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Research Director

Education, Tourism, Innovation and Small Business Committee

Parliament House

By email: ETISBC@parliament.qld.gov.au

Inquiry into Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016

HIA appreciates the opportunity to be able to comment on the Bill. HIA has no comment to make about the National Injury Insurance Scheme aspects of the Bill. HIA's concerns with the Bill relate to the provisions which will void contractual indemnities provided between businesses about the liability for injury claims.

HIA notes that the Bill represents the Government's policy response to the 2014 Supreme Court decision of *Byrne v People Resourcing Qld Pty Ltd*, but considers that the voiding of contractual indemnities is neither the appropriate nor reasonable policy response to situations where more than one business entity has a level of responsibility over the occurrence of a workplace injury.

In this regard, the approach taken in the Bill ignores the fundamental principal behind workers compensation being a no fault insurance scheme, by laying part or all of the responsibility and cost of a workplace injury onto a business via a recovery action by the workers compensation insurer, typically against the business' public liability insurance.

These changes, if implemented, will particularly impact upon the construction sector and discriminate against non-employers' (principal contractors, host employers, etc.) liability for damages for personal injuries. This could particularly impact on the capacity of group apprenticeship schemes to attract hosts for their apprentices.

When this issue was considered by the previous Parliament's Finance and Administration Committee in 2013 the Committee concluded as follows:

Recommendation 32

The Committee recommends that the Attorney-General and Minister for Justice investigate the financial implications of the suggested alternative methods offered before addressing this anomaly.

To HIA's knowledge the investigation recommended by the Committee has not been undertaken. While there has been consultation over the NIIS aspects of the Bill there has not been a similar opportunity with the contractual indemnity provisions.

The alternative method proposed to the 2013 Committee was that where both businesses had a current workers compensation policy, those policies should respond where there is shared liability for an injury. HIA supports this as the appropriate policy response as it maintains the no fault basis of workers compensation. It would also greatly reduce the time and legal costs involved in resolving these claims.

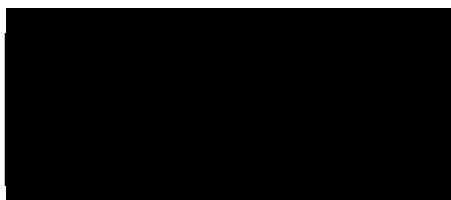
HIA also notes that the 2013 Committee received Departmental advice that moving to this preferred no fault approach would cost the workers compensation insurers an additional \$10-15 million in common law claim costs. The Committee noted that there was potential for these costs to be offset by an increase in workers compensation premiums. Surprisingly the estimate is now considered to be \$40 million. It seems highly unlikely that the potential cost of the alternative solution would have quadrupled in three years.

A further benefit from the recommended approach is that it would allow the workers compensation insurers to manage better joint responsibilities for return to work programs and allocate the experience component of premium increases more fairly. It would also better align the concept of shared obligations for the health of workers between the State's safety legislation and workers compensation scheme.

Against this background, HIA recommends that

- the proposed voiding of indemnities should only apply where the businesses partly or wholly responsible for an injury are not covered by a current workers compensation policy; and
- prior to any extension of the voiding of contractual indemnities to other circumstances where the businesses involved in a claim all have workers compensation insurance, that a thorough review of the costs and benefits and alternative approaches be undertaken.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED



Warwick Temby
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