensation insurance with the State Government Insurer.
[43] *QPD* 30 Oct. 1918 p. 3538

working within the capitalist system.[44] This placed Theodore in a position similar to Ryan with some non-labour groups such as farming and mining interests providing a measure of support, while certain radical union factions bitterly opposed him.

Regarded by some senior public servants as a most competent Premier, Theodore had a thorough grasp of public finance, public law and administration. As leader, he believed he best understood the problems and was best able to provide solutions.[45] This was demonstrated when he actively intervened in workers' compensation administrative processes that were still under the jurisdiction of the Justice Department. For example Theodore brought more pressure upon Inspectors by insisting they adopt a more interventionist role in relation to workers' compensation insurance. They were required to make regular inquiries of businesses to ensure they held the appropriate policies, that adequate records were kept and assist employers in completing returns.[46] All this was in addition to their roles as agents in other areas of insurance. Most found the extra tasks difficult.

Legislative amendments

A set of amendments, covering generally the same issues that were rejected in the amendments put forth in 1918 were re-introduced into the parliament in 1921. This time most were successful and made the legislation more comprehensive. The key features of the amendment were clarification that workers' compensation insurance was a state monopoly — deleting once and for all the ambiguous Clause 7 that Opposition members hoped to re-activate when next in government. The Bill also

[44] Murphy D.J. 1990, 'Edward Granville Theodore: Ideal and Reality' *The Premiers of Queensland*, Murphy D., Joyce R., and Cribb M., eds, University of Queensland Press, pp. 311-314.
[45] ibid p. 314.
[46] Memorandum from Premier to Under-Secretary of Treasury 7 Aug. 1925. QSA TRE/844 7254.

provided the Insurance Commissioner with extended powers to collect outstanding costs and increased monetary benefits to workers.[47] More public servants were brought under the Act as the salary cap for exemption was increased to £520 per annum, and salesmen, canvassers collectors and other commission workers, except those self-employed, were added to the legislation.[48] The latter was in response to requests from the Commissioner who had found "endless trouble" with insurance companies, sewing machine companies and tea companies who employed large numbers of canvassers.[49] As had occurred with pastoral industry contractors, when these workers were injured claims for benefits were made via claims that they were intended to be included in workers' compensation insurance policies. There was clarification that the legislation applied to jockeys as there had been "…much dissatisfaction…" with the high rate of injuries and fatalities in this industry and the callous treatment they received from the private insurance industry.[50] One aspect of the Bill that was rejected would have enabled the Commissioner to take common law action on behalf of workers who were not financially able to do.

In the parliament the protracted debates and forced amendments to almost every proposed clause in previous years, particularly in the Legislative Council was absent. Half-hearted attempts in the Legislative Assembly to change clauses pertaining to covering share-farmers as '*workers'* and cancellation of the controversial Clause 7 from the Act were the two issues that received most attention. The Legislative Council that had once been so intent on blocking as much of the legislation as

[47] *QPD* 26 Oct. 1921 p. 1897.
[48] S 2 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1918" in certain particulars* 12 Geo. 5 No. 29 1921.
[49] Memorandum from Insurance Commissioner. *Proposed Amending Workers' Compensation Bill. Reasons for Suggesting each Amendment*. 10 Aug. 1920. P. 2, QSA A/7148.
[50] *Insurance Lines* Vol II, No. 8, Feb. 1920, p. 5.

possible offered little resistance.[51]

There was also capitulation of sorts from the Opposition. Recognising the success of the fund, Elphinstone[52] spoke in the parliament of the advantages of state monopoly workers' compensation insurance, arguing the fund could be administered more effectively in an economic sense through the number of state resources such as medical officers and Petty Sessions officers at its disposal, particularly in remote areas. This led him to admit that private insurance companies could not compete and therefore he offered his support to state monopoly for this type of insurance – but no other.[53] Corser[54] offered support to the proposed amendment arguing in favour of bringing share-farmers under the Act. He argued that many share-farmers could not afford to insure themselves. Consequently making farm owners responsible was a good move.[55]

These examples demonstrate two key points. The first is, in political terms, that the conservatives were no longer as unified in opposition to the legislation as had been initially the case. Second, it indicates concern by conservative forces for the levels of support some rural sectors, particularly small farmers, offered the Labor government. Certainly the issue of forcing land owners to take out insurance for share-farmers who may work their land attracted the most debate during the passage of this round of amendments, and represented a division in the Opposition interests between small farmers and their larger counterparts.

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[51] *QPD* 27 Oct. 1921 pp. 1920-1923.
[52] Elphinstone had previously been general manager of Welsh Insurance Corporation. At this time he owned a substantial business dealing primarily in vehicle parts. Waterson D.B., 1972, *A Biographical Register of the Queensland Parliament 1860 – 1929*, Australian National University Press.
[53] Elphinstone A.C. (Member for Oxley) *QPD*, 26 Oct. 1921, p. 1902.
[54] Corser was the member for Burnett, an electorate that had a significant component of farming constituents, particularly the sugar industry.
[55] Corser E.B., (Member for Burnett) *QPD*, 27 Oct. 1921, p. 1932.

The issue of coverage of share-farmers under the legislation provides evidence that support for the legislation was shifting. Inclusion of this group in the legislation was initiated by a resolution passed at the 1920 Labor-in-Politics Convention. The resolution recommended the Act be amended to allow working employers of labour, particularly share farmers and timber contractors to insure themselves if desired.[56]

A further round of amendments in 1923 significantly broadened the definition of *'worker'* under the legislation. In essence the amendment aimed at clarifying the position of seamen. Under the legislation seamen working between Queensland ports on ships registered elsewhere were not entitled to benefits. This amendment brought all seamen working in Queensland waters under the Act. The amendment also sought to clarify the term *'contractor'* under the legislation – specifically as it related to persons employed in the timber industry. For example, to this point ring barkers and land clearers had been denied benefits because of the ambiguity of the definition. The third change was a further expansion under Section 14B where eligibility for compensation for mining diseases was provisional upon the worker having been employed in mining in Queensland for a specified 300 or 500 days.[57] The amendment allowed the calculation to be taken from the date work in the mining industry was commenced prior to 1916.[58] `

[56] Australian Labor Party, *Official Record of Proceedings of the Queensland Labor-in-Politics Convention*, 28 June 1920. John Oxley Library OMEQ2/6

[57] To be eligible for compensation for mining diseases workers had to have 300 days mining experience from 1st Jan 1916 and have lived three years in Queensland. Otherwise the requirement was set at 5 out of 7 years residency since 1916 and have worked 500 days during that time. *QPD* 24 July 1923, p. 199.

[58] S3 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1921," in certain particulars* 14 Geo. 5 No. 5.

W McCormack Government 1925 - 1929[59]

William McCormack entered the Queensland parliament in 1912 after a career as an official in the Australian Workers' Association (AWA). He was instrumental in founding the AWU into which the AWA was absorbed.[60] During McCormack's term as Premier, Queensland was confronted with continual industrial unrest particularly in the AWU-dominated sugar industry and with railways unions such as the Australian Railways Union (ARU). Consequently tensions increased between the industrial and political wings of the labour movement.[61] However, workers' compensation issues remained isolated from those that gave rise to unrest.

The Act was amended in 1925 to include more mining diseases such as septic poisoning, carbon monoxide poisoning and poisoning by nitrous fumes. The maximum compensation payable for death under the Section 14B provision was increased from £400 to £450.[62] Other amendments included expanded definitions of *'worker'* to include timber haulers and members of share-farmers' families who undertook farming work.[63] This last proposal was a direct response to AWU pressures.[64]

These changes were clearly aimed to benefit rural workers. They were supported by the Opposition in parliament which indicates both sides recognised the significant influence of rural industries in Queensland politics. This support was an attempt to

[59] After the resignation of E.G. Theodore, the Labor Party appointed W.N. Gillies as Premier. This premiership lasted only eight months and there were no changes to workers' compensation legislation during that time.
[60] Kennedy K., 1978, 'William McCormack. Forgotten Labor Leader' in *The Premiers of Queensland*, Murphy D., Joyce R. and Cribb M. eds., University of Queensland Press p 347.
[61] Johnston W.R., 1988, *A Documentary History of Queensland*, University of Queensland Press, p. 365.
[62] S6 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1923" in certain particulars* 16 Geo. 5. No. 18 1925.
[63] ibid S3B.
[64] 12th Annual AWU Delegate Meeting cited in *The Worker*, 22 Jan. 1925, p. 19. *The Worker*, 11 Sept. 1924, p15. The *Worker*, 19 April 1925 pp. 16-18. *The Worker*, 7 May 1925 p. 15.

soften the division that continued to develop between small and large farmers as the former offered support to the Labor party, leaving only the latter to support the Opposition parties. However, the Opposition argued that general benefits were being neglected in favour of rural and mining interests. It also argued that increases in general benefits were no longer commensurate with the premiums, consequently employers were not getting value for money. If they were to pay higher premiums, they would expect their injured workers to receive higher benefits.[65] It was argued the general fund was introduced to provide benefits for workers who were incapacitated — not to accumulate huge reserves.[66] There was certainly some basis for these claims. Although the SGIO Annual Report 1923 indicates a surplus of £6,300 after an unexpected expenditure of £7,210 to victims of the "Douglas Mawson" shipping disaster, the following year the Insurance Commissioner reported that £60,000 had been transferred to the General Reserve and £1,510 remained in the fund.[67]

As the economic position of the fund was sound there were calls for benefits levels to be increased from the 50% of workers' wages to 100%. At the Labor-in-Politics Convention in 1923 a resolution was passed to further amend the Act to make any allowance equal to the full wages of the injured workers.[68] However, this resolution was overturned at the 1926 Labor-in-Politics Convention after Premier McCormack argued it would prove a disincentive for workers to return to work and benefits would be paid for longer periods. As a result it would impose an additional £86,000 tax

[65] *QPD* 30 Sept. 1925 pp. 827-828.
[66] Sizer H.E.,(Member for Sandgate), *QPD* 30 Sept. 1925 p. 828.
[67] *State Government Insurance Office Annual Report* 30 June 1923 p. 9 *State Government Insurance Office Annual Report* 30 June 1924 p. 9.
[68] Australian Labor Party, *Official Record of Proceedings of the Queensland Labor-in-Politics Convention*, 5 Mar. 1923. John Oxley Library OMEQ 2/7.

upon employers that was a burden he doubted industry could carry.[69] In this decision the Parliamentary Labor Party (PLP) demonstrated a willingness to accede to measures that were conducive to the continued success of the fund, rather than capitulate to trade union pressures. In the following years policy priority moved further towards the profitability of the fund while maintaining sectional trade union and rural interests.

An amendment in 1926 increased general benefits. The amount of compensation payable to workers partially incapacitated for work as a result of injury was increased from 50% of average weekly earnings to 66⅔% - the maximum of which was increased from £2 to £2 15s. per week.[70] Debate in parliament was quite vigorous as Opposition members continued to focus on the wealth and management of the fund, suggesting that the fund was so profitable because the government was not providing adequate benefits. It argued that in light of the large profits the fund had generated the amendment did not go far enough. The proposed increases in benefits could be more substantial and could for example be extended to include wives and children of invalided workers.[71]

To minimise any impact this reversal of roles might have on public perceptions, the government spent much of the debate time reiterating the historical development of the legislation and highlighting the Opposition's hostile and obstructionist role therein.[72] At this point it becomes clearer that positions taken by major political parties in Queensland had converged. Conservative parties recognised that the

[69] Australian Labor Party, *Official Record of Proceedings of the Queensland Labor-in-Politics Convention,* 8 Feb.1926. John Oxley Library OMEQ 2/8.
[70] S2(b) *An Act to Amend "The Workers' Compensation Acts, 1916 to 1925" in certain particulars,* 17 Geo. 5 No. 17 1926.
[71] Corser B.H., (Member for Burnett) *QPD,* 6 Oct. 192 6, p. 933.
[72] *QPD,* 6 Oct. 1926, pp. 931-45.

success of the fund, both social and economic, preordained that any attempt to dismantle it would not be accepted by the electorate. They altered their position to one of broad support for the legislation and opposition to legislative amendments thereafter focused on the continued financial soundness and administrative competency of the fund, rather than ideological resistance to its existence.

A E Moore Government 1929 -1932

The McCormack government was soundly defeated at the 1929 State election in favour of a Country Party government headed by Arthur Edward Moore. The Labor Party lost 17 seats, as workers withdrew their support as a response to the South Johnstone sugar mill and railways strikes that had occurred in 1927.[73] The swing away from the Labor Party almost paralleled the swing to the Ryan government in 1915.[74] During the early 1920s Moore had been instrumental in forging a unity between the non-Labor Nationalist and Country Parties. He subsequently became the first Country Party premier of Queensland in the 1929 election.[75] Bernays described him thus:

> He is a dairy farmer and grazier of quite an exceptional kind. Instead of an oaf or a yokel he is a well-educated man who speaks good English, and owns a dress suit.[76]

Recognising electoral popularity of workers' compensation, the Country Party had

[73] This strike originated from inter-union rivalries between the Australian Workers' Union (AWU) and the Australian Railways Union (ARU). The strike began when management of South Johnstone mill hired non-union labour to work alongside AWU members. When the mill management requested rail transport for its produce the ARU joined the strike. Premier McCormack ordered the state employed railway workers back to work and when they refused he began a campaign of mass sackings. Both AWU and ARU workers were forced to capitulate, however a split between these trade unions (particularly the ARU) and McCormack's Parliamentary Labor Party resulted in the defeat of the Labor government at the next election in 1929. Fitzgerald R. and Thornton H., 1989, *Labor in Queensland from the 1880s to 1988*, University of Queensland Press, pp. 42-47.
[74] Lack, C., 1960, *Three Decades of Queensland Political History*, Queensland Govt. Printer, p. 87.
[75] Costar B., 2003, 'Arthur Edward Moore. Odd Man Out' in *Premiers of Queensland*, Murphy D., Joyce R., Cribb M. & Wear R., eds., University of Queensland Press, pp. 187-88.
[76] Bernays CA., 1931, *Queensland – Our Seventh Political Decade 1920-1930*, Sydney, p. 279.

pledged benefits would be increased to the level of the basic wage.[77] The new government partially fulfilled its election promise through an amendment introduced soon after taking office. Under S4 of the amendment, the weekly amount payable to injured workers with families of three or more children under fourteen years was increased from 66⅔% to the full basic wage.[78] The government rationalised that a worker with more than three children was more entitled to extra benefits than an individual with one child was.[79] The Labor Opposition argued that the Country Party had promised benefits would be brought in line with the basic wage for all workers — not just those with families.[80] Debate was spirited and protracted as the Opposition also attempted to coerce the government to introduce a measure the Labor party itself had rejected[81] at the 1926 Labour-in-Politics Convention when it was agreed an extension of full benefits to all forms of industrial and mining diseases would be prohibitive for both the fund and employers.[82] The government promptly reduced the State's basic wage a short time later from 85 shillings to 74 shillings per week for adult males.[83] As a consequence, maximum workers' compensation payable was reduced from £4 5 shillings per week to £3 14 shillings per week.[84]

There were also significant changes to the limitations upon eligibility under Section 14B. Residency and employment requirements, namely 300 and 500 days prior to 1916, were repealed and replaced by the proviso that a period of not more than fifteen

[77] Forgan-Smith W., (Member for Mackay) *QPD* 18 Sept. 1929 p. 442.
[78] S 4 *An Act to Amend "The Workers' Compensation Acts 1916 to 1926", in certain particulars* 20 Geo. 5 No. 22 1929. This clause also included a rise in benefits awarded to children up to the basic wage.
[79] Foley T.A., (Member for Leichhardt) *QPD*, 18 Oct. 1929, p. 1014.
[80] Hynes M.P. (Member for Townsville) *QPD* 18 Oct. 1929 p. 1911.
[81] Stopford J., (Member for Mt. Morgan) *QPD* 18 Oct. 1929 pp. 1016-19.
[82] *Queensland Labour- in-Politics 12th Annual Conference* 8 Feb. 1926. John Oxley Library OMEQ2/8.
[83] Costar B., 2003, 'Arthur Edward Moore. Odd Man Out' in *Premiers of Queensland*, Murphy D., Joyce R., Cribb M. & Wear R., eds., University of Queensland Press, p. 195.
[84] Larcombe J., 1941, *A Case for Labor. An Outline of The History of Labor Government in Queensland*, p. 38.

years had elapsed since employment ceased.[85] The amendment also clarified terms for more rural workers with the definition of *"timber"* expanded to include *"sleepers, piles, poles, girders, logs, pit timber or cord wood."*[86]

This was the only amendment by the Moore government during its term. It was also the first test of the compulsory monopoly provisions of the legislation that had so antagonised the State's conservative forces. There was no attempt by the government to revoke these provisions. Instead it was forced to focus attention on other issues in relation to the fund, not the least of which was the economic downturn that engulfed Australia. The administration was short-lived, and the Moore government remained in office for one term only, until 1932. The Labor Party was re-elected on 11th June 1932.[87]

Forgan Smith Government 1932 – 1940

William Forgan Smith was the third successive Labor Premier to rise from the ranks of the AWU. Elected initially as a member of the Ryan government in 1915, Forgan Smith rose steadily through the parliamentary ranks and became leader of the party after McCormack's resignation in the wake of the 1929 election defeat. Throughout his time as premier he was continually touted as a potential federal leader to replace first Scullin and then Curtin, however as his biographer noted he was "…possibly too astute to be catapulted into the factionalism of federal Labor politics in he 1930s"[88] As the Member for Mackay he particularly championed issues related to the sugar industry. Compared to previous Labor governments, the Forgan Smith ministry was

[85] S6(a)-(e) *An Act to Amend "The Workers' Compensation Acts 1916 to 1926", in certain particulars,* 20 Geo.5 No 22 1929.
[86] 2(b) *An Act to Amend "The Workers' Compensation Acts, 1916 to 1926,"in certain particulars* 20 Geo.5 No. 22.
[87] Lack C., 1960, *Three Decades of Queensland Political History 1929-1960,* Govt. Printer, Brisbane.
[88]Carroll B., 2003, 'William Forgan Smith. Dictator or Democrat?' in *The Premiers of Queensland,* Murphy D., Joyce R., and Cribb M., & Wear R., eds, University of Queensland Press p. 233.

distinctive for its increased numbers of AWU members.[89]

During the early part of the 1930s the Fund came under pressure from increased numbers of lead poisoning claims at Mount Isa. Newly-installed smelter equipment had no means of extracting lead dust and fumes and personal protective equipment supplied by management was inadequate.[90] In 1933, after Insurance Commissioner Watson and pathologist Dr. James Duhig visited Mt Isa, the government passed *The Workers' Compensation (Lead Poisoning Mount Isa) Act* as a means of bringing under control the unacceptably high incidence of lead poisoning among mine workers at Mount Isa Mines Limited. However, rather than provide compensation for lead poisoning, this amendment aimed at identifying all sufferers in order to halt the spread of the disease. Those not found to be incapacitated for work were provided with a certificate of fitness for work. Workers issued with certificates had their right to compensation under the principal Act terminated.[91]

The legislation made provision for the setting up of a Medical Board that consisted of three legally qualified medical officers. This Board was to have sole responsibility for certifying cases of lead poisoning.[92] Management had argued it was local doctors' misdiagnoses of the disease that precipitated the increase in compensation claims.[93] Medical practitioners were obliged to report all suspected cases of lead poisoning to

[89] ibid
[90] Penrose B., 1997, 'Occupational lead Poisoning at Mount Isa Mines in the 1930s' in *Labour History*, No. 73, Nov. 1997 p. 123.
[91] S5(1)(2) *An Act to Enact Special Provisions relating to Compensation to Workers for lead Poisoning Contracted by such Workers in the Employment of Mount Isa Mines Limited, Mount Isa, and for purposes incidental thereto or consequent thereon,* 24 Geo. 5 No.34 1933.
[92] ibid S4.
[93] Gillespie R., 1990, 'Account for Lead Poisoning: The Medical Politics of Occupational Health' in *Social History*, Vol. 15 No. 3, Oct. 1990 p. 316.

the Board.[94] Special rates set up under this amendment prohibited workers from claiming compensation during their initial four months of employment, and the amounts of compensation offered increased according to length of service.[95]

The legislation made no attempt to address the issue of improved health and safety standards at the workplace. Instead focus was solely upon minimising workers' compensation payouts. In this there was cooperation between the key parties. The majority of workers at Mount Isa Mines were represented by the AWU and the union was eager to ensure the continued profitability of Mount Isa Mines, as it was one of the few companies still maintaining reasonable employment levels. Similarly, the government was keen not to unbalance the operations of the company in a time of Depression. In short, the continued operation of the company was of supreme importance to government, management and employees.

However, the government came under pressure when the AWU Delegates' Conference strongly criticised the administrative procedures of workers' compensation. There were delays in settling claims and increased numbers of claimants were forced to appeal against decisions that were considered too harsh.[96] The government deferred to Commissioner Watson[97] who argued this was not so.[98]

Despite a continued economic downturn of the fund caused in no small way by the

[94] S5(5)(a) *An Act to Enact Special Provisions relating to Compensation to Workers for lead Poisoning Contracted by such Workers in the Employment of Mount Isa Mines Limited, Mount Isa, and for purposes incidental thereto or consequent thereon*, 24 Geo. 5 No.34 1933.
[95] ibid S8(1)(b).
[96] *CourierMail* 26 Jan. 1934 p. 17.
[97] John Goodwyn had resigned in 1921. This is discussed in more detail later in this chapter.
[98] The Commissioner pointed out that in the years 1935-1936 from a total number of 21,636 claims only 528 were rejected. Memorandum from Insurance Commissioner to Under Secretary Treasury 29 Oct. 1936. QSA TRE/A1596.

poor performance of the Section 14B fund, the government increased the rates of benefits for mining diseases and a principle was adopted whereby the concept of 'partial incapacity' was included in the legislation.[99] The amendment also increased the age of dependents from 14 years to 16 years and the sum awarded to all eligible dependents on the death of a worker was raised to £600. These changes were applicable to both the general fund and the Section 14B fund.[100] Previously the payment had been apportioned on a sliding scale basis depending on the duration of employment.

In the election year of 1935 there was agreement from both major political parties for these amendments. While questions were raised in parliament over the economic viability of such an amendment, all speakers were at pains to point out they were in agreement with the amendment itself. Opposition leader Moore indicated support for a further amendment covering an upward readjustment of premiums if the increases in benefits put extra pressure on the fund.[101]

An example of ad hoc policy making in this area is demonstrated by amendments passed in 1935 and 1936. Despite the fund posting a financial loss of £49,000 in 1935, there was an amendment granting benefits for 'partial' loss for some injuries such as to eyes and limbs, and clarification of the term '*a full weeks' work*' so as to include contractors.[102] However, in 1936 further amendment was necessary to clarify 'partial' loss to ensure that only reasonably extensive injuries were eligible for

[99] S2(b) *An Act to Amend "The Workers' Compensation Acts 1916 to 1934" in certain particulars* 26 Geo. 5 No. 26 1935.
[100] S2 and S3 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1929," in certain particulars* 25 Geo. 5 No. 39 1934.
[101] Moore A., (Member for Aubigny) *QPD* 19 Nov. 1935 pp. 1303-04.
[102] S2(i) and S2(B)(iv)(a)-(v) *An Act to Amend "The Workers' Compensation Acts 1916 to 1934" in certain particulars*, 26 Geo. 5 No. 26 1935.

compensation. *"Loss of the forefinger of the right hand"* was thus changed to *"loss of two joints of the forefinger of the right hand"* with similar changes for other injuries.[103] This ensured only reasonably extensive injuries were eligible for compensation.

Workers' compensation was part of the Labor Party's platform for the 1935 State election although there were no promises made in relation to system improvement. Rather the system was used as a mechanism to run a 'scare' campaign against conservative parties. The implication was that private insurance companies would be allowed to carry on workers' compensation business even though the Opposition had said no such thing, and the campaign highlighted the improved benefits under the Labor government.[104] However, the Labor Party did not put forward any clearly articulated strategies during the election campaign. Instead, workers' compensation policy development remained reactive, directed mainly by the economic fortunes of the fund and AWU requirements.

Shortly after the 1935 election, the Insurance Commissioner was forced to defend the department against further charges of poor administrative procedures and continued financial loss.[105] In particular, assertions that more cases were forced to appeal and old cases were reopened, seems to have forced many of the technical changes to the legislation.[106] The Opposition argued that the Insurance Commissioner was being subjected to considerable political pressure to re-open cases.[107] The more precise the parameters on defining an injury, the less likelihood a claimant would have sufficient

[103] ibid S2(d)(ii).
[104] Labor's Campaign Manual 1935, W. Forgan Smith M.L.A. (ed). John Oxley Library P324.9943 AUS C1.
[105] *Truth* 6 Dec. 1936. *QPD* 12 Nov. 1936 pp. 1509-11.
[106] *QPD* 12 Nov. 1936, pp. 1510-11.
[107] ibid pp. 1516-23.

grounds for appeal. There was also a steady rise in premiums during this time, particularly in rural industries such as sugar, poultry and wool as claims in those areas increased.[108]

However, another round of amendments in 1936 again provided increased compensation levels. This time there were increased benefits for death and particular injuries from £600 to £750, despite the continued economic troubles for the fund.[109] To alleviate this somewhat, the Commissioner was given the power to charge additional premiums under the Section14B fund as he found necessary.[110] There was also clarification of Weil's disease, prevalent in the sugar industry.[111] The aim was to pinpoint the industry in order to levy increased premiums at the source, rather than spread the cost across all employers.[112]

An amendment in 1939 indicates renewed optimism in the economic position of the fund. All remaining public servants were brought under the Act and employees of Queensland employers were eligible for compensation if injured in another State while carrying out employers' duties. This issue had been tested in the courts[113] and consequently the fund administrators sought to have it included in the legislation to minimise the likelihood of further actions and to contain unforseen economic costs.

Summation of 24 years of operation of Workers' Compensation Act 1916

Not content upon widening the parameters of workers' compensation legislation at the

[108] ibid p. 1519.
[109] S2(a) *An Act to Amend "The Workers' Compensation Acts 1916 to 1935" in certain particulars* 1 Edw. 8 No. 21 1936.
[110] ibid S4.
[111] ibid S3.
[112] Cooper F.A., (Member for Cook) *QPD* 12 Nov. 1936, p. 1509.
[113] *Courier Mail* 24 Sept. 1938.

outset, the Ryan government had insisted the system function as a state-operated monopoly. As well as taking an interventionist role by developing significant legislation, government intervened even further by making itself the sole provider and administrator under the provisions of the legislation.

The aim of state monopoly was more than profit. A report by Bedford after the introduction of a State monopoly claimed:

> It abolished the wasteful, crude, cumbersome, procrastinating and unjust competition to profit from the workman's chance of injury or the employer's misfortune; it cut premiums down by from 10 to 45 percent, and tremendously increased the benefits, and it substituted for halting, costly and delaying service, thoroughness, economy and efficiency.[114]

The provision of state monopoly insurance carried the influence of both social justice and the economic features which shaped the legislation. Under the legislation the chance of justice being denied to injured workers was abated as the denial of due recompense had been largely due to the practices of insurance companies and their pursuit of profit, which in turn, was at odds with the philosophies of social responsibility and welfarism popular at the time.

The continued rising costs of employers' premiums to private insurance companies was an important consideration in the government's decision to monopolise workers' compensation insurance. It was also in keeping with T.J. Ryan's election platform of state monopolies for several industries. The Labor Party sought a fairer share of economic prosperity for workers and competing government business enterprises

[114] Bedford R., *State Insurance in Queensland,* p. 4, QSA JUS 451, undated, approximately 1918.

seemed an appropriate means of achieving this.[115] State monopoly insurance was seen as a solution that would ensure workers were compensated and employers were financially challenged as little as possible. As a result initial antagonism dissipated quite rapidly, firstly by employers and later by Conservative political parties. In its place, support for the legislation increased as amendments reflected the needs of each stakeholder at various times.

While recognition of responsibility may be linked to social justice, enforcement of responsibility becomes complex as it necessarily involves consideration of economic influences. Therefore recognition that a responsibility is owed by one party to another is an issue of justice — of an equality of citizens, while enforcement of that responsibility by way of premiums and compensation provisions is an economic issue. It is to economic issues and how they were managed under the Queensland workers' compensation system that discussion now turns.

Economic progress of the fund

Contrary to the dire predictions by members of the Legislative Council, the fund was a financial success from the outset. For the government, success was twofold as workers' compensation insurance became the archetype for state-based insurance, and the SGIO the prototype for state enterprises. In this endeavour, substantial effort was expended to ensure its initial profitability and acceptance. This success was then used to support AWU arguments for the expansion of state insurance — including the possibility of monopolies in other areas of insurance, such as fire and household

[115] Murphy D.J. 1968, 'The Establishment of State Enterprises in Queensland, 1915-1918' in *Labour History*, Vol. 14, May, p. 13.

insurance.[116]

In relation to the fund's initial set up, funding of £20,000 from Treasury was repaid in the first year of operation. Premiums were set at the same rates as for the 1905 Act with an additional 2.5% to cover common law claims. However, the fund also granted a 10% premium bonus that brought employers premium rates lower than any charged by private insurance companies. Total expenses for the first year of operation amounted to £23,679/18s/3d. — 12.56% of premium income for the year. These expenses included the services of government officials (salaries), use of government buildings, fixtures and fittings and legal costs. This occurred in the face of a claim ratio of 62% of premiums received. Although this ratio was 27% higher than under the previous Act the fund still returned a surplus of £52,152/18s/1d — £18,717/6s/8d. of which was returned to policyholders of all forms of insurance, including £17,007/5s/8d to employers' workers' compensation policies.[117]

Invoking a philosophy that the whole of the profits were the property of policyholders, the fund showed a profit of £7,851/15s./0d. in this first year.[118] From a total of 7,849 claims made during its first year of operation, there were 74 reconsidered[119] with an average of £20/9s./6d. extra being paid per claim. One hundred and twenty one claims were rejected.[120] This was a vast improvement in terms of benefits over workers' past experience and so it received their support generally.

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[116] *The Worker* 23 Nov. 1916 p. 5.
[117] *State Government Insurance Office Annual Report* 1916 - 1917 pp. 4-5.
[118] ibid pp. 6 - 7.
[119] Apart from access to common law there was no formal appeals process included in the initial legislation, an informal process of 'reconsidering' rejected claims developed. Appeals to an Industrial Magistrate in relation to workers' compensation issues was introduced in 1921. S7 *Workers' Compensation Acts Amendment Act of 1921* 12 Geo. 5 No. 29 1921.
[120] *State Government Insurance Office Annual Report* 1916-1917 p. 14.

The willingness to utilise profits to adjust premiums found favour with some business sectors. For example, even before the commencement of the Act on 1st July 1916 Assistant Minister Fihelly promised a deputation from the Brisbane Chamber of Commerce, the United Pastoralists' Association and the Accountants' Association that the Commissioner would be asked to re-adjust rates within six months and, if any profit was found, then rates would be reduced.[121] This was done at the end of the first year of operation when household policies[122] were renewed with no premium required.[123] In his first Annual Report Commissioner Goodwyn noted this proposal had "…been very favourably received by the general public, and I have no doubt that this policy will very greatly add to the popularity and usefulness of the Office in all departments."[124] Employers were beginning to realise that direct consultation with the government could provide favourable outcomes without reliance upon parliamentary mechanisms that were increasingly less reliable, as the antagonisms between the Legislative Council and the Legislative Assembly showed no likelihood of abating. As a consequence, interactions between employers and government on policy issues relating to workers' compensation became more direct as were trade union communications with the Labor government at the time.

Introduction of benefits for mining diseases at the end of 1916 was administered through a separate fund, the Section 14B Miners' Phthisis fund. These types of diseases were endemic in Queensland and the government was acutely aware that the likely cost would be substantial. Its decision to conduct these types of claims through

[121] *The Brisbane Courier*, 3 July 1916, p. 11.
[122] These were policies issued to those who employed household labour e.g. domestic servants and gardeners.
[123] *State Government Insurance Office Annual Report* 1916-17, p. 4.
[124] ibid p. 6.

a separate fund provided protection for the general fund and for the majority of employers whose premiums funded the scheme. In this way mining companies could be made to more directly contribute to the costs of the diseases. From the outset the government was acutely aware that to attempt to force these employers to fund the total costs of benefits was prohibitive and that it would have to subsidise the fund as well.

During 1917 the fund operated effectively. No claims made under the Act were contested. Only one case chose a solution via common law, but damages awarded were less than what would have been received under the statutory benefits.[125] Financially, the fund offered a 10% bonus on ordinary premiums. Those with household policies fared even better — their premiums were waived. The explanation offered for this was there had been a considerable decrease in the working expenses of the fund.[126] However, there was also a decrease in the number of premiums received. As over 2,000 employers omitted to renew policies the Insurance Commissioner was prompted to request the legislation be amended so premiums could be classified as Crown debts, and not be subject to a Statute of Limitations.[127]

The fund remained profitable throughout 1918 and again a premium bonus of 10% was offered to ordinary policy-holders and no premium was levied on household policy owners. Workers also benefited from the sound financial state of the fund with a decision that the cost of medical certificates (approximately £2,500 per year) would

[125] In that case the family of a deceased worker refused the sum offered by the fund. However they received a significantly lower amount under common law. *Annual Report of the State Government Insurance Office* 1917-1918 p. 4.
[126] Memorandum setting out proposed press statements 1918. Dept of Justice Correspondence files. QSA JUS7129.
[127] *Annual Report of the State Government Insurance Office 1917-18*,p. 5.

be borne by the fund — not workers. [128] Treasury was anxious to end the £10,000 annual contribution it provided to subsidise the Section14B fund, however the Insurance Commissioner advised that many mines were still not financially independent to the extent that they could absorb a premium increase. Goodwyn advised it would be preferable to allow the subsidy to remain, with the amount being appropriated from the ordinary workers' compensation fund instead.[129] Consequently, a precedent was established very early for sums of money to be drawn from the fund and appropriated to general revenue.

This shrewdness on the part of both the government and Insurance Commissioner Goodwyn should be recognised. As well as maintaining a sharp focus on reasonable levels of parity between premium and benefit levels, the government was willing to cross subsidise the Section 14B fund. It passed the general fund surplus on to employers and employees instead and simultaneously contributed to increasing support for the fund among both groups.

In 1923, new amendments relating to seamen were used when the vessel *Douglas Mawson* sank in a cyclone with the loss of 13 lives. The fund paid out £7,210 for this disaster alone, but still posted a surplus at the end of the financial year. However, the Section 14B fund posted a £15,297 loss even after a £10,000 subsidy from the workers' compensation general fund was provided. The Commissioner noted in the Annual Report that premium rates under the Section14B fund required revision with a view to premium increases.[130] A small increase was levied the following year.[131]

[128]Memorandum re proposed media statement 22 Aug. 1918. Dept. of Justice Correspondence files. QSA JUS457.
[129] *State Government Insurance Office* memorandum to Minister for Justice, 8 Oct. 1918 QSA A7126.
[130] *Seventh Annual Report of the State Government Insurance Office* 30 June 1923, p. 9.

At the same time, other methods of revenue collection were employed as the government faced pressures to ensure the general fund continued to cover shortfalls in the Section 14B fund, and remain profitable itself. Premier Theodore ordered that greater attention be given to the collection of premiums from employers, with close emphasis on constant workplace checks by inspectors and prosecutions.[132] A merit rating system of premium calculation was introduced in 1924. Reduced rates were given to employers whose risks were better than the average of their rating group, while the rating of those risks which were more hazardous than the average was increased.[133] As a result, there was a notable increase in income[134] and the workers' compensation general fund posted a record profit of £68,602/4s/8d in 1925, while the Section 14B fund suffered a £20,030 loss despite a £10,000 subsidy from the general fund.[135] The Insurance Commissioner advised in the 1925 SGIO Annual Report that "…satisfactory attention has been given by Employers to their Returns and the requirements of the Office, and is reflected in the satisfactory premium income which has increased during the year…"[136]

In 1926, the Section 14B Fund experienced an increased loss of £49,799/1s/5d despite a subsidy of £20,000 from the general workers' compensation fund. This was due to increased numbers of claims during the year and the amount of compensation had increased from £400 to £450.[137]

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[131] *Eighth Annual Report of the State Government Insurance Office* 30 June 1924, p. 8.
[132] Memorandum from Premier to Under-Secretary of Treasury 7 Aug 1925. QSA TRE/844 7254.
[133] *Eighth Annual Report of the State Government Insurance Office*, 30 June 1924, p. 9.
[134] *Administrative Actions of the Labour Government in Queensland During the period 1915 to 1927.* Attorney-General of Qld. Hon. J. Mullar MLA, Brisbane Govt. Printer, 1928 p. 51. QSA TRE/A1017
[135] *Ninth Annual Report of the State Government Insurance Office* 30 June 1925, pp. 4-10.
[136] Ibid, p. 9.
[137] *Tenth Annual Report of the State Government Insurance Office* 30 June 1926, pp. 4-9.

In 1927, the general fund posted a profit of £95,582 and a contribution of £30,000 was transferred to the Section 14B fund.[138] The Annual Report noted that mining industry premiums had significantly decreased as the Depression placed strains on some employers' resources and others left the industry. At the same time, claims increased.[139] Financially however, by 1928 the general fund showed a fall in premiums of £62,709 that was attributed to rising unemployment and provided early indications of the economic depression that was to engulf Australia.[140]

Although the fund showed a surplus of over £51,200 in 1929, the Section 14B fund continued in deficit. The general fund was again able to inject a £30,000 subsidy reducing the deficit of over £49,803.[141] However, the SGIO was so economically sound by this time that the government had authorised the construction of new premises in the Brisbane CBD (cnr Adelaide and Edward Sts). Enough money, from both the workers' compensation fund and the general insurance business, had been set aside that planning and construction began without the assistance of government loan funds.[142]

In 1930, the general fund profited by £38,669 of which £25,000 was appropriated to reduce the losses of the Section14B fund. Under pressure from groups such as manufacturers and retailers[143] the government reduced premiums in some instances by up to 40%, and increased the prompt payment discount from 5% to 7.5%.[144] This brought about a loss of premium income of £22,470 in 1931. However, this did little

[138] *Eleventh Annual Report of the State Government Insurance Office* 30 June 1927, p. 1.
[139] ibid p. 1.
[140] *Twelfth Annual Report of the State Government Insurance Office* 30 June 1928, p. 1.
[141] *Thirteenth Annual Report of the State Government Insurance Office*, 30 June 1929, p. 1.
[142] Thomis M.A. and Wales M., 1986, *From SGIO to Suncorp*… p. 61.
[143] For example letter from H.A. Irvine & Sons, Ltd., (Wynnum Emporium) to Treasurer 10 July 1930. QSA TRE/A1111.
[144] *Fourteenth Annual Report of the State Government Insurance Office*, 30 June 1930, p. 1.

damage to the overall profitability of the fund in that year as other effects of the Depression, such as falling wages and unemployment, began to be reflected in the annual turnover of the fund. Reduced premiums were offset by reduced claims. High unemployment had brought the dubious distinction of the lowest number of fatal claims in the history of the fund in 1931. It did however increase pressure on the Section 14B account that recorded a deficit of £53,126 because there was less available in the general fund for an annual subsidisation.[145]

By 1932, the workers' compensation department showed a premium drop of £114,308 while claims and administrative expenditure rose in excess of premium income for the first time since the introduction of the fund. An amount of £55,000 had to be transferred from SGIO reserves to the fund. The Section 14B fund deficit continued to grow to the sum of £69,783. Commissioner Watson appealed to employers to do all that was possible to get incapacitated workers back to work as soon as possible. He also hoped the opening of new mining ventures such as Cracow Gold Field and the reopening of Mt Morgan would reverse the financial problems of the Section 14B fund, principally through increased premiums.[146]

In 1934, the government indicated that although the general fund had shown some instability during the previous few years of depression, increased employment in the State had improved the economic position of the fund. Consequently, increases in benefits were warranted.[147] When pressed the Minister indicated that as total wage income for 1932-33 had increased, he was optimistic the previous year's deficit could

[145] *Fifteenth Annual Report of the State Government Insurance Office*, 30 June 1931, p. 9.
[146] *Sixteenth Annual Report of the State Government Insurance Office*, 30 June 1932, pp. 1-9.
[147] Cooper F.A. (Member for Cook) *QPD* 22 Nov. 1934 p. 1643.

be converted to a small surplus.[148] This proved to be correct as a profit of £21,874 was posted in 1934, after the loss of £93,831 the previous year.[149]

However, another loss of £49,335 was posted the following year. The reasons offered were that claims on the workers' compensation general fund were the highest in the history of the office, while premium levels remained relatively low.[150] This forced the Insurance Commissioner to reconsider the fund's attitude to employers who neglected to take out policies, or who incorrectly stated the extent of their operations in order to have premiums lowered, and to implement strategies to deal with these issues.[151] At an internal country sales conference (aimed at boosting morale), field officers detailed the difficulties of getting employers, particularly sawmillers and timber-getters, to pay premiums.[152] Both of these were high-risk industries.

The fund again showed a loss for 1936 of £66,298. In the previous five years the total cost of government subsidies to the fund had totaled £258,233.[153] The Insurance Commissioner reported that this was due to insufficient premium income and increased expenditure brought about by contested cases.[154] The Insurance Commissioner indicated that the certificates provided by some medical practitioners were questionable and some claimants had been found to be carrying out tasks that were supposedly beyond their capabilities. There were indications that these events were occurring elsewhere, both in other States of Australia and overseas.[155] He also

[148] ibid p. 1756.
[149] *Eighteenth Annual Report of State Government Insurance Office*, 30 June 1934, p. 1. *Seventeenth Annual Report of State Government Insurance Office*, 30 June 1933, p. 1.
[150] *Nineteenth Annual Report of the State Government Insurance Office*, 30 June 1935, p. 1.
[151] *Twentieth Annual Report of State Government Insurance Office*, 30 June 1936, p.1.
[152] *Insurance Lines* Vol xvi, No 6, June 1934.
[153] *Twentieth Annual Report of State Government Insurance Office*, 30 June 1936, p. 1.
[154] ibid p. 1.
[155] ibid

pointed to a significant increase in the number of journey claims, as the use of motor vehicles was becoming more prevalent.[156]

The Insurance Commissioner decided that the deficit could not continue to drain the SGIO reserves and premium rates would have to be increased in industries where claims ratios exceeded 51 percent of the premium paid.[157] The Commissioner failed to single out any industry where this was occurring however in the parliament the Opposition pointed to the sugar industry as problematic.[158] The Opposition also argued the economic problems facing the fund were the result of political pressures that had been placed upon the Insurance Commissioner to "…give decisions against his better judgment" as government members attempted to get better outcomes for constituents.[159] After the increase in premium rates representatives from the sugar industry asked the government to reconsider as the increases in that industry were too high, however the government did not accede to this and argued if the sugar industry did not "…carry its own deficit, somebody else would have to carry it."[160]

By 1938, the fund profited by £90,780 as premiums reached record levels, although claims reached a similar record high. This amount was sufficient to reduce the previous deficit. The end of the economic Depression brought higher wages and consequently increased premium calculations. The Section 14B fund remained in deficit, however its size was slowly being decreased.[161]

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[156] ibid
[157] ibid p. 1.
[158] Maher E.B., (Member for West Moreton) *QPD* 12 Nov 1936, p. 1510.
[159] ibid
[160] Notes on a deputation from Qld. Cane Growers Council with Treasurer F.A. Cooper 25 May 1938. QSA TRE/A1768.
[161] *Twentysecond Annual Report of State Government Insurance Office*, 30 June 1938, p. 1

Overall, the economic management of the scheme during this initial era contributed significantly to increased levels of support given to the legislation, particularly by employers. A mix of leniency towards both employers and employees who failed to adhere to fund requirements, and a willingness to 'top up' both the Section 14B fund and later the general fund ensured a majority of members of these groups benefited from the scheme. In particular, both the Insurance Commissioners and the government were sensitive to the needs of employers and actively sought to maintain reasonable premium levels for as long as possible, to the extent that the government was prepared to top up the fund from government revenue. Benefits increases were also introduced despite the fund's adverse financial position.

The Role of the Commissioner

The SGIO was the 'jewel in the crown' of Ryan's state enterprises program. By the 1920s it became clear that state insurance was to be an exception as other state enterprises floundered. For example, state stations had incurred losses in excess of £1,000,000 and state butcheries fared little better with losses amounting to £700,000.[162]

Stability and expansion of the SGIO was a vital component in the continued support for workers' compensation legislation. The role of the Insurance Commissioner in particular was critical to the development of cooperative relations between the stakeholders. As inaugural Commissioner, John Goodwyn was committed to broad principles of social justice and held a strong belief that cooperation was the most appropriate means of achieving maximum effect from the legislation. He saw his

[162] *Daily Mail* 22 Oct. 1928.

role, in part, as facilitator of this cooperation. The second Commissioner, Watson, had been Goodwyn's deputy and well knew the principles that underpinned the initial success of the legislation. His lengthy term as Commissioner ensured practices that had begun with Goodwyn were continued.

As Halligan argues, when government was less complicated, simplified methods of policy-making were adequate, and administrators and managers were afforded considerable discretion in the process.[163] There was little need for formal techniques such as policy frameworks. Certainly, the Insurance Commissioner exercised significant power in the progress of the legislation. By Executive Order, the position was empowered to vary some premium rates, determine the validity of charges made by medical practitioners, enter into arrangements with medical practitioners and hospitals, and limit the amount of recoverable costs.[164] Government also made liberal use of Regulations provisions with, for example, the Commissioner was granted the power to vary premiums of employers who retained an ambulance service on work premises.[165] This brought a dynamism to policy-making and rapid development of the legislation, particularly during the term of the first Commissioner, John Goodwyn.

The government's choice in appointing Goodwyn was astute. An experienced and respected actuary, Goodwyn's advice on the likely success of monopoly workers' compensation insurance was one of two independent reports sought by Attorney-General Fihelly prior to the introduction of the legislation.[166] He held a genuine concern about workplace injuries in general and a strong personal belief that

[163] Halligan J., 1988, 'State Executives' in *Comparative State Policies* Galligan B., ed., Longman Cheshire p. 58.
[164] S20(2)(i)and (vi), *An Act to Amend the Law with respect to Compensation to Disabled Workers,* 6 Geo. 5 No. 35.
[165] *Qld Government Gazette* No. 56 Vol. CIX 4 Aug. 1917 p. 515.
[166] Fihelly J.A., 'State Insurance History Forgets Founder' in *Sunday Truth,* 15 Aug. 1937.

compulsory state insurance was the best system to bring significant improvement in this area. For example, Goodwyn ended each Annual Report with the reminder "Most of us can well afford to spend a little time in acquiring knowledge which may at any time assist in saving a valuable life."[167]

From the outset, Ryan and Fihelly, along with Goodwyn, envisaged a decentralised structural arrangement for managing the fund, particularly for areas outside Brisbane. Centralisation of operations within Brisbane was never the intention of the government and a complex network of branch offices was set up which provided a majority of workers with easy access to the department. Clerks of Petty Sessions were appointed as agents of the Insurance Commissioner. The combination of their legal training and their capacity to understand and apply regulations made them very effective in this role. A high level of efficiency in dealing with claims resulted and workers were spared a long costly wait for compensation.[168] In his first Annual Report Goodwyn noted there had been a "speeding up" in the processes of claim settlement across the State.[169]

As a result of the significant level of autonomy granted to the Commissioner, he exerted considerable influence over key areas of early policy development. For example, when employer groups asked for extra time for their members to organise policies with the SGIO, leniency was shown. In one instance, a labourer on a dairy farm was killed and, although the employer had no insurance and had paid no premium, the Commissioner's decision to pay compensation was made on grounds that the employer had secured the necessary forms and intended to take out

[167] *State Government Insurance Office Annual Reports* 1916 – 1920.
[168] Thomis M.I. & Wales M., 1986, *From SGIO to Suncorp…* p. 18.
[169] *Report of the State Government Insurance Office 1916-1917*, p. 10.

insurance.[170]

Similarly, when the Legislative Council applied restrictive eligibility criteria to the Mining and Industrial Diseases amendment Goodwyn established a compassionate grant fund financed by the general fund's unappropriated profits that facilitated payment of benefits to ineligible workers.[171] The following year his request for eligibility criteria to be extended were successful, as was his request that the amounts paid by the compassionate grant fund be deducted from any subsequent compensation paid.[172]

The Commissioner's role in directing policy was visible when he attempted to include casual workers in the legislation by Regulation,[173] however the Legislative Council refused to allow the change.[174] Not to be outdone, the Commissioner drafted similar amendments for submission to parliament in 1918. His reasons were set out in a memorandum to the Attorney-General:

> There is at the present time very considerable difficulty in regard to these persons as in the event of an accident the employer as a rule claims that they were included in his Policy or that he intended to include the amount paid to them at next adjustment. Consequently we pay a very large number of claims each year and receive no corresponding premium income"[175]

While casual workers and canvassers were heavily employed in rural industries, it is something of an anomaly that public service employees were also singled out for inclusion in the amendment, particularly as public sector unions (the Public Service General Officers' Association [PSGOA] and the Professional Officers Association

[170] *The Brisbane Courier*, 20 July 1916, p. 6.
[171] *Annual Report of the State Government Insurance Office 1917 – 1918,* p. 6.
[172] S14B(1) *Workers' Compensation Act 1916-1918* Amendment Act. 9 Geo. 5 No. 21 1918.
[173] *Qld Government Gazette* 31 Mar. 1916, Vol CV1, p.192.
[174] *QPD* 27 Sept. 1916, p. 869 and 19 Dec.1916, p. 2724. *Brisbane Courier* 20 Dec 1916, p. 8.
[175] *Workers' Compensation Acts Amendment Bill. Reasons for Recommending the Various Amendments*, 8 Oct. 1918 p. 3. Justice Dept. Correspondence file QSA A7126.

[POA]), were preoccupied with other issues. The Royal Commission on Classification of Officers and the setting up of the Public Service Appeals Board during this time engrossed these unions, and no evidence was found of lobbying by these groups for changes under workers' compensation legislation.[176] It was not until after the amendment was lost that the PSGOA began a campaign for inclusion of their members. Consequently, there was discussion at the Association's 1921 Annual General Meeting[177] and a deputation to the government in 1922.[178]

With the unions preoccupied, explanation for why the Insurance Commissioner was intent on bringing public servants under the legislation may rest with his own staff. As he oversaw the setting up of the department, including its staffing, Goodwyn fought a running battle with superiors for more money for his employees.[179] Also, Inspectors often faced hazards as they were required to travel long distances on country roads sometimes by horse and at other times by sulky. Even the Commissioner received minor injuries in a fatal car accident while on departmental business.[180]

His influence over the development of the legislation is visible in a number of key areas. The definition of "*worker"* was administratively unsatisfactory for the department because it omitted a large class of persons who were employed under contracts other than contracts of service or apprenticeship. Courts had been applying a liberal interpretation to the ambiguity to determine whether contractors came within the interpretation of '*worker'* under the Act. For example, in one case a judge had

[176] *The State Service*, Journal of Public Service General Officers' Association of Queenland. 1916-1920.
[177] *The State Service*, August 1921, p. 6.
[178] *The State Service* August 1922, p. 9 and October 1922, p.1.
[179] Thomis M.I. and Wales M., 1986, *From SGIO to Suncorp…* p. 19.
[180] ibid

relied on earnings to determine the eligibility of a contractor. If the wages of the contractor were equivalent to those of a worker, then that person was a *'worker'*. Similarly, it was found that the fact of being a contractor did not necessarily mean the person was not a *'worker'*.[181]

Judicial decisions generally brought increased settlements in monetary terms that, in turn, added financial strain to the fund as employers' premiums covered these payments as well as statutory payments. Bringing more workers under the statutory scheme would facilitate increased control over the economic viability of the fund, and this the Insurance Commissioner actively sought to do. This position backfired somewhat as the Legislative Council rejected changes to the definition of *'worker'* on the grounds that, as the fund had already taken a liberal approach to the definition there was no reason to change the legislation. For example, in one instance a death had occurred as the result of a workplace accident, however it was unclear whether the man could be defined as a *'worker'* under the Act. It was felt a court decision would be negative in this regard but the fund awarded his family £300.[182] Therefore Legislative Council members saw no reason to change the definition.

This lack of cooperation by the Legislative Council led to more active use of informal methods of policy implementation within the department sanctioned by the Commissioner. Employers were shown leniency in regards premiums and policies, and worker-based decisions were dealt with in similar manner. In this instance, the willingness of the government to allow the Insurance Commissioner significant leeway to make these types of decisions without resorting to legal clarification, served

[181] *QPD* 18 Oct. 1918, p. 3311.
[182] ibid p. 3532.

to allay suspicions of both employers and employees as to motives. Arguably, over time this practice drew the affected parties together in a form of cooperation. In particular, this internalisation of transactions left little active role for the legal fraternity and it was locked out of the core community of stakeholders.

Goodwyn was instrumental in attempts to further minimise involvement of lawyers in the legislation. It was on Goodwyn's recommendation that the government attempted to change the avenue of appeal from the Supreme Court to the Industrial Arbitration Court in the 1918 round of amendments because lawyers did not appear very much in the latter. Appeals in the Supreme Court usually ended up being prolonged over a technical point and proved quite costly. Shifting the avenue of appeal to the Arbitration Court meant workers could be represented by trade unions, enabling the government to reduce the legal costs of the fund.[183] Although the Legislative Council rejected this amendment, the attempt is a demonstration of an intention to further exclude lawyers from the policy community.

As a response to a drop in premium renewals in 1917, there was an attempt in the 1918 amendments to classify premiums as Crown debts — not subject to the Statute of Limitations.[184] This also was included on the recommendation of Commissioner Goodwyn.[185] This too, was blocked by the Legislative Council after persuasive argument that it could create a situation, for example, where in the case of a deceased estate workers' compensation premiums would take precedence over other debts.[186] Primary concerns were that it would give the department unwarranted entrée to

[183] *QPD* 18 Oct. 1918, p. 3340.
[184] *Workers' Compensation Acts Amendment Bill. Reasons for Recommending the Various Amendments*, 8 Oct.1918 Justice Dept. Correspondence file, QSA A7126.
[185] ibid. See also *Annual Report of the State Government Insurance office 1917-1918*, p. 5.
[186] *QPD* 30 Oct. 1918, p. 3535.

individuals financial affairs and access to deceased estates[187] and it would provide the Commissioner with unacceptably wide reaching powers.[188]

The influence of the Insurance Commissioner was particularly evident when Assistant Justice Minister Fihelly suggested the Commissioner inform him of the possibility of repealing S14B(6) which required the cost of the Section 14B fund £10,000 subsidisation be replaced with mining company premiums instead. The Insurance Commissioner advised, "This may have a serious effect on certain mines which are either not paying their way or which are on the border line between profit and loss. I am also of the opinion that the Government would reap a certain amount of discredit by repealing this Subsection."[189] Instead he advised that the general workers' compensation department policyholders could forgo a bonus and a portion of the workers' compensation profits could be appropriated back to Treasury. According to the Commissioner "The object desired by the Honourable the Treasurer will thus be attained without furnishing opponents with material for criticism either of this Office or the Government's policy."[190]

Goodwyn resigned on 31st October 1920 to take up a more lucrative position with an insurance company in NSW. He had been forced to mount strong protests for a rise in salary that was quite modest commensurate with the responsibility encompassed in the position of Insurance Commissioner. He had also endured considerable personal attacks from certain areas of private enterprise, notably the insurance sector.[191] Under

[187] *Brisbane Courier* 31 Oct. 1918 p. 5.
[188] *QPD* 30 Oct. 1918 p. 3534.
[189] SGIO Memorandum to Minister for Justice 8 Oct. 1918 Justice Dept. Correspondence file QSA A7126.
[190] ibid
[191] Rowley B., 1986, 'John Goodwyn and the Foundation of the SGIO, 1916-20' The 1986 Clem Lack Memorial Oration. Rowley was the General of Suncorp Insurance in 1986. He cites Suncorp Historical Section as the source of this information.

Goodwyn's stewardship the initial relationship between administration and politicians was close and complimentary.[192] However, he is believed to have been privately distressed with the level of political interference over policy and staff matters.[193] He was replaced by Deputy Commissioner John Watson.[194] Fihelly had also been replaced as Attorney-General by W.N. Gillies in 1918 and the department generally experienced increased pressures to provide premium bonuses at a time of increased administrative and staffing costs, due in no small part to the expanded role of the SGIO in offering a variety of insurance.[195]

Overall Goodwyn's resignation signaled the demise of the initial innovative period for workers' compensation and coincided with the resignation of Premier Ryan, although there is no evidence of any direct or indirect links between the two. New Commissioner Watson's task was one of administrative consolidation. In the absence of structures and procedures for handling policy, as Watson's reign as Commissioner began it was clear that initial objectives had been met and there was little clarification of future policy direction.

However Goodwyn had instituted structural arrangements, particularly the extensive use of Regulations, that ensured the fund effectively operated through the public service. It established a pattern of activity in the role of Commissioner by allowing his to be a leading voice in policy development, and provides an example of executive dominance that continued throughout this period of Labor rule.[196] However, by the

[192] Thomis M.I. and Wales M., 1986, *From SGIO to Suncorp…* p. 37.
[193] Rowley B., 1986, 'John Goodwyn and the Foundation of the SGIO….' Rowley cites discussions with staff who were present during the Goodwyn era as the source of this information.
[194] Watson remained Commissioner for 25 years.
[195] Thomis M.I. and Wales M., 1986 *From SGIO to Suncorp…* p. 35.
[196] Scott R., Coaldrake P., Head B., and Reynolds P., 1986, 'Queensland' in *Australian State Politics*, Galligan B., ed., Longman Cheshire, 59.

1930s calls were mounting for an overhaul of the SGIO amid claims it had become autocratic and unjust in its dealings with injured workers. There were accusations it had become a "bureaucrats' castle" with little sympathy, and often disdain, for workers as many claims were poorly handled with long delays and poor decision making.[197] The Commissioner was forced to defend the organisation against Labor Party and trade union allegations that it no longer operated with the best of intentions towards workers.[198] In reponse Commissioner Watson argued "…the Acts are being interpreted as liberally as possible in favour of the claimant."[199] Perhaps the most scathing of criticisms came in 1937 when John Fihelly (since retired) wrote a disparaging newspaper article condemning the current administration. He claimed "…even if a pack of fools were in charge the institution could hardly have succeeded less well." [200]

The government was also forced to defend increasingly complex administrative measures employed by the fund, particularly in relation to claims assessment. In one outburst the Premier argued that behaviours of certain ethnic groups warranted such response. He said: "I have heard that the first word of English that a certain foreign element learns to say is "compensation." The Leader of the Opposition agreed. Essentially, they argued this amounted to collusion between employers, employees and the medical profession in some instances that made it difficult for the Insurance Commissioner to justify claims.[201]

Overall, it is argued the role of the Insurance Commissioner in these early stages of

[197] *Sunday Truth*, 9 Aug. 1936 p. 9. *Sunday Truth*, 6 Dec. 1936 p. 7.
[198] Letter from Assistant Treasurer to V. Gair, Secretary of Parliamentary Labour Party, 5 Nov. 1936, QSA TRE/A1596.
[199] Memorandum from Insurance Commissioner to Under Secretary, Treasury, 29 Oct. 1936, QSA TRE/A1596.
[200] Fihelly J.A. 'State Insurance History Forgets Founder' in *Sunday Truth* 15 Aug. 1937.
[201] *QPD* 18 Nov. 1936, p. 1631.

development was pivotal to the success of the SGIO and workers' compensation. Commissioner Goodwyn's ideological affinity with Ryan's legislative model provided a basis upon which broader support of employers and employees for the initial legislation could be garnered. Less structured bureaucratic practices afforded the Commissioner the capacity to influence both the legislative development and the administration of the fund. Simplistic administrative processes aided his liberal application of regulatory mechanisms and willingness to administer decisions on a case-by-case basis. These, in turn, contributed significantly to the development of practices of direct communication with trade unions and employers, along with increased levels of trust of those groups as efforts were made to address the needs of each.

Development of cooperation

To attract support for the legislation, particularly among employer groups, administrators of the fund adopted a liberal approach in dealings with stakeholders from the outset. Direct communication practices were utilised. For example Commissioner Goodwyn made note of the role of trade unions in successful negotiation of disputed claims during the fund's first year of operation. "For this" he said "we have largely to thank the good understanding which exists between the Office and the officials of the various trades unions. In the event of a serious difficulty arising with an injured worker I make a practice of getting the secretary of his union to look through the papers and discuss the question either with myself or the Chief Claim Officer, and the results of this practice, so far, have been quite

satisfactory."[202]

With employers, willingness to bend the rules was conducive to improving relations, and contributed to acceptance of the scheme. To expand on an example mentioned above, a farmhand was killed at Maleny. His employer was not insured. His dependents were entitled to £450 and £500. The Commissioner was satisfied that the employer intended to insure his employee, and he merely charged him his premium and paid full compensation.[203]

The fund faced its first real test in the wake of the Mt. Mulligan mining disaster in 1921. Seventy five miners were killed and compensation had to be paid to their families. During that year £24,560 was paid and approximately £7,650 was left outstanding in claims not finalised. The SGIO Annual Report for that year showed that after these amounts were deducted, along with reserves for regular outstanding claims and the appropriation of £5,000 to the Section14B fund, there remained a surplus of £5,000.[204] Although stretched, the fund had successfully weathered this test. The department also acquitted itself reasonably well in administrative terms in handling the disaster, despite confusion in relation to the special Act of parliament set up to handle relief monies, and problems identifying and locating dependents. The employer, Chillagoe Ltd, admitted that the fund had saved it from enormous loss, as without state insurance the company would have had to outlay considerably more than the £5,000 liability it incurred under the legislation. Consequently, the availability of compensation allowed the company to continue. The only disadvantage was that dependents were inadequately compensated, as they could only be provided with

[202] *Annual Report of the State Government Insurance Office 1916-17* p. 11.
[203] *QPD* 18 Oct. 1918 p. 3340.
[204] *Sixth Annual Report of the State Government Insurance Office* 30 June 1922.

amounts set out in the Act that were inadequate for a catastrophe of this magnitude.[205]

While this liberal approach by fund administrators during these early years contributed much to the development of cooperative relations among stakeholders, it also placed a strain on the scheme's finances through the number of claims each year that were not covered by corresponding income. Consequently, alternate methods of premium gathering were introduced, albeit with an eye towards engendering minimal discontent. For example, after initially being rejected by the Legislative Council in 1918, [206] the position of Insurance Commissioner was granted increased autonomy in 1920. Specifically he was given power to vary the rates of premiums in individual instances where employers had been found, through increased claims, to pose a higher risk to their employees.[207]

A revision of premiums in 1920 had found that in three classes — agriculture, mining and timber industries — rates were vastly inadequate, however to avoid extra burdens on these industries existing rates were maintained.[208] Increasing the Commissioner's discretionary power in this regard provided some avenue for recouping costs from higher risk employers, without jeopardising broader support of key industries for the legislation.

However, by the time Commissioner Watson took office the task of minimising discontent among some employer groups over premium levels was becoming

[205] *QPD* 26 Oct. 1921 p. 1904.
[206] *Memorandum. Proposed Amending Workers' Compensation Bill. Reasons for Suggesting Each Amendment* 10 Aug. 1920 p. 7 QSA TRE A/7148.
[207] S13 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1918," in certain particulars.* 12 Geo. 5 No. 29.
[208] Memorandum from Insurance Commissioner to Under-Secretary Justice Dept. 24 Oct. 1921. QSA TRE A/7148.

difficult. The Brisbane Chamber of Commerce, Chamber of Manufactures and the Brisbane Timber Merchants' Association lobbied for changes to the system of premium calculation, as rates under the general fund continued to escalate.[209] T.C. Bierne, a well-known retail proprietor, mounted a campaign for the introduction of a merit rating system, on behalf of a group of similar employers. Beirne claimed that in his industry premiums had risen to a point where they were more expensive than prior to the introduction of the legislation. He argued that across the board premiums were unfair on low risk industries such as his.[210]

Under a merit rating system reduced premium rates would be provided to employers whose risks were better than the average for their rating group. Similarly, those whose risks were more hazardous than the average would be levied a higher premium rate. In response, statistics gathered by the department confirmed that of the ten groups which made up the workers' compensation risks, only one (clerical workers) would result in lower premium calculation under a merit rating system. Eight groups would attract increases within sections of those groups, and in the last group, hotels and restaurants, charges would remain the same.[211] Therefore, acquiescing to employer demands at this time was deemed an acceptable risk, and the system was introduced in 1924, although it made very little difference to the income levels of the fund.

The Commissioner was prompted to introduce a merit rating system for a second reason also. A continued rise in the number of fatal claims brought increased claims

[209] *The Journal of Commerce* Vol. 3 No. 2 April 1921 p. 1. *Brisbane Courier* 22 Oct. 1921 p. 5. *The Journal of Commerce* Vol. 4 No. 3 October 1922 p. 9.
[210] *Courier Mail* 28 Feb 1923.
[211] Memorandum from Insurance Commissioner to Under-Secretary Justice 6 Mar. 1923 QSA TRE A/7148.

against the fund.[212] The introduction of a merit rating system was an attempt to entice employers into focusing more on accident prevention.[213] To this point premiums had been spread evenly across employers and provided little incentive for workplace safety measures as workplaces with higher rates of injury or illness were subsidised by those with low incidence rates.

At the same time, in response to the Mt Mulligan disaster where benefit levels proved vastly inadequate, the government faced mounting pressure from miners' groups for substantial increases, particularly for death benefits, and the Treasury was forced to increase mining company premiums to improve the economic position of the Section 14B fund.[214] In response, mining industry groups argued this placed extra burden on mining companies and shouldered them with the economic responsibility for diseases that took hold during more prosperous times, and usually in mines that no longer operated.[215]

Discontent also arose within pockets of employee stakeholder groups. An attack on the administration of the scheme by the Australian Railways Union (ARU) was part of a larger campaign to destabilise the government as the previously close relationship between the two deteriorated over philosophical differences. The shift by the AWU-dominated government away from radical socialist principles resulted in the links between the AWU and Labor governments being forged into a permanent alliance and

[212] *Eighth Annual Report of the State Government Insurance Office* 30 June 1924, p. 9.
[213] ibid p. 9.
[214] Memorandum from Insurance Commissioner to Under Secretary Treasury 31 Oct. 1923. QSA TRE A/791.
[215] Letter from Charters Towers Chamber of Commerce and Mines to Insurance Commissioner 20 Sept. 1924 QSA TRE A/791.

the smaller, more militant groups were sidelined.[216]

In its attack the ARU argued the humanitarian intentions of Ryan and Fihelly had become secondary to "profit-mongering". It alleged this alteration in policy direction was the result of the management changeover from Goodwyn to Watson. Citing several instances where it had been forced to instigate legal action on behalf of its members against the fund, the Union lamented the loss of Goodwyn's propensity to award ex gratia payments where cases did not strictly adhere with the terms of the legislation.[217]

However, acceptance of the legislation by stakeholders was sufficient to bring a Country Party policy reversal over the issue. Previously scathing in its attacks on both state enterprises and state monopoly workers' compensation insurance, as part of its 1929 election policy the Country Party reversed its position and stated its intention to dispose of state enterprises — except the SGIO. Reasons given for retaining the SGIO were its profitability and the possibility of co-operative forms of insurance that private insurance companies could not offer. The Party had also promised to restructure the department so that the life, fire and workers' compensation sections were kept strictly apart. In this way, it was argued, workers' compensation premiums could be decreased while benefits could be increased. Also funds would no longer be diverted to prop up other sections, namely the life insurance section. Although this did not eventuate, the change in policy provides the first clear evidence that there was a tangible level of support for the legislation among stakeholder groups, and

[216] Cribb M.B., 1980, 'Ideological Conflict: The 1927 and 1948 Strikes' in *Labor in Power. The Labor Party and Government in Queensland 1915-57,* Murphy D.J., Joyce R.B. and Hughes C.A., eds., University of Queensland Press, pp. 382-389.
[217] *Advocate* Vol X No. 17. 15 Jan. 1929.

conservative parties knew there was little electoral support for dismantling of the system. It also signalled the end of antagonism over the issue in the political arena.

Management of premium levels required continual attention, and discontent continued to be expressed by sections of employers at different times and were directly addressed while broader support for the legislation was maintained. For example when premiums were increased in 1936 to counter the fund's economic downturn, groups including the Queensland Cane Growers' Council, Brisbane Timber Merchants' Association, Queensland Chamber of Manufactures and the United Graziers' Association claimed their industries would face up to 90 percent increases, while railway, railway construction and tramway industries remained unchanged.[218] The Commissioner was optimistic of a turn around in the general fund and promised groups such as the Queensland Cane Growers' Council that adjustments would be made to premiums if the trend continued, and provided the claims ratios for their industry were reduced. He indicated that if cane growers' workers' compensation figures for the following twelve to eighteen months improved, a reduction would be made.[219] This provides some indication of a policy shift towards singling out industries to make them pay their way. The sugar industry is one example of where claims had been high and other industries had been forced to subsidise the industry. The fund expected the sugar industry to fully subsidise its benefits.

Discussion

The central point in this chapter that addresses the question of why workers' compensation legislation endured for such a long period is the anomaly of stable

[218] *Courier Mail* 14 July 1936.
[219] Notes on a deputation from Qld. Cane Growers Council with Treasurer F.A. Cooper 25 May 1938. QSA TRE A1768.

power relations among key stakeholders that emerged in the face of instability in relations among the three stakeholders in other industrial and political arenas within this State. Essentially, power relations within the workers' compensation policy area remained stable firstly because the manner in which the initial legislation was structured facilitated rapid development of a policy community. Because the initial legislation excluded all but the three key stakeholders, and was mindful to include the needs of each, a policy community developed quickly as all stakeholders drew benefit from the legislation, and, in return, became more supportive of it. Secondly, through the economic success of the fund the power relations between the stakeholders remained embedded within this policy community, as the needs of each stakeholder were adequately addressed. This meant the number of participants remained limited to government, trade unions/employees and employer associations/employers. The private insurance industry was consciously excluded under the legislation.

In developing stakeholder support for the *Workers' Compensation Act*, legislators faced a number of pressures. Social pressures were addressed initially through the introduction of the Act in 1916 as it involved a core policy change from employers' liability to a no fault system. Consequently, trade unions and employer associations were drawn into a system that was predisposed to the development of cooperation via a no-fault basis that removed the adversarial character of previous relations between the stakeholders. In line with Rhodes'[220] policy community observations, stakeholder groups were hierarchical and leaders were able to ensure compliant members, despite some individual discontent among both trade unions and employer associations. For example, in 1927 the ARU attacks upon the administration of the scheme as part of its

[220] Rhodes R.A.W., 1997, *Understanding Governance…*p. 44.

campaign against the AWU-dominated Labor government, did not de-stabilise relations within the policy community.

The long period of Labor rule, particularly the in the initial period of government up to 1929 also contributed to the rise of a policy community, as it provided time for policy negotiation and communication methods among stakeholders to be established. These were well entrenched by the end of World War 1 when Labor's emphasis shifted from pre-war social experimentation, to a concentration on material development.[221] By the 1930s, employment and wages issues dominated the ALP and workers' compensation issues were addressed through the policy community. By 1940 the policy community was the principal mechanism for legislative development.

In terms of ideological pressures the introduction of a state monopoly scheme was underpinned by broader socialist ideals. This mechanism extinguished the need for employers to obtain private insurance and along with it any role for private insurance companies in relation to workers' compensation. Also, the introduction of no-fault mechanisms minimised the role of lawyers as most workers opted for statutory benefits over common law claims. Consequently, the form of the legislation ordained the legitimacy of stakeholders. Had laissez-faire ideology triumphed and removed the state monopoly component of the legislation, other stakeholders such as private insurers would have had legitimate interests to be considered, and the small policy community would have developed into something quite different as additional power sources were accommodated. Instead, the determination of the Labor government to maintain its ideological position, assisted by its relatively lengthy period in

[221] Jordan P.K., 1980, 'Health and Social Welfare' in *Labor in Power. The Labor Party and Governments in Queensland 1915 –57,* Murphy D.J., Joyce R.B. and Hughes C.A. eds., University of Queensland Press, p. 326.

government gave the three key stakeholders enough time to form a cohesive policy community where acceptable levels of stakeholder needs were reconciled. Communication among stakeholders shifted further from the public arena to the meso-level of the policy community.

Additionally, ideological pressures posited within the broader territories of Australian political culture where liberal-conservative traditions contended with social-democratic traditions impacted on the development of workers' compensation in Queensland. Both of these ideologies became embedded within this country's political psyche to the extent that policies put forward by each of the two major political parties in Australia indicate a degree of ideological convergence as each party developed new outlooks over time.[222] Head[223] argues that by the 1940s major political parties had refuted notions of laissez-faire, and political accommodation was based on a "…social-liberal 'hegemony'…" that centralised features of mixed economy, state regulation, welfare measures and reduction of industrial unrest, rather than a sharp divide between liberal ideals of the Liberal Party and the socialist ideals of the Australian Labor Party (ALP). This also holds true in Queensland where, by the 1940s, similar 'social-liberal hegemonic' ideals were reflected in both the Labor Party and the Country/Liberal Party coalition policies.

An ideological shift in the conservative parties policy also emerged in these initial years. Despite earlier commitment to abolish the legislation, conservative political forces recognised the popularity of state monopoly workers' compensation, and not only pledged to maintain the scheme but also increased benefits. By the time a

[222] Head B., 1989, 'Political Ideologies and Political Parties' in *Australian Studies. A Survey,* Oxford University Press, Melbourne, p. 285.
[223] ibid p. 286.

change in government (albeit brief) occurred in 1929 there was a strong level of support among employees and employers for continuance of the legislation. The conservative government also pledged to dispose of all state enterprises except the SGIO as they accepted the economic soundness of the agency and the success of co-operative forms of insurance were features worthy of continuance.

During the initial era of this study, economic pressures that were placed on the workers' compensation fund were administered in such a manner as to contribute to the development of stakeholder confidence, as government sought to avoid placing undue economic burden on any party, preferring to subsidise losses from its own revenue sources. It did however, turn a blind eye to uneven distribution of funds that placed strain on weaker pockets within each stakeholder group in support of appeasing the most politically powerful elements within employer and employee groups to foster further co-operation. This led to some employers' resistance towards the premium setting mechanisms the government employed. As premiums were initially set across the board, some employers argued that those in low injury industries such as retailing offset the inadequate premiums of high injury industries such as the timber industry. They were correct in their argument, however, as these latter industries held little influence in the Queensland economy, government was able to risk the displeasure of some employers while maintaining the support of key employer groups. However, dissention was minimal and did not impinge on the overall confidence among the majority of members of each stakeholder group.

However, the government did not hesitate to modify the initial insurance principle of ensuring premiums were adequate to cover benefits when addressing the issue of

compensation for mining and industrial diseases. The decision to set up a separate Section 14B Miners Phthisis fund to deal with the large volume of claims was politically astute, as government was acutely aware that the administration of the expected large volume of mining claims under the general fund would prove costly and other employer groups would be forced to subsidise the mining industry through higher premiums. Government was prepared to cross-subsidise losses in this fund from the general workers' compensation fund even when it resulted in deficit, rather than impose significant increases in employer premiums. This served to further appease antagonistic employers at a crucial stage in the development of the policy community. By the 1930s, there is little evidence of communication in the public arena in relation to economic issues. Instead, almost all communication was conducted directly between government and employers and government and employees.

Government attempts to slow and eventually eradicate certain diseases also addressed economic issues related to the fund. For example, regulations were introduced that required all workers in the mining industry to be issued with certificates that declared them free from mining diseases — no worker was to be employed in the industry without such certificate. While it is plausible to argue government economic interests were the central motivating features here, social factors cannot be ignored, as government was also keen to incorporate preventative measures in the legislation where possible. The first Commissioner, Goodwyn, in particular, demonstrated commitment to the prevention of workplace injuries and illnesses. These moves also brought employees and employers into further co-operation as employers could only employ disease-free workers. Workers were somewhat assured as mine employers

such as Mount Isa Mines Limited were pressured into improving workplace safety to ensure workers remained disease-free.

Other issues also facilitated the development of the policy community and hence the legislation. As the SGIO began operation, administration of the fund had to somehow harness and manage competing pressures. In the early years of the legislation, government was less complex and policy-making less complicated which afforded bureaucrats, such as the Insurance Commissioner, more discretion, particularly in administering incremental changes. The Labor government was also willing to liberally utilise Regulations provisions to assist in this. Consequently, more informal methods of policy implementation were adopted. The willingness of the government to grant such administrative leeway served to allay suspicions of both employers and employees as to their motives and highlighted the propensity for positive outcomes for each under the existing structure. Over time this practice drew the affected parties together in a form of co-operation. In particular, it internalised many transactions and further locked the legal fraternity out of the policy community.

Further evidence supporting the early development of a policy community relates to the role of the bureaucracy at the time and the methods of policy-making employed. As government was limited in scope the role of the bureaucracy was often clerical in nature.[224] There was little rationality in policy processes as "…precision was clearly much harder to achieve…" and each department tended towards autonomous policy-making.[225] In the absence of formal policy-making techniques, Insurance Commissioners, particularly the first Commissioner Goodwyn, were able to respond

[224] Coaldrake P., 1989, *Working the System. Government in Queensland*, University of Queensland Press, p. 72.
[225] Wettenhall R., 1986, *Organising Government. The Uses of Ministries and Departments*, Croom Helm, pp. 148-49.

to stakeholder needs quite rapidly, through extensive use of Executive Orders and Regulations. This helped foster an atmosphere of trust among stakeholders and facilitated the establishment of regular interaction among stakeholders.

The authority of the political and administrative executive radiated downwards to the middle ranks of the bureaucracy.[226] Although policy-making in this area had facilitated some bureaucratic liberty, by the 1940s the less complicated, simplified methods of policy-making exhibited by Commissioner Goodwyn gave way to more complex styles in line with a broader shifts in policy-making influence from the political executive to the bureaucracy.

The role of the SGIO during these early years also supports Painter's conclusions the early twentieth century was a period of institution building for state governments. [227] Structures and practices were set in place and remained dominant for some sixty years. In particular Painter highlights innovations such as statutory authorities and ministerial government as key characteristics that became valued traditions. This was certainly accurate in relation to the State Government Insurance Office. Furthermore, these innovations took place within the parameters of a public administration model characterised by a lack of central coordination and control, an absence of accountability, high levels of independence and small government that facilitated less complex policy making and simple administrative procedures.

Conclusion

This chapter illustrates how a policy community developed within a broader arena

[226] Pross A.P. 1986, *Group Politics and Public Policy*, Oxford University Press, p. 46.
[227] Painter M., 1986, 'Administrative Change and Reform in *Australian State Politics*, Galligan B., ed., Longman Cheshire, p195.

that had been characterised by significant industrial turmoil. Bitter and violent industrial confrontations, such as the shearing strikes in the 1890s, had left the relationship between employers, employees and government in Queensland mired in acrimony. The likelihood that these established protagonists could forge a cooperative relationship, advantageous for each over a sustained period of time, seemed remote. More remote still was the idea that a piece of legislation that had borne the full brunt of that acrimony as it passed through the parliament, could survive and remain effective throughout this time.

This chapter has traced the development of the *Workers' Compensation Act 1916* during the first period of its operation from 1916 to 1940. As a policy instrument the Act, particularly its genesis as a state enterprise, facilitated a degree of cooperation between employers, employees and government. This statutory body then enabled the government to exercise a certain amount of flexibility within the enterprise.[228] Initially a sympathetic consultative approach towards both employers and employees was adopted, without surrendering broader control over the legislation.

In these initial years, the SGIO took an active role in the direction of policy. Its willingness to adopt a liberal interpretation of the legislation, for example in relation to the definition of '*worker*' and the establishment of compassionate grant fund brought approval from trade unions, while, leniency with recalcitrant employers such as acceptance of intention to insure, minimisation of premiums, and actively seeking the inclusion of other groups of employers, for instance the self-employed to improve equity, brought employer support. At the same time the government actively sought

[228] Howlett M. and Ramesh M., 1995, *Studying Public Policy. Policy Cycles and Policy Subsystems*, Oxford University Press, pp. 89-90.

to establish its own role alongside these two stakeholders through administrative mechanisms such as the efficient financial management of the scheme, passing benefits on to policyholders, attempts to make premiums Crown debts, attempts to lock out lawyers by moving appeals process to Industrial Arbitration Court, and attempts to extricate debts from compliance with the Statute of Limitations. Together these moves clearly establish a measure of cooperation between the three actors, as no party is particularly disadvantaged in favour of the others.

Politically, the government was prepared to accommodate the other two key stakeholder's needs, with amendments that benefited each party. However, as the fund advanced, tensions appeared between a drive for profit and a need to maintain stakeholder support. While the body of policy community literature places development of these structures in the 1950s, in this instance the rise of a policy community was facilitated by the functions of a relatively autonomous bureaucracy that was unhindered by formal policy procedures and frameworks.

In particular, the features of Rhodes' policy community model[229] were beginning to emerge at this early stage. The number of stakeholders was limited to employers, employees and government. Private insurers and lawyers were excluded from participation in policy changes. There was frequent interaction between the three stakeholders over policy issues. For example, trade union groups such as the AWU were influential in issues related to benefits, and employer groups were effective in relation to matters relative to premium levels. Although not fully developed at this early stage there is evidence that a common set of values, ideology and policy

[229] Rhodes R., 1997, *Understanding Governance…* p. 43.

preferences were emerging. The most visible was that relating to state monopoly where stakeholder support increased quite rapidly. Finally, while individual employer groups were willing to voice discontent over premium levels and various employee groups demonstrated displeasure over coverage limitations, each stakeholder came to believe they were in a positive sum game overall. None sought to dismantle the scheme nor did they seek wider choice through private insurers. Instead, each attempted to gain improvements within the existing policy parameters. More importantly, these factors were a foundation upon which a tight cooperative policy community would develop as the institutions of government became more complex in the years that followed.

The evidence presented shows deliberate attempts were made to gain the trust and support of stakeholders. In particular, mechanisms deployed to isolate premium increases as much as possible without undermining the support of the broader employer stakeholder group provided a basis upon which a policy community developed. The willingness of administrators to address issues raised by both employer groups and trade unions acted as a conduit to this alternate meso-level arena of communication. Although relatively simplistic in these early stages, the practices established in these initial years of the legislation laid the groundwork for the development of more complex policy making structures in the coming years.

CHAPTER FIVE

THE LEGISLATION FROM THE 1960s TO 1980s – "…A KIND OF BASTARDISED SOCIAL SERVICE SCHEME"[1]

In contrast to the previous era that was dominated by Labor government, this chapter explores an era of conservative government in Queensland in the years between 1957 and 1989. It illustrates how the change in government and the concomitant longevity of conservative government impacted upon both the legislation and the SGIO. As in the previous era, successive governments continued to be confronted by a number of social, political, ideological and economic constraints that impacted on workers' compensation. Paramount among these constraints was the juxtaposition of a workers' compensation system the central features of which were ideologically counter to the governments' fundamental philosophy of private enterprise.

Poised above this second era of workers' compensation administration in Queensland is the spectre of the Bjelke-Petersen administration, arguably the most controversial period of government in Queensland's history. For example, Mullins identified this period (1967 to 1987) as one of right populism that spread among foreign mining capital, rural landholders, a small Queensland capital class and extended to sections of the working class. He argued it constituted the most repressive period in Queensland's twentieth century history as the government attempted to control the State's population, not just through curbing industrial action, but through controls on

[1] Tucker P. J., (Member for Townsville North) *QPD* 22 Mar. 1973, p. 3163.

wider civil liberties, such as bans on street marches.[2]

Whereas the previous chapter pointed to features of innovation and expansion during the early years of the legislation, this era can appropriately be labelled one of administrative and economic dominance. As well as a lesser number of amendments overall, the legislative changes introduced, particularly by the Bjelke-Petersen government were, in the main, directed at effecting technical changes in the Act, primarily to meet government and SGIO economic agendas. Development of the legislation slowed and administration of the fund became problematic. Legislative mechanisms became less effective as they failed to keep up with broader workplace changes. Administration of the fund became less efficient for both employers and employees as ad hoc policy changes rendered the *Workers' Compensation Act* cumbersome and difficult to understand.

Social pressures again centred round the relationship between government and the trade union movement. However, in stark contrast to the previous era when trade union power extended into political power and Labor governments often acted to advance the specific needs of certain trade unions, legislative amendments that targeted individual industries or occupations, particularly those covered by the AWU, almost disappeared in this period of conservative government. Industrial unrest in Queensland increased as the trade union movement faced an onslaught of attacks on their legal rights and legitimacy, particularly under the Bjelke-Petersen government.

This chapter demonstrates that cooperation within the policy community prevailed

[2] Mullins B., 1986, 'Queensland: Populist politics and development' in *The Politics of Development in Australia*, Head B. ed., Allen & Unwin, pp. 156-57.

during this time and workers' compensation did not become entangled in the broader antagonisms between the government and the labour movement, even during the 1980s when the trade union movement became more dissatisfied with the legislation. In effect, trade unions believed existing workers' compensation arrangements were better than what might be achieved through direct action during this time.

This chapter argues that political pressures impacted on workers' compensation legislation as the longevity of conservative government, assisted by the absence of an effective parliamentary Opposition, gave rise to complacency, increasing lack of accountability and eventual corruption in government. For much of this time the Labor Party was unable to effectively place pressure on government as it remained in disarray, racked by infighting. Although the taint of corruption never reached workers' compensation, the legislation was affected by the broader poor governance practices. As cooperation within the policy community was well established before the Liberal/Country Party coalition came to office, the government found no reason to discontinue established stakeholder relationships. However, over time government increasingly ignored worker-related issues of the workers' compensation system and, with the exception of one isolated example when building industry workers mounted a case in the Queensland Conciliation and Arbitration Commission for increased benefits levels, trade unions remained unwilling to challenge the government in any arena outside the policy community.

Therefore, with the trade union movement posing little threat in the area of workers' compensation the government became increasingly indifferent and failed to address a number of key issues such as maintaining adequate benefits levels, injury and illness

specifications in areas such as loss of hearing and the growing number of asbestos-related diseases among workers. Consequently, this chapter shows that by the end of conservative government in 1989 the legislation was ineffective.

Ideological pressures that subsisted during this era were centred primarily round privatisation of the SGIO. This chapter demonstrates that despite governments' continued support for the state monopoly system of workers' compensation it did not continue to view the SGIO in similar ideological favour. The state-run SGIO faced enormous strain as the Bjelke-Petersen government was intent on its privatisation. As the SGIO had been instituted primarily for workers' compensation, the future of this scheme was threatened as the government set about restructuring and then privatising the insurance giant. As the core functions of the SGIO were increasingly centred round economic efficiency and investment the social welfare principles that underpinned the legislation at the earlier stage became less compatible with the organisation's broader goals. Regulation of workers' compensation was seen as an obstruction to investment and the future private development of the SGIO. Consequently, separation of workers' compensation from the SGIO, and the introduction of a new Workers' Compensation Board were significant factors during this time. Ideological pressure also strongly affected the legislation as a shift from the initial social justice emphasis undertaken by legislators Ryan and Fihelly and articulated through Insurance Commissioners, particularly Goodwyn, gave way to administrative domination and profit maximisation within the SGIO.

The chapter also notes that economic pressures influencing the development of the legislation during this era were quite different to the previous era. Whereas during the

1920s and 1930s the spectre of the Great Depression shadowed the legislation, this era was generally one of economic prosperity for Queensland led initially by the mining industry, and followed by a steady rise in secondary industry during the 1960s and the tourism industry in the 1970s.[3] This brought corresponding increases in workers' compensation income as employment increased. At the micro level the increasing propensity of the government to use the SGIO as its key vehicle for economic investment in Queensland placed pressure on administration of the workers' compensation fund, as it was the most profitable department within the SGIO. This chapter clearly shows however this profitability factor was not always acknowledged within the organisation.

Relations within the policy community continued insofar as each stakeholder maintained support for the established broad policy preferences relating to workers' compensation, particularly state monopoly, full common law access and no-fault insurance. Other groups such as private insurers continued to be actively excluded. However, analysis of legislative changes during this era provides evidence that the relationship dynamics changed somewhat. Whereas in the previous era the balance of power within the policy community was situated with employees, under conservative government, particularly the Bjelke-Petersen administration, policy decision-making in this area clearly favoured employers.

The chapter argues that relationships within the policy community were affected as government's attention to State economic development escalated and other areas of administration were overlooked. The policy community that in previous years had

[3] Johnson W. R., 1982, *The Call of the Land. A History of Queensland to the Present Day*, Jacaranda Press, pp. 192-95.

facilitated stability and continuity in policy making in relation to workers' compensation became institutionalised. This led to ineffectiveness as stakeholder views over key issues such as state monopoly and no fault insurance coalesced and overshadowed individual interests that had underpinned initial legislative development.

The chapter looks first at the implosion of the Labor Party in Queensland and outlines the shifts in focus of the trade union movement from political action to direct industrial conflict that underpinned both politics and industrial relations in Queensland during this era. It provides an examination of the early conservative government between 1957 and 1968, focusing on the Nicklin government and its attitude towards workers' compensation. An analysis of the initial legislative amendments introduced during this time is provided and the administrative development of the workers' compensation fund is addressed. In all, these sections demonstrate the continued centrality of influence of the policy community in effecting positive change in workers' compensation legislation, and serve as a contrast to the following years of Bjelke-Petersen government.

The chapter then moves to focus on the Bjelke-Petersen years between 1968 and 1987. After a brief description of the leadership style of the Premier, the chapter moves to examine changes to the SGIO and its successor the Workers' Compensation Board of Queensland (WCBQ) primarily as a means of demonstrating how the administration of the fund and the roles of administrators influenced the legislation. The legislative amendments introduced by the Bjelke-Petersen government are detailed and the effect on the state monopoly is analysed. Thereafter the chapter

provides a brief analysis of the closing years of conservative rule. Finally, it provides an analysis of the impact of all these factors on the legislation and highlights the role of the policy community between 1957 and 1989 and its contribution to the longevity of the scheme.

The Australian Labor Party

As elaborated in the previous chapter, the alliance forged between the AWU and the Parliamentary Labor Party (PLP) greatly assisted the development of workers' compensation legislation. Relations between the two remained amicable as long as the PLP continued to pay particular attention to AWU industrial needs.[4] However, by 1950 an anti-communist catholic Movement began to emerge within the ALP. Led by Vince Gair, the Movement began to challenge dominant factions, particularly the AWU faction at Labor-in-Politics Conventions. The PLP was initially uncertain how to respond to the new faction as it was unwilling to withdraw its support from the AWU faction, as it also sympathised with some to the Movement's strong anti-communist ideals.[5]

The Movement's influence increased in Queensland from 1950 and in 1952 when Premier Ned Hanlon died in office Vince Gair, who was acting Premier, became his successor.[6] As Premier, Gair refused to continue to uphold any alliance with the AWU and cultivated an alternative power base with unions aligned with the Federated Clerks' Union (FCU). Decisions made by the Gair government, particularly the

[4] Fitzgerald R. and Thornton R., 1989, *Labor in Queensland from the 1880s to 1988,* University of Queensland Press, pp. 142-43.
[5] ibid. pp. 56-58.
[6] When Gair was asked by the Governor if he could form government Gair consulted the Cabinet, not the Caucus and was able to advise the Governor that he could form government. Six days later caucus was advised it could either accept the Cabinet's decision or fact a leadership ballot. Costar B., 2003, 'Vincent Clair Gair. Labor's Loser' in *Premiers of Queensland,* Murphy D.J., Joyce R., Cribb M., and Wear R., eds., University of Queensland Press p. 272.

declaration of a state of emergency to end the shearers' strike in 1956 further alienated the AWU.[7] However, the AWU was not the only group ostracised by Gair and before long other militant unions and civil libertarian groups were also targeted.[8]

Unwilling to compromise with any of these groups, Gair became increasingly isolated as affected groups joined forces to effect his political demise. Unable to maintain cohesion among Queensland Central Executive (QCE) members, the ALP split over a vote taken on 24th April 1957 to expel Gair from the Party. The vote succeeded but Gair and twenty-five other ALP parliamentary members continued to govern as the Queensland Labor Party (QLP) until parliament next sat on 11th June 1957. Jack Duggan was appointed leader of the remaining twenty-four PLP members.[9]

When parliament resumed the Gair-led QLP combined with the Country/Liberal coalition members to defeat the Speaker's ruling that Duggan, as leader of the second largest group in the parliament was the official Opposition. The QLP also combined to appoint Country Party leader Frank Nicklin as leader of the Opposition. This large Opposition group then supported the Duggan group in blocking Supply bills. The next day Gair arranged for parliament to be dissolved and an election was called.[10] The split decimated the ALP's political powers and ensured a long period in Opposition.

As the ALP imploded, the allegiance of many country voters eroded. Conservative

[7] Fitzgerald R. and Thornton R., 1989, *Labor in Queensland…*pp. 154-55.
[8] For example Gair reneged on an election promise to introduce three weeks annual leave for all Queensland workers. He cited economic reasons for the refusal, however State public servants and workers covered under some State Awards had already been granted this benefit. See Fitzgerald R. & Thornton H., 1989, *Labour in Queensland…* p. 147.
[9] Fitzgerald R. and Thornton H., 1989, *Labour in Queensland…*pp. 148-49.
[10] ibid. pp. 151-52.

forces, led by Frank Nicklin[11] adopted the rural corporatist position that had been so successful for the ALP. For rural voters, the Country Party in particular proved just as capable in the continued provision of vital infrastructure such as roads, and the ALP was left devoid of a vital constituency.[12] Fitzgerald and Thornton[13] argue that during the 1960s, as Conservative governments continued to deliver policies and programs initially espoused by the ALP, the latter's political fortunes languished. However, trade union unification increased and success for industrial labour was achieved by exerting direct pressures on employers for wage increases and improved conditions. In political terms a well-remunerated parliamentary position became a just reward for trade union loyalty rather than the vehicle for social and economic change it had been 50 years earlier.

With this shift towards powerful direct unionism, and the simultaneous move away from parliamentary representation as the key to industrial advances, union-based struggles took precedence. However, Trades and Labour Council (TLC) leaders saw blue-collar workers or unions, particularly trades, as paramount and paid scant attention to white-collar unions such as the Federated Clerks' Union, the Shop Distributive and Allied Employees Association and the Public Service unions. New union power-brokers had risen to power as a result of the Gair split. Jack Egerton, leader of a faction called the Trades Hall group was elected president of the TLC. Whereas in previous years of AWU domination focus had centred upon political action to achieve goals, the Trades Hall group reasserted the centrality of industrial struggle to effect desired outcomes. In this shift, the TLC sought to eliminate the AWU and other aligned unions who were the TLC's most potent competitors, both in

[11] Nicklin was a small farmer in the pineapple industry.
[12] Fitzgerald R. and Thornton H., 1989, *Labour in Queensland*…p. 182.
[13] ibid. p. 187.

ideological terms and for blue-collar union membership.[14] Although it was no longer central to workers' compensation development, the AWU remained supportive of the scheme. It continued to urge members to attend promptly to paperwork to assist the department to provide good service, which indicates a greater interest in operating effectively within the system than initiating active measures for change.[15] Workers' compensation had not been a plank in the ALP's Queensland election campaigns since the 1920s.

The Nicklin Government 1957 - 1968

The long period of Labor government in Queensland came to an end when the Nicklin government was sworn in on 12th August 1957. By this time the Conservative forces consisted of the Liberal Party and the Country Party, the latter recognised as the senior Coalition partner. Although the elevation to government was unexpected, the new government moved quickly to alter electoral boundaries to enhance its chances of longevity in office. Nicklin established this era of Conservative government in Queensland at a time when both the State and Australia were prospering. A preoccupation with rural industries continued as agricultural production increased, forcing corresponding progression in infrastructure and, importantly, exploration of new mineral deposits such as Weipa bauxite began.

There were fears within labour ranks that industrial achievements, such as workers' compensation would be wound back under Conservative rule. However, despite a general willingness to tackle labour issues through amendments to the *Conciliation and Arbitration Act* that led to considerable industrial unrest, the government seemed

[14] ibid. p. 187.
[15] *AWU Annual Report*, in The Worker, 29 Jan. 1962.

acutely aware it had nothing to gain by attacking workers' compensation during this time of positive economic growth. The government also showed some sympathy for white-collar unions, particularly the public service unions[16] that had been marginalised by the ALP.[17]

The change in government from Labor to Conservative in 1957 brought into question whether support for the established principles of state monopoly insurance that underpinned workers' compensation policy community unity would continue. Although in 1929 the Moore Conservative government ruled out abolition of the state monopoly it was not clear whether this government would continue a similar policy, or whether promises made in 1916 to dismantle the state controlled fund would be resurrected. Also, in light of the TLC's recommitment to direct industrial action, it was also doubtful whether the conservative government could maintain amicable relations with employees and the trade union movement generally, without hostilities spilling over into the policy community.

However, there were indications that established administrative practices that had contributed to the initial development of the policy community would continue, at least in the short term. In a memorandum to the Under Treasurer the General Manager of the SGIO reiterated that:

> The policy of the Office has always been to administer the Workers' Compensation Act fairly and generously, acting according to the spirit rather than the letter of the law. Wherever there is a reasonable doubt the claimant is given the benefit of the doubt. This policy will be continued.[18]

[16] Nicklin oversaw the reclassification of public service positions and awarded that group the largest salary rise in public service history. See Stevenson B., 1990, "George Francis Reuben Nicklin. 'Honest Frank' – the Gentleman Premier" in *The Premiers of Queensland*, Murphy D.J., Joyce R., & Cribb M., University of Queensland Press, p. 487.
[17] Stevenson B., 1990, "George Francis Reuben Nicklin… pp.477-85.
[18] Memorandum SGIO General Manager to Under Treasurer, 31 Aug 1960, QSA TR1193/5.

Workers' Compensation Fund

To this point the workers' compensation fund had expanded considerably as detailed in the previous chapter. In economic terms it had endured a number of difficulties including the Depression of the 1920s and pressures that stemmed from excessive claims and insufficient premiums. During the 1950s and 1960s the workers' compensation fund continued to prosper with surpluses recorded each year. The formerly troublesome Section 14B fund had weathered its previous difficulties as improved working conditions contributed significantly to the reduction in numbers of sufferers of mining-related diseases.[19] By 1962 the fund was solvent and all monies borrowed from the general fund in earlier years were returned. Consequently, the government began a program of increased benefits and premium reductions. It also provided annual Christmas Grants of £3 to those in receipt of Section14B benefits as further indication of government confidence the fund was financially sound.[20]

The fund recorded a surplus each year from 1963-64 to 1966-67, growing from £2,242,922 in 1963-64 to £6,888,033 in 1966-67.[21] The explanation for the increased surplus was that the enlarged bonus scale set in place on employers' premiums had provided incentive for the introduction of improved workplace safety mechanisms. This, in turn had led to a reduction in claims.[22] Most of the surplus was used to benefit employers. The 1965-66 Annual Report states:

> As the Office administers the Acts on a non-profit basis, surpluses are available for distribution to Employers so that this year we have again allowed the highest Bonus range in the history of the Office. This scale was first allowed in 1964 and, despite increases in benefits to injured workers, we have maintained this record rebate since that date.[23]

[19] This is not to imply that other mining-related diseases were not occurring e.g. asbestos-related illnesses, however the government avoided recognition of these diseases throughout the years under study in this chapter.
[20] Press Statement. T.A. Hiley, Treasurer, 7 Nov. 1963, QSA TR1193/5.
[21] *See State Government Insurance Office Annual Reports*, 1962 – 1967.
[22] *State Government Insurance Office Annual Report*, 30th June 1967, p. 15.
[23] *State Government Insurance Office Annual Report* 30th June 1966, p. 16.

In fact employer bonuses quickly became a dominant issue within the scheme. In 1961 the government argued the accepted practice of assisting some industries with low premium rates at the expense of others who, it was felt, could carry a higher rate, was inappropriate. Rather, premium rates should be set relative to claims experience. In so doing, industries that had previously benefited from the traditional practice of 'across the board' claims distribution, such as grain wool and produce stores, pastoral companies, sugar mills, timber getters, wharf labourers, gas works, breweries, and pipe manufacturers, were no longer favoured. Conversely, industries that would incur reductions were identified as coal miners, fencers and ringbarkers, mines and smelting works.[24] A merit bonus scheme, whereby employers who maintained a claims ratio of less than 70% of their annual premium would be awarded an extra bonus above that provided to all employers, was introduced in 1962.

This scheme differed from the merit rating system introduced in 1924. The previous rating system simply calculated premiums according to industry claims experience. In some years, after funds were apportioned to the General Reserve, the entire surplus was utilised to maintain or lower existing premium and bonus levels. This occurred in 1965[25], 1966,[26] and 1972.[27] In other years upwards of 70% were utilised for this purpose while considerably smaller amounts were maintained in a workers' compensation reserve to meet future catastrophes.[28]

This enhanced focus on employer needs was offset by shifts in attitudes towards

[24] Cabinet Submission, 5 May 1961, QSA TR1193/5.
[25] Cabinet Submission, September 1966, QSA TR1193/5.
[26] *State Government Insurance Office Annual Report* 30th June 1966, p. 16.
[27] *State Government Insurance Office Annual Report* 30th June 1972, p. 14.
[28] This occurred in 1964, 1967, and 1971. No Reports were found for years between 1968 and 1970. There are indications none were produced.

injured workers. On the one hand, leniency in granting benefits was employed as occurred in relation to the position of jockeys. The General Manager noted there had been occasions where jockeys had been injured in circumstances other than on a racecourse.[29] In these circumstances he noted, "…if this were so this Office would not split straws and not admit the claim."[30] However, more stringent approaches were employed in other areas. In particular, according to the General Manager it was necessary to keep suspect claimants under close surveillance, by camera if possible, to gather enough evidence to refute both claims and medical advice.[31] In a memorandum that set out the inconclusiveness of suspect back injuries, the General Manager noted "…the number of films taken of so-called totally incapacitated workers…" made such injuries difficult to handle.[32]

The government decided to expand the types of specialist Boards to address the economic costs of long term claims where the claimants were believed by SGIO assessors to be fully recovered. To this point the only recourse for terminating such claims was through a decision by the Industrial Magistrate. However, this avenue was limited unless the SGIO was provided with more investigative staff to produce relevant evidence. The General Manager envisaged many of the 20,000 outstanding claims would be terminated due to fraudulence if this avenue could be undertaken and such cases referred to a specialist Board instead. This was particularly relevant for back injuries and recourse to an Orthopaedic Board was warranted.[33]

[29] Under the Act jockeys were considered to be 'workers' when riding on a racecourse. This did not include walking horses on nearby roads etc.
[30] Memorandum SGIO General Manager to Under Treasurer, 21 Oct. 1966, QSA TR1193/5.
[31] ibid.
[32] Memorandum SGIO General Manager to Under Treasurer, 23 Nov. 1966, QSA TR1193/5.
[33] Memorandum SGIO General Manager to Under Treasurer, 21 Oct. 1966, QSA TR1193/5.

Legislative amendments

In government, the conservative coalition initially continued to amend the legislation on as regular a basis as had the Labor Party. In 1959 the legislation was amended to increase death benefits for employees from £2,800 to £3,300. The sum awarded for death benefits under the Section 14B account was also increased by £500 to a maximum of £3,000. [34] The time limitation[35] that had been placed on claims under the Section 14B fund was repealed.[36] The amendment also changed the compensatory rights of share-farmers. Under this amendment, property owners were granted the right to recover the costs of workers' compensation premiums from share-farmers.[37] As explained in the earlier chapters, Labor governments had classified share-farmers as employees under the legislation and it had been expanded a number of times to accommodate their needs. In particular, the Act had placed responsibility for payment of premiums on property-owners, however the issue remained unclear in legal terms, as property owners were not technically 'employers' under share-farming arrangements. Traditionally, verbal agreements were entered into between share-farmers and property owners and for many years the fund had encountered difficulties obtaining written agreements in relation to premium charges. This amendment aimed to overcome the ambiguity.[38]

There were two important amendments in 1960. The first was necessary to accommodate the decision to separate the Insurance Commissioner from the SGIO

[34] S2 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1959" in certain particulars,* (No. 2), 8 Eliz. 2 No. 75 1959.
[35] Under the initial legislation affected workers had no claim for entitlement if more than fifteen years had elapsed since employment ceased, however some diseases such as silicosis often had a longer incubation period. See Draft Cabinet Submission, 5 Nov. 1959, QSA TR1193/5.
[36] S3 (b) and S3(e) *An Act to Amend "The Workers' Compensation Acts, 1916 to 1959" in certain particulars,* (No. 2), 8 Eliz. 2 No. 75 1959.
[37] ibid. S5.
[38] Memorandum SGIO General Manager to Under Treasurer, 14 Sept. 1961, QSA TR1193/5.

and appoint a General Manager.[39] The government deemed it was no longer acceptable that the person who headed the State's largest insurance company was also charged with overseeing the business of private insurance companies. Although each Commissioner — Goodwyn, Watson and later Grimley[40] had always exercised utmost integrity in relation to information received about competitors, it was appropriate to eliminate the possibility of a conflict of interest and remove the Commissioner from the SGIO. This move can be seen as evidence of a level of accountability that became a driving force under the public sector reform programs introduced later on during the 1990s.

With this restructure the key tasks carried out by the Commissioner — namely decisions in relation to the conditions under which insurance operator licences were granted or cancelled, as well as the right to investigate suspected breaches — would no longer be conducted by the chief executive of the State's largest insurance company.[41] This meant the Insurance Commissioner would also be removed as head of the Workers' Compensation Department. It was placed under control of a newly-appointed General Manager.[42] Organisational focus also shifted more towards investment. The General Manager was given full powers to invest workers' compensation funds and an advisory committee was set up to assist in this re-directed role.[43] The central function of the SGIO became clearly economic. The social justice focus instilled by the Ryan government was relegated as a less crucial factor.

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[39] S3, *An Act to Amend "The Workers' Compensation Acts, 1916 to 1959" in certain particulars* 9 Eliz. 2 No. 3 1960.

[40] Cecil Arthur Grimley became Insurance Commissioner in 1945 after Watson retired. He had been recruited to the SGIO in 1917 by Goodwyn. He remained in the position until 1960 when he was appointed Insurance Commissioner under the new legislation that separated that role from the SGIO.

[41] Memorandum. SGIO Miscelleanous Papers, QSA TR1193/5.

[42] Essentially the role of the insurance Commissioner was to examine requests by private insurance companies to increase premiums.

[43] Hiley T. A., (Treasurer) *QPD* 24 Feb 1960 p. 2094.

Eric Riding was appointed as General Manager in 1963, a move reluctantly accepted by staff as he was the first outsider to be appointed to the top position.[44] In parliament, the Opposition argued that the SGIO had always trained outstanding administrators and there was no need to scout outside the department for a general manager.[45] With a long public service career spent mostly in Treasury, the department that administered the SGIO, Riding had a sound knowledge of investment issues and procedures. Thomis and Wales[46] note that despite his qualifications, Riding was treated with suspicion by some long-term employees who were inclined to adhere to the culture of service that Goodwyn had instilled, and consequently viewed the appointment of an outsider as a government plot to destroy the last bastion of state enterprise.

The existing culture within the organisation had changed little from that established by Goodwyn. Riding found a departmental obsession with promotion to senior ranks as a reward for long and faithful service. In particular, the lack of energetic leadership and dynamism was problematic in relation to insurance sales staff. It contrasted sharply with private insurance competitors whom he believed benefited from young managerial entrepreneurship. Salaries in these positions were not comparable with competitors so it was difficult to attract capable persons from private sector insurers.[47]

Riding's approach accords with new ideas about management and public sector reform that were beginning to take hold in other Australian States and a further

[44] Thomis M.I. & Wales M., 1986, *From SGIO to Suncorp.*…p. 194.
[45] Donald J., (Member for Bremer) *QPD* 25 Feb. 1960 p. 2106.
[46] Thomis M.I. & Wales M., 1986, *From SGIO to Suncorp.*…p194.
[47] ibid. p. 195.

preface to the public sector reforms that were introduced in the 1990s. His focus on merit rather than age and experience, and his willingness to appoint from the outside contributed significantly to the shift from a culture of service to one of profitability. His chances of success in these endeavours were enhanced by the fact that, although the department had expanded, a considerable number of individuals who had been with the office since Goodwyn's time had reached retirement age, and would not be replaced in the short term.[48] Consequently, many who were imbued with traditional bureaucratic cultural attitudes would not be around, ensuring culture change more chance of success.

These staffing changes also lent themselves towards facilitating broader reorganisation within the SGIO. The original structure instituted by Goodwyn positioned the Workers' Compensation Department as the central tenet around which the organisation functioned. However, this no longer was the case as the organisational goal shifted to one of profit driven by investment. This proved successful and, by the time of the SGIO's 50th Anniversary celebrations in 1968, there was no mention of the contribution of workers' compensation in the recognition of achievements. Instead, life insurance was hailed as the cornerstone of SGIO success.[49]

On a broad organisational level, managing a cultural shift from public service norms to competitive insurance ethos posed a challenge. This challenge was especially difficult for the workers' compensation division as its social justice basis was not compatible with the government's enhanced investment visions for the SGIO. These

[48] ibid. p.199.
[49] '1918- 50 years of Progress – 1968. A Lifetime of Success' in *Insurance Lines*, Vol. VI, No. 1, July-Sept 1968, pp. 12-13.

competing ideologies of public service provider and profit-making did not sit comfortably together, and for some this again raised questions in relation to the appropriateness of a government monopoly fund operating within a competitive insurance arena. For example, during Parliamentary debate, Liberal member Chinchen argued:

> Again the State Government Insurance Office should be able to use these funds in the same way as they are used by other insurance companies. It could do so if it were in a free and competitive field, which, of course, it is not. …Workers' compensation, of course, is a monopoly of the S.G.I.O…It cannot be claimed that that is true and open competition…The Public Service system must inhibit the efficiency of the S.G.I.O.[50]

These comments were an early indication of attitudes that were gaining traction within government circles. It seemed workers' compensation, particularly its state monopolistic features that necessitated public service involvement, hampered the organisation's profit-making potential, although the compulsory monopoly also provided avenues for potential sales in other insurance areas. In all, Riding proved a successful administrator and his financial management brought enhanced economic prosperity for the SGIO.

The second amendment in 1960 clarified the right to compensation where aggravation or acceleration of an existing heart condition was established as being caused through the individual's work.[51] Although influenced by a High Court decision relating to a case in New South Wales,[52] with the government fearing possible future common law expenses, it was a significant step as heart related ailments were not classified as work-related. In this amendment the government demonstrated a willingness to be

[50] Chinchen G.T., (Member for Mt. Gravatt) *QPD* 3 Dec. 1970 p. 2373.
[51] S3 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1960" in certain particulars*, (No. 2) 9 Eliz. 2 No. 47 1960.
[52] In the Hussey case the High Court established that even slight exertion at work contributes to a heart injury, compensation must be paid.

proactive. For senior medical officers within the workers' compensation department, determination of claims by workers suffering from cardiac conditions proved complex, and an independent Cardiac Board was established in 1960,[53] with cardiac specialists appointed as Board members.[54]

Evidence indicates the dynamics among the stakeholders within the policy community had shifted during these early years of conservative government. In 1916 the Ryan government had clearly articulated that fund's primary purpose was to ensure the provision of adequate benefits for injured workers. However, the conservative governments' view was now somewhat different. Treasurer Hiley stated:

> The Government's view is that workers' compensation is a vast co-operative insurance conducted on behalf of employers generally. Particularly good results are rewarded with a general and incentive bonus; further benefits are shared with the injured workers[55]

The most obvious example of this was the merit bonus scheme introduced in 1962.[56] The Treasurer acknowledged the fund was in a sound financial position, and employers were granted an additional 5% general bonus in addition to merit bonuses. The introduction of merit bonuses was also designed to induce employers to improve workplace safety. These proved beneficial to employers and those eligible for maximum bonuses rose steadily to the extent that, by 1981, approximately 70% of employers were receiving the maximum merit bonus of 60%, as well as general bonuses of 10% to 15%.[57] These bonuses were principally inducements for employers to improve workplace safety and reduce compensation costs, yet there is

[53] S4 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1960" in certain particulars*, (No. 2) 9 Eliz. 2 No. 47 1960.
[54] This was the first specialist medical Board set up within the Queensland workers' compensation system. See Campbell J.V., 1984, 'The Queensland Approach' in *Papers Prepared for the Conference on Workers' Compensation – New Directions*, Adelaide.
[55] Hiley, T., (Treasurer) *QPD* 28 Nov. 1962, p. 2031.
[56] Details of this scheme are set out under **Workers' Compensation Fund** in this chapter.
[57] *Workers' Compensation Board of Queensland. 1981 Annual Report*, p. 8.

no evidence that this occurred. For example in 1981 claims increased by 6%.[58]

Policy divisions were also apparent in the 1962 amendments. As a result of pressure from the Council of Agriculture, the government amended the legislation relating to share-farmers again.[59] The initial changes made in 1959 had proved complicated as many share-farmers refused to pay a share of premiums as assessments were issued in land-owners' names. After lengthy discussions with the Council for Agriculture and the Graziers' Association of Central and North Queensland, it was agreed the most appropriate approach was that share-farmers who provided substantial plant, or those who received not less than two-thirds of the proceeds from share-farming agreements would be deemed to be independent contractors and therefore excluded from the Act.[60] This was incorporated into the legislation, along with a further amendment that share-farmers who receive upwards of two-thirds of the product proceeds would be obliged to cover any employees.[61]

These changes indicate a shift in policy priorities when compared to the initial years of the legislation when share-farmers enjoyed a strong level of support from government. Now they were singled out and had conditions revised downwards. Certainly, employer representatives were the more influential force within the network at this time as the Country Party relied heavily on rural constituencies. Large rural property owners such as Robert (later Sir) Sparkes were influential within the party's ranks, and as early as 1960 had called for abolition of the Queensland workers'

[58] ibid. p. 8.
[59] Cabinet Submission, 29 Oct. 1962, QSATR1193/5.
[60] ibid.
[61] S2(3B) *An Act to Amend "The Workers' Compensation Acts 1916 to 1961" in certain particulars*, No. 29 of 1962.

compensation system.[62] Also, by the 1960s continued reliance on rural industries had left Queensland economically vulnerable and the government attempted to focus more on industrial development.[63] These two factors meant that share-farmers, who had in the past often supported the ALP, were vulnerable to policy changes under conservative government.

The issue of industrial deafness was also addressed in the 1962 amendment. The Act had been amended to include coverage for industrial deafness that occurred on or after the 1st January 1945.[64] However, the gradual onset nature of industrial deafness meant only workers who began work after that date were eligible under that amendment. In supporting the new amendment, the Treasurer argued it was inappropriate to confer a right in such a way as to make its legal enforcement a difficult task for employees, despite the fact the fund took a lenient approach to the time limits. He recommended the Act be amended so the 'injury' would be deemed to have occurred at the time the claim for compensation was made.[65] However, the amendment was not extended to include workers who had retired as the slow onset of the disease made it impossible to prove that the injury had occurred as a result of work.[66]

The amendment created an obligation that employers insure workers for common law damages as well as workers' compensation benefits,[67] as costs to the fund of common

[62] *Courier Mail* 1 Apr. 1960.
[63] Johnson W.R., 1982, *The Call of the Land. A History of Queensland to the Present Day*, The Jacaranda Press, p. 190.
[64] The Act was amended to include *"industrial injury"* within the terms of the legislation. Industrial deafness was classed as an industrial injury. See S2 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1943," in certain particulars,* 9 Geo. 6 No. 2 1944.
[65] Cabinet Submission No. 4147, 29 Oct.1962, Cabinet Secretariat, QSA Z3332.
[66] Hiley T.A., (Treasurer), *QPD* 28 Nov. 1962, p. 2027.
[67] S4 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1961" in certain particulars* No. 29 of 1962.

law payouts were increasing. Up to this point the extra coverage was voluntary, although some 60% of employers paid the 3.75% higher premium levels.[68] The amendment also provided extra benefits for children between the ages of sixteen and twenty-one who remained in full-time education and were dependent on the earnings of an incapacitated worker.[69]

Therefore, while the government demonstrated a willingness to maintain certain levels of co-operation it actively ameliorated issues that were at the core of their political constituency, and ignored others. For example, evidence indicates benefit levels and administration of the fund, particularly increased delays in receiving benefits were problematic. Delays in decision-making and receipt of benefits began to lag further behind and injured workers were forced to wait months for compensation.[70] Employee groups such as the TLC remained active in propelling claims that benefits levels should be increased and administration processes improved. However, this trade union activity remained within the policy community and did not extend to industrial action. For example, in response to a request that a claim decision be further investigated the Boilermakers' Society responded:

> In reply to your letter concerning the compensation claim by the widow of…I wish to advise you that it is not the policy of this Society to fight compensation claims.[71]

Evidence also suggests that while the government was willing to address core policy community needs, particularly premium levels needs of employers, broader attention to the legislation was not a priority for the government at this time. For example, other employee-related issues pursued by the trade union movement such as sun

[68] Hiley, T., (Treasurer) *QPD* 28 Nov. 1962, p. 2027.
[69] S6 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1961" in certain particulars* No. 29 of 1962.
[70] Knox W., (Member for Nundah) *QPD*, 28 Nov. 1962, p. 2033-34.
[71] Cited by Delamothe P.R (Member for Bowen) *QPD*, 28 Nov. 1962, p. 2034.

cancer,[72] damage to spectacles, dentures and hearing aids,[73] and hepatitis,[74] were ignored. The government's willingness to address 'big ticket' items such as industrial deafness but not the smaller issues such as these reflects policy community relations as employer issues began to take precedence over those of employees.

Administrative standards were also deteriorating. For example, in April 1965, General Manager Riding advised the Treasurer the Act was out of print and redrafting was urgent prior to re-printing. He requested secondment of Mr J. Leech, a member of the Treasurer's staff to assist with such redrafting as the SGIO had no personnel competent to undertake the necessary work involved.[75] The Minister's curt response was "The Under Treasurer states that he cannot spare the services of Mr. Leech for the purpose you require."[76]

Later that year Riding was concerned that the lack of amendments in the current session of parliament meant there would be no further opportunity for amendment until August the following year. The Act was out of print and there had been no order of re-prints as "The Acts are so outmoded and amendment desirable in many aspects that it would appear unwise to reprint in the present form."[77] However, the Treasurer's response was "As I see the matters raised, all are desirable. Some we can meet administratively. But I see no pressing urgency."[78]

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[72] Memorandum for Insurance Commissioner to Under Treasurer, 2 June 1955 and Letter from Trades & Labor Council of Queensland to Treasurer, 5 Feb. 1960, QSATR1193/5.
[73] Letter from Trades & Labor Council of Qld to Treasurer, 6 April 1960 and Memorandum from SGIO General Manager to Under Treasurer, 26 April 1960, QSATR1193/5.
[74] Letter Trades & Labor Council of Queensland to Treasurer, 2 Feb 1961, Memorandum from SGIO General Manager to Under Treasurer, 15 Feb 1961, QSA TR1193/5.
[75] Memorandum SGIO General Manager to Under Treasurer, 20 April 1965, QSA TR1193/5.
[76] Footnote dated 21 April 1965 in Memorandum SGIO General Manager to Under Treasurer, 20 April 1965, QSA TR1193/5.
[77] Memorandum from SGIO General Manager to Under Treasurer, 10 Aug. 1965, QSA TR1193/5.
[78] Footnote dated 14 Sept. 1965 in memorandum from SGIO General Manager to Under Treasurer, 10 Aug. 1965, QSA TR1193/5.

By 1966 employee benefits often lagged behind other States and cost of living adjustments. For example, in response to claims workers should be granted full levels of pay to alleviate worries of inability to meet financial commitments in the event of injury or illness the government argued the fund would not be made "…guarantor of Hire Purchase debts…." Employees would have little incentive to return to work, merit bonuses to employers would have to be cut or terminated and fund reserves would be "…melted away like snow in the midday sun."[79]

In 1966 there was an amendment that primarily focused on the extension of Specialist Boards in the continued effort to more accurately determine medical aspects of claims and minimise fraudulent claims. Added to the existing Cardiac Board were: General Medical Board, Neurology Board, Orthopaedic Board, Opthamology Board, Skin Diseases Board and the Ear, Nose and Throat Board.[80]

Overall, this early period of conservative rule brought about some policy changes in line with key political constituencies. Sound economic management continued to be a priority, and cohesiveness within the policy community remained intact as changes that advantaged employers were able to be offset by some gains to employees, mainly in the form of increased benefits. However, this was to be challenged with the ascendancy of the Bjelke-Petersen government.

The Bjelke-Petersen Government 1968 - 1987

General prosperity and an imploding Labor Party provided the impetus for a long run

[79] Memorandum SGIO General Manager to Under Treasurer, 23 Nov. 1966, QSA TR1193/5.
[80] S8 *An Act to Amend "The Workers' Compensation Acts, 1916 to 1965" in certain particulars,* No. 28 of 1966.

of Conservative government in Queensland. After Nicklin retired in 1968, he was succeeded by Jack Pizzey who died in office a short time later. Sir Gordon Chalk became caretaker Premier between 1st and 8th August 1968 with Joh Bjelke-Petersen unexpectedly appointed Premier on 8th August 1968 after a tussle between the Country Party and the Liberal Party coalition partners.[81]

In electoral terms, the ALP's fortunes ebbed and flowed for three decades. During the 1960s there was some clawing back of support, but not enough for it to regain government.[82] Despite disharmony among Conservative parties during the early 1970s the ALP primary vote slumped again due in part to the unpopularity of Labor Prime Minister Gough Whitlam, but had climbed by the end of the 1970s. The ALP spent another decade in Opposition despite mounting community concerns about the Conservative government, particularly the increased disdain Premier Bjelke-Petersen displayed in relation to acceptable parliamentary procedures such as accountability.

Wear argues that the functions of state parliament had been steadily eroded from the time the Legislative Council was abolished.[83] The dominance of Cabinet had developed through "…widespread ignorance of parliamentary convention and the expectation within parliament and the community of strong political leadership."[84] Consequently, the Premier was able to steer much of the government's program.

[81] Joh Bjelke-Petersen had been elected leader of the parliamentary Country Party when Pizzey died. Leader of the parliamentary Liberal Party Sir Gordon Chalk was appointed caretaker Premier, however in an unexpected struggle, the Country Party parliamentarians used their numbers in a joint party meeting to ensure their new parliamentary leader, Bjelke-Petersen, was elected Premier. Walter J., 2003, 'Johannes Bjelke-Petersen. The Populist Autocrat' in *The Premiers of Queensland*, Murphy D., Joyce R., Cribb M., and Wear R., eds., University of Queensland Press, p. 305.

[82] In 1969 the ALP received 45% of the primary vote in the State election, however QLP votes prevented it gaining government. Fitzgerald R. and Thornton H., 1988, *Labour in Power*…p. 195.

[83] Wear R., 2002, *Johannes Bjelke-Petersen. The Lord's Premier*, University of Queensland Press, p. 130.

[84] ibid.

Described as a mix of 'political cunning' and a 'populist leadership style', the leadership of Joh Bjelke-Petersen evolved from "…diffident beginner who…could not persuade cabinet to buy him an aircraft to aging autocrat who faced no opposition of any consequence. [I]n Bjelke-Petersen's mind, cabinet was there to ratify his judgment and major decisions were often considered in a 'cursory fashion."[85]

Painter sees this period state politics was "… inextricably linked with the personal style and image of state premiers."[86] Scott et al provide a more direct assessment of Bjelke-Petersen when they say:

> His direct involvement in major questions of political strategy, economic policy-making and relationships with other levels of government means that he bestrides the Queensland political scene like a colossus and shapes the behaviour and aspirations of all those around him. [87]

Although some modernising mechanisms were infiltrating the Queensland public sector they were not directed from the centre. Instead, government under Bjelke-Petersen exhibited little propensity for the public sector reform that was permeating other States, and it remained off the political agenda in Queensland. For example, in 1988 department heads were still excluded from receiving Cabinet submissions.[88] Authority was concentrated in the hands of the Premier and his deputy, and their advisers.[89] Consequently, policy-making in Queensland during this time was "…personalized, centralized and with a weakly institutionalized collective capacity".[90] Little discretion and power to attend to policy issues was afforded to senior bureaucrats, which stands in contrast with the roles of early Insurance

[85] ibid. p. 125-32.
[86] Painter M., 1982 'Premier's Departments and the Coordination Problem: New South Wales, South Australia and Victoria in the 1970s' in *Politics*, Vol. 17 No. 1 p. 11.
[87] Scott R., Coaldrake P., Head B., and Reynolds P., 1986, "Queensland' in *Australian State Politics*. Galligan B., ed, Longman Cheshire, p. 53.
[88] Halligan J., 1988, "State Executives" in *Comparative State Policies*, Galligan B ed., Longman Cheshire, p. 43.
[89] ibid.
[90] ibid.

Commissioners such as Goodwyn and Watson.

As a consequence, Queensland statutory corporations such as the SGIO had reduced levels of autonomy. Commissioners and General Managers were subject to ministerial supervision in much the same way as departmental Under Secretaries were, and their decisions were submitted to the Minister for approval.[91] The informality of policy-making in earlier times that had afforded previous Insurance Commissioners Goodwyn and Watson the authority to direct policy, had been replaced by more centralised policy implementation techniques. The government continued to be locked within a Weberian bureaucratic system of strict hierarchical decision-making structures with the functions within each level of these structures clearly defined.

These restrictive government practices impacted heavily on workers' compensation legislation, principally through the mechanisms of the SGIO. While a measure of attention was still placed on injury and illness coverage, focus was no longer centred upon industry and occupation-specific amendments. Fund administration deteriorated further with inconsistencies in calculating the merit-based premium rates, particularly for small business, and workers complaining about slowness and inadequacies of payment methods. For example, cheques were often lost in the mail and difficulties were encountered with cashing of cheques.[92]

The Bjelke-Petersen government largely ignored these administrative inefficiencies. By 1972, there had been 40 amendments that, coupled with an extensive set of

[91] Smith P.Y., 1982, 'The Queensland Premier's Department' in *Politics*, Vol. 17 No. 1, p45.
[92] *QPD* 1972, 1975, 1976.

Regulations and schedules, rendered the legislation confusing and obscured the original intention of the Act. Despite this, neither employers nor employees and their representatives voiced any significant public protest at this state of affairs. The only public evidence of discontent were parliamentary discussions from the Opposition. There were also direct communications between various employee representative groups and government in relation to increasing fund problems. For example the Communist Party of Australia wrote to the Premier and voiced its discontent with existing arrangements, specifically in relation to benefits for miners, as did the Cairns branch of the TLC.[93] In 1976, a circular was distributed by the Australian Medical Association (AMA) to draw attention to the shortcomings of the legislation, particularly the increasing inability of benefit levels to adequately cover medical costs. In the circular the AMA highlighted the futility of its attempts to approach the government in relation to these issues.[94]

The 1984-85 Annual Report showed a surplus of $40M and Board investments of $223M, yet services continued to decline. In particular, benefits levels failed to keep pace with cost of living increases. They also lagged considerably behind other States as illustrated in Table 1:

[93] Letter from Communist Party of Australia to Premier 1st Aug. 1972. A handwritten instruction on this letter directed that there be no response by the government. Letter from Cairns TLC to Premier 1972 (no date). Premiers Dept file B-69.

[94] *Workers' Compensation Act*. Circular distributed by Australian Medical Association, 27 Nov. 1976. Premiers Dept. file B-69

Table 1: Comparative Lump Sum amounts for other Australian States (1986)[95]

Type of Injury $000	CGEA[96]	NSW	Vic	SA	WA	Qld
Loss of eye with serious impairment of other eye		71	75		75	65
Leg above knee (amputation)	75	71	75	90	70	55
Loss of hearing	70	61	65	75	75	50

In that same year, increases offered to families of victims of the Moura mine disaster were a relatively minor $13.80 per week.[97] The trade union movement and the government were engaged in a number of difficult industrial campaigns during the 1970s and early 1980s, including the South East Queensland Electricity Board (SEQEB)[98] dispute. Workers' compensation was not a central issue in the industrial agenda in Queensland, particularly for trade unions. They were preoccupied in defending more precarious industrial issues. This inhibited their ability to pay closer attention to the system of workers' compensation that, although flawed, was working.

Legislation covering the fund became so complex that, by 1987, there were 405 classifications of industry or business with 219 different premium rates. A proposed

[95] *QPD* 21 Aug 1986, p. 503.
[96] Commonwealth Government Employees Act. (workers' compensation).
[97] This was the sum added to the $47,000 lump sum payment received and existing extra child allowance of a maximum of $3,490 per child. Vaughn K.H., (Member for Nudgee) *QPD,* 21 Aug. 1986, pp. 513-16.
[98] In 1984 there was antagonism between Electrical Trades Union (ETU) employees and the government, principally over the issue of increased use by the latter of contract labour. In February 1985 the ETU called an indefinite strike. When the union refused an Industrial Commission ruling to return to work Premier Bjelke-Petersen proclaimed a state of emergency under an Essential Services Act framed specifically with the electricity industry in mind. When workers refused to return to work the government began termination proceedings against 1000 employees. After 15 days the striking unionists abandoned strike action in the belief negotiations with government would resume for conditions of re-instatement. This did not occur as government had drafted a significantly restructured package that facilitated exclusion of the union. The sacked workers were not re-employed. See Blackmur D., 1989 'Industrial Conflict in the Public Sector: The Origins and Nature of the 1985 Queensland Electricity Dispute' in *Australian Journal of Public Administration*, Vol. 48 No. 2 June pp. 163-75.

government restructure of the fund would decrease the number of classifications to 387 and the number of premium rates to 169. Key industries to be targeted were the meat industry, local government and the pastoral industry, the latter was to be re-categorised to more accurately reflect the changed nature of the industry in this State. In particular there was a need to provide for the increased numbers of pastoralists who grazed both sheep and cattle, rather than maintain the current differentiation between the two.[99]

As a response to the increasingly long delays in claims assessments, the government also appointed extra medical professionals to the various Boards however the Opposition declared it simply an inefficient counter measure to the declining number of medical board hearings that took place.[100] Administration of the fund had become inefficient and complex.

Changes to the SGIO

On assuming office in 1957 the Nicklin government Treasurer, Thomas Hiley, noted that although the overall state of the SGIO was "…superficially well…" he found the office "…with limited ambitions in the field of general underwriting, dominated in its workload by workers' compensation, and no initiative in investment."[101] Hiley's vision for the SGIO was ambitious and distinct from his predecessors as he was determined to significantly expand business and focus on investment mechanisms.[102] Just as the first Commissioner Goodwyn had been the 'ideal' choice to implement Ryan and Fihelly's initial vision for the SGIO, the appointment of Riding as General

[99] *Review of Workers' Compensation Premium Rates,* Cabinet Submission No. 46614, 15 June 1987, p. 4.
[100] For example, cardiac board decisions decreased from 256 in 1983-84 to 194 in 1984-85 and general medical board decisions decreased from 349 in 1983-84 to 289 in 1984-85. *QPD* 21 Aug 1986, p. 515.
[101] Hiley T., cited in Thomis M.A. and Wales M., 1986, *From SGIO to Suncorp*…p. 192.
[102] Thomis M.A. and Wales M., 1986, *From SGIO to Suncorp*…p. 192.

Manager complimented Hiley's plans for 'revitalisation' of the organisation.[103]

Consequently, the SGIO underwent significant structural changes that directly affected workers' compensation. By 1971 the complexity of the organisation had reached a point where the government decided that a Board rather than one individual should have decision-making responsibilities.[104] The introduction of a Board involved the reorganisation of the top management structure through a separation of insurance activities from policy-making and financial activities, and the facilitation of sufficient liaison between the three areas.[105] Responsibility for policy development both in terms of investment activities and insurance business, including the determination of types of insurance, was transferred to the Board.[106] The Minister was given power to issue directions to the Board.

This marked the beginning of a period of massive investment expansion for the SGIO. The position of General Manager became more administratively focused with the key role being to implement the policies of the Board. Although the role appeared to be less powerful than previously, there was no real separation of powers or division of responsibility as the General Manager was also a Board member. These changes produced a schism in the identity of the SGIO as it balanced somewhat precariously between both public and private systems. The situation left the organisation vulnerable to criticism that it held an unfair advantage over its competition that conflicted with the strong free enterprise philosophies of the Bjelke-Petersen government. In particular, the monopoly workers' compensation insurance brought it

[103] ibid.
[104] Chalk G.W.W., (Member for Lockyer) *QPD* 3 Dec. 1970, p. 2356.
[105] ibid. p. 2476.
[106] ibid. p. 2355.

to the attention of most workplaces and therefore provided a ready market for its other products.

The Brisbane Chamber of Commerce highlighted the difficulties that private enterprise faced when forced to compete with government organisations such as the SGIO. It argued that the latter were not subject to the same legislative restrictions and financial imposts as were private enterprises. It singled out workers' compensation as an example of an area where "Once bureaucratic protection of a Government organization takes hold there could be no staying the inevitable doom of private enterprise."[107]

In 1976 the Young National Party State Council called for the abolition of the SGIO arguing it had become "…a socialist monster, devouring all in its path." It argued that the investment proclivities of the organisation had grown to such an extent a future Labor government would be able to use it to "...destroy private enterprise" through massive buy-outs.[108] Senior National Party members supported these criticisms and claimed the investment activities of the SGIO were misdirected. During the previous year Queensland National Party President, Robert Sparkes, had criticised the SGIO's investment in a rural property, saying it was inconsistent with the free-enterprise philosophies of the government.[109] Again a conflict of interests developed as the property was recognised as one of the top grain producers on the Darling Downs and operated in direct competition with the interests of certain senior National Party members.

[107] 'Unfair Competition to Private Enterprise' in *The Voice of Business*, Brisbane Chamber of Commerce, October 1967, p. 2.
[108] *Courier Mail* 23 May 1977, p. 2.
[109] *Courier Mail* 14 July 1976, p. 9.

Sparkes labeled the SGIO "…a Socialist creation running amok under a private enterprise government."[110] He argued it had overstepped its primary role as an insurer through heavy investment in property and the introduction of lending services through the setting up of the SGIO Permanent Building Society.[111] The SGIO had become "…a financial octopus, with its fingers in many pies."[112] With its status of being 'government-backed', it held unfair advantages over other long-established companies.[113]

A new industrial ruling specifically related to workers' compensation was also an issue. In 1972, the Queensland Conciliation and Arbitration Commission had ruled that compensation rates for building industry workers should equal full award wages. Until this time the rate of compensation was set at 80% of the full basic wage.[114] The issue of full pay had been addressed in Cabinet in 1971, with the government arguing that malingering would become rife if benefits were increased to 100%, as workers would have little incentive to return to work. Nevertheless, the government decided to extend the Commission decision to other workers as the matter had been the subject of some adverse industrial and political publicity, and it was feared the SGIO could become embroiled in further industrial court hearings which would not be appropriate for its burgeoning corporate image. It could also hold implications for the cooperative relations among stakeholders if not addressed.[115] The government agreed that totally incapacitated workers would receive payments at the level of wages provided for by

[110] *Courier Mail* 24 May 1976, p. 3.
[111] This banking arm of the SGIO, the SGIO Permanent Building Society, was introduced in 1976.
[112] ibid
[113] *Courier Mail* 24 May 1976, p. 3.
[114] *QPD*, 3 Aug. 1971, p. 51.
[115] Cabinet Submission 13772 16 Feb 1971. QSA QS1043/1.

the relevant award or industrial agreement for a period of 26 weeks only.

In setting these parameters, the government refused to take into account actual earnings such as above award payments and overtime, consequently many workers were still disadvantaged by lower income levels during their period of incapacitation. Some unions, particularly the metal industry unions, negotiated special industrial agreements with employers that would provide 'make up' pay in these circumstances to cover the difference between award rates of pay provided by the workers' compensation fund and the actual wages workers received prior to incapacity.[116] For the first time since the introduction of the legislation, trade unions demonstrated their willingness to use mechanisms other than the policy community to achieve desired workers' compensation outcomes.

In the year after its introduction, the Industrial Relations Minister claimed there had been widespread abuse of the scheme, as claims doubled in some instances.[117] However, the primary concern centred around indications that the government monopoly was under threat with some private insurers underwriting policies for employers to cover the 'make-up' pay the latter were forced to outlay.[118] Despite its preference for privatisation of the SGIO, the government's position that workers' compensation should remain a government monopoly was clearly articulated. It argued that private insurers coming into the field in this manner "…could quite well be the thin edge of the wedge to break the monopoly of the State Government

[116] Queensland Workers' Health Centre, 1984, *Deficiencies in the Workers' Compensation System in Queensland: Final Report*, p. 5.
[117] Courier Mail 22 Mar. 1973 p. 12.
[118] Cabinet Submission 15298, 20 June 1972,QSA QS1043/1.

Insurance Office in Workers' Compensation insurance generally."[119] Both the Queensland TLC and the Queensland Chamber of Manufactures had indicated concern that the inclusion of private insurance companies in this manner could threaten the monopoly.[120] Consequently, employers, employees and the government were unified in favour of maintaining existing arrangements in relation to the core issue of government monopoly. The government eventually responded to the problem in 1982 by amending the legislation to prevent the registration of new awards and industrial agreements that included a provision of 'make up' pay for injured workers.[121]

The outcome of these dilemmas was a decision by the government in 1978 to separate the administration of workers' compensation from the SGIO. The key reason for the decision was somewhat ironic as the Treasurer announced:

> The separation of the workers' compensation activity is desirable because workers' compensation is more and more looked upon as a welfare function rather than one of insurance. To this extent, it has a closer affinity to the operations of the Division of Occupational Health and Safety and to the other activities of the department administered by my colleague the Minister for Labour Relations than it does to the SGIO.[122]

However, any similarities with the founding principles of social responsibility expressed by Goodwyn and Fihelly were tempered. In his speech to the parliament on the placement of workers' compensation in his department, the Minister for Labour Relations stated:

> It is quite coincidental that, having started my working life in the insurance industry and having had experience for many years in the fire, accident, marine and general insurance aspects of the industry, I should be given the overview of the Workers' Compensation Board. I could take that as a

[119] ibid.
[120] Cabinet Submission, 8300 23 Sept. 1966, QSA QSAZ4607.
[121] S11 *An Act to amend the Workers' Compensation Act 1916-1980 in certain particulars* No. 9 of 1982.
[122] Knox W (Treasurer) *QPD*, 27 April 1978, p. 732.

compliment[123].

Clearly, insurance expertise would remain influential to decision-making in relation to future directions of the workers' compensation system. The shift would also enhance the viability of privatisation of the SGIO, as it ended suggestions that the workers' compensation fund had been used to subsidise other areas of insurance within the SGIO. Additionally, the volatile and emotive nature of publicity that often accompanied the rejection of workers' compensation claims had reflected adversely upon the underwriting in other competitive areas of the SGIO.[124] Thomis and Wales note that the separation of the workers' compensation fund from the SGIO "…put an end to those comfortable days when workers' compensation almost guaranteed the SGIO a steady source of investment capital."[125] Certainly the SGIO General Reserve had been built 80% by workers' compensation and 20% by general insurance.[126]

Forces within the Workers' Compensation Department were in favour of the separation. The head of the Department, K.F. Doody, argued that the altered levels of bureaucratisation within the SGIO initiated by changes introduced by Riding some ten year earlier, had undermined the social service values that were the cornerstone of the scheme. Doody stated the shift was considered necessary "…on the basis that workers' compensation was essentially a social service and should be administered indefinitely as such."[127] Also, the shift in organisational focus away from workers' compensation brought financial limitations as money from the fund was amalgamated with other insurance schemes to enhance broader investment opportunities at the

[123] Campbell F.A., (Minister for Labour Relations) *QPD*, 18 May 1978 p. 1018.
[124] Knox W.E. (Treasurer) *QPD*, 27 April 1978, p. 732.
[125] Thomis M. and Wales M., 1986, *From SGIO to Suncorp*…p. 218.
[126] Draft Cabinet Submission , Sept. 1966, QSA TR1193/5.
[127] Doody K.F., 'The Workers' Compensation Story' in *Workers' Compensation Board of Queensland. First Annual Report 1978-79*, p. 8.

expense of further development of the fund. For example, the Workers' Compensation Department did not have the economic resources needed to fully pursue the provision of rehabilitation that was incorporated into the legislation in 1973. Liaison was established with the Commonwealth Rehabilitation Centre, but was extremely limited with an average of only 16 injured workers receiving treatment at any one time. The first rehabilitation officer was not appointed to the department until 1976.[128] Nor was it able to properly investigate the implications of the rising incidence of industrial related diseases such as asbestosis.[129] Consequently, at this point broader Workers' Compensation Department goals were becoming increasingly incompatible with those of the SGIO, as the latter had become more focused on general insurance and investment.

A less crucial element that impacted on the separation was the Premier's habit of by-passing formal channels of policy-making such as the organisational wing of the party, its coalition partner and bureaucrats, in favour of advice from '…self-interested flatterers.'[130] Chief among such persons was Sir Edward Lyons who was appointed the Premier's personal investment advisor. By the 1980s Lyons' influence over the Premier came to eclipse that of National Party President Sir Robert Sparkes.[131] Lyons was chairman of Rothwell's merchant bank, a direct competitor of the SGIO Permanent Building Society, as well as holding directorships of several companies with insurance interests. Competition in banking and insurance industries was fierce during the 1970s and private insurance companies were forced to develop new types of insurance policies and cut premium rates to attract business away from the

[128] Campbell F.A., (Minister for Labour Relations) *QPD*, 18 May 1978, p. 1017.
[129] Thomis M. and Wales M., 1986, *From SGIO to Suncorp…*p. 218.
[130] Wear R., 2002, *Johannes Bjelke-Petersen....*University of Queensland Press, p186.
[131] Wear R., 2002, *Johannes Bjelke-Petersen.…*University of Queensland Press, p109.

SGIO.[132] Privatisation of the SGIO would level the competitive field somewhat. In sum, by the time of separation, the SGIO was "…far removed from the ideas of John Fihelly, or even John Goodwyn, who had envisaged in the early days a possible expansion of state insurance that would eventually eliminate private enterprise and provide insurance purely as a social service."[133]

Ironically, in 1975 the Federal Whitlam government proposed the establishment of an Australian Government Insurance Office in line with the Woodhouse Royal Commission recommendations. The Whitlam government had appointed Justice Owen Woodhouse to head a Royal Commission into the development of a national rehabilitation and compensation scheme that would encompass all forms of personal injuries including work-related injuries.[134] Federal ALP member Clyde Cameron who had a strong interest in workers' compensation issues had introduced the idea of a national scheme some years prior to the election of the Whitlam Labor government.[135]

At that time many workers' compensation funds faced economic crises. Considine argues that in Australian States other than Queensland profit motives prevailed over welfare concerns and this subsequently led to different administrative practices. In other Australian States where private insurers dominated workers' compensation, employer premiums generated lucrative cash flows. Consequently, small new operators were continually enticed into the field. New operators usually had lower

[132] *Rydges* Vol L., No. 7, July 1977, pp28-29.
[133] Thomis M. and Wales M., 1986, *From SGIO to Suncorp*…p216.
[134] The scope of the Inquiry covered personal injuries sustained on the road, in schools and homes and included industrial diseases. Palmer G., 1979, *Compensation for Incapacity. A Study of Law and Social Change in New Zealand and Australia*, Oxford University Press, p.134.
[135] Considine M., 1991, *The Politics of Reform. Workers' Compensation from Woodhouse to WorkCare*, Deakin University Press, p. 26.

overheads.[136] However, continued discount competition, rising inflation and recognition of new diseases often brought about the downfall of these companies.[137]

Governments, such as the Bolte government in Victoria, often complied with insurance companies requests to tighten workers' compensation legislation to address the economic problems. For example the Bolte Liberal government did not increase the rates of employee benefits during its first seven years in office between 1955 and 1962. The Bolte government also restricted the definition of injury and limited the range of dependents who could receive benefits.[138] In most Australian States inequalities and inefficiencies similar to those experienced in Victoria resulted in the rights of significant numbers of injured workers being diminished and many others suffered considerable financial hardship through these inequities.[139]

The Queensland Treasury submission to the Inquiry argued it would create financial hardship, particularly for the SGIO. It argued that a considerable number of state projects were funded through the SGIO and its monopoly of workers' compensation. Also Queensland stood to lose approximately $1M in stamp duties payable on insurance policies.[140] In Queensland the SGIO denounced the proposal as a threat to the insurance industry (private and government) and labelled it a 'vehicle for nationalization' of the entire insurance industry.[141] The proposal was not popular in Queensland as both trade union and employer groups opposed the changes. The trade union movement were particularly opposed to the limits placed on common law

[136] For example they did not have accumulated obligations generated from previous claims that remained active.
[137] Considine M., 1991, *The Politics of Reform…* p. 15.
[138] ibid. p. 18.
[139] ibid. p. 2.
[140] Palmer G., 1979, *Compensation for Incapacity…* p.144.
[141] Thomis M. and Wales M., 1986, *From SGIO to Suncorp…*p. 217.

benefits which Woodhouse recommended be reduced from 100% to 85% of earnings.[142] Employers opposed the introduction of the proposed scheme principally on the grounds that costs would rise and the State would suffer from a downturn in proportionate reinvestment in Queensland.[143]

As well as the traditional cries of intrusion into State's rights, the government's disagreement with the proposed national scheme was also an attempt to thwart the insurance industry. It had made clear its willingness to collect a special levy from employers on behalf of the Federal government, to assist the administration costs of the scheme. In return, the insurance industry asked for a rationalisation of workers' compensation schemes across the country and the introduction of uniform legislation in all States and Territories.[144] Despite mounting problems of inadequate benefit levels, increasing complexity of premium setting and administrative functions Queensland employers and employees continued to maintain the state monopoly system was superior. As with other times when the monopoly in Queensland was threatened, the members of the policy community were not inclined to provide support for such changes. The Woodhouse system was never introduced as the Whitlam government lost office in November 1975.

The Workers' Compensation Board of Queensland

In 1978 the Workers' Compensation Department in the SGIO was closed and a newly formed organisation named the Workers' Compensation Board (WCBQ) established and placed under the jurisdiction of the Department of Labour Relations. This brought it together with other work-oriented legislation, particularly occupational

[142] Palmer G., 1979, *Compensation for Incapacity*…p. 180.
[143] *The Voice of Business,* October 1973, p. 2 and Feb. 1975 p. 4.
[144] *The Australian* 26 April 1976, p. 1.

health and safety services. The Board consisted of the permanent head of the Department of Labour Relations as Chairman, the General Manager of the office of the Board as Deputy Chairman and a government nominee, an employer representative, an employee representative (nominated by the Minister) and a medical officer from the Department of Health.[145] Full responsibility for policy-making was returned to the government. The Board's General Manager later noted the administration of the fund by a stakeholder representative board such as this was wise as it gave "…both employers and workers their opportunity to express opinion on matters affecting both parties and to bring forward matters for the mutual benefit of all concerned."[146]

As one of its first tasks, the Board immediately opened a $1M fund to expand rehabilitation services that had been hampered under the SGIO.[147] There were also indications that hardened attitudes, particularly towards claimants, that had infiltrated the Department in the previous few years had been transported to the new organisation. The culture of co-operation that Goodwyn and Fihelly had established was all but gone. There had been complaints from injured workers that staff were'…rather tough' when processing claims.[148] Claimants were often treated as malingerers, and with no direct avenues of appeal against Medical Board decisions[149] contained in the legislation, these workers were left without economic support.[150] Labor Party member Tom Burns stated accusatory comments that were no more than personal judgments, were often placed on claimants' files by staff members without

[145] Campbell F.A., (Minister for Labour Relations) *QPD*, 17 May 1978, p. 942.
[146] Campbell J.V. 'The Queensland Approach' in *Papers prepared for the Conference on Workers' Compensation – new directions.* June 1984 p. 9.
[147] Doumany S., (Minister for Welfare on behalf of Minister for Labour Relations) *QPD*, 10 April 1979, p. 3952.
[148] Scott-Young N.R., (Member for Townsville) *QPD*, 10 April 1979, p. 3955.
[149] Appeals could be made to the Industrial Magistrate, however there were no direct avenues of appeal to the Workers' Compensation Fund.
[150] Scott-Young N. R., (Member for Townsville) *QPD*, 10 April 1979, p. 3955.

the claimant's knowledge. For example, notations were placed on files that indicated injuries might have originated on the sports field rather than in the workplace.[151]

However, once operational the office met with positive reviews also. For example Les Yewdale, the Labor member for Rockhampton North said:

> Over a period of many years, both as a union official and a member of this Parliament, I have had a lot to do with workers' compensation in my area. I have seen the transition from the S.G.I.O. to the Workers' Compensation Board take place, and although I expressed grave concern about the transition, it was perhaps not warranted. The board is now functioning, and I can find no complaint with the personnel…although there are still some problems, in most cases they are very receptive and co-operative.[152]

In economic terms the fund remained in surplus and was able to expand into areas such as accident prevention research. For example, during the latter half of the 1980s research grants were awarded to Mines' Rescue Stations, the National Safety Council of Australia, Queensland industrial ergonomics program and the University of Queensland Chair in Orthopaedics.[153]

Overall, the introduction of the WCBQ brought little change to relations within the policy community. Staff from the SGIO[154] workers' compensation department were transferred to the WCBQ and the established policy community relations that operated under the former structure were similarly transferred. Consequently, with little change in established relations among stakeholders, nor entry of other stakeholders under the new structure to provide impetus, there was little likelihood of significant policy change.

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[151] Burns T., (Member for Lytton) *QPD* 10 April 1979, p. 3959.
[152] Yewdale L (Member for North Rockhampton) *QPD*, 27 Mar. 1980, p. 3041.
[153] *Workers' Compensation Board 1987 Annual Report.*
[154] The SGIO was renamed Suncorp in 1986 after separation of the workers' compensation scheme.

Legislative Amendments of the Bjelke-Petersen Government

Initially, the Bjelke-Petersen government continued the practice of three-yearly reviews and regulatory amendment of the workers' compensation legislation. Increases in benefits to sufferers of Miners' Phthisis were granted in 1970.[155] This came on the recommendation of the SGIO General Manager on the grounds that recipients of the Commonwealth invalid pension had been granted an increase in the amount they could earn without affecting their eligibility for benefits.[156] General benefits were also increased.[157] After a general review by the SGIO General Manager it was argued that death benefits in particular had not kept pace with basic wage and cost of living increases. Queensland lagged behind the other Australian States in this area and the government was keen to see any disparity rectified.[158] In 1972, general benefits were again increased through regulatory mechanisms, again on the recommendation of the SGIO General Manager on the basis of basic wage increases.[159]

The first Bjelke-Petersen government amendment was made in 1973. With no amendments since 1966 this represented the longest period of legislative inactivity since the inception of the Act in 1915.

Legislative inadequacies that had surfaced during the 1960s were addressed. For example, the fund faced increased instances of confusion over the definitions of *'worker'* and *'employer'*. In one instance an employer of carpenters had required them to purchase their own nails and then claimed he was not an employer as his

[155] Queensland Government Industrial Gazette, Vol. LXXIV No. 18, p. 115.
[156] Cabinet Submission 13579, 11 Dec. 1970, QSA Z6862.
[157] ibid..
[158] Cabinet Submission 13007, 16 Feb. 1971, QSA Z6860.
[159] Cabinet Submission 15015, 24 Mar. 1972, QSA Z6870.

workers were sub-contractors.[160] The new measures brought clarification of the term *'sub-contractor'* under the Act, particularly as large home-building organisations were utilising the ambiguity of the term.[161] Provision was also made for injured workers to receive 100% of wages for the first 26 weeks of incapacitation. This inclusion represented a formalisation of the Queensland Conciliation and Arbitration Commission ruling the previous year that had been initially implemented using Orders in Council. Under this amendment the provision was extended to University and College of Advanced Education employees as well as those not employed under any industrial award or registered industrial agreement.[162]

Other measures included providing cover to seamen employed on Queensland ships that discharged cargo outside Queensland waters.[163] This amendment was necessary, as a previous judicial decision had determined the SGIO only had the right to charge premiums on the earnings of seamen on ships operating between Queensland ports.[164] Rates of benefits were increased, and limited rehabilitation services capped at a maximum of $1,500 per claim per year for such services were introduced.[165] The numbers of specialists appointed to Medical Boards was increased.[166]

As in 1966, this amendment was an attempt to bring the legislation up to date, although the Opposition argued the Act was in need of a complete overhaul to halt its slide into what Labor member Percy Tucker described as "… a kind of bastardised

[160] Chalk G.W. (Member for Lockyer) *QPD*, 22 Mar. 1973, p. 3161.
[161] Cabinet Submission 15969, 29 Nov. 1972, QSA Z6874.
[162] S10 *An Act to amend the Workers' Compensation Acts 1916 to 1966 in certain particulars*, No. 14 of 1973.
[163] Provided the ship's (or mothership's) cargo was discharged at Queensland ports. *QPD*, 22 Mar. 1973, p. 3161.
[164] Memorandum Acting Assistant Crown Solicitor to Solicitor General, 10 July 1961, QSA TR1193/5.
[165] S14 *An Act to amend The Workers' Compensation Acts 1916 to 1966 in certain particulars*, No. 14 of 1973.
[166] ibid. S9

social service scheme."[167] In this comment he was referring to the increased propensity for workers' compensation recipients to be categorised as in receipt of 'hand-outs' such as unemployment benefits[168] rather than due recompense for the loss of earning ability through workplace injury or illness.

No further amendments were enacted until 1978. In that year an amendment that separated workers' compensation from the SGIO also provided for sports player/coaches to be included under the legislation.[169] Benefit levels for child dependents in relation to fatal claims were increased. Medical expenses limits previously set at a maximum of $1,200 were increased to an unlimited amount[170] and non-award workers on higher salaries were granted benefit levels equal to 80% of wages for a maximum of 26 weeks.[171] Owner-drivers were specifically excluded from the legislation as it was deemed difficult to determine whether this group were contractors or employees. As contractors they would be excluded from compensation, but retained the avenue of voluntary insurance with the Department.[172]

Amendments made during the 1980s clearly show the predominant focus of the fund was administrative. An amendment in 1980 made provision for employer premiums paid by instalment to incur a levy of 10%. This was a response to a request by the Solicitor-General who had encountered increasing difficulty in managing the process

[167] Tucker P.J. (Member for Townsville North) *QPD*, 22 Mar. 1973, p. 3163.
[168] ibid.
[169] S3(A)(c) *An Act to amend the Workers' Compensation Act 1916 – 1974 in certain particulars and for other purposes*, No. 13 of 1978.
[170] ibid. S17
[171] Calculations of 'higher salary' were calculated at 80% of either the Mechanical Engineering Award (fitters) or the weekly rate of wages provided by the contract of service under which the worker was employed – whichever was the greater. See *QPD* 17 May 1978, p. 942 and S13 (1) (iii) *An Act to amend the Workers' Compensation Act 1916 – 1974 in certain particulars and for other purposes* , No. 13 of 1978.
[172] Campbell F.A., (Minister for Labour Relations) *QPD*, 17 May 1978, p. 940.

on a case-by-case basis.[173] Voluntary workers such as Rural Fire Brigade Board members were provided with cover[174], and the Section 14B fund was amended to allow recovery of increased funeral costs.[175]

Some Opposition pressure continued in 1981 with questions raised in relation to the number of offices, particularly in rural areas, and the capacity of some of these to effectively process an increased numbers of claims.[176] Issues that affected meatworkers, as well as painters and dockers, were aired in parliament. These issues related to the irregularity of benefits due to the system of wages that existed in these industries, as well as inconsistencies in the interpretation of '*industrial diseases*', particularly in the meat industry.[177] No legislative change resulted although the government was prompted, through the Workers' Compensation Board, to fund a medical study into diseases in the meatworking industry.[178] Labor Opposition members raised concern in parliament over the lack of appeal processes in relation to specialist medical board decisions,[179] and there were questions asked in relation to the inadequacy of benefits for industrial deafness.[180] None of these issues of discontent moved beyond the political arena as militant groups, such as meatworkers and painters and dockers, did not pursue their claims to any significant extent in the wider industrial arena.

[173] Regulation 7 had been introduced in 1962. This set out the initial prerogative of the fund to levy interest charges on premium installment payments.
[174] Coverage for this category was on a voluntary basis – not compulsory as in most categories of workers.
[175] S4 and S5, *An Act to amend the workers' Compensation Act 1916 – 1979 in certain particulars and for another purpose*, No. 27 of 1980.
[176] Yewdale L. J., (Member for North Rockhampton) *QPD*, 10 March 1981, pp. 88-89 and 20 Aug. 1981 pp. 1695-96 and 1 Dec. 1981 pp. 4116-17.
[177] Workers in these industries were essentially paid on a casual basis with bonuses added on e.g. tally system that existed in meat industry. McLean R.T., (Member for Bulimba) *QPD*, 19 Mar.1981, p. 355.
[178] Harper N., (Member for Auburn) *QPD*, 5 Aug 1981, p. 1464.
[179] Scott-Young N.R., (Member for Townsville) *QPD*, 24 Mar. 1981, pp. 406-07.
[180] Yewdale L.J., (Member for North Rockhampton) *QPD*, 1 Dec. 1981, p. 4117.

Further amendments in 1982 were broad-based and did not focus on any particular industry. They provided improved benefits to injured workers by increased monetary sums equal to the guaranteed minimum wage, instead of the basic wage. Benefits under the Section 14B fund were included in these changes. The amendments also afforded recognition that males could be classed as '*dependents*'.[181] Workers choosing to implement a common law claim were granted the ability to serve their claim upon the Workers' Compensation Board if the employer for any reason ceased to exist, for example as a result of death or disappearance.[182] Chiropractic therapists were provided recognition under the legislation.

Limits for rehabilitation services were abandoned and measures were taken to halt Queensland Conciliation and Arbitration Commission interference in the legislation as occurred in 1972 when the Commission had awarded building workers 100% award wages while injured.[183] To clarify the issue of total incapacity payments after the initial 26 weeks incapacitation[184] this amendment provided that, after the initial 26 weeks these payments would be reduced to 80% of actual earnings before incapacity, or at the level of a fitter's award wages, whichever was the greater. A maximum period of 26 weeks for receipt of these lower payments was also set.[185]

The amendment introduced a new Section 18 that prevented registration of new awards or industrial agreements that included a provision for 'make-up' pay to injured workers whose incapacitated entitlements were less than their normal wages.[186] This

[181] S6 *An Act to amend the Workers' Compensation Act 1916 – 1980 in certain particulars,* No. 9 of 1982.
[182] ibid. S5
[183] Knox W., (Minister for Employment and Labour Relations) *QPD* 23 Mar. 1982 p. 4950.
[184] In 1972 the Queensland Conciliation and Arbitration Commission had ruled injured workers were entitled to 100% award or industrial agreement wages for the first 26 weeks incapacitation.
[185] S7 *An Act to amend the Workers' Compensation Act 1916-1980 in certain particulars* No. 9 of 1982.
[186] S11 *An Act to amend the Workers' Compensation Act 1916-1980 in certain particulars* No. 9 of 1982.

closed a potential avenue of challenge that had threatened established decision-making practices that had thus far been contained within the policy community.

There were moves to close loopholes that were subject to worker abuse in the system. The first was the increased practice of delaying claim lodgement until close to the expiry period in the hopes of forcing fast superficial decision-making over the claim, and the second was the incidence of faking claims so benefits extended into recreation or long service leave periods. The first was addressed by limiting compensation to a period of 4 weeks prior to the lodgement of claims, and the latter was addressed by proportionately reducing the amount of weekly compensation payable by the gross amount received by the worker, during the period of leave.[187]

The issue of rehabilitation, particularly access to it, was important as facilities were somewhat Brisbane-centric. The matter of expanding such programs and facilities outside the Brisbane metropolitan area became a concern.[188] However, the matter that most concerned workers was the long delays encountered in receiving benefits. Increased administrative problems led to longer delays and workers often had no other means of economic support during this time.[189] As mentioned above, in particular common law claims were increasing in response to the government's reluctance to address declining benefit levels, and in terms of administrative problems, medical board decisions were especially slow.

In a further amendment in 1983 seamen were granted extended coverage so they would be covered when operating outside Australian waters under certain

[187] ibid. S13
[188] Yewdale L.F. (Member for North Rockhampton) *QPD* 30 Mar. 1982, p. 5292.
[189] McLean R.T. (Member for Bulimba) *QPD*, 31 Mar. 1982, p. 5459.

circumstances due to mishap, bad weather or offering assistance to a ship in distress.[190] The remainder of the amendment was aimed at clarifying ambiguous injury terms, such as 'partial' and 'total.'[191] However, while the government was willing to attend to some problems it ignored more pressing issues, especially those put forward by the trade union movement. For example, there were on-going problems with the limitations imposed upon the recognition of asbestos-related diseases and the numbers of workers with these diseases were escalating.[192] Questions were raised by the Labor Opposition in the parliament in relation to other issues such as the provision of artificial eyes and false teeth and the limited provisions for journey claims.

The issue of the introduction of an Appeals process for both Medical Board and ordinary claims decisions was also raised. [193] The government responded to these calls by claiming that it was desired neither by the trade unions nor employers, as it would slow the system considerably.[194] Pressures also continued over limitations in relation to industrial deafness. Specifically, if a worker's hearing deteriorated after retirement they were not entitled to compensation — even if the loss could be directly identified as work-related.[195] Other administrative problems such as cheques lost in the mail and tardiness of the medical profession in supplying medical opinions within the allotted time under the Statute of Limitations continued to be ignored.[196] Clearly the legislation was failing to respond to new issues raised by workers, yet the trade union movement continued to support the system.

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[190] S2, S3 and S4, *An Act to amend the Workers' Compensation Act 1916-1982 in certain particulars No. 12 of 1983.*
[191] S5 *An Act to amend the Workers' Compensation Act 1916-1982 in certain particulars* No. 12 of 1983.
[192] McLean R.T., (Member for Bulimba) *QPD*, 29 Mar. 1983, p. 3899.
[193] ibid. pp. 3905-07.
[194] Knox W.E., (Minister for Employment and Labour Relations) *QPD*, 29 Mar. 1983, p. 3912.
[195] Yewdale L.J., (Member for North Rockhampton) *QPD*, 29 Mar. 1983, p. 3909.
[196] Yewdale L.J., (Member for North Rockhampton) *QPD*, 29 Mar. 1983, pp. 3909-11.

By 1984, there was some indication that the trade union movement was more amenable to a national compensation scheme as provisions under the Queensland scheme deteriorated. A report prepared by the Queensland Workers' Health Centre after consultation with a number of trade unions found disparities between the Queensland fund and other State's funds might be better addressed under a national scheme.

Aspects of the Queensland fund that were identified as particularly problematic were limited eligibility of those suffering hearing-related problems, exclusion of some casual workers, and difficulties in defining a 'causal link' with work for workers suffering heart attacks. Additionally, workers increasingly encountered difficulties in relation to journey claims as the department adopted increasingly stringent parameters in this area, and there were increasing inadequacies in a number of benefits categories, such as total incapacity payments, that were limited to a maximum of 26 weeks. [197]

The report also highlighted the government's continued refusal to specify asbestosis and mesothelioma as industrial diseases. The government's failure to specify these two diseases meant workers who contracted these diseases had to prove their illness was related to their occupation. As incidences of these diseases occurring outside the workplace was low, trade unions argued that specification of these illnesses as industrial diseases would mean those who contracted either disease would automatically be entitled to compensation, unless evidence could be found to prove

[197] Queensland, 1984, *Deficiencies in the Workers' Compensation System in Queensland: Final Report*, pp. 1-6.

otherwise.[198] The report was also critical of what it termed breaches of workers civil rights. As workers had no rights of access to information contained in their workers' compensation files they were not able to question the accuracy of information contained therein, particularly information supplied by their employer. Board investigations and reasons for refusal of claims remained confidential. Workers were placed at a disadvantage if they chose to appeal decisions via the industrial magistrate.[199] Despite these inadequacies, the report also noted that a shift towards a general compensation scheme was most unlikely and therefore the report did not pursue the possibility.[200]

An amendment in 1986 brought an increase in benefits to the families of deceased workers. The amendment was retrospective and was a direct response to the Moura mine disaster.[201] The number of specialists on medical board panels was increased from 10-15,[202] in an attempt to make Boards more accessible and thus speed up the claims process.[203] The definition of '*worker*' was reclassified to halt the expanding propensity of certain levels of management to access the fund without contribution.[204] In particular, it clarified that directors of both $2 companies and sub-contracting companies were not intended to be covered under the legislation.[205] The amendment also clarified journey claims to render ineligible any worker who had experienced a 'substantial interruption' in their journey between their place of residence and workplace.[206] This, the Minister argued, was to put a stop to claims by workers who

[198] ibid. pp. 13-14.
[199] ibid. p. 20.
[200] ibid. p. 4.
[201] S1(3) *An Act to amend the Workers' Compensation Act 1916-1983 in certain particulars,* No. 34 of 1986.
[202] ibid. S8(a)(I)
[203] McLean R.L., (Member for Bulimba) *QPD,* 21 Aug. 1986, pp. 500-12.
[204] S4(v) *An Act to amend the Workers' Compensation Act 1916-1983 in certain particulars,* No. 34 of 1986.
[205] ibid. S4(g)
[206] ibid. S6(b)

had interrupted their journey home to shop, attend a sporting commitment or a union meeting.[207]

By the end of the 1980s the legislation had become increasingly unsatisfactory, particularly in respect to employee-related issues such as lack of an appeals process, limits to journey claims and inadequate rehabilitation facilities. After so many amendments, claims that the Act itself had become difficult to read and understand that were first raised in the 1960s continued.[208] The government continued to focus on issues of fund profitability and low employer premiums, and used these to explain increased business relocation to Queensland from other States.[209]

Fund administration was also problematic with almost 50% of common law claims taking ten years or more to resolve.[210] This was problematic for both employees and the fund as employees faced long-term court proceedings, and the fund had to wait a similarly long time to recoup any statutory benefits that may have been paid to injured workers in the interim.[211] There were indications that the numbers of common law claims were rising, and varied reasons were given for this occurrence.[212] These included increased access to legal aid, and poor advice being provided by specialised law services.[213] However, workers were pursuing common law remedies because of

[207] Lester V.P., (Member for Peak Downs) *QPD*, 21 Aug. 1986, pp. 546-47.
[208] McLean R.T., (Member for Bulimba) *QPD*, 21 Aug. 1986, p. 513.
[209] Lester V (Minister for Employment, Small Business and Industrial Affairs) *QPD*, 18Nov. 1987, p. 4430.
[210] Interview with Grace Grace, President of the Queensland Council of Unions, 24 May 2004.
[211] The Act prohibited 'double-dipping'. Workers were provided with statutory benefits until court proceedings were completed. In the event the worker's claim was successful, the amount paid to the worker in statutory benefits would be deducted from the monetary amount awarded by the court.
[212] For example during the period 1986/87 there was a 21.6% increase in common law claims. This effectively meant the number of these claims had doubled in the previous five years. During the same year there was a 8.1% decrease in statutory claims from the previous year. *Workers' Compensation Board of Queensland 1987 Annual Report* p. 27. There were similar figures for other years, although slight decreases in common law claims were recorded during 1987/88. See *Workers' Compensation Board of Queensland Annual Reports.*
[213] Knox W., (Member for Nudgee) *QPD*, 20 April 1988, p. 6168.

the potential for higher economic awards in preference over the increasingly inadequate levels of statutory benefits. Overall, apart from periodic attention to the issues of employee benefits and employer premiums, the pace of legislative change slowed dramatically as it was not a high priority issue, particularly for government during the Bjelke-Petersen years.

Compulsory Government Monopoly

Given the conservative parties' ideological history of objection to state monopoly, the change of government in 1957 brought with it uncertainty as to whether the monopoly of workers' compensation insurance would continue. The new government's policy on this issue was clarified early in 1960 when the Treasurer announced in parliament that the government saw no merit in such a move. The Treasurer left no doubt about the issue. He stated:

> I am satisfied and the Government are satisfied that the public of this State, those who are engaged in industry and employers, are best served by a continuation of the present system. Consequently, the Government propose no change whatever in what has been the practice for 40-odd years, a practice which we are satisfied has worked successfully, satisfactorily, and economically in the interests of employers and for the benefit of the people of the State.[214]

This declaration of government policy by the Treasurer indicated, after many years of active opposition to the key element of the system that the conservative parties recognised the efficacy of the system, and placed importance on preserving a state monopoly as a means of maintaining that effectiveness. Consequently, the political arena no longer posed a threat to this core component of the legislation. Both the Labor Party and the Country/Liberal Coalition were complicit in the maintenance of government control over the fund, despite divisions in other areas of the legislation

[214] Hiley T., (Treasurer) *QPD* 25 Feb. 1960, p. 2103.

over issues such as benefits levels and premium adjustments.

Treasurer Hiley revealed a further reason for preserving the state monopoly in his reply to an accusation by the Queensland Womens' Electoral League that it was unsuitable for a conservative government to maintain socialist principles.[215] The Treasurer responded that the matter had been examined by a number of employer organisations that were satisfied with the system. Also:

> At a time when Queensland is endeavouring to stimulate industrial growth it would be folly indeed to throw away one of the few advantages that we can demonstrate and that is a lower charge for workers' compensation insurance.[216]

The issue became more acute in 1966 when the Fire and Accident Underwriters' Association attempted to challenge the monopoly by mounting a campaign that included garnering some employer support. However, those employer groups who did provide support appeared 'half-hearted'. For example, the Queensland Chamber of Fruit and Vegetable Industries' Co-operative Limited noted that it had not given any thought to the issue until approached by the Fire and Accident Underwriters' Association of Queensland. It stated a belief that monopolies were not generally a "…good thing…", although it noted the SGIO was an exception. It acknowledged there would be problems if the government privatised workers' compensation, however the "…all round benefits would make it worthwhile."[217] What these benefits might be was not elaborated upon although it seems the reference was to the end of an insurance monopoly in general. The Brisbane Chamber of Commerce offered a similar letter of support. Their brief letter to the government simply stated:

[215] Letter from Queensland Womens' Electoral League to Treasurer Hiley, 21 Apr. 1960, QSA TR1652/1.
[216] Letter from Treasurer Hiley to Queensland Womens' Electoral League, 28 Apr. 1960, QSA TR1652/1.
[217] Letter Queensland Chamber of Fruit and Vegetable Industries Co-Operative Limited to Premier, 12 Oct. 1966, QSA SRS1043/1.

"Believing that Free Enterprise should be allowed to compete on a fair basis with government and semi-government organisations, the Chamber supports the submissions made by the [Fire and Accident Underwriters] Association."[218] It also failed to elaborate on specific reasons. A Resolution had also been passed at the 1962 Liberal Party Convention that called for the removal of all restrictive legislation that created government monopolies and restricted private enterprise, however this did not impact on government.[219]

The other stakeholder in the policy community also continued to support existing arrangements. In defending the monopoly, the TLC argued on a number of bases. Firstly, fifty years of service were argued to have made the SGIO more efficient. Secondly, as a public organisation it operated on a non-profit basis and counteracted the private profit motive. Thirdly, it had the lowest premium schedules in the Commonwealth, the lowest percentage of rejected claims and the fund rarely exercised its right of appeal against Court decisions on rejected claims. Finally, the TLC argued that most private insurance companies had headquarters outside Queensland and profits were being transferred out of the State.[220]

From its own perspective the government identified four other important factors. These included the proven sound economics of one organisation handling all workers' compensation claims, and the protection provided to both employers and employees against the dangers of insurers becoming selective in the writing of insurance policies. Additionally, the operation of the scheme as a social service was something private insurers could not be expected to adopt as the government had used substantial

[218] Letter from Brisbane Chamber of Commerce to Premier, 24 ct. 1966, QSA SRS1143/1.
[219] Resolution No. 146, Liberal Party Convention, June 1962, QSA 1043/1.
[220] Cabinet Submission, 8300 23 Sept. 1966, QSA Z4607.

investment income from reserves and provisions to reduce the costs of the service. Finally, the government noted that the SGIO played a major role in the provision of investment funds for the development of Queensland, and it was keen to maintain financial contribution levels.[221] Consequently, the Underwriters' Association expelled the SGIO in 1966 in protest at the continued workers' compensation monopoly, even though it had only been an affiliate and expulsion would have no real effect.[222]

Clearly, the compulsory government monopoly component of the legislation was a core feature agreed among policy community stakeholders. The relationship between the three key stakeholders was solid on this point and little support was offered to the insurance lobby. Trade unions were not expected to provide support, and groups such as the Australian Engineers' Union (AEU), the Gladstone branch of the TLC, the Rockhampton branch of the Building Workers' Industrial Union (BWIU), and the Townsville branch of the Waterside Workers' Federation (WWF) were some of those who voiced disapproval of the proposal.[223] Employers, although sympathetic to the anti-competitive effects of the legislation, saw no specific organisational benefits in changing the system, and showed a general disinterest in lobbying on behalf of insurance companies. The Printing and Allied Trades Employers' Association of Queensland fully supported the monopoly as did the Queensland Cane Growers' Council.[224]

[221] ibid.
[222] Courier Mail 11Aug. 1966 p. 3.
[223] Letter from AEU to Premier, 28 Sept. 1966; letter from TLC Gladstone to Premier, 3 Oct. 1966; letter from BWIU Rockhampton sub-branch to Premier, 3 Oct. 1966; letter from Member for Townsville, Tom Aiken to Premier, 20 Sept. 1966 forwarding on a letter from WWF Townsville branch, QSA SRS1143/1.
[224] Letter from Printing and Allied Trades Employers' Association of Queensland to Premier, 6 Sept. 1966; letter from Queensland Cane Growers Council to Premier 26 Aug. 1966, QSA SRS1143/1.

A decade later when the issue of ending the monopoly of workers' compensation was raised again there was no change in government attitude. The Treasurer admitted the issue was often on the agenda of his Party's conferences, however, research showed that the cost of workers' compensation to employers in other States was greater than Queensland industry had to bear. Therefore, continued state administration of workers' compensation was in the best interests of the community as a whole.[225]

For the government, refusal to seize the opportunity to end the monopoly after the long and bitter fight its predecessors had waged during the early years of the legislation, indicates this aspect was indeed working well for all three parties. As well as maintaining harmonious relations among the parties, particularly with the trade union movement, the proven economic benefits were a major factor in the government's continued support for the scheme. In 1976, approaches by the Minet James group on the issue of self-insurance for employers received no support. The government argued that such insurance was not feasible as it was in direct conflict with the basic spread-of-risk principle that underpinned the current system. [226] For the government this was even more pertinent after the separation of the Workers' Compensation Board from the SGIO, as the former stood more chance of economic success with a larger organisational pool from which to draw premium income. To allow some organisations to opt out could threaten its economic viability.

The Conservative government's continued commitment to compulsory monopoly workers' compensation enhanced co-operation and cohesion among the three stakeholders. However, the amicable relations that fostered support for this

[225] Chalk G.W.W., (Member for Lockyer) *QPD*, 3 Dec. 1970, p. 2377.
[226] Campbell F.A., (Minister for Labour Relations) *QPD* 2 May 1979, p. 4453.

component were not always maintained over other aspects of the legislation. Close scrutiny of the legislative amendments set out above illustrates a willingness of each party to incur less than ideal outcomes, although the trade union movement bore the brunt of such compromises, particularly in relation to issues such as inadequate benefit levels the increasing occurrence of asbestos-related diseases. However, they were significantly less willing to take such disruptions into the public arena, preferring to maintain a workable if inadequate system.

The Ahern Government

Joh Bjelke-Petersen was forced to resign in 1987 amid a furore over corruption, lack of accountability and poor government management practices. His successor was Mike Ahern. Davis says from the outset Ahern "…sought to establish the coordination systems [of government] missing under his predecessors."[227] In contrast to previous governments, particularly the Bjelke-Petersen government, Ahern understood that "…quality government decisions and policy implementation relied on shifting authority from the person of the Premier to regular and routine cabinet and budget processes."[228] These reforms were made all the more important as the government had to attempt to restore public trust in the wake of the findings of the Fitzgerald Inquiry that were delivered to Ahern in July 1989. The Inquiry was initially set up to inquire into illegal activities and misconduct in the Queensland Police Service, however its terms of reference were extended twice. In addition to systemic corruption within most levels of police ranks the Fitzgerald Report found extensive government maladministration, and corruption charges were laid against

[227] Davis G., 1995, *A Government of Routines*, Macmillan, p. 9.
[228] ibid. pp. 9-10.

several Bjelke-Petersen government ministers.[229]

The Bjelke-Petersen government had showed little interest in government administrative reform that was being carried out within other State governments[230] and Premier Ahern set about implementing a more managerial model of coordination.[231] Ahern's changes accorded with Halligan's description of managerialism that was emerging within Australian governments at that time. Halligan described managerialism as "…policy-making is now expected to reflect corporate objectives, strategic planning and other management techniques that have been evolved in the private sector." [232]

In Queensland, one such reform was the creation of the Queensland Treasury Corporation (QTC) established to centralise government investment and borrowing requirements. The QTC was granted extensive powers to borrow both within Australia and overseas. It also was given the power to invest on behalf of the Treasurer and state statutory authorities.[233] Consequently the QTC assumed responsibility for the government's investment management activities and for the investment of cash balances in the workers' compensation fund. Decision-making responsibilities in relation to finances and investment were removed from the direct control of the fund.

[229] Sir Joh Bjelke-Petersen also faced charges of corruption that rose out of the Fitzgerald Inquiry however the jury failed to reach a verdict and he was discharged. Other Ministers including Don Lane, Brian Austin and Leisha Harvey were convicted and served prison terms. Russell Hinze died before legal proceedings against him began. Reynolds P., 2003, 'Michael John Ahern The Conservative Reformer' in *The Premiers of Queensland*, University of Queensland Press, p. 349.

[230] Halligan J., 1988, 'State Executives' in *Comparative State Policies*, B. Galligan ed., Longman Cheshire, p. 41.

[231] Davis G., 1995, *A Government of Routines*, Macmillan p. 10.

[232] Halligan J., 1988, 'State Executives'… p. 41.

[233] Reynolds P., (2002) *Lock Stock and Barrel. A Political Biography of Mike Ahern*, University of Queensland Press, p. 108.

Another reform was achieved through changes to the composition of the Workers' Compensation Board in an amendment in 1988.[234] No longer would the Departmental Under Secretary automatically be the Board Chairman. Instead, the position could be awarded to someone from outside the department. The government sidestepped both Liberal and Labor Party questions in relation to this change, however the decision to remove the restrictions in relation to appointment of Chairman is further evidence of a shift towards a private-enterprise strategic management style instead of the traditional practices that had dominated the fund. A new focus on flexibility was highlighted with arguments that "…the amendments to the composition of the Board and other authority redirection amendments will bring about the elimination of unnecessary administrative trivia."[235] The Board was granted increased power to make recommendations to the Minister in relation to improved health and safety issues.[236] In response to a question about rumoured privatisation of the fund, the Minister refuted the need for such because "…it works in a very private-enterprise manner at the moment."[237]

At what was ostensibly the end of the era of Conservative government,[238] a level of co-operation and cohesion within the policy community remained, most notably in the continued resistance by stakeholders to privatisation of the fund, although co-operative policy development had long since slowed. Earlier social welfarist ideologies and conservatism, particularly of the Bjelke-Petersen government, were giving way to neo-liberalism and its ideals of decentralisation and privatisation, and these threatened the structures that supported the policy community.

[234] Knox W., (Member for Nundah) *QPD*, 20 April 1988, p. 6186.
[235] Fraser H.D.J., (Member for Springwood), *QPD*, 20 April 1988, p. 6195.
[236] Vaughn K.H., (Member for Nudgee) *QPD*, 20 April 1988, p. 6181.
[237] Lester V.P., (Minister for Labour Relations) *QPD*, 20 April 1988, p. 6199.
[238] Mike Ahern was replaced as Premier by Russell Cooper in an internal National Party ballot on 25th September 1989. Cooper remained Premier until 7th December 1989 when the Goss Labor government was elected.

Discussion

The central point in this chapter that addresses the question of the longevity of the Queensland workers' compensation legislation is that the relations among stakeholders within the policy community, that had been established during the era of Labor government, were sustained throughout this period of conservative government. As in the previous era, the policy community remained intact principally through the continued support by employers and employees for key components of the legislation, namely state monopoly and no-fault insurance. This cohesion became all the more important as it served as a buffer against dissatisfaction in other areas of the legislation that developed as government increasingly failed to address stakeholder needs, particularly those of employees.

The continued commitment of the stakeholders to the policy community transcended individual discontent even as policy development became increasingly centred in government and as legislative changes indicated disregard for stakeholders' needs. In particular, trade unions adopted a position that centred round maintaining existing arrangements as they were keenly aware there was little chance any substantial changes to the legislation would be implemented, particularly during the Bjelke-Petersen era. Consequently, the legislation continued although increasing sections of it were clearly inadequate for stakeholders' needs, and inefficiencies began to prove costly.

Although the policy community survived and changes in the workers' compensation legislation were continually enacted through it, there were many pressures that

hampered legislative development. These pressures served to prevent any revival of legislative innovation that was visible during the early years of the legislation. In terms of specific pressures, social pressures were most visible in the area of industrial unrest. Trade union strategies reverted from political power back to industrial action at the end of the 1950s, however the government could ill-afford any significant levels of industrial unrest as it had embarked upon a program of rapid industrialisation during this same time. Increased industrialisation, in turn, brought new work technologies and processes and along with these came new illnesses and injuries, and different job categorisations that needed to be incorporated within the legislation. As traditionally highly unionised industries such as mining were central to the government's plans for economic development during the 1960s, issues that were likely to cause dispute could not be ignored. For example, in 1969 the SGIO General Manager responded to a query from the Premier's Department of the term *'arising out of the employment.'* His advice was: "…suffice to say that the broader definition in use is now quite acceptable by both employer and employee alike, and I do not think it would be superfluous to say that it has made no little contribution to industrial rest."[239] At this stage the government continued to see merit in some cooperation with trade unions over workers' compensation.

However, by the 1980s the Bjelke-Petersen government had adopted a more aggressive attitude to trade unions in Queensland. Blackmur argues the government during this time "…launched a vigorous counter-attack against anything which it believed threatened economic growth and development in Queensland."[240] The government employed increasingly aggressive tactics and trade unions suffered

[239] Letter from General Manager, SGIO to Under Secretary Premiers Dept., 28 Aug. 1969, QSA QS1043/1.
[240] Blackmur D., 1989, *Industrial Conflict in the Public Sector…*p. 164.

significant defeats such as in the SEQEB strike. As the government reaffirmed its rejection of the principles and practices of organised labour, trade unions came to understand any advances in work-related issues under the Bjelke-Petersen regime would not be easily achieved. Consequently the trade union movement saw merit in maintaining amicable relations within the policy community as a more likely arena for directing policy change in relation to workers' compensation issues. The government on the other hand, in line with its broader anti-union stance, increasingly paid 'lip service' to workers' needs as it failed to implement key proposals in areas of workers' compensation that were becoming problematic, such as its continued refused to classify asbestos-related diseases as industrial diseases. On the one occasion in 1972 when the trade union movement did seek to address a workers' compensation issue in the Queensland Conciliation and Arbitration Commission, the government moved swiftly to prevent any further occurrences by making such rulings invalid under the *Workers' Compensation Act*.

Political pressures influenced the legislation during this era. In political terms the government focused more on industrialisation and less emphasis was placed on areas such as welfare, education and public health.[241] As Hughes[242] points out, Queensland politics came to focus on "…things and places rather than people and ideas." The Labor Party provided little effective opposition to this political agenda as its attention was focused on internal conflicts for much of this time. With the political arm of the trade union movement in disarray and avenues for direct industrial action curtailed, it was more politically astute for the trade union movement to rely on policy community mechanisms in its attempts to influence the policy agenda in relation to workers'

[241] Cribb M.B., & Murphy D.J., 1980, 'Winners and Losers in Queensland Politics' in *Politics in Queensland. 1977 and Beyond*, Cribb M.B. and Boyce P.J., eds., University of Queensland Press, p. 30.
[242] ibid. p. 269.

compensation.

Ideological pressures were complex during this era. In 1957 when the conservative parties were first elected to government, the most visible ideological differences between the government and the Labor Opposition in relation to workers' compensation centred round the continuation of the state monopoly. The new government quickly asserted its full support for the existing system. However, this commitment by the conservative government to the state monopoly continued to cause tensions with private insurers and was an enduring ideological conflict that confronted legislators during this era.

The private insurance lobby never relented in its drive to end the state monopoly of workers' compensation, although levels of campaigning waxed and waned at various times. For example, during the 1960s as the government moved towards privatisation of the SGIO, the insurance lobby mounted a vigorous campaign to encourage the government to end the state monopoly of workers' compensation at the same time. The private insurance lobby managed to elicit some reluctant support from employer groups such as the Queensland Chamber of Fruit and Vegetable Industries Co-operative Limited, although most employers did not support the campaign.

The government was not swayed and joined the two other policy community stakeholders to reject any change. Essentially the government's continued commitment to the state monopoly was maintained because it was politically and economically advantageous to do so. The strong support of employers and employees for the state monopoly and the fund's hefty contribution to the SGIO's investments

pool ensured the government's continued support. After its separation from the SGIO it was the fund's financial stability and the on-going support of both employers and employees for the continuance of existing arrangements that ensured the longevity of the state monopoly based system of workers' compensation.

In the ensuing years the government moved further to the right of the political spectrum, particularly during the premiership of Joh Bjelke-Petersen. Most visible in relation to workers' compensation was the obfuscation of social welfare principles that were so pivotal in the initial legislation. From the 1970s, social welfare ideology came under pressure as advances in areas such as technology facilitated expansion in global capabilities. In line with these new capabilities, a shift towards neo-conservatism emerged. Governments abandoned existing core ideological elements in favour of new conservatism, and set out to restructure or abolish many public institutions, particularly those whose central functions were social welfare-based, such as workers' compensation. In Queensland the Bjelke-Petersen administration resisted calls for reforms in public administration, however it maintained a strong ideological position in favour of privatisation.

The government's ideological commitment to privatisation impacted on the workers' compensation scheme through a determination to privatise the SGIO. As the SGIO had been set up, primarily as the mechanism through which workers' compensation would function, the continuance of the fund in its existing form was jeopardised. However, as argued above, the financial viability of the workers' compensation fund and the desire within the policy community to maintain the state monopoly provided incentive for the government to maintain control of the scheme, and it was moved to

the control of the Department of Labour Relations.

During this second era the fund also faced economic pressures that were somewhat different to those that surfaced during the early stages of the legislation. The problems with the Section 14B miners' phthisis fund were under control and the general fund flourished. From the outset, the new government, and particularly its Treasurer Thomas Hiley, focused on increased economic efficiency and investment for the SGIO in line with the government's broader economic development policy. The core functions of the SGIO were re-directed towards improved economic outcomes that could be attained through closer attention to other areas of business such as life insurance, although the workers' compensation fund remained the largest financial contributor to the SGIO.

The liberalist approach to the administration of the fund that was instilled by Commissioner Goodwyn and continued through Commissioners Watson and Grimley was soon at odds with the organisation's broader goals. The administration of the workers' compensation scheme became more focused on control of economic issues. Consequently, instances of leniency in areas such as claims assessments, that had contributed much to develop initial support for the legislation, disappeared.

Restructuring of the SGIO, during the 1960s and 1970s, re-directed focus away from service delivery in areas such as workers' compensation and towards increased profits for investment purposes. Pressure was placed on the fund to increase surpluses. This was yet a further reason for the government moving swiftly to close the potential loophole of arbitration decisions that would have placed some economic decision-

making outside the fund's control. Similarly, when rehabilitation mechanisms were introduced in 1973 the central reason for this change was simply getting workers back to work as early as possible to decrease the extent of benefits payments.

Both employers and employees were acutely aware of these economic pressures as benefits rates slowed and premiums rose, yet they remained locked into the policy community believing this to be the most advantageous course to follow. Certainly until the 1980s each stakeholder continued to maintain that continued policy development within the policy community was preferred, and each believed resort to private insurance would no doubt bring more problems. However, as benefits levels in particular began to lag considerably behind other States, some trade unions questioned the ability of the policy community to deliver desired outcomes. They suggested that alternate mechanisms such as a national scheme might provide improvements in this area. However, other industrial issues such as the Bjelke-Petersen government's concerted attack on trade union rights and civil liberties took precedence and the trade unions did not seriously pursue this alternative.

Trade unions accepted existing arrangements, and rather than increase already high levels of industrial action, continued to voice their discontent within the policy community, mostly through written communications and representations to ministers. However, during the latter part of the 1980s employees began to increasingly register discontent outside the policy community, particularly over inadequate benefit levels by increased resort to common law, which in turn increased the costs of administering the scheme.

Other pressures also impacted on the legislation during this era. Administrative pressures for example were visible for much of the time. These began in the 1960s when the SGIO was restructured from a state enterprise to a public corporation. In place of the Insurance Commissioner, a General Manager directed a shift from public service ethos to competitive insurance, and increased profits and investment in line with broader government economic policy. Similarly, when Suncorp was finally privatised in 1978, the workers' compensation department was transferred to the Department of Labour Relations and new structures were put in place. Regardless of these restructures administrative processes became more bureaucratised.

By the end of the 1980s, processes throughout much of government had become inefficient and costly. In the administrations of workers' compensation, inefficiencies such as slow claims assessments that surfaced were addressed from within the policy community through discussions between stakeholders. For example Medical Boards were expanded to expedite the finalisation of claims after complaints that the number of decisions handed down by the Boards had slowed, and injured workers were waiting increasingly long times for claims assessments. However, other issues such as poor customer relations were not adequately addressed, and antagonisms began to fester as unsubstantiated judgments in terms of the likely origins and extent of their injuries were recorded without claimants' knowledge.

The legislation had stagnated and incremental administrative policy changes dominated due largely to the fact that policy development in relation to workers' compensation was directed by a well-established policy community with a long-held authorisation in the area. Rhodes' argument that within the policy community power

relationship all stakeholders may not be equal, however each views membership as a "…positive sum game"[243] is a crucial point in this analysis, as trade unions in particular became increasingly dissatisfied with policy developments, yet they maintained their support for the legislation. This occurred through their continued support for the fundamental aspects of the system, namely state monopoly and no-fault insurance, and despite growing discontent with the operational aspects of the legislation. By the end of the 1980s, the policy community became a largely ineffective mechanism for legislative development as policy-making became routinised and prohibited the development of new policy directions.

Conclusion

The central argument contained within this chapter is that policy community relations changed markedly during this era. As government expanded and became more complex, relations among key stakeholders became routinised. The dynamic policy-making that had been visible during the previous era disappeared. Throughout this period there were shifts in legislative priority that, more often than not, favoured employers.

In particular, the chapter highlights differences between amendments instituted by the earlier Nicklin government and those introduced by the Bjelke-Petersen government. Although not always favourable to employees, the earlier amendments nevertheless remained focused on individual industries and occupations. However, the pace of amendments slowed. The rapid progress that had been so much a feature of the earlier predominantly Labor period of the legislation disappeared.

[243] Rhodes R.A.W. 1997, *Understanding Governance…*p. 43.

By the 1970s the legislation began to stagnate as the political objectives of the Bjelke-Petersen government were centred elsewhere. Indeed, much of what occurred in terms of significant changes to the legislation during this time was driven by another government agenda — the privatisation of the SGIO. However, the principal objective of increased profit and investment contained within that agenda were incompatible with the social welfare ideology that underpinned the workers' compensation legislation. Other areas, particularly administrative processes, deteriorated as the SGIO, through diversification and restructuring, evolved into a financial giant. Consequently, the fund survived the dismantling of its original operational medium and remained intact, albeit with a culture that more closely resembled private enterprise managerialist strategies than public service ethos.

This chapter has argued that the key factor contributing to the longevity of the legislation was the continued centrality of the policy community as the mechanism for policy development. In exploring why the policy community remained pivotal in relation to workers' compensation legislation it was found that:

(a) a high level of cohesion was maintained through a collective conviction among all three policy community stakeholders that the central features of state monopoly and no-fault insurance should be maintained;

(b) much of this era was dominated by an unstable industrial environment stakeholders, particularly government and trade unions, recognised the policy community as a more agreeable arena to negotiate policy changes.

In political terms, by 1989 workers' compensation was no longer a central issue in the political agenda of the National Party, the Liberal Party or the Labor Party in

Queensland. After years of government under-management and policy community complacency economic difficulties began to emerge as increasing numbers of workers resorted to common law remedies for more adequate compensation. This in turn placed more strain upon fund administration and delays in case decisions became problematic. These problems culminated in the early 1990s, and the incoming Goss Labor government was forced to address the economic fallout from the practices that were established during this era.

CHAPTER SIX

A TIME OF CHANGE – THE GOSS & BORBIDGE GOVERNMENTS

The 1990s brought changes to the environment in which Queensland public institutions operated. After thirty-two years of National/Liberal Party government, public administrative functions had fragmented and the mechanisms for their control were inadequate. In particular, the Bjelke-Petersen regime had steadfastly ignored calls for public administration reforms that were permeating through other areas of Australian government. Instead, it continued to conform to a traditional 'leaders know best' [1] style of governance.

The previous chapter argued that despite the long period of conservative government the centrality of the policy community remained in relation to workers' compensation. As broader political authority remained concentrated in the hands of the Premier and senior advisors, little attention was paid to areas such workers' compensation; cooperative relations among the three key stakeholders continued, sustained largely by the state monopoly and no-fault insurance components of the legislation. In particular, workers' compensation legislative development during the 1970s and 1980s was stifled by inefficient administrative practices and lack of accountability in policy processes. The first full investigation into the operations of the WCBQ concluded it "…is ineffective and for all practical purposes useless. Board members have no real authority, no real responsibility, and no accountability."[2]

[1] Rhodes R.A.W. , 1997, *Understanding Governance*…p3.
[2] *Report of the Commission of Inquiry into Workers' Compensation and Related Matters in Queensland* (Kennedy Report) 30 June 1996, p.ix.

When the Australian Labor Party (ALP) was elected to government in 1989, it was acutely aware of the diminished levels of trust and confidence between the electorate and their elected representatives. Earlier in 1989, it was clear from the Fitzgerald Inquiry's findings of corruption and maladministration in the Queensland government that a major task of the new government was to stem electorate cynicism and restore public confidence in government. There was a need to abolish old conventions of favouritism, patronage and partisanship that were entrenched within previous conservative administrations.[3]

To address these problems the new Goss Labor government embarked on a program of reform to "…improve the effectiveness, efficiency, economy and impartiality of the Queensland public sector."[4] In this program the government focused on three areas, the traditional public service, commercial business units within the public service and government owned enterprises.[5] Coupled with this was a propensity for economic reform that included reforms in areas such as the public sector, regulatory regimes, state infrastructure, investment approval processes, education and training and industrial relations.[6]

As a state controlled monopoly administered by a statutory Board, workers' compensation was exposed to the reforms programs. This chapter argues that the policy community fractured as the consequences of reform pressures such as broader consultative arrangements, impacted on workers' compensation. The breakdown began as the Goss Labor government reform measures were initially implemented,

[3] Wanna J., 1992, 'Trust, Distrust and Public Sector Reform: Labor's Managerialism in Queensland' in *Policy Organisation and Society*, Special Trust Issue, Winter 1992, p. 74.
[4] Goss W., 1990, "Process of Executive Government in Queensland" in *Public Sector Reform Under the First Goss Government*, Davis G. (ed) The Centre for Australian Public Sector Management, p. 29.
[5] Queensland Government, 1992, *Queensland Leading State*. State Economic Development Policy, p. 35.
[6] ibid. p. 35.

and accelerated as processes were further developed. It culminated in 1996 when the Borbidge conservative government[7] abolished the *Workers' Compensation Act* and introduced the *WorkCover Queensland Act*. The new Act vastly curtailed most of the provisions contained in the previous legislation.

This chapter documents a decline in the role of the policy community and its centrality in policy-making. However, as the government adopted public sector reforms and new financial management principles, policy-making came to more closely reflect private sector techniques such as corporate objectives and strategic planning. Relationships within the policy community could not be sustained, and stakeholders again became adversaries as the legislation was amended to more adequately meet these public administration changes.

Social pressures continued to influence the direction of workers' compensation legislation, particularly as Queensland achieved significant employment growth from the late 1980s through to the 1990s. In 1992 national employment growth remained static, but there was a 2.5% increase in the Queensland labour market.[8] Consequently, these expanded employment conditions placed more demands upon workers' compensation legislation. The legislation faced further pressures, as this employment growth was concentrated in newer service industries although employment in rural and primary industries such as mining remained high. During this time, areas such as retail trade, property and business services, community services and finance and construction, accounted for 90% of the total increase in

[7] The Borbidge conservative government came to power in 1995 after resignation of the Goss government.
[8] Queensland Treasury, 1992, *Queensland Economic Review: December Quarter*, pp. 18-19.

employment in Queensland.[9] The relationship between the trade union movement and the Labor government was vastly different from its earlier term in office. Although factionalism still resonated through the Parliamentary Labor Party (PLP) in relation to issues such as the allocation of ministries, the government was not primarily recognised as advocating work-related issues such as workers' compensation. Instead, the party had developed a more diverse agenda and appealed to broader sectors of the community.

In terms of political pressures, government instability was a feature of the Queensland political landscape for the first time since 1916. Public expectations and enthusiasm that accompanied the return to Labor government were high as the ALP promised much needed political and economic reforms. The Goss government's first term performance was satisfactory and it was afforded a second term in government in an election in 1992. However, by this time the government's reform process was beginning to yield changes, not all of which were viewed positively. In particular, the nature and extent of public sector reforms brought dissatisfaction that increased tensions between government and the bureaucracy.[10] Public discontent grew as the government became embroiled in issues such as the proposed closures of railways in regional Queensland and a Criminal Justice Commission report into misuse of parliamentary travel expenses forced the resignation of two members of the Goss ministry and the Deputy Speaker.[11]

[9] Queensland Government, 1992, *Queensland Leading State*, State Economic Development Policy, p. 17.
[10] Wanna J., 1992, 'Trust, Distrust and Public Sector Reform:…p. 74.
[11] Wanna J., 2003, 'Wayne Keith Goss. The Rise and Fall of a Meticulous Controller' in *The Premiers of Queensland*, Murphy D., Joyce R., Cribb M., and Wear R., eds. University of Queensland Press, pp. 381-82.

The Goss Labor government was re-elected in 1995 with a one-seat majority. However, a by-election in the seat of Mundingburra later that year was won by the Liberal Party and left the ALP without a majority. As the sole independent in the Queensland parliament, it was left to the Member for Gladstone Liz Cunningham, to decide the fate of the government. She indicated she would support the Opposition and the Goss government resigned. The National/Liberal[12] coalition parties, led by Rob Borbidge as premier, returned to government. However, the elevation was short-lived as the ALP was returned to government at the election in 1998.

The chapter also illustrates that ideological pressures emerged as the economic principles that underpinned government reforms were sharply at odds with social justice ideals that had initially held sway in this issue. For example, Carroll argues the zealousness of the Goss Labor government in addressing economic and administrative reform "...seemed to show disregard for social justice, equity and other social values generally held dear by the Queensland Labor Party."[13] In accordance with Rhodes' general observation in relation to policy communities that "…policy intentions drown[ed] under their unintended consequences…"[14] this chapter will establish that reform mechanisms, such as partial deregulation of the law industry, had an unintended impact on this issue as increased common law claims placed enormous economic strain on the workers' compensation fund.

Further ideological pressures were placed on the legislation, as the existing state monopoly component of the scheme was incompatible with the government's reform

[12] The National and Liberal Parties resumed their coalition in 1992.
[13] Carroll P., 1993, 'Regulatory Reform' in *The Goss Government. Promise and Performance of Labor in Queensland*, Stevens B. and Wanna J. eds. Macmillan, p. 150.
[14] Rhodes R.A.W., 1997, *Understanding Governance…*p. 4.

program and economic agenda. In particular, enhanced public consultative initiatives facilitated contributions by previous outsider groups in relation to the future directions of the fund. Private insurers saw an opportunity to bring about the demise of the state-controlled scheme and, as the economic conditions of the fund deteriorated and premiums rose, there was increased support from employers for the introduction of more comprehensive insurance choices in the area of workers' compensation.

Economic pressures were substantial. As the workers' compensation fund faced its largest deficit since the introduction of the legislation in 1916. There were indications during the latter half of the 1980s that the continued economic prosperity of the fund could be jeopardised if common law claims continued to rise and inefficient administrative practices were not addressed. However, little account was taken, particularly of the reasons why common law claims were rising, and by 1995 the fund posted a $118M unfunded loss and it faced a further $280M in claims liability.[15]

Broader economic issues also impacted on the fund. Australia faced an economic recession between 1988 and 1991 that brought more difficult economic conditions for governments, employers and employees. Although Queensland fared somewhat better than other States, the broader economic climate remained cause for concern. In Queensland, in 1992, 27% of export income still came from rural industries and the State remained dependent upon agriculture and mining for economic prosperity, although employment growth came via newer service industries as set out above.[16] The agriculture and mining industries also continued to provide input into many other

[15] *Workers' Compensation Board of Queensland 1995 Annual Report.*
[16] Queensland Treasury, 1992, *Queensland Economic Review: December Quarter*, p. 5.

industries and the income created, in turn, generated demand in other industries such as housing. However, Queensland's manufacturing output was lower than the national average.[17] Overall, expansion in business opportunities and employment increases impacted upon both the premiums and claims experiences of the workers' compensation fund.

Most importantly, this chapter argues that the government's recourse to more consultative methods of policy development, primarily as a means of reinvigorating public trust, also contributed to the decline in established relationships in workers' compensation. Participation in policy choices shifted from closed meso-level consultation between employers, employees and government to more public forms of community consultation, the most comprehensive of which was the Kennedy Inquiry in 1996. Effectively, opening the issue up to public consultation widened the stakeholder pool. The transparency of the process meant government responses had to incorporate other stakeholder interests in future policy direction.

The impact of broader stakeholder input forced re-clarification of the purpose of the scheme, and re-evaluation of policy objectives. Whereas, previously, the scheme maintained a strong social welfare focus, this became increasingly blurred with the myriad of stakeholder interests that were encapsulated in consultation, and it was more difficult to determine whether it was a public service, an insurance scheme or an issue of preventative health and safety. The Kennedy Inquiry concluded workers' compensation was primarily an insurance issue[18] and the recommendations that stemmed from the Inquiry meant interests could no longer be aggregated within a

[17] Queensland Government, 1992, *Queensland Leading State*, State Economic Development Policy, p. 15.
[18] *Kennedy Report* p. 94.

tightly integrated policy community. This chapter demonstrates, in exchange for improved economic performance and accountability, some interests such as the Insurance Council and lawyers were brought into the aggregation, while traditional insider groups, employers and employees, found their influence challenged.

In considering these changes, this chapter looks firstly at the rejuvenation of the ALP in Queensland during the 1980s. Established factionalised power structures that had engulfed the party for much of the previous 32 years were addressed and a new reformist group was able to restore, to some extent, a semblance of unity within the party. A brief discussion is undertaken of the new governance ideals that were central to the Labor Party's electoral platform and were an integral part of the operations of the Goss Labor government upon its election in 1989, before providing a detailed examination of the amendments to the workers' compensation legislation during the Goss era and focusing particularly on the impact of reform processes on the policy community.

The discussion then turns to the brief return of the conservative parties to government in 1995 and their determination to implement significant changes to workers' compensation, principally through the findings of the Kennedy Inquiry into the legislation. The recommendations of the Kennedy Report that precipitated the abolition of the *Workers' Compensation Act* and introduction of *the WorkCover Queensland Act* by the Borbidge conservative government are detailed, before the impact of these factors is analysed. The collapse of the policy community and winding back of the legislation are then highlighted.

ALP reforms – 1980s

As explored in previous chapters the ALP languished in Opposition for thirty-two years, and for most of those years it remained preoccupied with factional in-fighting and upheaval. Reynolds argued that during its years in opposition the ALP descended into a morass of internal power plays and distorted perception of political reality, and it became detached from external political forces in Queensland.[19] Reynolds argues the party "…abandoned any desire to challenge the hegemony of the coalition and has indulged in its own internecine feuding."[20] As a result the Labor Party's focus shifted from the parliament to the Queensland Central Executive (QCE).[21] In an attempt to re-direct the Labor Party, a reform group emerged in 1977. Based in Brisbane's western suburbs rather than rural areas as previously, members of the group included academic Dr. Denis Murphy and lawyer Peter Beattie. A central plank in the agenda of this group was substantial reform of the administrative wing of the Party, the QCE. The reform group advocated abolition of the QCE and the creation of a larger State Council.

The aim of this organisational restructure was to address the need to broaden union representation and bring an end to the situation where too few unions were represented in too many positions within the Party. Large unions, such as the metalworkers' and miscellaneous workers' unions had been excluded from the Executive wing of the ALP decision-making despite the importance of their support in any future electoral success.[22] Thus began a struggle that pre-occupied the ALP for

[19] Reynolds P., 1979, 'Queensland's autocracy – the fatal flaw for Labor' in *Labor Forum*, Vol. 1 No. 4, p. 8.
[20] ibid.
[21] ibid.
[22] Fitzgerald R. and Thornton H., 1989, *Labour in Queensland from the 1880s to 1988*, University of Queensland Press, pp. 211-15.

the following five years, culminating in the defeat of the "old guard"[23] and bringing with it new power factions headed by the reformist group leaders. As a result of such a protracted period of instability from 1957 onwards, and the ALP's poor parliamentary performance that stemmed from the infighting, electoral support for the Party was low. There were also further outbursts of factional infighting in the mid 1980s that hindered the Party's electoral prospects.[24]

Between 1915 and the 1950s, while the PLP had remained susceptible to Australian Workers' Union (AWU) interference workers' compensation policy expanded. However, some sixty years later, continued electoral losses forced the ALP to redefine its goals and ideologies in order to develop strategies that would allow it to regain, and maintain, majority electoral support. Rather than focus largely on advancing the interests of labour, a broader parliamentary manifesto was needed. Workers' compensation was a casualty of this change.

Policy development from this point onwards reflects a broader, more administratively focused direction, as former specific workers' compensation policy options that enabled rapid advancements in key industries and occupations were no longer viable. As the ALP regrouped during the 1980s key policies focused on electoral and public sector reform, small business, education and unemployment.[25] The Party could no longer focus on specific industrial issues such as workers' compensation as it had in the earlier part of the 20th century.

[23] "Old guard" is the term used to identify the Party faction dominated by Trades Hall and a small group of craft unions.
[24] Fitzgerald R. and Thornton H., 1989, *Labour in Queensland.*.. pp. 341-45.
[25] ibid. p. 332.

For the ALP, the 1990s began in similar fashion to 1915 – that is with election to government after a long period of conservative rule.[26] There was much anticipation from particular community sectors that the 'spirit' of idealism, so much a feature of the Ryan government, would again figure in government policy.[27] Like Ryan, Premier Wayne Goss was to an extent, able to unite Labor Party factions, and had considerable support within the Party. However, the Labor Party was itself no longer identified primarily as a champion of workplace issues. In line with Head's argument that since the 1940s both the major political parties in Australia have rejected the initial sharp ideological divisions in favour of a moderate social liberal hegemony,[28] the class-based political divide of the Ryan era had long since dissipated. In its place was a Labor Party with a clear understanding that electorate support was gained by appealing to broader sectors of the community. In garnering wider support, the Labor Party had tempered its ethos of working-class idealism with decisions that were aligned with conservative ideals of new managerialism and New Right economic ideals.[29] In office, the Labor government embraced both economic and political reform. There was a commitment to public sector performance evaluation, and a strong emphasis on economic development in line with global trends.

New Governance ideals

The ALP's 1989 election platform outlined a proposal to introduce 'corporate' institutional consultative arrangements between government, trade unions and

[26] The Goss Labor government was elected to power in December 1989.
[27] Stevens B., and Wanna J., 1993, 'The Goss Government: An Agenda for Reform' in *the Goss Government. Promise and Performance of Labor in Queensland*, Stevens B. and Wanna J. eds., Macmillan, p.2.
[28] Head B., 1989, "Political Ideologies and Political Parties" in *Australian Studies. A Survey*, Oxford University Press, p. 285.
[29] Arguably, for the Labor Party this 'idealism' ended many years prior to the 1990s during the times of Theodore and Gair.

employers.[30] The new Labor government committed itself to reforming the management of the public sector, restoring the credibility of government and public officials and improving the delivery of services to clients.[31] However, introduction of reforms could not be straightforward. Government assistance, regulations and controls in Australia generally, had traditionally been more extensive than international standards. These, in turn, had fostered uncompetitive and inefficient practices. As reform agendas in other western countries such as the United Kingdom and New Zealand, as well as other Australian States were implemented, regulators argued that the cultivation of competitive economic environments proved far superior to those dominated by poorly integrated administrative arrangements.

In response to international economic and social pressures, Australian governments "…withdrew from traditional economic and social regulation and focused instead on improved efficiency and effectiveness for utilities and government-controlled commercial activities, with their social obligations being separately specified and more transparent." [32] However, though global trends may have been a spur to action, governments in Australia used a variety of responses to deal with issues.[33] Uhr and Wanna[34] support this view and argue new public management "…charted the way for a new administrative order relying on a results orientation to both policy development and program accountability."

[30] Ryan N., 1993, 'Economic and Industrial Development Policy' in *The Goss Government. Promise and Performance of Labor in Queensland*, Stevens B. and Wanna J. eds. Macmillan, p. 162.
[31] Wanna J., 1992, 'Trust, Distrust and Public Sector Reform:…, p. 74.
[32] Davis G. and Rhodes R., 2000, 'From Hierarchy to Contracts and Back Again: Reforming the Australian Public Service' in *Institutions on the Edge? Capacity for Governance*, Allen & Unwin, p. 83.
[33] ibid.
[34] Uhr J. and Wanna J., 2000, 'The Future Roles of Parliament' in *Institutions on the Edge? Capacity for Governance* Allen & Unwin, p. 26.

In Queensland, the Goss government introduced its reform initiatives through a package based on the principles of new managerialism that centred round a 'corporate government' approach wherein public activity was deemed "…an integrated whole…in which decisions relating to one area were to be coordinated with other areas of administration."[35] This model was recognised as a 'rational' means of balancing conflicting and contradictory demands. Under this model public sector employees had to "…satisfy different expectations from a variety of 'clients' including cabinet, the minister, the community, taxpayers and other organisations of the public sector."[36]

Of central importance was the government's determination to reassert cabinet control over policy development as a central factor of the reform process.[37] Kevin Rudd, the Director-General, Office of Cabinet, argued in favour of policy co-ordination through Cabinet.[38] He defined the process as "…consistency of policy development, articulation and implementation across the whole of government so that the part intelligently reflects and contributes to the whole."[39] Cabinet was perceived as the institution most capable of facilitating such co-ordination. In operation, co-ordination would be accomplished through testing specific proposals against a set of policy objectives and principles determined by Cabinet.[40]

This whole-of-government approach to public policy formulation and delivery was in contrast to the traditionally incremental responses to policy issues. In practice, in

[35] Wanna J., 1992, 'Trust, Distrust and Public Sector Reform:…p. 75.
[36] ibid. p. 76.
[37] Goss W., 1989, 'Making Government Work:…p. 2.
[38] Rudd K.M., 1991, 'Problems of Policy Co-ordination: The Role of Queensland's Office of the Cabinet' in *Public Sector Reform under the First Goss Government,* Davis G., (ed) The Centre for Australian Public Sector Management, p. 60.
[39] ibid. p. 62.
[40] Davis G., 1995, *A Government of Routines,* Macmillan, pp. 63-65.

areas such as workers' compensation, past governments had responded to issues through the liberal use of regulatory mechanisms as well as legislative amendments on an increasingly ad hoc basis, that left little room for further development and application of broader objectives and principles. For example, the Kennedy Inquiry into the Queensland workers' compensation system found "It is not a streamlined, efficient, commercial organisation with a responsible board and significant insurance skills. It is a bureaucratic organisation whose staff see themselves as public servants, administering rather than managing, an insurance scheme."[41]

A second mechanism of reform was wider utilisation of public consultation, as it afforded the government the appearance of open, transparent decision-making. As a more direct mechanism for exchange between policy makers and those affected by policy choices, consultation not only expanded potential policy choices, it offered broader participation and would bring legitimacy to any changes that resulted.[42]

Workers' compensation amendments

The government's reform agenda impacted almost immediately on workers' compensation legislation. Acting upon issues that had been raised by stakeholders during the 1980s, the Goss government acknowledged the legislation did not take full account of issues such as the types and levels of benefits, and scope of insurance types required in line with broader industrial changes that had occurred in Queensland.[43]

[41] *Kennedy Report* p. ix.
[42] Bishop P. and Davis G., 2001, 'Developing consent: consultation, participation and governance' in *Are You Being Served*, Davis G. and Weller P. eds., Allen & Unwin, pp. 180-181.
[43] Warburton N., (Minister for Employment, Training and Industrial Relations) *QPD* 8 Nov. 1990, p. 4732.

The government also proclaimed the Act was complex and needed to be restructured to ensure it was "…more logical and readable".[44]

In August 1990 the government called for public consultation on this issue. In an initial challenge to the supremacy of established policy community arrangements, letters were forwarded to trade unions, employer associations, medical and allied health associations, legal associations and larger employers inviting submissions in relation to the Act. Public meetings were also held in various regions.[45] After consultations, a Discussion Paper was released in August 1990. Although it outlined the government's intention to replace the Act with a more comprehensive statute that reflected the government's central policy objectives of increased efficiency and accountability, only minimal changes to the operation of the fund were outlined in the Paper.[46] In line with established policy community patterns, consultations had reinforced the desires of stakeholders to retain a no fault compulsory fully funded scheme administered by a single [State] insurer. Levels of benefits had fallen below national averages and there were submissions by trade unions for increases. Alongside this were calls by employers' groups for premium reductions.[47] The Paper also affirmed support for the retention of full common law access.[48]

Stakeholders indicated discontent over other issues as well. One such area of discontent was the lack of transparency in administrative processes. As discussed in the last chapter, issues of secrecy surrounding decisions made by Medical Assessment Tribunals had gone unchecked for many years. In the introduction of Medical

[44] ibid.
[45] *Proposals for Revising the Workers' Compensation Act 1916-1988 Together with The Workers' Compensation (Lead Poisoning, Mount Isa) Acts 1933 to 1961*. Discussion Paper, Qld.Government, August 1990, p. 4.
[46] ibid. pp. 2 – 3.
[47] ibid. p. 3.
[48] ibid. p2.

Assessment Tribunals during the 1960s, and in later developments, governments had not incorporated mechanisms into the legislation that required the Workers' Compensation Board of Queensland (WCBQ) and Medical Assessment Tribunals to provide reasons for decisions. The Bjelke-Petersen regime, in particular, had not deemed it necessary to lay open to public scrutiny the functions and operations of public sector boards. Neither did his government demand accountability in decision-making from these boards.

For employees this meant there was no access to the reasons for the Medical Assessment Tribunals rejecting claims. For employers, it failed to provide adequate information, such as claims experience that was used to calculate premiums. Limited appeals processes meant decisions were only sporadically disputed. [49] Those who disputed decisions faced added expenses as plaintiffs were forced to apply to the Court via Third Party Discovery mechanisms to obtain information relating to their case, because the Workers' Compensation Board was not obliged to provide any relevant documentation in common law actions.[50]

A second priority for employees was the failure to incorporate updated current medical standards into the legislation. For example, limitations on industrial deafness were unjust as workers were denied any access to claims for loss of hearing after retirement, despite growing medical evidence that work-induced hearing losses were often only detectable after a number of years. The lack of access to private hospitals,

[49] The only avenues of appeal were via the Industrial Magistrates Court or the President of the Industrial Magistrates Court.
[50] *Proposals for Revising the Workers' Compensation Act*…p7.

ambulance and travelling expenses, and blurred definitions of diseases and limited availability of various treatments were also issues of concern. [51]

Employers identified issues related to the premium-rating system as problematic. They argued there were limited mechanisms in place to deal with the problem of employers with poor safety records and their impact on premium calculations. The provision of information regarding claims experience was scant, and there were calls for rehabilitation services to be expanded so injured workers could be referred for rehabilitation earlier.[52]

In response to the Discussion Paper, the Goss government introduced amendments to the *Workers' Compensation Act* in November 1990.[53] In line with established policy community patterns these changes addressed specific needs of each stakeholder without disturbing the central features of the Act. Levels of benefits were significantly increased. The duration of benefits on full Award rates was extended from 26 to 39 weeks while a 20 percent increase in maximum benefits payable brought the total to $67,000. Maximum death benefits increased to $89,000 and there were also increases in allowances to dependents.[54] Qualifying criteria for industrial deafness were altered to include seasonal workers, and claims for the condition were extended for workers up to 12 months after retirement.[55] The definition of medical treatment was extended to include registered podiatrists, speech therapists and psychologists, as well as specific provisions for the supply and repair of prostheses

[51] ibid. p. 6.
[52] ibid. p. 11.
[53] Although the government claimed it was 're-writing' the Act insofar as it was simplifying and clarifying terminologies, much of the substance of the legislation remained unaltered, as did the title.
[54] S8.1 *An Act to provide for compensation and rehabilitation to injured workers and for related purposes*, No 110 of 1990.
[55] ibid. S5.8

and other assistive devices.[56] Injured workers were granted entitlement to extended ambulance travel, and up to four days private hospitalisation without the prior permission of the Board.[57]

The definition of 'worker' was expanded to include casual workers in line with changing community standards, thereby increasing the liability of employers of such labour.[58] Reducing the eligibility period for de facto partners from three years to one year was a further example of expanding definitions.[59] Incorporating the Lead Poisoning Act within the mainstream legislation removed confusion and limitations in respect of that illness.[60]

The amendment also included improved transparency in decision-making. Medical Assessment Tribunal decisions would be provided to the Workers' Compensation Board.[61] The Board, in turn, was obligated to formally notify claimants of both the decision, and reasons for the decision.[62] Similarly, employers would be entitled to details of their claims experience. In conjunction with these changes the government provided a 4% premium reduction for employers.[63]

Overall this initial amendment indicates tentative steps towards change, however the pace was modest and indicative of a new government. The consultation process had given legitimacy to key features of the amendment, namely benefit increases and premium reductions. It had also posed only a minor threat to the dominance of the

[56] ibid. S2.1(1)(a)
[57] ibid. S8.23 and S8.27
[58] ibid. S2.2
[59] ibid. S2.1(1)(d)
[60] ibid. S5.7
[61] ibid. S9.19
[62] ibid. S9.23
[63] Harper N.J., (Member for Auburn) *QPD*, 29 Nov. 1990, p. 5596.

policy community as the needs of new stakeholders, particularly lawyers and medical professionals, had largely accorded with those of employers and employees.

In economic terms, the government was optimistic that greater administrative efficiencies in the Board's operations, particularly the changes in the operations of the Medical Assessment Tribunals, would offset the provision of increased benefits and premium reductions.[64] However offering such extensive changes to both employers and employees did not pass without criticism. The Opposition warned of increased rorting and financial instability in the fund. It argued that after an initial period of fund sustainability due to previous sound financial management, the increases in benefits would eventually lead to considerable financial loss, with the fund moving into liability.[65] Also, in a return to previous policy, the Liberal Party revived calls for the abolition of the state monopoly and full privatisation of the scheme as the optimal means of maintaining economic efficiency.[66]

Changes Between 1991 – 1993

As a further aspect of its public sector reform process, the government commissioned a review by the Electoral and Administrative Review Commission (EARC) of administrative appeals procedures. Included in the Report handed down in 1992 was a review of the workers' compensation appeals processes. The Report found that appeals to the Industrial Magistrates' Court or President of the Industrial Magistrates' Court, as the only avenue of review in workers' compensation legislation, were vastly inadequate. The circumstances of such appeals, which were confined to situations

[64] *Courier Mail*, 30 Aug. 1990, p. 1.
[65] Santoro S., (Member for Merthyr) *QPD*, 29 Nov. 1990, p. 5612.
[66] *Courier Mai*l, 27 Aug. 1990, p. 4.

where fresh evidence became available, were found to be insufficient.[67] The Report advocated the establishment of an independent general tribunal system, to be known as Queensland Independent Tribunal of Administrative Review (QICAR). This general tribunal would be the vehicle through which appeals encompassing a broad range of areas including workers' compensation would flow.[68]

The Report recommended that claims for compensation or fitness for work should be determined by the General Manager of the Workers' Compensation Board as primary decision-maker, with the advice of the Board's medical advisors where necessary.[69] The existing provision that limited appeals to the production of fresh evidence would be abolished, and review functions would become the responsibility of QICAR. In this way the general tribunal would review the decisions of management. Consequently, Medical Assessment Tribunals operating under the *Workers' Compensation Act* could be abolished.[70]

However, in its submission to EARC, the Workers' Compensation Board of Queensland argued against the introduction of this type of appeals process. It reasoned that it would undermine the stability of the scheme and lead to costs 'blow-outs', arguing that schemes in other States had suffered such problems through lack of control after the introduction of general tribunals.[71] Although the recommendations of the Report were never implemented, the discussion served to highlight further the

[67] This evidence had to be considered with 12 months of the original decision.
[68] The Report sets out the establishment of the Queensland Independent Commission of Administrative Review (QICAR). This never eventuated.
[69] Electoral and Administrative Review Commission, 1993, *Report on Review of Appeals from Administrative Decisions*, p. 412.
[70] ibid. pp. 412-13.
[71] Electoral and Administrative Review Commission, 1992, *Appeals from Administrative Decisions. Issues Paper No. 18. Public Submissions*, submission No. 13.

issues of accountability of the Medical Assessment Tribunals and workers' rights of appeal.

Two other developments that held direct consequences for workers' compensation also occurred at this time. The first was the decision by the government to deregulate the law industry, by allowing lawyers to advertise their services.[72] Argued in terms of national competition policy,[73] this move brought more aggressive public advertising by law firms. Attracted by slogans such as "No Win. No Fee" and "Injured at Work?", those suffering work-related injuries and illnesses were drawn to the prospect of higher financial payouts than they were entitled to under the statutory benefits scheme.[74] The level of common law claims had been steadily rising throughout the 1980s in response to increased inefficiencies in the legislation,[75] and the added pressure of the increased advertising during the early 1990s contributed to the rising number of common law claims. In the period 1993-1996 this led the fund into the largest deficit in its history.

The second issue related to a case heard in the Queensland Industrial Relations Court. The findings in *Timbs v. Workers' Compensation Board of Queensland*[76] reinforced earlier High Court decisions that had interpreted the question of liability for workplace injuries very broadly. The issue in dispute related to stress in the workplace. The decision found it was not necessary for the Applicant to show that

[72] This process of increased advertising began in 1989.
[73] In 1996, the WCBQ conducted an initial audit in accordance with Queensland Treasury National Competition Policy Implementation Guidelines that confirmed the Board was not in breach of the Trade Practices Act. *Workers' Compensation Board of Queensland 1996 Annual Report*, p. 29. The National Competition Policy Legislation Review of the *WorkCover Queensland Act* was not completed until December 2000 and will be addressed in detail in the next chapter.
[74] Workers' Compensation Board presentation materials, John Oxley Library VF354 QUECI. *The Kennedy Report* 30 June 1996, p. xviii.
[75] These were set out in the previous chapter.
[76] *Queensland Government Industrial Gazette*, Vol. 144 No. 2, 3 Sept. 1993, p. 149.

specific factors of employment were contributing factors to stress. Instead, the judge ruled the Plaintiff need only show employment positively contributed to the development of the disorder, that is "…the employment provided external stimulus to aggravate or accelerate his disease."[77] This ruling held significant implications for the government, as stress claims among its own employees were rising.[78] It also had the potential to increase the financial obligations of the fund, as common law was the only avenue of compensation for stress-related illnesses at that time.

Indications of economic problems became visible in 1993. Predicted levels of profit, through improved administrative efficiency of Workers' Compensation Board and Medical Assessment Tribunal operations, were insufficient to sustain the increased costs of the fund. Figures showed a shortfall of $80M between projected and actual premium income for the year 1991/1992 and a similar projected amount for the following year.[79] These elevated costs were generated by increases in both the numbers of claims, particularly common law claims, and premium merit bonuses awarded to employers. Also, the wider economic recession had impacted through increased numbers of business closures and employers defaulting on premium obligations.[80]

To address the problem, the government imposed an employers' premium increase of 24.86% without consultation with employer groups.[81] It made no move to limit employee benefit levels and instead left employers to bear the brunt of these difficult economic circumstances. This left relations between employers and the government

[77] ibid. p.150.
[78] Letter from Department of Justice and Attorney-General, 3 Nov. 1993.
[79] Foley M., (Minister for Employment, Training and Industrial Relations) *QPD*, 12 Nov. 1992, p. 509.
[80] Foley M., (Minister for Employment, Training and Industrial Relations) *QPD*, 10 Nov. 1992, p. 179.
[81] State Chamber of Commerce, *The Voice of Business*, June 1993, p1. Sheldon J. (Member for Lansborough) *QPD*, 16 July 1993, pp. 3681-82.

strained as employers became increasingly disgruntled,[82] however their protestations were disregarded. They placed public pressure on the government by implying it was favouring trade unions, and they called for limits to be placed on common law access instead of premium increases.[83] Despite this, increased numbers of employees continued to take advantage of the relaxation of restrictions on lawyers, and the numbers of common law claims continued to rise.[84]

Government decision-making at this time indicates a clear shift away from traditional practices in this area, particularly in relation to maintaining the economic viability of the fund. In times past, administrators were not averse to propping up the scheme with general revenue funds in circumstances such as these. Things were not so straightforward under the Goss government's broader accountability and corporate managerialist principles. Instead, the government decided the most appropriate avenue for addressing the fund's economic problems was through increased levels of employers' premiums. Employer groups complained of a lack of consultation by the government prior to this change.[85]

This behaviour by the government was not in line with established policy community practices, but it did accord with the Goss administration's centralised control of government. As a government with highly refined objectives, policy decision-making was increasingly being coordinated through the Premier's Department and the Office of Cabinet. Reynolds argues the government had become:

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[82] State Chamber of Commerce, *The Voice of Business,* November 1993, pp. 1-4.
[83] ibid.
[84] Foley M., (Minister for Employment, Training and Industrial Relations) *QPD,* 10 Nov. 1992, p. 180. Workers' Compensation Board of Queensland presentation materials, QSL VF354 QUE C1.
[85] State Chamber of Commerce, *The Voice of Business,* June 1993, p1.

> …characterised by tight control, from the top, of all its operations. While this approach suits the personal style of Goss, Rudd and state ALP secretary Wayne Swan, it harks back to the earlier ALP governments, particularly those from 1932 to 1957. Premiers in this era were known for their firm control of cabinet, the parliamentary Labor Party, the parliament and the party at large.[86]

Reynolds further argued:

> …Inevitably, operating with such a tight reign leads to charges of autocracy, while perceived failures in policy implementation are unambiguously attributed to the highest levels of government.[87]

In 1994, the federal Keating Labor government ordered an Industry Commission Report into workers' compensation systems throughout Australia. Central to its aims was identifying the extent to which workers' compensation arrangements contributed to incentives for workplace safety, the relationships between workers' compensation systems and government programs such as social security, the differences between the various State and Commonwealth schemes, and identification of best practice within existing workers' compensation arrangements.[88]

The Report concluded that workers' compensation arrangements had an integral role in minimising risks of death, injury and illness in the workplace. The Report found that competition, particularly among various interest groups within systems tended to encourage cost shifting, rather than enhancing cost efficiency and improved service.[89] The Report particularly highlighted the increased propensity of State and Territories governments to engage in 'invidious competition' as a means of maintaining premium levels at artificially low levels through reduced claims provisions to injured workers.[90] The Report rejected governments' claims that lower premium levels were

[86] Reynolds P., 1992, 'The Goss Government: An Evaluation' in *Social Alternatives*, 11 (2) p. 7.
[87] ibid.
[88] *Workers' Compensation in Australia*, Industry Commission Report No. 36, 1994, p. xxvi.
[89] ibid. G1-G12.
[90] Purse K., 1998, 'Workers' Compensation Policy in Australia: Best Practice or Lowest Common Denominator?' in *The Journal of Industrial Relations*, Vol. 40 No. 2, p. 179.

justified to prevent migration of business and jobs to other States.[91] It also recommended a national workers' compensation scheme so the issue could no longer be claimed to influence business location decisions. The development of such a scheme would also facilitate an increased the focus on reducing the costs of workers' compensation in preference to reducing benefits, and would increase pressures on State schemes to improve their performance.[92]

State and Territory governments did not respond positively to the Industry Commission Report's recommendations. The Heads of Workers' Compensation Authorities[93] rejected most of the key recommendations relating to cost shifting, inadequate employee entitlements and the introduction of a national scheme.[94] Queensland also rejected the Report's key recommendations. The General Manager of the WCBQ, John Hastie, argued that the introduction of a national insurer competing with State schemes would be detrimental to the Queensland scheme. In particular it could result in the emergence of insurance risk selection whereby a national insurer "…could capture a substantial proportion of low risk, high revenue clients, leaving the State schemes to insure the high risk, high cost sectors of business."[95] Hastie also reiterated the importance of retaining control over premiums.[96] The Heads of Workers Compensation Authorities response effectively halted the propulsion of the Industry Commission Report and its recommendations were largely ignored.[97]

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[91] *Workers' Compensation in Australia,* …p. xxxi.
[92] ibid. p. xxvii.
[93] Heads of Workers Compensation Authorities is an organisation made up of senior bureaucrats from the ten workers' compensation schemes that operate throughout Australia. Purse K. 1998, 'Workers' Compensation Policy in Australia:…p. 180.
[94] Purse K., 1998, 'Workers' Compensation Policy in Australia…pp. 180-81.
[95] *Workers' Compensation Board of Queensland 1994 Annual Report 1994*, p. 1.
[96] ibid.
[97] Bohle P. and Quinlan M., 2000, *Managing Occupational Health and Safety. A Multidisciplinary Approach*, 2nd ed., Macmillan, p. 351.

Changes - 1995

By 1995 the initial 'gloss' of the Goss government had dissipated amid claims it had developed a 'we know best' attitude that fostered increased electoral hostility.[98] Anti-government campaigns were mounted over issues such as the proposed development of the South Coast Motorway between Brisbane and the Gold Coast, the government's refusal to remove the toll from the Sunshine Coast Motorway and its policy reversal over the issue of daylight saving.[99] An election in 1995 resulted in the return of the government with only a one-seat majority. In the Townsville-based seat of Mundingburra, the Labor Party candidate, Ken Davies, won with a majority of only 16 votes.

Shortly after the election, claims were raised over the limited voting opportunities provided to military personnel, registered in the Mundingburra electorate, but serving overseas at the time. There loomed a very real prospect of a re-election in the seat. If the ALP were to lose in a re-election, it would be faced with a choice of garnering the support of the sole independent member of the parliament, the Member for Gladstone Liz Cunningham, or losing government.[100] Mundingburra was essentially a blue-collar electorate; therefore, to attack work-related issues such as workers' compensation provisions was not politically sound at this time.

Consequently, the government continued to resist placing limits on the rights of employees for as long as possible. However, in September 1995, it announced the

[98] Seccombe M., "We know best" – Goss lost his gloss through arrogance' *Sydney Morning Herald,* 13 Feb. 1996, p. 7.
[99] Initially the Goss government introduced a three year trial over the issue of daylight saving. However it abolished the trial after a referendum in 1992 rejected the idea. Wanna J., 2003, 'Wayne Keith Goss. The Rise and Fall of a Meticulous Controller' in *The Premiers of Queensland*, Murphy D., Joyce R., Cribb M. and Wear R. eds. University of Queensland Press, p. 381.
[100] Wanna J., 2003, 'Wayne Keith Goss…, p. 384.

workers' compensation fund had registered an unfunded loss of $118M for the 1994-1995 financial year. In addition, there was a need to make provision for an unprecedented additional $280M in outstanding claims liabilities.[101] The fund loss was incurred primarily through an increase in common law actions, and most of these were at the lower end of the claims' scale. In line with earlier indications, the Workers' Compensation Board reasoned that the inflated costs of common law claims stemmed from the relaxation of advertising restrictions for lawyers.[102]

The government continued to support such deregulation in the parliament. The Premier argued that, while not agreeing with some of the methods employed by individual practitioners in advertising, the legal profession had nevertheless become significantly more competitive since the relaxation of advertising restrictions on the profession. [103] This accords with Richardson's findings in relation to new governance issues, such as deregulation, that established forces such as policy communities were destabilised as exogenously generated ideas impacted on the established institutional arrangements and the stakeholders that benefited from them.[104]

As the government remained committed to its agenda of increased economic efficiency through competition, restricting the advertising capabilities of lawyers was not an option. Instead, the issue of common law access came under scrutiny. Such access had been abolished or curtailed by this time in most other States. South Australia and the Northern Territory had abolished common law access altogether.

[101] Edmond W., (Minister for Employment and Training) *QPD*, 7 Sept. 1995, pp. 36-38.
[102] Workers' Compensation Board presentation materials, John Oxley Library VF354QUECI.
[103] Goss W.K., (Premier) *QPD*, 7 Sept. 1995, p. 41.
[104] Richardson J., 2000, 'Government, Interest Groups and Policy Change' in *Political Studies*, Vol. 48, p. 1019.

NSW, Victoria, Western Australia and Comcare[105] had placed threshold limits on injuries that restricted access to common law. Only Queensland, Tasmania and the Australian Capital Territory still retained full access.

An Actuaries' Report commissioned by the government found no evidence to indicate there was a disproportionate number of common law claims for minor injuries.[106] Consequently amending the law to limit access at the lower end of the common law scale would make little or no difference. Other alternatives included broader limits placed on common law access, the most extreme of which would be the abolition of common law access altogether. In light of the government's need for blue-collar support in the pending by-election in Mundingburra, attacking common law access at this time was not politically sensible and was strongly opposed by the trade union movement.[107]

Instead, in an effort to balance contending interests, the government relied on yet another review, this time into workers' compensation premiums that was conducted in 1994. The review centred on the merit bonus system and focused closely on the lack of disincentive for employers who had years of poor compensation claims performance.[108] The recommendations set out by the review panel centred around an increased focus on prevention. In particular, it was recommended that financial incentives should be available to good performing employers, with a premium loading to be imposed to penalise those with consistently unsatisfactory claims experience.[109]

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[105] *Safety, Rehabilitation and Compensation Act* 1988 (Cth) and *Military Compensation Act* 1993 (Cth), collectively known as Comcare provide workers' compensation coverage for federal government employees.
[106] Trowbridge Consulting, *Workers' Compensation Board of Queensland. Review of Outstanding Claims as at 30 June 1995*, cited in Kennedy Report p. 65.
[107] Interview with Grace Grace, President of Queensland Council of Unions, 24 May 2004.
[108] Queensland Government, *Review of the Merit Bonus Scheme: Discussion Paper*, 1 Mar. 1994, p. 1.
[109] ibid. p. 6.

The Australian Chamber of Commerce and Industry had argued that responsibility for workplace safety should be shared between employees and employers, suggesting that funding educational and other measures from workers' compensation premiums further increased the burden on employers. It was an anomaly that all responsibility and associated costs continued to fall directly on employers while no similar responsibility or ownership was targeted towards employees. It reasoned that while the government continued to support the concept of a social welfare system to prevent citizens falling into destitution through the misfortune of a work-related accident or illness, it should not preclude employees from contributing to a workers' compensation scheme.[110]

Although not prepared to go that far, the government did implement a round of amendments that brought little comfort to either employees or employers, although again, with its precarious electoral circumstances in mind, the legislation favoured the former. For the first time in the history of the legislation, restrictions were applied to common law access. The amendment provided for an irrevocable decision by claimants who suffered an injury that resulted in a 20% or less disability.[111] Under these circumstances employees would have to choose whether to access common law, or accept statutory benefits.[112] As well, this restraint would be accompanied by a restructure (and increase) in statutory benefits.

These increases would take account of over-award payments, shift and overtime payments, as well as increased death benefits to deter injured workers or their families

[110] State Chamber of Commerce, *Voice of Business*, November 1993.
[111] S6A(1) & (2) *Workers' Compensation Amendment Act (No. 2) 1995*, No. 56 of 1995.
[112] ibid. S182B

from accessing common law. The government defended the strategy of increasing benefits at a time when the fund faced financial crisis. It argued that if restrictions were to be placed on common law access the level of maximum statutory compensation would need to be increased generally to provide adequate benefits for less seriously injured workers.[113] However, these increases were of little comfort to the trade union movement that continued to argue vehemently against any limits to common law.[114]

The amendment also declared sufferers of stress-related conditions would not be eligible to access common law.[115] Reasons offered for this omission were chiefly that it was difficult to delineate between the work-related component, an individual's personality, social and other non-work related factors, thus leaving these types of disorders difficult to quantify and diagnose. The permanency of the affliction was also unclear. The government argued it was more beneficial to manage stress-related claims through the statutory benefits scheme, with particular emphasis placed upon rehabilitation processes.[116] Also, in an indirect attempt to recoup some of the costs of stress-related claims of public sector employees, the government introduced an amendment that required government agencies to hold workers' compensation policies with the WCBQ.[117] Previously, statutory claims of government workers had been administered and paid by the WCBQ without premiums being levied,[118] however the government argued that significant health and safety improvements could be made if a

[113] Edmond W., (Minister for Employment and Training) *QPD*, 19 Oct 1995, p. 477.
[114] Interview with Grace Grace, President Queensland Council of Unions, 24 May 2004.
[115] 130A(3) *Workers' Compensation Amendment Act (No. 2) 1995*, No. 56 of 1995.
[116] Workers' Compensation Board presentation materials, John Oxley library VF354QUEC1.
[117] S4 *Workers' Compensation Amendment Act 1995* No. 13 of 1995.
[118] Previously at the end of each financial year each department or agency was required to reimburse the WCBQ for any compensation claims that had been paid for workers during that year.

similar system of incentives and penalties was applied to these agencies.[119] The government also argued this amendment was in line with its broader public sector reform agenda. The Minister for Employment, Training and Industrial Relations reasoned that there was significant potential for performance improvement by public sector agencies if they operated with similar systems of incentives and penalties as the private sector.[120]

The amendment included an increase in employers' premiums of approximately 10%. In addition, they would be required to pay the first five days' wages of injured workers.[121] This represents a significant change, as a large number of injuries require less than 5 days off.[122] For this stakeholder group the deterioration of the established policy community through decisions taken unilaterally by the government reduced the benefits and payoffs to which they had become accustomed.

The government's focus on sound economic management was increasingly being governed through the centralisation of policy decision-making by Cabinet, and this centralisation extended to workers' compensation. The outcome was a further alienation of key stakeholder groups in the policy community as control over policy was increasingly centred in the Office of Cabinet and Premiers' Department. Deputy Premier Burns described this government behaviour thus "There is a feeling that

[119] Foley M.J. (Minister for Employment, Training and Industrial Relations) *QPD,* 21 Mar. 1995, p. 11185.
[120] ibid.
[121] Legislation has always dictated that employers pay employees wages on the day of injury. This legislation extends that responsibility for four additional days. S123A(1) *Workers' Compensation Amendment Act (No. 2) 1995* No. 56 of 1995.
[122] This was also a key issue in the original Ryan legislation. He abolished the 5-day period that existed under previous legislation.

'upstairs' writes the policies and wants them to shut up and let the Office of Cabinet or the premier's office run the government."[123]

In the issue of workers' compensation, the pendulum had swung from one extreme to the other. Under outdated public administrative practices, policy had been neglected and the scheme languished as vested interests of a tight policy community, particularly employers, dominated. However, under new governance ideals, the precedence of economic principles steered the government towards policy decisions that were unfavourable to stakeholders. In particular, the primary concern for economic outcomes was at odds with the social justice/welfare ideals contained in the initial legislation in 1915. It also demonstrates a similarity of focus with the previous conservative government's attitudes to workers' compensation.

In its preoccupation with economic outcomes, the Goss government had forfeited the rights of injured workers to full access to the common law. Workers had always viewed this provision, included in the initial Ryan Act in 1916, as a fundamental right. As a result, antagonisms among members of the policy community increased, and cooperation among stakeholders collapsed. For the trade union movement there was a return to the industrial arena as it mounted organised campaigns and rallies in relation to the changes.[124]

The Borbidge government 1995 - 1998

Towards the end of 1995, the Court of Disputed Returns ordered a re-election in the seat of Mundingburra. By this time, the sitting Labor member, Ken Davies, was

[123] Davis G., 1995, *A Government of Routines*, Macmillan, p. 46.
[124] Interview with Grace Grace, President Queensland Council of Unions, 24 May, 2004.

facing possible bankruptcy. Unnerved by the consequences of such a development, the Labor Party pre-selected Townsville mayor Tony Mooney as its candidate in the re-election, instead of Davies. Disgruntled, Davies contested the ballot as an Independent, and effectively split the Labor Party's vote, handing victory to the Liberal Party candidate, Frank Tanti. In the parliament, this left the Government and the Opposition with 44 members each. The lone independent parliamentary member, Liz Cunningham, offered her support to the Opposition. Rather than face defeat on the floor of the parliament, the Goss government resigned.[125]

The resignation of the Goss government brought the Coalition parties, with Rob Borbidge as premier,[126] to power. The new government found itself in the position of operating as a minority government, reliant upon the support of Liz Cunningham. To address the financial crisis of the workers' compensation fund the government announced its intention to hold an inquiry into the issue. Prominent business identity, Jim Kennedy, was appointed to head the inquiry.

The Kennedy Report

Kennedy embarked upon a consultation process that began with over 500 written invitations to employers and employer groups, trade unions, companies and medical and legal professional groups. In response there were in excess of 220 written submissions, and discussions were undertaken with experts in the fields of law, medicine, insurance and workplace health and safety. As well, there was a series of public meetings held throughout Queensland. [127]

[125] Wanna J., 2003 'Wayne Keith Goss… p. 384.
[126] Wear R., 2003, 'Robert Edward Borbidge. In the Shadow of Bjelke-Petersen' in *The Premiers of Queensland*, Murphy D., Joyce R., Cribb M., and Wear R., eds., University of Queensland Press, p. 392.
[127] *Kennedy Report*, p. 8.

Initially, the inquiry attempted to gauge the exact extent of the fund's financial liability. However, several actuaries' projections produced different results, as calculations relied on 'predictions' of outcomes of future claims, both statutory and common law. All agreed the liability was extensive.[128]

There was no lack of clarity in the Report however, in relation to the root of the financial crisis. It placed responsibility for the loss in two directions. The *first* of these was the massive increase in common law payouts that had been steadily rising through the 1980s, and had escalated during the first half of the 1990s after the relaxation of laws restricting lawyers from advertising.[129] In the period between 1990 and 1995 the growth in common law injury claims increases ranged from 1,350% for tendonitis to 42% for crush. Other areas of increase included lacerations (113.6%) and cuts (197.1%).[130] Although statutory claims were almost 30 times more frequent than common law claims, the number of common law claims had almost tripled while statutory claims increased only slightly.[131] Average costs of claims rose exponentially during these years to $3,090 for statutory claims and $83,569 for common law costs in 1995-1996.[132]

Clearly, the issue of common law access had to be addressed. Employers argued common law judgements were excessive and unreasonable. Their submissions to the inquiry called for either no access or severely limited access to common law as well

[128] The confusion existed through the inability to determine the actual costs of claims currently in the system. The Report accepted that projected a $290m deficit at 30 June 1996 was not unreasonable. p. ii.
[129] *Kennedy Report*, p.195.
[130] WCBQ, 'Trends in Statutory and Common Law Claims, March 1996', cited in Kennedy Report, p. 42.
[131] ibid. p. 38.
[132] ibid. p. 39. Note these figures were likely to increase as these calculations only covered the financial year to 31 March 1996.

as a capping of the damages' awards.[133] However, various legal representative groups such as the Bar Association of Queensland and the Law Society of Queensland, along with the Australian Council of Trade Unions (ACTU) and the Queensland Council of Unions (QCU) argued against any limitations to common law access, and maintained that limits put in place by the Goss government several months earlier would be sufficient to reduce the economic impact of common law claims on the fund. The Report concluded that the risk of waiting a further two or three years to determine whether this was the case was too great, and actuarial advice indicated that the limits were not sufficiently robust to effect significant change.[134]

The Report stated employers should not be unfairly penalised to an extent that economic competitiveness was affected.[135] There was a growing tendency by employees to opt for higher common law payouts for minor injuries such as cuts and strains, where the degree of employer negligence did not match the economic award for injury and subsequent premium calculations could be adversely affected. Consequently, the legislation designed to protect employees' incomes against employer negligence was in danger of becoming simply an avenue for economic maximisation. Increased costs for these low-level injuries could not be sustained by the fund, as it was precisely this trend that resulted in termination, or limitation of common law access in other Australian States.[136]

The Report recommended a middle ground solution posited between the two extremes of full common law access and the elimination of access altogether. The

[133] *Kennedy Report* p. iii.
[134] ibid.
[135] ibid. pp. 199-200.
[136] ibid. pp. 199-200.

recommendation was for the introduction of a threshold for access to common law damages. This recommended threshold was limited to work-related injuries in which the lump sum benefit entitlement would be calculated at more than 15% of the statutory maximum for that particular injury.[137] The Report also recommended increases to the thresholds of statutory benefits. Overall, it found that everything possible should be done to preserve both statutory and common law rights of workers, albeit in a manner that minimised fraudulent abuse of the system.[138]

The second reason for the funds' problems pointed to issues related to administration of the fund. The Reports' findings accord with evidence set out in the last chapter showing that the more informal structures in place during the early years of the legislation were replaced by a more complex bureaucratic management system as the legislation expanded. It found that apart from the rapid increase in common law claims, problems of the fund were exacerbated "…by the fact it is operated under an outdated inflexible bureaucratic system more suitable to past times."[139] Serious deficiencies in the operation of the legislation had been masked while the fund remained in surplus, common law claims were minimal and the focus of government and the public was elsewhere.[140]

The policy community, that had been a dynamic feature of policy development in the early years of the legislation, had become moribund in later years as the fund's continued financial soundness precipitated complacency among stakeholders and permitted their attention to be placed elsewhere. This was exacerbated by

[137] ibid. p. iv.
[138] ibid. pp. 199-200.
[139] ibid. p. vi.
[140] ibid. p. vi.

inefficiencies and maladministration that had increased in Queensland public administration, particularly during the 1970s and 1980s. The increasing delays in Medical Assessment Tribunal decisions that became problematic despite additional Tribunal appointments is an example of inefficiencies that were apparent at that time.

In particular, evidence presented in the previous chapter showed that the policy community remained entrenched at the meso-level of government and supported by bureaucratic practices, particularly within the SGIO/Suncorp during the 1970s, that had been resistant to change. Problems continued after the separation of WCQB from SGIO/Suncorp in 1978.[141] For example there were ongoing problems with claims lodgments as application forms were vague and no provisions were made to assist non-english speaking workers to complete applications.[142] The attention of a series of conservative governments, particularly the Bjelke-Petersen administration, was focused on issues such as increasing the investment opportunities facilitated through the profits of the state insurer and its subsequent possible privatisation.

The Kennedy Report found the WCBQ was a captive of particular interests of the policy community's members. Although avoiding singling out individual members of the Board, the Inquiry found the Board operated as a representative of sectional interests, not in the best interests of the Board itself. Problems such as ill defined responsibilities, divided authority and lack of authority arose ostensibly because the Board failed to exercise the minimal power it was afforded under the legislation, principally because this power extended only as far as advising the Minister in relation to premiums and benefits. This often led to problems in the relationships

[141] In a somewhat ironic circumstance it was the Goss government that finally privatised Suncorp in 1994.
[142] Queensland Workers' Health Centre, 1984, *Deficiencies in the Workers' Compensation system in Queensland: Final Report*, p. 17.

between management, administration, and the Minister.[143] When key decisions such as premium rates and benefits were determined by parliament, they became effectively political in nature and subject to the vagaries of politics.

The Report recommended that the Board become a fully independent statutory authority, to be known as WorkCover Queensland, with full responsibility in law for the policy and management of the fund. Although subject to direction from the Minister on matters of policy, the Board should be afforded full authority "…to set premiums, adjust benefits and to operate in a financially responsible manner".[144] This would ensure it remained relatively free from political influence.

The Report also identified complacency in what it termed a 'compo culture' that significantly reduced any impetus for change. This culture manifested as cooperation among stakeholders — a willingness of some employees, together with doctors and lawyers, to 'work the system'.[145] The existence of 'compo lawyers' and 'compo doctors' reinforced the culture and served only to increase employer premium costs. Similarly, many employers failed to pay any premiums or avoided paying the correct level of premium. This was particularly prevalent in industries with high levels of sub-contracting. Also it found that employers who failed to maintain safe workplaces were afforded some protection from worker injuries by the larger premium pool provided by other employers.[146]

[143] *Kennedy Report*, p. 102.
[144] ibid. p. 105.
[145] ibid. p. vii.
[146] *Kennedy Report* p. vii.

Effectively, employers and employees had remained comfortable with long-standing arrangements and focused their attention on other issues such as wages. The policy community had banded together to repel any encroachment in the legislation such as that mounted by private insurance companies. However, the cooperation in policy development that had been fostered by Ryan, Fihelly and Goodwyn had been replaced by complacency in later years.

As the third stakeholder in the policy community, government was singled out for decision-making aimed at political expediency, such as increased benefits, decreased premiums and vice versa, and ignoring broader changes in claims conduct over a number of years. For example, it failed to recognise that court processes in relation to claims had significantly slowed, and the legal costs of these processes had increased.[147] The government was also held responsible for 'bleeding' the fund through stamp duty and grants as increased proportions of premiums were garnered as compulsory State taxes.[148]

In an effort to address the identified complacency, Kennedy recommended five other avenues to limit access to the system. The *first* of these was the proposal that the definition of 'worker' be reduced. Limiting a 'worker' to those who work under a contract of service and PAYE taxpayers in relation to the remuneration for such a contract, placed many workers outside the parameters of the legislation.[149] In light of the growing trend towards atypical forms of employment that utilised alternate

[147] Maher S., "Qld compo cases slow and costly" in *Courier Mail* 23 Feb. 1995, p. 1.
[148] *Kennedy Report* p. viii.
[149] ibid. p. 143.

wage structures, such as Prescribed Payment System,[150] this would serve to remove as many employees as possible from access to the legislation.

Secondly, there was a similar proposal for a contraction in the definition of 'injury' from 'a significant contributing factor' to that in which work was 'the major contributing factor'. This meant liability for compensation or damages would not be accepted for conditions that were aggravated at work, such as stress, as it is difficult to prove that stress is solely work-related. Clearly this was a response to the burgeoning numbers of stress claims incurred, particularly by public service employees, and exampled by the case of *Timbs v. The Workers' Compensation Board of Queensland*.[151]

The *third* mechanism for restricting access to the legislation was the Report's recommendation in relation to journey claims. Considered the easiest target for fraudulent claims, as employers had little to no control over the causes of these claims, the Report recommended they be abolished.[152] These types of claims had caused friction between various stakeholders as lifestyle and family patterns changed. Initially interpreted as the shortest, most direct route between an employee's home and work, the necessity to ferry family members, such as children to and from schools, had increased. As families were forced to commute longer distances to and from work, the interpretation became blurred. Employers were uppermost in voicing opposition to journey claims, and this recommendation represented acceptance of that

[150] This was a category of tax arrangements set out by the Australian Taxation Office for income earned through delivery of personal services in some categories of self-employment, particularly contractors in the building, construction and transport industries.
[151] *Kennedy Report* p. 159.
[152] ibid. p.163.

antagonism.[153] It was another point offering economic advantage to the government, as it eliminated a body of benefits payable to injured workers.

A *fourth* significant recommendation centred round the reintroduction of the principles of 'contributory negligence' in the legislation. The Report recommended any new legislation include such a provision. This was an important recommendation as it went to the very heart of one the key features of T.J. Ryans' initial legislation – 'no fault' compensation. As discussed in an earlier chapter, employees, through the trade union movement and the Labor Party had fought long and hard to end the injustices and the harsh outcomes of legislation that prevailed when contributory negligence principles were ruthlessly applied. Reliance on the principles by employers and government had contributed significantly to antagonisms over this issue, as the onus was on employees to refute allegations of contributory negligence in the courts. Removal of the principles in favour of 'no fault' mechanisms had removed the adversarial proclivities, and facilitated cooperation among stakeholders. It had also reduced the influence of the lawyers over workers' compensation.

Finally, of most significance were the Inquiry's findings on state monopoly insurance. It stated:

> Private insurers seeking to play a role in the provision of workers' compensation in Queensland have failed to convince me that they will be able to do so more efficiently at this time. There is a need to move towards a more competitive system because of National Competition Policy and the option of self-insurance will be one important step to achieving a more competitive environment. While the scheme is in deficit the monopoly must be retained. Once the underfunding is resolved the issue should be re-examined.[154]

[153] ibid. p. xxi.
[154] ibid. p. xx.

This provided the most visible indication that the superiority of the policy community in relation to the issue of state monopoly insurance had considerably waned. The most lasting consequence of the policy community was in maintaining the state monopoly and prohibiting the entry of private insurers. If private insurers were to enter the market, no common existing stakeholder interests would remain, and consequently it would most likely leave no common areas of interest upon which policy community stakeholders could maintain control over policy.

Overall, the Kennedy Report mirrored the ideals of the previous ALP government and principles of greater economic efficiency and wider consultation it had embraced in its initial years of government. It also brought an end to superiority of the policy community. With a much larger array of stakeholder needs to consider, Kennedy believed it was important to clarify the objectives of workers' compensation. The Inquiry clearly defined the core business of workers' compensation legislation as to provide direction. Direction was limited to ensuring the insurance system was correctly managed, financial balance was maintained and appropriate compensation and rehabilitation provided.[155] This was a considerable shift from the broader ideological position that the state should safeguard living standards and reduce inequalities principally through expansion in state activity that had underpinned the Ryan government's objectives when the legislation was introduced in 1916.

Introduction of the WorkCover Queensland Act 1996

On the 23rd July 1996, the Borbidge government announced its intention to abolish the *Queensland Workers' Compensation Act*, and replace it with the *WorkCover*

[155] ibid. p. 94.

Queensland Act that would incorporate the recommendations of the Kennedy Inquiry.[156] In the parliament, Liz Cunningham advised she would not support the introduction of key aspects of the Kennedy recommendations. She pointed to the proposed threshold for access to common law and the abolition of journey and recess claims as areas of objection.[157] Without Cunningham's support, the government stood little chance in having the legislation passed. The Minister for Training and Industrial Relations Santo Santoro's response to Liz Cunningham's decision exhibited a measure of pragmatism in the government's decision-making. In capitulating to the alterations that Liz Cunningham's opposition would force on the legislation, he said "It is the government's view, however, that regrettably Mr. Kennedy's reform package has been compromised to the point where it will be a case of 'too little-too late'."[158]

However politically expedient it may have been to single out Liz Cunningham's role in the failure to incorporate these Kennedy Report recommendations into legislation, the government itself had decided against implementing a number of the recommendations. The recommendation that a WorkCover Queensland Board be granted autonomy to set benefits and premium levels was not accepted. The government argued that while premium setting was rightly the province of the Board,[159] the benefits' structure should remain part of the primary legislation, and therefore be under the auspices of the parliament.[160] An independent WorkCover Board was introduced and a corporate plan drawn up,[161] however the government's

[156] Santoro S., (Minister for Training and Industrial Relations) *QPD*, 23 July 1996 pp. 1705-07.
[157] Cunningham L., (Member for Gladstone) *QPD*, 31 Oct. 1996 p. 3846.
[158] Santoro S., (Minister for Training and Industrial Relations) *QPD*, 27 Nov. 1996 p. 4458.
[159] Although the Minister would retain the power to direct the Board differently.
[160] The Board could make recommendations to the Minister in this regard. Santoro S., (Minister for Training and Industrial Relations) *QPD*, 27 Nov 1996, p. 4458.
[161] S344 *WorkCover Queensland Act 1996* No. 75 of 1996.

refusal to grant the Board full independence demonstrates the reluctance of government to relinquish central power over workers' compensation. While on the one hand, the government appeared committed to reform, it waivered when the most likely outcome was a loss of power. It also failed to introduce independent review mechanisms. Instead, current Board members were appointed to a new statutory review board.[162]

The government did include the Report's recommendations of limited definitions of 'worker' and 'injury' and the revival of 'contributory negligence' in the new legislation. Under the new legislation a *'worker'* was defined as an individual who (a) *works under a contract of service; and* (b) *is a PAYE taxpayer in relation to the remuneration or other benefit received for the performance of work under the contract of service.*[163]

A similar situation was enacted in relation to the interpretation of 'injury'. In accordance with the Report's recommendations, the government included a provision that work must be '*the major contributing factor*' to injury.[164] In this way, employees were prevented from claiming compensation for injuries that were aggravated or recurred through work. In limiting the definition of *'injury'* the new Act singled out stress-related illnesses and placed rigorous constraints upon eligibility for such claims. S34(4) excluded psychiatric or psychological disorders that arose out of (a) *"reasonable management action taken in a reasonable way by the employer in connection with the worker's employment"* (b) *"the worker's expectation or perception of reasonable management action being taken against the worker" (c)*

[162] ibid. S487(3)
[163] ibid. S12 (1)
[164] ibid. S34 (3)

"action by WorkCover or a self-insurer in connection with the worker's application for compensation" or *"circumstances in which a reasonable person, in the same employment as the worker, would not have been expected to sustain the injury."*[165] The terms *"reasonable management actions"* were defined as actions that included transfer, demotion, discipline, redeployment, retrenchment or dismissal.[166]

The reintroduction of contributory negligence principles revived the previous onus on employees to bear some responsibility for any injury in certain circumstances, unless they could prove fault on the part of the employer. Although the Act specifically prevented 'contributory negligence' being used as an absolute defence, its re-introduction was intended to encourage employees to take some responsibility for their own safety. Although not as extreme as in early legislation, the principle that underpinned its inclusion of contributory negligence remained potentially severe. For example, there were to be six categories under which a charge of contributory negligence could be levelled at workers. These were that a worker failed to comply with instructions, failed to use personal protective equipment, failed to use anything designed to reduce workers' exposure to risk, interfered with or misused anything designed to reduce exposure to risk, was affected by a substance that induced impairment and failed to attend a safety training course when offered.[167] Each breach would reduce any payout by 25%.[168] Contributory negligence claims are difficult for employees to defend. Apart from the prohibitive economic cost of mounting such a defence, employees are placed in the position of having to prove both their own innocence and their employer's negligence.

[165] ibid. S34(4)(a) to (d)
[166] ibid. S34(4)(a) to (d)
[167] ibid. S314 (1)
[168] ibid. S314 (3)

In return for Liz Cunningham's support, the government did not introduce a 15% threshold for common law access. It opted instead to retain limits imposed by the previous government whereby workers who sustain permanent impairment of 20% or more of maximum statutory entitlement would retain access to common law, however workers who sustain an impairment of under 20% for a work related injury must irrevocably elect to either accept statutory benefits or access common law.[169] Journey claims were retained in the legislation also, although restricted to journeys of *"…the shortest convenient route"*.[170]

Of crucial importance was the introduction of pre-Ryan legislative mechanism that allowed certain employers to contract out of the system by self-insurance. Just as CSR had been able to set up a private insurance system in 1907, so too, single employers, groups of employers, and body corporates would be able to by-pass the government fund and set up private schemes — subject to government approval.[171]

This change was vital as it impacted on the original concept of compulsory monopoly insurance that was premised upon the understanding that if every employer were compelled to pay a premium, the costs of those premiums would be decreased. Traditionally, larger employers paid higher premiums, consequently without these premiums the costs to other employers would increase. Such a change could also potentially lead to inconsistencies across systems as benefits could vary within individual self- insurance schemes, despite the vigilance of the government, leaving

[169] ibid. S253
[170] ibid. S37 (3)(a)
[171] This provision was restricted to employers with a minimum of 500 fulltime workers only. S101 *WorkCover Queensland Act 1996* No. 75 of 1996.

workers vulnerable. The government disagreed and argued this measure was in line with sound economic principles, as evidence had shown it was better performers who withdrew from the general insurance pool. This, in turn placed additional economic pressures on those still reliant upon the state scheme, and subsequently increased the economic incentive for poor performers to perform better and for high-risk industries to reduce risks in order to reduce premium costs.[172]

Discontent in relation to these changes was considerable from both employer and employee groups. As the premium increases that had been introduced by the Goss government were included in the new legislation, employers such as Mount Isa Mines Holdings Ltd (MIM) called for further restrictions on common law and premium reductions.[173] The Metal Trades Industry Association (MTIA) argued the common law threshold limit should be increased to 30%.[174] In contrast to previous times when conflict was largely confined within the policy community, expression of dissatisfaction over the proposed changes became public as the State Public Service Federation, the Construction, Forestry, Mining and Energy Union (CFMEU) and the Communications, Electrical and Plumbing Union (CEPU) organised work stoppages and public demonstrations.[175]

The ACTU threatened voter backlash.[176] There was also a twenty-four hour stoppage in the sugar industry over the proposed changes.[177] The government however

[172] Santoro S., (Minister for Training and Industrial Relations) *QPD*, 27 Nov. 1996, p. 4460.
[173] Southorn E., 'MIM chief calls for compo premium cap' in *Courier Mail*, 5 July 1996. P. 6.
[174] Dowling J., 'Proposals match business wish list, say employers' *Courier Mail* 11 July 1996, p. 10.
[175] Southern E., 'Unions vow strike action and campaign against State Government' *Courier Mail* 11 July 1996, p. 10. Southern E., 'State public servants set to walk out over attacks' in *Courier Mail*, 12 July 1996, p. 3. Koch T., 'Compo chaos to create election climate' in *Courier Mail* 13 July 1996, p. 1. Southern E and Callinan R., "Workers to march on parliament" *Courier Mail* 3 Dec. 1996, p. 1.
[176] Southern E., 'ACTU attack on workers' compo plan' in *Courier Mail*, 13 July 1996, p. 3. Southern E., 'Unions vow strike action and campaign against state government' *Courier Mail* 11 July 1996, p. 10.
[177] Springborg L., (Member for Southern Downs) *QPD*, 13 Sept. 1996, p. 2896.

remained firm, and the legislation was introduced without capitulation to stakeholder demands, particularly those of trade unions.

Consultation through the Kennedy Inquiry proved to be a useful tool for the Borbidge government. As the proposed changes were extensive, the provision of appropriate opportunities for public input and the transparency of the consultation process enhanced the legitimacy of the government's policy changes, and made them difficult to ignore. This process allowed the government to re-structure the legislation to conform with the tenets of sound economic management, as it contended with both the financial problems left by the previous government, and broader suspicions of the electorate that the Borbidge government represented a return to the 'Joh' era that had so appalled the community a few years earlier.[178] Members of the original policy community had little choice other than to adjust to being among many stakeholders with recognised rightful interests in workers' compensation. The cooperative nature of relations among the members of the policy community had dissipated and their relationship had reverted to that of adversaries in the wake of the emergence of different patterns of policy-making.

Discussion

The central point in this chapter in addressing the question of the longevity of the Queensland workers' compensation legislation is that the institutionalised policy-making arrangements within the policy community collapsed as the legislation faced a number of serious political and economic challenges. New governance mechanisms

[178] In other areas of administration the Borbidge government demonstrated a propensity for attitudes akin to those that dominated during the Joh era. For example he overturned a parliamentary no-confidence motion in the Attorney-General Denver Beanland and argued that Ministers were responsible to him, not the parliament. He also abolished the Office of Cabinet and the Public Sector Management Commission that had been set up as reform mechanisms by the Goss government. Wear R., 2003, 'Robert Edward Borbidge'…pp. 394-97. See also Morley P., 'Haunted by the past' *Courier Mail*, 13 July 1997, p. 20.

introduced by the Goss government and continued by the Borbidge government resulted in policy community fragmentation as government adopted mechanisms, such as enhanced consultative arrangements. This created new networks and altered the power relations within the existing policy community. As Rhodes points out in relation to such shifts in public administration, the outcome was a transformation "…from government to governance."[179] In contrast to the previous two eras that had brought the institutionalisation of policy community arrangements, this transformation threatened the continuity of the legislation in its existing form.

The central features of the state monopoly, no-fault insurance and common law rights that were pivotal in the prolongation of the Act faced serious threat, and some aspects of the legislation were curtailed. As the Labor government's new managerialist strategies were implemented, existing policy community arrangements were disregarded in favour of more transparent consultative mechanisms, such as public meetings and distribution of discussion papers on issues relative to workers' compensation.

The two remaining stakeholders, employers and trade unions, faced loss of authority over workers' compensation policy development. Upon the brief return to conservative government in Queensland in 1995, the Borbidge government was quite willing to continue the processes introduced by the Goss Labor government. Under the Borbidge government consultative mechanisms were expanded into a public inquiry and, as a result, the legislation was abolished and replaced by the more

[179] Rhodes R.A.W., 1997, *Understanding Governance.*..p. 45.

stringent *WorkCover Queensland Act* that was potentially less adequate for both employers and employees.

The 1990s were an era of immense social and political change, in some ways similar to the changes that occurred at the beginning of the twentieth century that so influenced the introduction of the initial workers' compensation legislation. Most obvious was the change in government to Labor rule after 32 years in opposition. However, electoral demographics had also changed and the traditional support bases of all major political parties had shifted. Each party recognised that broader community support was important for electoral success.

In government, the Labor Party focused primarily on public sector reform and economic development aligned with global trends that were often at odds with employee interests. Whereas during the previous era of conservative government trade unions found merit in maintaining amicable policy community relations in relation to workers' compensation rather than face industrial conflict over the issue, a return to Labor government brought high expectations that trade union concerns would receive high priority. Instead, pressures placed upon workers' compensation legislation from the time of election of the Goss Labor government were the most severe since its introduction in 1916, as the government was not set upon focusing solely upon the demands of its key constituencies within the trade union movement.[180]

In the interests of long-term tenure of political office, the government embarked upon a cautious and economically responsible path that aimed to avoid antagonising

[180] Stevens B. & Wanna J., 1993, 'The Goss Government: An Agenda for Reform' in *The Goss Government. Promise and Performance of Government in Queensland*, Stevens B. & Wanna J., Des, Macmillan, p. 4.

potentially hostile electoral groups.[181] In relation to workers' compensation, this ruled out any notions of return to the practices adopted by earlier Labor governments that had closely addressed employee needs on an occupation and industry basis.

Indeed, as part of its determination to address the needs of non-core Labor electoral constituencies, the Goss government introduced a meticulous process of broader public consultation in relation to issues such as workers' compensation. This set in train a gradual process of alienation of the policy community in relation to the policy process, as outsider groups such as private insurance companies were provided an avenue for discussion with government over future policy directions for the fund.

The Borbidge government saw even less reason to maintain previous stakeholder relations and in fact, the Premier saw political mileage in abandoning any cooperation with trade unions.[182] The fund's severe economic problems that culminated during the term of the Borbidge government provided an opportunity to re-direct the core ideals and limit development of the legislation. In response, expression of trade unions' policy needs, and their dissatisfaction over policy direction shifted back to the industrial domain with a series of strikes and public demonstrations over proposed legislative changes while employers' insider status continued.

Ideological shifts impacted sharply upon workers' compensation legislation during this era. In broad terms, global influences presented many challenges and government decision-making was made more complex through economic uncertainty. The ability of governments to control both economic and social policy was fraught with problems

[181] Ibid.
[182] In adopting this attitude he sought to emulate his predecessor, Joh Bjelke-Petersen. Wear R., 2003, 'Robert Edward Borbidge...pp. 393 and p. 398.

as neo-conservatist ideologies dominated. In Queensland, the change to Labor government was accompanied by ideological change not just in terms of alignment with broader global shifts, but also in terms of traditional Labor Party ideologies. Wear argues that "…although Goss paid homage to the traditional Labor values of social justice and equality of opportunity, his primary focus was on economic development."[183]

A further ideological shift, in the guise of public sector reform, also impacted upon the legislation. Yeatman argues the central feature of reform processes between the 1970s and the 1990s were to be found in "…its discursive orientation to management, rather than to governance…".[184] She argues discourse in relation to public sector management involved "…different kinds of rhetorical mix" centred round four core values of "…economy, efficiency, effectiveness and equity."[185] Two requirements underpinned this public sector management reform discourse. The *first* was instrumentalism. The use of technical means provided the avenue for governments to focus on the values of economy, efficiency, effectiveness and equity in public sector reform processes.[186]

Secondly, Yeatman argues discourse "…must appear ideologically neutral in the sense of being able to respond effectively to all legitimate stakeholders in the conception and delivery of public policy. The range of stakeholders finds its way into public management discourse however much this may encourage incoherencies and

[183] Wear R., 1993, 'Wayne Goss – a Leader in the Queensland Tradition?' in *The Goss Government. Promise and Performance of Labor in Queensland,* Stevens B. & Wanna J. eds., Macmillan, p. 27.
[184] Yeatman A., 1996, 'The New Contractualism: Management Reform or a New Approach to Governance?' in *New ideas, Better Government,* Davis G. & Weller P., eds., Allen & Unwin, p. 283.
[185] ibid. p. 284.
[186] ibid.

contradictions within it."[187] On winning office, the Goss government indeed developed a discourse that highlighted new managerialist principles that centred round the values of economy, efficiency, effectiveness and equity as the most appropriate path to accountability and improved public administration in Queensland government. In 'talking the talk' the government had then to 'walk the walk' and acknowledge all legitimate stakeholders in given areas. For workers' compensation this meant that existing policy community arrangements would be truncated, as ostensibly more effective and efficient policy development could be achieved through wider stakeholder consultation.

As part of the reform process the key principles of the legislation, namely state monopoly and no fault insurance faced formidable tests as workers' compensation arrangements were placed under the scrutiny of administrative review, national competition policy processes and the Kennedy public inquiry. These principles emerged relatively unscathed from the first two processes, however the Kennedy inquiry — and the report that emanated therefrom — were used by the Borbidge government as reason to abandon the long-held key principles and to support a complete re-writing of the Act. Contributory negligence provisions in line with Kennedy report recommendations replaced no fault mechanisms.

The Kennedy report also recommended state monopoly be abandoned, however not until after the fund's massive financial deficit was reversed. The Borbidge government announced its intention to do this. However, political intervention in the form of an election brought the demise of the government before the deficit was rectified, but not before it included limited legislative provision for certain employer

[187] Yeatman A. 1996, 'The New Contractualism…p. 284.

groups to by-pass the state scheme and self-insure. Thereby, albeit in a limited manner, the Borbidge government ended the much vaunted principle of state monopoly insurance.

The fund faced serious economic pressures, particularly during the first half of the 1990s. As discussed in the previous chapter, common law costs began rising steadily throughout the 1980s. As the Bjelke-Petersen government neglected the legislation and benefits began to lag behind cost of living and wage increases, injured workers turned to common law and the higher monetary awards it provided. These rises in common law costs accelerated when the Goss government's deregulation of lawyers resulted in aggressive advertising by sections of that group who specifically targeted workplace injuries. Promises of 'no win no fee' in law firms' advertising placed additional economic strain upon the fund.

The Goss government responded in a manner that did little to enhance relations among key stakeholders and served as a mechanism to further alienate the policy community. Premiums were significantly increased without consultation with employers. As a result, employers' positive sum game advantages that had been a central component of their continued support of the legislation in the past was challenged by this extra economic burden. Employees fared little better under the Goss Labor government as it moved to limit their common law access for the first time in the history of the legislation.

The Goss governments' commitment to economic reform, especially in relation to the efficiency of the public sector was paramount. This commitment prevailed over long-

held Labor Party social justice values and workers' compensation was seen by the government as simply another area in need of sound economic management. In this pursuit a key question centred round how the fund could be made less litigious, and how disputes over workers' compensation issues could be settled in the most appropriate economic and efficient manner. It is somewhat of an irony that these were much the same issues that confronted the Ryan government when it introduced the legislation in 1916, except the central beneficiaries of such solutions had shifted from employers and employees to government.

Conclusion

The traditions and structures that had shaped workers' compensation up to the 1990s proved incapable of responding and adapting to the challenges posed by the reform ideologies adopted by governments during the 1980s and 1990s. As the system of workers' compensation was established early in the twentieth century, this chapter has focused on how institutional arrangements, particularly the dominance of the policy community, that influenced legislative development for approximately seventy years, were abandoned in the substantial changes that occurred during the 1990s.

In broad terms Wanna and Keating argue that after a generation of "…neglect and dismissive abandon…" that had seen governments become less responsive to citizens, existing institutional arrangements came under scrutiny. [188] In Queensland there was added impetus for questioning the established institutional arrangements, as the Fitzgerald Inquiry had unearthed complacency and corruption in public administration. In seeking to transform public administration in Queensland

[188] Wanna J. and Keating M., 2000, 'Conclusion: institutional adaptability and coherence' in *Institutions on the Edge? Capacity for governance*, Keating M., Wanna J., and Weller P., eds., Allen & Unwin, p. 230.

government, the ALP had directed its attention to an extensive reform program and commitment to economic efficiency. The Borbidge government was able to capitalise upon these initial changes to extend New Right economic rationalist ideals that were central to National party ideals, particularly at the Federal level, during the mid 1990s.[189]

Just as the direction of workers' compensation legislation had been significantly influenced by accepted practices of previous times, so too, the legislation was inevitably re-shaped by modern practices. Wanna and Keating outlined the impact of new governance ideals thus:

> The bureaucracy and many of the arm's length statutory authorities have been forced to engage with both economic issues and issues of service delivery and individual rights in ways that have significantly affected their form and roles.[190]

This neatly sums up the problems that confronted policy-makers in relation to workers' compensation as notions of individualism supplanted collective ideologies. The inability of political parties to embrace the greater diversity of interests that resulted from this ideological shift forced executive government and its agents, such as the bureaucracy and statutory authorities, to develop different negotiating and networking capacities.[191] Although the WCBQ had largely maintained its traditional organisational form of statutory authority, and largely similar membership of employers and employees, it was forced to alter established practices. For example, a commitment to economic efficiency principles dictated that financial problems should be addressed in a more transparent and accountable manner — that is through the

[189] The Queensland Nationals were somewhat anomalous in relation to commitment to these broader Party ideals as it vacillated between embracing the federal Party ideals and reverting to the right populism of the 'Joh' era. See Wear R., 2003, 'Robert Edward Borbidge… p. 399.
[190] Wanna J., and Keating M., 2000, "Conclusion: institutional…p. 230.
[191] Wanna J., and Keating M., 2000, "Conclusion: institutional…p. 231.

collection of premium revenue and claims provisions. Previous practices of topping up the fund from general reserves in times of economic downturn were no longer acceptable. As there had been a very deliberate strategy in the earlier years from the government to employers and employees to foster trust and cooperation through revenue top-ups, the shift to placing more direct responsibility on each group diminished trust and cooperation within the policy community.

Also, as both major political parties sought to restore public trust and confidence in government, consultation was used as a ploy to sever the superiority of the policy community through the recognition of a wider array of legitimate stakeholders. Consultation provided legitimacy for government as it incorporated broader reform commitments that eventually substantially changed the legislation. Not only did consultation break the monopoly of employers and employees over this policy domain, but it also facilitated an ideological shift in relation to the purpose of workers' compensation. This was redefined as primarily an issue of insurance, rather than an issue of social justice/welfare.

Clearly the policy community was no longer directing the policy agenda. Antagonisms among the key stakeholders escalated and discontent was re-directed back to the industrial arena. Workers' compensation also became an election issue for the first time in over half a century.

CHAPTER SEVEN

RE-INVENTING THE WHEEL – THE BEATTIE GOVERNMENT

The last chapter highlighted the impact of new global governance models on workers' compensation legislation as the Goss and Borbidge governments adopted reform processes in areas such as the public sector, regulatory regimes and state infrastructure. In particular it demonstrated how the adoption of reform mechanisms such as broader public consultative arrangements, societal events such as socio-economic change, and policy decisions in other areas (notably the law industry), affected policy changes in the workers' compensation domain.

As the Goss and Borbidge governments implemented new governance instruments such as deregulatory mechanisms, both sought to diminish the exclusivity of influence in policy-making that had been afforded to the workers' compensation policy community over a long period of time. These actions resulted in the fragmentation of the policy community, with antagonisms among the stakeholders directing discontent back into the industrial arena. An incoming Labor government was left to address the rapid decline in the effectiveness of, and support for, the legislation that resulted.

The Beattie Labor government had two central priorities in respect of workers' compensation: to restore the economic prosperity of the fund; and to revive the support of stakeholders for the legislation, particularly trade unions, to maintain its long-term economic viability. However, there were three significant problems that impeded the new government's aims. The *first* was the financial position of the fund. This remained precarious as the fund struggled to recover from its 1995 economic

loss. *Secondly*, the WorkCover legislation introduced in 1996 by the Borbidge government was so restrictive in some areas as to potentially lead to further economic loss through workers undertaking common law actions. *Thirdly,* the mechanisms for self insurance introduced by the Borbidge government, were cause for economic concern as many eligible employers chose this option. If this option was to continue, funds in the general premium pool would diminish, creating a threat to its long-term viability.

This chapter argues that the Beattie government had little choice but to address inequities contained in the 1996 WorkCover legislation, and the broader economic problems they precipitated. The restoration of key principles, which had underpinned the legislation since its inception in 1916 and contributed significantly to the continued viability of the fund, was recognised as paramount in any attempt to resolve the problems in workers' compensation. To alleviate the antagonisms and revive the scheme, the Beattie government decided to re-establish the core principles of the 1916 Act[1] — and in doing so it had to re-invent the workers' compensation wheel.

The Beattie government focused on the restoration of central features of the Queensland workers' compensation legislation such as no-fault mechanisms, maximum dependency of employers on state insurance and more inclusive categorisations of '*worker*' '*employer'* and '*injury*'. It was these core factors that had proved beneficial to all parties and facilitated the high level of cooperation within the policy community originally. However, this time there were two key differences. The law industry remained de-regulated giving the government very limited recourse to

[1] Queensland Government, 1999, *Restoring the Balance. Delivering a fair and equitable system of Workers' Compensation in Queensland*, p. 3.

control of this group. Consequently, the government sought to marginalise the law industry through the restoration of adequate statutory provisions to minimise preference for common law outcomes. Self-insurance introduced under the Borbidge legislation also remained, and the government sought to restrict its impact on the scheme as much as possible.

To some extent, the restoration of these key principles was indicative of a renewed understanding by the Labor government of what the electorate wanted, and a pragmatism about meshing their ideological beliefs with the realities of the economic and governance climate. A belief emerged that social justice principles could and should prevail alongside the economic ideals that were at the heart of the Goss and Borbidge governments' amendments, rather than economic principles being most significant. Thus, under Premier Peter Beattie there was a shift from economic rationalism to what he termed "…social rationalism."[2]

The restoration of key features of the legislation was perceived as a means of re-establishing amicable relations among traditional stakeholders and restoring the centrality of the statutory mechanisms. Subsequently, the government would be better placed to more accurately control the economic prosperity of the fund. Superiority of the statutory Fund would also ensure minimal impact of new stakeholder groups such as the law industry and the Insurance Council, and prevent the establishment of new centres of power by these groups over workers' compensation.

As in previous eras, a number of competing pressures impacted upon the attempts to

[2] Preston N., 2003, 'Peter Douglas Beattie. The Inclusive Populist' in *Premiers of Queensland*, Murphy D., Joyce R., Cribb M. and Wear R., eds., University of Queensland Press, p. 406.

revive the legislation. Similar social pressures as those in existence during the Goss and Borbidge administrations were evident. In particular, sustained State economic and employment growth continued to place demands upon the workers' compensation fund, despite the more restrictive definitional interpretations of *'worker'* and *'employer'* that had been incorporated into the Borbidge legislation. As these restrictive measures came into effect relations between the Borbidge government and the trade union movement over workers' compensation had deteriorated.

As part of its broader agenda of a more cooperative approach to workplace relations,[3] the Beattie government sought to revive the cooperation that had previously existed in the area of workers' compensation. However, this would not be easy as relations between the Beattie administration and some trade unions were less than amicable. This was the result of the government's refusal to support pay increase claims from key groups such as teachers, nurses and construction workers, and its reluctance to protect industries where jobs were threatened.[4]

Political pressures heightened as the rise, albeit temporarily, of a new political party, One Nation, highlighted the disenchantment of the electorate with both the major political parties and the unrelenting reform agendas each had pursued during the 1990s. This, in turn, brought new ideological pressures as the Beattie government was forced to temper economic rationalist based strategies with an enhanced attention to the social implications, and incorporate mechanisms that would ease the impact of any further changes. Economic pressures were paramount as it fell to the Beattie government to administer the mechanisms established by the Borbidge government to

[3] ibid. p. 405.
[4] ibid.

address the workers' compensation fund's poor financial position. This was a precarious task, as the Labor Party had included in its election platform promises to restore key features of the legislation, including lower premiums and increased benefits.

In considering these changes and their implications for the workers' compensation scheme's longevity, this chapter begins with an examination of the Beattie government. In particular it focuses on the unique style of the Premier and his willingness to adopt alternative governance mechanisms to avoid the problems that had underpinned the downfall of the Goss Labor government three years earlier. A brief discussion is undertaken to highlight the problems that had emerged within the *WorkCover* legislation during its initial two years of operation, after which the chapter explores the amendments introduced by the Beattie government to address these problems. National Competition Policy guidelines coincided with the amendments to the legislation, and the subsequent review based on these guidelines and the impact they had on the extensive changes that the Beattie government planned to introduce in workers' compensation are considered. The chapter then turns to a discussion on the impact of these legislative changes and the attempts by the Beattie government to restore cooperative relations with employers and employees, and what this meant for the policy community.

Beattie Government

In contrast to its prior parliamentary history of Opposition for thirty-two years, the Labor Party's term in Opposition during the 1990s was only three years before returning to government. The Beattie Labor government was elected in 1998. The Borbidge conservative government was afforded only one term in office mainly

because of the rise of the fledgling One Nation Party that unexpectedly won eleven, mostly conservative seats, in parliament. Just as the Borbidge administration had governed as a minority government with the support of independent member Liz Cunningham, so too the initial Beattie administration operated as a minority government with the support of an independent member, Peter Wellington, for its first six months in office. In December 1998, the Labor Party won a by-election in the seat of Mulgrave and the Beattie government was able to govern in its own right thereafter. At the next election in 2001, the Beattie government extended its one seat majority to a forty-three seat majority, due largely to the efforts of Beattie himself who was able to convince electors that he was trustworthy and firmly in charge of his government.[5]

Many members of parliament who had been part of the Goss administration were included in the new Labor government. However, the Beattie government did not bear any resemblance to the Labor governments of the earlier 1990s. While Beattie himself had been initially elected to the parliament in 1989 as a member of the first Goss administration, his leadership style was vastly different to that of the previous premier. Under Goss, government became increasingly centralised with Cabinet control over policy development. In contrast, Beattie adopted a more flexible and consensus-based style of government. As the rise of the One Nation Party reflected a disaffection of the Queensland electorate of the economic rationalist and reform principles adopted by governments during the early 1990s, Beattie sought to slow the reform process in many areas and has been openly critical of other aspects such as

[5] Preston N., 2003, 'Peter Douglas Beattie…, pp. 400-01. The Beattie administration remains in government having been elected for a third term in 2003.

National Competition Policy.[6] Beattie also recognised the need to shift away from the isolationist centralism of the previous governments in favour of a more pragmatic, flexible style of government, even when this meant compromise, or reversal of decisions by the Premier.[7]

During the election campaign in 1998 ALP leader Peter Beattie stated his Party's intentions to introduce changes to the *WorkCover* legislation. After its election the Labor government set about a consultative process, the outcome of which was presented in a document strategically called "Restoring the Balance". The opening declaration contained in the document stated:

> The Queensland workers' compensation system lacks balance. Many injured workers are currently missing out on compensation to which they were previously entitled. Some employers are paying artificially high premiums because others are not paying their fair share.[8]

From this basis the government set out a reform package to enable reparation of the balance between the rights of injured workers and the need for competitive and affordable employer premiums, while simultaneously maintaining a viable and economically secure workers' compensation system.

Despite the familiar rhetoric, there were three key differences that prevented an uncomplicated return to fund prosperity: the enhanced role afforded to the law industry through deregulation, restrictions on access to common law, and the partial retreat from state monopoly insurance through self-insurance. However, specific positive outcomes in the "Restoring the Balance" package were clearly designed around issues that would bring advantages to the former policy community

[6] ibid. p. 407.
[7] ibid. pp. 402-06.
[8] Queensland Government, 1999, *Restoring the Balance*…p. 3.

stakeholders, particularly trade unions. For example, the government indicated a commitment to amending the definitions of '*worker*' and '*injury'*, contributory negligence provisions, re-instating journey claims and limiting self-insurance, together with an undertaking that insurance premiums would remain viable.[9] These specific items accord with Rhodes'[10] assertion that each stakeholder has to gain a positive outcome if support for the policy community is to be retained.

Amendments to WorkCover legislation – 1999

The first amendments were introduced in 1999. Altering the narrow interpretation the Borbidge government had applied to the definitions of '*worker*' and *'employer'* was of paramount importance. Under the amendment this restrictive definition was replaced with one that stated a '*worker*' was 'A person who works under a contract, or at piecework rates, for labour only or substantially for labour only'. Share-farmers, certain contractors, workers working through labour hire agencies or group training schemes, and those involved in holding companies were included under the definition.[11]

The term '*employer*' was expanded in a similar fashion. Under the 1996 legislation the term was vague, and simply stated an *employer* was "…a person who employs a worker…", including government entities.[12] In line with the definition of *'worker'* the Beattie government expanded this to include farmers, labour hire agencies and group training scheme agencies, those employing salespersons, collectors, canvassers paid on

[9] Other issues such as the introduction of a Review Council were also included in the package. See Queensland Government, 1999, *Restoring the Balance*…p. 12.
[10] Rhodes R.A.W., 1997, *Understanding Governance*…p. 44.
[11] Sch 2 Part 1 WorkCover Queensland Amendment Act 1999 No. 17 of 1999.
[12] ibid. S32(1)(a)(b)

commission, and certain contractors.[13]

The 1999 amendment also addressed the narrow definition of '*injury*'. The 1996 legislation defined an injury as work-related "…where the employment is the major significant factor causing injury."[14] The Beattie government redefined the definition as "…significant contributing factor to" which would increase the numbers of injuries classed as work-related.[15] It also made specific provision for work-related aggravations of existing injuries or diseases, irrespective of whether the original injury or disease was work-related. However, these injuries would only be compensated to the extent of the aggravation.

In addition, tests of "*reasonable person*" and "*ordinary susceptibility*" that applied to psychological and psychiatric injuries were removed from the legislation, as they were difficult to interpret and apply.[16] This re-ignited the issue of the increased incidence of stress-related illnesses, and the extent to which it is aggravated in the workplace. National Party member Russell Cooper reinforced the attitude of the previous conservative government by arguing:

> Stress is something for those people who just want to cop out because they cannot take it. Once upon a time, people were told to wake up to themselves and get on with it. Of course, now they just claim a stress condition and out they go. It is no wonder that we are becoming a weak society. In terms of premium costs, every industry had to dig deep to cover the deficit to which dubious and unidentifiable claims for stress contributed.[17]

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[13]ibid. Sch 2A
[14] S34 *WorkCover Queensland Act* 1996 No. 75 of 1996..
[15]S8(1) WorkCover Queensland Amendment Act 1999 No. 17 of 1999.
[16] The "reasonable person" test dictated consideration be given to whether a reasonable person in the same employment would have been expected to sustain the psychiatric or psychological disorder. The "ordinary person" test dictated consideration be given to how a worker of ordinary susceptibility would have reacted to that employment. See Queensland Government, *WorkCover Queensland Bill 1999, Explanatory Notes*. P. 8.
[17] Cooper R., (Member for Crows Nest)*QPD*, 14 April 1999, p.1071.

However, the Beattie government again saw merit in acceding to discontent by employers and employees over stringent legislative measures. Release from these legislative limitations, particularly in relation to burgeoning stress-related claims, although having an effect of increasing the number of statutory claims, would curtail the number of less predictable common law claims.[18] Future negotiations over these types of statutory claims could be conducted directly with stakeholders, rather than in a public arena such as the courts.

The amendment also reinstated journey claims. At issue was the extent to which, in the event of an injury occurring where there had been a substantial delay before the worker completed the journey, regard must be given to the reasons for that delay. Under the 1996 Act there was no such provision. In accordance with the Kennedy Report recommendations, the Act had stated simply that if there was a substantial delay the injury would not be considered to arise out of the course of employment.[19] While of limited direct benefit to employers, the restoration of this provision was vitally important to employees, as it had been a central feature of the legislation from 1916 until 1996. The level of discontent over this issue would always be problematic while it remained unresolved. It is argued then, that this measure was re-introduced with the clear intention of restoring cooperation among key stakeholders.

The appeals review process introduced in the Borbidge legislation was also amended. In what had been an undisguised attempt to halt the control of the legislation by the

[18] Access to common law was for psychiatric or psychological injuries was limited to certificate injuries only. Certificate injuries were those that resulted in a work related impairment of 20% or more. S42 *WorkCover Queensland Act 1996* No. 75 of 1996.
[19] S38(2)(b)(I) *WorkCover Queensland Act 1996* No. 75 of 1996.

policy community, and what the Kennedy Report termed the '*compo culture*'[20] of the stakeholders, the 1996 Act had made provision for the introduction of a Statutory Review Branch. However, this body lacked independence and transparency, and the review process was largely limited to a paper file review with little opportunity for either employers or employees to be heard.[21]

In its place the 1999 amendment provided for the establishment of a Review Unit, separate from WorkCover's commercial insurance operations, to facilitate independent reviews. Its role would be to provide a review panel to conduct internal reviews of proposed decisions to reject or terminate compensation. Its powers were extended to include decisions relating to premium setting, reassessment of premiums and waiving or reducing penalties. A Review Council was established to monitor the performance and outcomes of the review process and Medical Assessment Tribunals.[22]

In essence, the aim of this division was to separate the commercial mechanisms of the fund from its regulatory functions to ensure independent regulation of the workers' compensation market. This move also provided formal recognition of the role of employers and employees as the composition of the Review Council was limited to the chairperson (or director) of WorkCover's Board, two employer representatives and two employee representatives.[23] This review body, Q-Comp, was established in 2000.[24]

[20] Kennedy Report p. 102.
[21] WorkCover Queensland Amendment Bill 1999, Explanatory Notes, p. 3.
[22] ibid.
[23] S423C WorkCover Queensland Amendment Act 1999, No. 17 of 1999.
[24] Q-Comp did not fully commence operations until late 2001 which places it outside the scope of this discussion.

Changes to self-insurance were also critical in this amendment. In an attempt to curb the higher than expected numbers of employers proceeding to self-insurance the government moved to severely restrict licencing parameters. The criteria governing the minimum numbers of workers employed to ensure eligibility for self-insurance had been set at 500 by the Borbidge government, but under this amendment the number was increased to 2,000. As well, levies were set for self-insurers to ensure the financial security of schemes. [25] In an effort to improve the viability of the State scheme the legislation as it related to self-insurers was made more restrictive.

These restrictions were designed to minimise the negative financial impact on both the fund itself and on the large numbers of smaller employers who remained dependent on the scheme.[26] To remain economically viable, premium levels had to be maintained. This could be achieved either by a larger pool of premium revenue, or by increasing the premium levels of those dependent on the scheme. The government deemed the former option the more appropriate, further indicating the government's stakeholder preferences and its attempts to restore recognition to key stakeholders.

Overall, this series of amendments represents a clear reversal in the objectives of the legislation. The restoration of key features of earlier legislation diminished the antagonism among certain groups of employers and employees, particularly groups such as farmers who had been central within the policy community over a long period of time. As the two previous governments had exposed the policy community to greater outside influences, particularly from the law industry, these amendments represented something of a retreat, as the Beattie government attempted to increase

[25] S17(1) WorkCover Queensland Amendment Act 1999, No. 17 of 1999.
[26] WorkCover Queensland Amendment Bill 1999, Explanatory Notes, p. 2.

recourse to statutory benefits to minimise judicial involvement, while simultaneously casting an eye towards restoring cooperation among the three traditional stakeholders. However, other reform processes limited the government's ability to achieve these objectives, and National Competition Policy (NCP) was one such process.

National Competition Policy

In 1995, Australian governments had agreed to a process aimed at limiting anti-competitive conduct and removing special advantages brought about by government business activities. A process was then established for governments to review all inconsistent, ineffective and/or anti-competitive legislation within their jurisdiction. The aim was to reform all legislation that was found to be restrictive in relation to the public interest.

The WCBQ had undertaken a preliminary review of the legislation in 1996 in accordance with the Queensland Treasury National Competition Policy Implementation Guidelines, and the legislation was found to align with the Trade Practices Act. Certain provisions of the *WorkCover Queensland Act* were identified as potentially anti-competitive and were subjected to a review, in line with NCP. In particular, the state monopoly basis of the legislation meant it warranted a major review that was carried out in 2000. In all, nine identified provisions of the Act were reviewed. These were:

- Compulsory insurance provided by employers
- WorkCover as the principal provider of accident insurance
- Self insurance licencing criteria
- Restricted benefit levels for hospitalisation costs
- Restricted benefit levels for medical and rehabilitation costs

- WorkCover as the sole approver of rehabilitation training
- Workplaces with 30 or more employees require a rehabilitation coordinator
- Premium setting mechanisms.[27]

The Review found restrictions such as the monopoly insurance provisions and the compulsory nature of those provisions were not anti-competitive.[28] These findings were based on two key criteria. The *first* criterion was principally of a social justice nature. Rather than succumb to neo-conservative perceptions that social provision by the state undermined self-reliance, the Review reinforced the fundamental right of workers to fair compensation in the event of workplace injury, illness or death. The state was obligated to maintain an active role in ensuring that provision.[29]

The *second* criterion was designed to protect employers from the financial burden that compensation might place on businesses. In all, the Review set out that:

> The system must be fair in balancing the rights of injured workers with the need for competitive and affordable premiums for employers, while maintaining a secure and viable workers' compensation system.[30]

In relation to the monopoly held by WorkCover over insurance, the Review found that workers' compensation was different from other forms of insurance in that its key objective was the social welfare of workers – not profit.[31] While exposing this form of insurance to competition might decrease premium prices or increase benefits to workers, experience in other Australian States had shown that performance targets used in private insurance companies led to cost minimisation processes, and

[27] Dept of Employment, Training and Industrial Relations, 2000, National Competition Policy Legislation Review of the WorkCover Queensland Act 1996, Report of the InterDepartmental Committee, pp. 20 – 64.
[28] ibid. p. 6.
[29] ibid. p. 20.
[30] ibid. p. 14.
[31] ibid. p. 20.

particularly to increased levels of claim rejections. This eventually led to increased costs in legal action as workers appealed the decisions. In particular, the introduction of multiple insurance providers in the market created a potential for variance in legislative interpretation and inconsistent claims decisions, thereby jeopardising the stated objective of economic protection for workers and their dependents from workplace deaths, injuries and illnesses. It also enhanced the difficulties of identifying uninsured employers.[32]

Of those consulted in the review process, the private insurance industry was the major objector to the maintenance of a state monopoly over workers' compensation insurance. Other stakeholders, including employer groups, self insurer groups and the Queensland Law Society, supported the retention of WorkCover's monopoly.[33] The high level of support stemmed from the long-term stability and good performance of the scheme in its current form.

However, the Review found that WorkCover itself should be more exposed to market forces to ensure appropriate benchmarking. A recommendation was made that, in order to facilitate independent regulation of the market for workers' compensation, there should be separation of the regulatory functions of the scheme from its commercial functions.[34] This was an NCP requirement, and in line with competition principles. Stakeholders argued that the separation between the existing WorkCover and its review unit, Q-Comp, was deficient as the General Manager of Q-Comp reported to the CEO of WorkCover, who, in turn, reported to the WorkCover Board.[35]

[32] ibid pp. 22-23.
[33] ibid. pp. 70-72.
[34] ibid. p. 35.
[35] ibid. p. 5.

Increased autonomy of Q-Comp was subsequently legislated in May 2000, in accordance with these recommendations.[36]

One aspect of state monopoly insurance that came under Review scrutiny was the price-setting mechanisms for premiums. Despite the absence of private insurers in the market the Review found that the price setting mechanisms were not restrictive.[37] However, provisions in the legislation such as self-insurance, that placed limitations on which employers could self-insure, were found to be a restriction on business. The Review concluded that as self-insurance mechanisms had been in place for only a short period of time there should be a controlled approach to easing restrictions in this area, and a further review should occur in three years.[38]

In respect of restrictions placed on hospital, medical and rehabilitation costs by the legislation, the Review found that limiting these costs represented restrictions that could alter the economic activity of the market. However, stakeholders agreed that the potential for cost blowouts through over-servicing and over-charging, should such restrictions be lifted, outweighed the potential benefit to injured workers' of access to private hospitalisation. Similarly, although provisions that rehabilitation services could only be carried out by WorkCover-approved providers created restrictions in this area, stakeholders agreed that regulation of such a market was essential to ensure certain standards were met. To this end it was recommended that accreditation of such providers become the responsibility of Q-Comp, rather than WorkCover, in the

[36] Although Q-Comp was operational there was no legislation passed to formalise its existence until 2002.
[37] Dept of Employment, Training and Industrial Relations, 2000, *National Competition Policy Legislation Review…* pp. 30-34.
[38] ibid p. 35.

interests of independence.[39]

The requirement that businesses employing more than 30 individuals employ a rehabilitation co-ordinator was seen as a restriction on the conduct of business, compelling some businesses to operate in a different manner than others. The Review recommended that Q-Comp be given the task of examining alternate methods of providing rehabilitation services, without jeopardising the access of all workers to such facilities.[40]

Overall, the Review found that some practices, such as the links between the insurance arm (WorkCover) and the administrative arm (Q-Comp), and the limitations placed on self-insurers and rehabilitation processes, were restrictive. Significantly, it found the key principle of state monopoly insurance was anti-competitive, but the long-term stability it had engendered was more important. Submissions by small business groups in particular indicated they would be worse off under a model of competitive underwriting, as the splitting up of the insurance market would lead to instability in the scheme.[41]

This National Competition Policy Review provided further evidence for the Beattie government that capitulation to new public administration archetypes was not always ideal in terms of good governance. To set about a restructuring process that more broadly exposed workers' compensation to the full brunt of market forces, as had occurred with the Borbidge government's *WorkCover Queensland Act*, had demonstrated a clear attempt to reposition it as an economic issue with scant regard

[39] ibid pp. 47-49.
[40] ibid pp .57-58.
[41] ibid. p. 32.

for its underlying social justice and community welfare nature. The findings of the NCP Review re-established the significance of the latter, and social welfare-dominated governance ideals assumed precedence over newer conservative models in relation to workers' compensation.

Without the imposition of wider market forces, cooperation among key stakeholders could again be sought by the government as the most adept means of achieving continued support and effectiveness of the fund. Although the retreat from new governance ideals could not extend to the re-regulation of the law industry, the government saw the most efficient means of re-establishing cooperation was to further amend the legislation to minimise the role of this group.

Amendments to WorkCover legislation 2000 - 2001

Amendments in 2000 aimed to further reinforce the superiority of statutory mechanisms over common law, and to restrict self insurance parameters. These restrictions would again enhance the centrality of the three key stakeholders, government, employers and employees. Provision was made for an increase in the number of Medical Assessment Tribunals to increase their efficiency and was achieved by the inclusion of a Disfigurement Assessment Tribunal. The restriction on the number of doctors appointed to the General Medical Assessment Tribunal Panel was removed to avoid the need for an alternative panel.[42]

[42] S20 WorkCover Queensland and Other Acts Amendment Act 2000, No. 61 of 2000.

In limiting access to self insurance, bank guarantee levels for self-insurers were reassessed and increased,[43] and provision was made to include ambulance costs in the annual levies paid by self or group insurers. There was enhanced Ministerial control over the process of self insurance, and the amendment also stipulated that while WorkCover was to recommend the levy rate each year it must consult with the Minister before that recommendation could be offered.[44] This represented an abrogation of the Kennedy Report and National Competition Policy Review recommendations that workers' compensation should become an autonomous organisation with the power to set premium rates and benefits, and de-politicise the process.

Other amendments included extended powers for WorkCover representatives to enter workplaces for the purposes of monitoring or enforcing compliance within the Act, and obliging occupiers of premises entered to provide 'reasonable help' to authorised persons. New powers included authority to search, film, photograph and so forth.[45]

Eligibility for compensation for the day of injury was expanded to cover casual workers. Under the 1996 Act, workers had only been eligible for compensation from the date on which they were assessed by a doctor or other health professional.[46] Under amendment, workers who were not employed under an industrial instrument and were not entitled to be paid for the whole of the day on which they stopped work because of an injury, were entitled to an amount equal to what they would have

[43] ibid. Part 2
[44] ibid. S5
[45] ibid. S24
[46] S168 WorkCover Queensland Act 1996, No. 75 of 1996.

received from the employment for the day they stopped work, if the injury had not been sustained.[47]

Early in 2001 the Beattie government was re-elected for a second term with a record majority. The Labor Party had included a promise of increased statutory benefits in its election policy, and set about its introduction. In all, this round of amendments represented a return to traditional practices as the restoration of Fund solvency prompted the government to both increase employee benefits and reduce employer premium.[48]

Under the new provisions, seriously injured workers and their dependents would benefit from increased maximum statutory benefits. Increases of up to $250,000 were provided to the dependents of deceased workers. Provision was made for a maximum additional lump sum payment of up to $150,000 to be available to workers who sustained injuries that resulted in work-related impairment of 50% or more.[49] Additional lump sum amounts for gratuitous care[50] were made available to workers with a work-related impairment of 15% or more. This was to compensate workers in need of special care assistance after the cessation of statutory benefits. In these cases, the care assistance would be provided gratuitously by someone such as a spouse, parent, child or friend.[51]

The unfunded loss of 1995 had been rectified to some considerable extent through

[47] Part 7A WorkCover Queensland and Other Acts Amendment Act 2000, No. 61 of 2000.
[48] Jarratt J., (Member for Whitsunday) *QPD*, 18 Oct. 2001, p. 3040.
[49] S8 WorkCover Queensland Amendment Act 2001, No. 67 of 2001.
[50] ibid. S14
[51] This 'gratuitous' type of benefit was included in the initial 1996 legislation, however access to this benefit was limited to workers who suffered a 50% work-related impairment in accordance with the Kennedy Report recommendations.

increased employer premiums, and the government again felt comfortable enough to risk higher costs for the fund without impinging further upon employers. These moves represent in part, a return to established policy trajectories as the government performed a 'juggling act' to accommodate the different needs of each stakeholder. However, it is also clear these amendments were introduced by a government with a determination to encourage injured workers to opt for statutory sums without resorting to common law and its higher associated legal costs.

Moves to 'shore up' support of key stakeholders, particularly the trade union movement, were made with the abolition of the unpopular contributory negligence and mitigating loss provisions[52] introduced by the Borbidge government. The 1996 legislation had dictated that if an employee contributed to their injury in any of six circumstances (see previous chapter), compensation awards would be reduced by at least 25% for each breach. By repealing these six circumstance clauses the amendment reintroduced the broad no fault principle, although it failed to invoke the principle absolutely. Instead it stated while the amendment did not reintroduce the "*…absolute defence of contributory negligence or common employment…*" [it would provide] "*…that judicial discretion will be used on a case-by-case basis when determining compensation awards.*"[53] This largely deleted the imbalance that had placed the onus of proof on employees and restored the principle of mutual obligation between employees and employers.

The issue of common law and the role of lawyers was also addressed in this amendment. Mechanisms were put in place to enhance the processing of common law

[52] S5 WorkCover Amendment Act 2001, No 67 of 2001.
[53] WorkCover Amendment Act 2001, Amendment Notes, p. 38.

claims, thus minimising the costs of such claims. Central to this mechanism was the establishment of a pre-proceedings claims process aimed at early resolution of claims. For example, the pre-proceedings process included provision for WorkCover to begin early negotiations with claimants to effect resolutions of claims for damages, prior to the commencement of court proceedings.[54] Terminally ill workers were afforded a right to by-pass even some of the pre-proceedings requirements to achieve a more speedy resolution to damages claims.[55] Again, the government's aim was to maintain employees' rights to common law while retaining some control through the minimisation of legal and court mechanisms. However, the amendment stopped short of reinstating full access to common law, and this failure remains an issue of discontent, particularly within the trade union movement.[56]

These changes arguably represented an even more rapid development of core principles of workers' compensation in Queensland than the original Ryan legislation. As with the progress of Ryan's legislation, they were aimed at inclusiveness of two groups - employees with the restoration and enhancement of many key provisions, and employers with decreased premiums. They represented recognition by the Beattie government that the key features of the original legislation were central to the success of the scheme and were best administered with the support of employers and employees. They also point to recognition that an enhanced level of control of the legislation by the government was necessary to avoid a repetition of the financial crisis of the early 1990s, precipitated largely by common law blow-outs and the influence of the law industry.

[54] S20 WorkCover Amendment Act 2001, No 67 of 2001.
[55] ibid. S19
[56] Interview with Grace Grace, President of Queensland Council of Unions, 24 May 2004.

Discussion

In exploring the question of the longevity of the Queensland workers' compensation legislation this chapter illustrates that the Beattie Labor government saw merit in restoring much of the legislation to more closely mirror the 1916 Ryan Act, and in so doing ensured further continuity for workers' compensation in its existing form in Queensland. In contrast to the previous eras examined, the pressures that confronted the Beattie government were mostly attributable to the amendment of the legislation by previous Labor and Conservative governments. In particular it was left to the Beattie government to address the adverse economic condition of the workers' compensation fund that had been incurred by the Bjelke-Petersen and Goss governments, as well as the shortcomings of the new legislation that had been introduced by the Borbidge government and was proving inadequate in relation to the needs of both employers and employees. However, in addressing these issues the Beattie government also had to uphold the reform processes that the Goss government had begun, albeit in a much more tempered manner.

In terms of social pressures the Beattie government faced a hostile trade union movement from the outset. By the time the Labor administration assumed government a broad level of hostility, that stemmed from the public sector and new economic management reforms introduced by the Goss government and continued by the Borbidge government, had manifested in sections of the trade union movement. Workers' compensation issues constituted part of a raft of industrial relations issues the Beattie government aimed to address as a means of appeasing trade union constituencies. From the outset the government demonstrated a willingness to adopt a more cooperative approach to workplace relations. For example, in 1999 it introduced

an industrial relations reform package that included increased powers of the Queensland Industrial Commission and enhanced trade union coverage.[57] In relation to workers' compensation there was considerable public trade union pressure to discard unsatisfactory aspects of the new legislation (such as restrictive definitions of *'worker'*, *'employer'* and *'injury'* and the inclusion of contributory negligence principles). While the government was quite willing to address these issues, in asserting its economic interests in the fund, however, the government refused to address other issues that were paramount for trade unions, namely the limited access to common law.[58]

Addressing the issue of constraints upon the definitions of *'worker' 'employer'* and *'injury'* was a vitally important component in the restoration of cooperation among key stakeholders and in minimising the expanded role of the law industry. The restrictions placed on these definitions were most unsatisfactory for both employers and employees, as the legislation granted benefits to PAYE workers only. Employees who were excluded from coverage exposed employers to a greater number of common law damages claims. *Firstly*, enhanced exposure of such a large number of employers and employees to common law remedies, and the inherently larger payouts that usually resulted from these types of claims, would increase the financial strain on the scheme just as it was recovering from pressures brought about in similar circumstances a few years earlier. The inclusion of more categories of employers and employees under the legislation would allow the government to more readily control funds through closer management of benefit levels and premium income. *Secondly*, leaving such large numbers of employers and employees with no avenue for redress

[57] Preston N., 2003, 'Peter Douglas Beattie… p. 405.
[58] Interview with Grace Grace, President Queensland Council of Unions, 24 May 2004.

other than the courts would again highlight the adversarial nature of the issue, and discontent would shift back to the industrial arena. It was better for the government to draw these groups back under the legislation and to attempt to restore a measure of cooperation.

For the most part, political pressures that were evident during this time impacted favourably on the legislation. *Firstly*, the election of a Labor government terminated any further amendments aimed at the abolition of state monopoly insurance. *Secondly*, the short period in Opposition between 1996 and 1998 had allowed the Labor Party to reassess its aggressive reform agenda and devise a program that would occasion less public hostility while simultaneously continuing to incorporate positive changes in Queensland government. In government, the Beattie administration proved vastly different to the Goss administration. It has been the Beattie government that has managed to rebuild public trust in Queensland government in the wake of both the Fitzgerald Inquiry and the overzealous economic rationalist Goss reforms. Much of this rebuilding of public trust has been due to the role adopted by Premier Beattie himself.

As Premier, Peter Beattie quickly developed a leadership style that met with general electorate approval. Williams says Beattie has "…adapted traditional populism to the demands of an increasingly cognizant and sophisticated electorate by combining proven populist elements with his own characteristic elements."[59] A significant feature of Beattie's style is his willingness to apologise and to reverse policy decisions.

[59] Williams P.D., 2001, *Metapopulism: Peter Beattie and the Reinvention of Queensland Populist Discourse,* Paper presented at Australian Political Studies Association Conference, Brisbane.

Williams argues that Beattie's penchant for policy 'back-flips' and apologies actually provide an avenue to more properly manage policy through the provision of increased opportunities to experiment with innovative public policy, as they provide a mechanism to repair any electoral damage and rebuild public faith in government that may be incurred through proposed policy change.[60] For workers' compensation policy, this translated into a willingness to address the extensive problems by reverting to previous mechanisms, even though these might be perceived as being incompatible with contemporary ideological ideals. For example there was a relatively swift return to broader definitions of *'worker'*, *'employer'* and '*injury'* similar to those was contained in the previous legislation. Journey claims were also reinstated and the avenues for self insurance were restricted in an effort to reassert the dominance of the state insurance.

From an ideological perspective the Beattie Labor government adopted a more tempered approach to issues such as privatisation and deregulation, having learnt from the demise of the Goss government that, as argued previously, had attempted to do too much too soon. The inclusion of self-insurance provisions in the Borbidge workers' compensation legislation had been the preliminary step towards the eventual privatisation of workers' compensation insurance in Queensland in line with that government's neo-conservative ideals. However, the continued support for the state monopoly scheme at least in the short term, particularly by employer groups who argued in favour of allowing the fund to stabilise before any further changes were made, was favoured by the Beattie government over and above ideological

[60] Williams P.D., 2004, *Mea Culpa and the Policy 'Backflip': Two Strategies in Peter Beattie's Arsenal of Crisis Management*, Paper presented at Australian Political Studies Association Conference, Adelaide.

relativities.[61] Once the state monopoly scheme was determined by the NCP Review as being in accord with competition guidelines, the Beattie government became more confident in further restricting access to self insurance and reasserting the centrality of the state scheme.

Economic pressures remained centred around the financial losses the Fund had incurred during the first half of the 1990s. These existing pressures were exacerbated by increased demands, particularly by trade unions for legislative amendments to broaden the definitions of *'worker'*, *'employer'* and *'injury'* that would again bring coverage for a larger numbers of workers, and subsequently increase the numbers of workers' compensation claims. To address this, the Beattie government sought to again maximise fund revenue through premium maximisation. Consequently, it introduced more restrictive avenues for self insurance, principally through the requirement that only employers with more than 2,000 full time employees could self insure, thus limiting the numbers of employers for whom this was an option. Although self insurance brought legitimate stakeholder recognition to the Insurance Council as the representative of self insurers' interests, its role was limited, and more importantly, private insurers remained excluded from the scheme.

The issue of the abolition of the state monopoly is not a threat as long as the Beattie government, or arguably any Labor government, remains in power. However, any return to policy directed by an exclusive policy community remains remote, as broader governance ideological principles are still centred in new institutionalist mechanisms. These mechanisms inhibit centralised management and control of government, and

[61] Dept of Employment, Training and Industrial Relations, 2000, *National Competition Policy Legislation Review.*..p. 31.

limit the ability of groups to exert undue influence through administrative level connections. So even though the Beattie government has been explicit in its attempts to gain the cooperation of the key stakeholders in workers' compensation for its amendments, and has sought to increase the benefits they receive from the scheme, the policy community has not been reformed.

Perhaps this has been a deliberate strategy because of the additional stakeholders now involved in workers' compensation, and the impact they might have on a policy community. For example, the increased role afforded the law industry was especially problematic as it could create what Rhodes[62] termed *"multiple centres"* of governance. In this scenario, more decisions relating to workers' compensation could be placed in the hands of lawyers and the judiciary rather than the government. It also accords with McConnell's[63] identification of power in the hands of private groups. He argued that when a private group, such as lawyers, is able to exert power over matters affecting the larger society, their incorporation into a policy network/community and the extent of their power over that network or community will be in direct correlation to their constituent organisation. Their power is likely to be substantial within a small policy area with few stakeholders.

This argument holds in respect of workers' compensation as the power of the law industry was significantly enhanced, firstly through deregulation, and then via restrictive definitional parameters set out in the Borbidge *WorkCover* legislation, as more categories of workers had no recourse to compensation other than through the common law. Re-regulation of the law industry was not possible. Therefore, just as

[62] Rhodes R.A.W., 1997, *Understanding Governance*…p. 109.
[63] McConnell G., 1996, *Private Power in American Democracy*, Vintage Books, p. 5.

the Ryan government in 1916 had used the legislation to foster cooperative relations between employees and employers to maximise the scheme's potential for success, so too the Beattie government needed to amend the legislation in a manner that would restore cooperative rather than adversarial relations among key stakeholders.

In all, any legislative amendments introduced by the Beattie government would have to take account of the interests of an expanded group of stakeholders, thus becoming according to Rhodes' model more of an issue network than a policy community. [64] Recognition of new stakeholders did not however necessarily mean accommodation of each of these groups' needs, as had occurred during the years of policy community cooperation. Instead, the exploration of legislative amendments contained in this chapter indicates that the Beattie government was determined to minimise these new stakeholders' interests in an effort to re-distribute power among the original three stakeholder groups.

In this way, the potential for multiple centres of governance over workers' compensation might be avoided and influence over policy direction limited as before. However, despite the Beattie Labor government's willingness to restore key principles from previous legislation, it has remained steadfast in its refusal to fully restore all aspects of that legislation, even with continued trade union pressure. In particular the legislation continues to provide only limited common law access rather than a return to full access. Negotiations, particularly in relation to workers' access to common law remain positioned in the public arena, further demonstrating the lack of restoration of the policy community.

[64] Rhodes R.A.W. 1997, *Understanding Governance.*..p. 44.

Conclusion

To some extent this chapter points to a rejuvenated Labor government willing to learn from the mistakes of its predecessors. After increased legislative complexities brought about by new public administration ideals such as the EARC Report and the Kennedy Inquiry, the National Competition Policy Review demonstrated to the Beattie administration the value of restoring cooperative relations among key stakeholders to secure the continued development of workers' compensation, and to ensure the Fund's economic recovery and long-term viability.

Many of the features the Beattie government set about repairing were akin to the notion of 'reinventing the wheel' as they had been the cornerstones to the success of the previous W*orkers' Compensation Acts.* Features, such as the definition of '*worker*', the abolition of contributory negligence principles and access to journey claims, were pivotal in T.J. Ryan's initial legislation and contributed to the long-term success of the scheme along with state monopoly insurance.

The Beattie government addressed the disintegration of the legislation and set about restoring the cooperation of the two key stakeholders in legislative development. This move would increase support for statutory mechanisms over recourse to common law and thereby minimise the role of the law industry. Just as first Insurance Commissioner Goodwyn had recognised the most efficient means of effecting limited desire for recourse to the common law was through adequate statutory benefits and amicable relations among stakeholders, so too the Beattie government sought the cooperation and support of these groups with their amendments. Enhanced recourse to

statutory mechanisms would facilitate enhanced economic control of the fund by government in the short-term. However, existing limitations such as the winding back of self insurance, and more specifically restricted access to common law, continue to prohibit any notion of a complete return to cooperative relations among stakeholders, and the issue of workers' compensation remains firmly within the industrial arena.

CHAPTER EIGHT

CONCLUSION

The *Workers' Compensation Act 1916* was introduced in somewhat controversial circumstances by the Ryan Labor government. Strong opposition from influential groups such as employers, insurance companies and lawyers drew a commitment from the Conservative parties to overturn the legislation at the first available opportunity. However, the legislation continued for eighty years and during that time underwent some 75 amendments. In other circumstances such continued legislative tinkering would at best change the face of the legislation completely or at worst render it completely ineffective. The Queensland *Workers' Compensation Act* is unique, as neither of these has eventuated. The key principles of the original legislation, compulsory state monopoly and no fault insurance scheme, have remained central features of the system as has access to common law, throughout most of the period.

While workers' compensation legislation reflected societal changes, it also helped articulate social justice principles in government policy through the recognition that workplace injuries and illnesses had moral value, in addition to economic value. The 1916 *Workers' Compensation Act* strongly reflected the Labor government's commitment to these values. Its introduction was buoyed by a wider shift towards social welfarism that developed around that time, and continued until the 1950s and 1960s. Public institutions also developed and expanded in line with this welfarist shift. By the 1970s however, social welfare ideologies had begun to give way to new liberalist ideals. A

central feature of this ideological shift was a propensity for government reform that accelerated during the 1990s. The workers' compensation scheme was able to adjust to a variety of pressures between 1916 and 2001, the end of the period studied. Why it was able to adjust and thrive in environments that caused workers' compensation schemes in other Australian states to collapse has been the central question of this thesis.

This thesis has explored the endurance of an initially contentious piece of legislation and the strong support it eventually garnered from former opponents. It has been posited that the longevity of the Queensland workers' compensation legislation is best explained through the development and operation of a policy community framework. Levels of cohesion within the policy community facilitated legislative development through a shared set of core values relative to broad policy preferences. These core values were compulsory monopoly, no fault insurance and full access to common law. This thesis has demonstrated quite clearly that a cooperative policy community was a key determinant in the continuity of the legislation over a long period of time.

As may be expected in a span of eighty years, pressures on the workers' compensation legislation were many and varied. Social pressures influenced the legislation both as an accompaniment to ideological pressures and in response to broader societal and industrial development that inevitably occurs over such a long period of time. Political pressures were inevitable and diverse during this time, although long periods of stable government were of paramount importance. Ideological shifts saw the legislation, which developed as a counter to laissez-faire principles, adapt through neo-classical and social welfarist

ideals to the new liberalist ideals of governance which still have currency. Economic pressures were considerable, as the legislation had to continually maintain relevance to stakeholders in terms of adequate benefits and premium levels, while simultaneously accommodating broader economic tensions such as the depression of the 1930s. Lastly, underpinning much of the development of the legislation have been administrative pressures that at times have facilitated innovation and dynamism in the workers' compensation scheme, and at other times, rendered it moribund and ineffectual.

In addressing the central question of why the Queensland workers' compensation model endured while others did not, two key features are pivotal:

(1) Development of a policy community: The thesis argues first and foremost that the power relations within a workers' compensation policy community were pivotal to the scheme's endurance. Cooperation within the policy community was fostered firstly because the initial legislation, as a compulsory state monopoly, included only three key stakeholders groups of employers, employees and government. The exclusion of private insurance companies brought an end to competition among stakeholders in respect of premium and benefit levels. It also eliminated the legal loopholes that private insurers had so vigorously employed in the past that had created antagonisms. In exploring the years 1916 to 1940, evidence showed that the government was mindful from the outset to accommodate the needs of each stakeholder as far as possible in administering the fund. Consequently, a policy community developed quickly as all

stakeholders drew benefits from the legislation, and, in return, became more supportive of it.

(2) Continuation of a small, cohesive policy community was instrumental in the endurance of the model in the face of social, political, ideological and economic pressures. As a second point the thesis demonstrates that once established, power relations between the key stakeholders remained embedded within a policy community throughout much of the period of the legislation. The number of participants remained limited to government, employers and employees. Others, namely the insurance industry and to a lesser extent the medical and legal fraternities, were actively excluded by government. In line with Rhodes' policy community typology there was consistency in membership, values and policy outcomes that persisted for at least 70 years. All participants shared broad policy preferences and ideology in relation to workers' compensation and there was a reasonably good level of communication between stakeholders, usually between government/employees and government/employers rather than employers and employees. Even during the 1970s and 1980s when the broader industrial relationship between the Bjelke-Petersen government and the trade union movement was at it lowest ebb, trade unions continued to maintain amicable policy community relations, believing it was better to maintain insider status than to be excluded from the policy arena. Stakeholder groups were hierarchical and leaders could ensure an acceptable level of member compliance. Within the

power relationships of the policy community all stakeholders were not always equal but each continued to view membership as a "…positive sum game."[1]

It must also be noted that, although Rhodes says the existence of a policy community as an ideal type is unlikely,[2] this thesis contends the unique set of circumstances created by the *Workers' Compensation Act 1916* justifies the application of this theory in an unmodified form. The thesis also demonstrates the accuracy of Rhodes' argument that ideal type policy communities are unlikely in modern governance because the extent of changes in government structures and mechanisms prohibit their continuation,[3] as privatisation and economic reform mechanisms introduced by the Goss and Borbidge governments, which increased the number of stakeholders and diminished the influence of the policy community, show. However, throughout much of the legislative history of workers' compensation in Queensland, machinations within the policy community contrived to ward off any threatened intrusion by outsiders, and enabled it to repel unwanted change.

In determining the influence of the policy community in the development of this legislation, three specific eras have been researched. During these eras social, political, ideological and economic conditions differ quite markedly. In the first and second eras evidence clearly shows high levels of co-operation between government, employer and employee stakeholders in the policy community. In addition, the evidence shows that the

[1] These features are taken from the characteristics of policy community as defined by Rhodes. See Rhodes RAW, 1997, *Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability*, Open University Press, p. 43.
[2] ibid p. 45.
[3] Rhodes RAW, 1997, *Understanding Governance.*..pp35-45.

key stakeholders together were unwilling to allow others access to policy development. Indeed, each stakeholder demonstrates a willingness to forgo certain demands at various times in order to maintain stable relations within the policy community. In the third era however, as well as changed political, economic and social conditions, the spectre of public sector reform impacted significantly on the legislation and the policy community. This occurred principally through new policy coordination and consultation practices that diminished the centrality of the policy community, and cast a wider net to include the influence of new stakeholders in the determination of workers' compensation policy.

Had government capitulated to free market ideological pressures that surrounded the legislation in the initial stages, relations among stakeholders may have developed quite differently with the entry of other stakeholders such as private insurance companies. Over time, power relations among stakeholders could have become more disproportionate and therefore more vulnerable to change mechanisms as had been the experience under previous legislation, the *Employers' Liability Act* 1886 and the *Workers' Compensation Act* of 1905.

Both these Acts clearly favoured employers through limited provision of circumstances and types of work that were eligible for compensation. Employers were required only to provide insurance, but no provisions were placed upon insurance companies. Employers paid premiums but little was provided in the form of compensation when claims were made on the policy. Many cases were contested in the courts upon technicalities, an expense neither employers nor employees could afford. When awards for compensation

were made, insurance companies simply raised premiums. Consequently, these practices facilitated on-going antagonisms among stakeholders. In place of this discord, the policy community provided a pivotal factor that enabled the principles of the 1916 legislation to withstand diverse pressures that inevitably surfaced, particularly during the latter half of the 20th century.

Until 1926 broader political pressures in the form of an antagonistic Legislative Council also influenced the government's agenda. During the initial years of Labor rule, the government was acutely aware of the need for incremental change as the most efficient means of gaining approval for continued amendments. With the abolition of the Legislative Council in 1926 the pace of amendments accelerated. The level of satisfaction among the government's working class electoral power base and communication within the policy community increased to such an extent that by 1930 workers' compensation issues had disappeared from the Labor Party platform altogether.

From this point, government priorities in relation to workers' compensation shifted from its initial expansionary goals towards amendments that were increasingly monetary-based. By 1957 when the Labor Party lost office, the policy community was the principal mechanism for legislative development. Weekly workers' compensation payments were among the highest in Australia and employer premiums were the lowest, yet the State basic wage was lower in Queensland than in any other State.[4]

[4] Murphy D.J., 1980, "State Enterprises" in *Labor in Power. The Labor Party and Governments in Queensland 1915-57*, Murphy D.J. Joyce R.B., and Hughes C.A., eds., University of Queensland Press, p. 266.

The ‘drawing-in’ of protagonists into a co-operative arrangement was a crucial factor that served to control future conflict over workers’ compensation. Although each stakeholder incurred disadvantage at various times, support for the continuity of the broad structural model brought security, particularly as systems in other States collapsed or created continual conflict. For example, during the 1970s employees’ demands to have asbestos-related illnesses included under the legislation were repeatedly ignored and claims for hearing-related illnesses remained limited. However, the trade union movement for the most part limited negotiations over these types of issues to within the policy community and no organised public campaign was mounted. This is particularly highlighted during the second era as government moved further to the right of the political spectrum under Premier Bjelke-Petersen.

By the 1970s, benefits began to considerably lag behind cost of living increases, and employees made wider use of common law avenues as an arguably more expeditious remedy than relying on protracted policy community machinations. Employers and government also faced pressures during this time. Employers were burdened with excessive premiums at a time when the overall fund was prosperous. Despite these difficulties, there was little public demonstration of discontent from within the policy community. The government was however forced to raise benefit levels from 80% to 100% of basic wages after building workers’ unions mounted a successful industrial court action. This response was a direct contravention of governments’, both Labor and Conservative, long-held belief that such an increase was not sound policy. However, it

was preferable to capitulate than expose the legislation to further court actions and thereby potentially jeopardise relations within the policy community in the long term.

During the second era issues such as the privatisation of Suncorp placed the workers' compensation scheme under considerable strain. However, the financial viability of the workers' compensation scheme and the support within the policy community for continued state monopoly, provided incentive for the government to maintain control of the scheme. The government also remained mindful that the scheme, in its existing form, was largely responsible for amicable relations between employers and employees on the issue of workers' compensation generally, and that it contributed in some measure to industrial peace over the matter. As other aspects of the employment relationship culminated in extensive unrest during the Bjelke-Petersen era, it was important for the continued viability of the scheme that cohesion within the policy community was retained. This, combined with the continued economic viability of the scheme was a useful mechanism that the government utilised to attract business to Queensland.

The ability to manage discontent without disturbing broader levels of cooperation was a major contributor to the preservation of the policy community, and added significantly to continued legislative development particularly during times when broader economic, political, social and ideological pressures made this difficult. The size of the policy community itself remained constant as the number of participants remained confined to government, employers and employees and it was able to repel others, particularly private insurers. All stakeholders continued to share broad policy preferences and ideologies, particularly in relation to state monopoly insurance. Although power relationships were

almost constantly in flux in the broader industrial arena throughout the second era, each stakeholder continued to maintain a belief that existing arrangements were the best option. In effect, each learned how to adapt and modify their needs within the policy community.

Although this mix of relationships when limited to government, employers and trade unions is more often identified as corporatist, such application, as argued in Chapter Two, is not applied here for three reasons. Firstly, the state does not play an autonomous role within the policy community as is usually identified within corporatism. Instead, the mechanism of monopoly insurance meant the state maintained a vested interest in legislative development. Secondly, institutionalisation of trade unions and employer associations ensues under corporatist structures, however broader relations among the stakeholders in Queensland have always remained independent, negating institutionalisation of the parties. Thirdly, the cooperative relationship over workers' compensation is not duplicated in other issues and, as an isolated example of such relations among the stakeholders, it does not provide sufficient evidence of a corporatist state.

In contrast to previous periods, the third era studied represents a period of profound change. Broader issues such as globalisation, neo-conservatism and issues of competition propelled the legislation into situations that pioneers Goodwyn and Fihelly could never have imagined as outside forces such as new public sector management ideologies impacted on the development of the legislation to change the policy environment within

which it operated. During this era the scheme was challenged by its largest financial deficit of $319M. Although the fund had faced deficits before, on this occasion it was confronted simultaneously with unprecedented levels of deregulation and privatisation of public institutions that were aimed at producing optimal economic efficiency.

After the electoral defeat of the Goss government, the relatively short reign of the conservative Borbidge government was significant in terms of workers' compensation. Anxious to avoid assuming responsibility for the financial problems of the fund, the government ordered a public inquiry that finally shattered the policy community as it brought more stakeholders into the fray, including ironically Suncorp in its role as an employer and private insurer. In line with the Kennedy Report that ensued from the inquiry, the Borbidge government abolished the existing Act and introduced a vastly different one in its place. The new WorkCover legislation maintained some elements of the superceded Act, such as state monopoly insurance for most employers. Other aspects of the new Act such as re-introduction of contributory negligence provisions, limited access to common law and abolition of journey claims, ignored policy community relations and returned the scheme to the arena of competition between employers and employees.

This third era stands in stark contrast to the previous two, with relations within the policy community being abandoned by government in responding to broader political pressures precipitated by their reform agendas. Previously shared policy values were rejected as part of government commitment to deregulatory, economic rationalist policies.

Inconsistencies in values and policy outcomes for each stakeholder emerged when both the Goss and Borbidge governments asserted unprecedented control over policy direction to meet political goals. For example, limits were placed on employees' access to common law for the first time, and in addition to incurring premium increases, employers' premiums no longer covered all injuries. Government commitment to broader consultative mechanisms also displaced existing policy community communication arrangements. Symptomatic of this breakdown of the policy community, discontent was articulated outside the policy community and industrial action over workers' compensation was raised for the first time in almost a century. The policy community had been a potent force in the survival of the legislation until the 1990s when the adoption of new governance ideals such as de-regulation and economic reform brought constraints on its exclusivity in policy development.

However, a sense of *déjà vu* is detected by the late 1990s when the Beattie Labor government was forced to restore many of the key features of the original 1916 legislation. Despite the regeneration of the key principles of Queensland workers' compensation legislation, policy community structures did not re-emerge to again direct policy, principally because broader governance ideological principles remain centred in new institutionalist mechanisms. These mechanisms inhibit centralised management and control of government, and limit the ability of groups to exert undue influence through administrative level connections. Despite this, the Beattie government has been explicit in its attempts to gain the cooperation of the key stakeholders in workers' compensation for its amendments, and has sought to enhance statutory mechanisms to improve support

for the scheme. However this thesis has argued that such a strategy does not translate into a revival of a policy community. By re-establishing the statutory mechanisms as the preferred compensation instrument, particularly among employees, the government sought to avoid a return to extensive use of common law and the economic repercussions this would have on the workers' compensation fund.

The efforts of the Beattie Labor government in reviving the key principles of the original legislation have allowed the Queensland workers' compensation scheme to survive into the 21st century. While somewhat different to the original 1916 legislation introduced by the Ryan Labor government, the legislation still has social justice as well as economic justice aspects. The absence of a cooperative policy community because of changes and developments in governance ideals is one key difference from the 1916 legislation. How, and if, the legislation will adapt to changing conditions without policy level stakeholder cooperation community remains to be seen. One pressure that will bear upon the legislation is the issue of privatisation. Full privatisation of the workers' scheme has been withdrawn from the political agenda for the time being. However, prevailing neo-liberalist ideologies among conservative political parties leads to speculation that a future change of government may well bring an end to a piece of socially innovative legislation that outlasted all others of its ilk.