



Queensland Treasury

Our Ref: 01804-2016

Mr Scott Stewart MP  
Chair  
Education, Tourism, Innovation and Small Business Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Stewart

#### National Injury Insurance Scheme (Qld) Bill 2016

I refer to your letter of 17 May 2016.

The committee has asked:

*Could you please advise whether a participant in the National Injury Insurance Scheme proposed by the Bill may seek a lump sum from the NIIS agency without reference to common law?*

The short answer is no.

As currently drafted a person can only pursue a lump sum where they have a claim against an insurer (see clause 40). The Bill defines a 'claim' to mean a motor vehicle accident claim under the *Motor Accident Insurance Act 1994* (see Schedule 1). The *Motor Accident Insurance Act 1994* relevantly defines a 'motor vehicle accident claim' to mean a claim for damages based on a liability for personal injury arising out of a motor vehicle accident (see section 4). In Queensland, such claims for damages continue to be based upon the common law, albeit with statutory limitations.

A common law right for damages arises where an injured person can assert fault against another party. Presently where a person is considered to have contributed to their injuries or accident a court may reduce their damages for contributory negligence. If this occurs, all heads of damages will be reduced accordingly. For example where a person is 50% contributorily negligent their total damages will be reduced by 50%.

Under the National Injury Insurance Bill (Queensland) 2016 damages for treatment, care and support are not reduced for contributory negligence (see clause 149).

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Under the Bill a person can issue a notice to the agency and insurer (see clause 41) where they are a lifetime participant and have a CTP claim (see clause 40). The effect of the notice is that the agency becomes a contributor to the claim (see clause 42). The agency's liability as a contributor will cease in certain circumstances, including the situation where the participant is guilty of contributory negligence of 25 per cent or more (see clause 42).

An alteration of the limitation in clause 42 for contributory negligence may lead to a greater number of persons asserting a claim at common law. As noted by the State Actuary at the public hearing on 12 May 2016 this may increase the costs to the National Injury Insurance Scheme.

If the agency ceases to be liable as a contributor, the participant is then unable to be awarded a lump sum for their treatment, care and support damages (see clauses 44 and 149). In this situation the participant will continue to receive their full treatment, care and support funded under the National Injury Insurance Scheme Queensland for their lifetime (as a continuing lifetime participant). The participant can still pursue damages for non-economic loss (pain and suffering) and economic loss. Those damages may, as outlined above, be reduced for the participant's contributory negligence.

Additionally, the Bill provides that the agency may enter into funding agreements with a participant enabling the participant to manage and fund their treatment, care and support needs (see clause 34).

I trust this information is of assistance to you.

Yours sincerely



Jim Murphy  
Under Treasurer

18/5/16