

14th July 2016

**Submission to the Education, Tourism, Innovation and Small Business Committee
on the
Workers' Compensation and Rehabilitation (National Injury Insurance Scheme)
Amendment Bill 2016**

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

QTA Ltd is the pre-eminent Industry Association in Queensland whose membership is representative of all elements of the freight task, geographically throughout Queensland, and is recognised as such by the Queensland Government.

This submission on the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016* ("the Bill") is confined to the sections of the Bill that set out to reverse the decision in *Byrne v People Resourcing (Qld) Pty Ltd & Anor [2014] QSC 269* ("the Byrne decision"). The proposed amendments prohibit the contractual transfer of liability for injury costs from principal contractors or host employers to employers with a workers' compensation insurance policy.

QTA Ltd has had the benefit of previewing the submission of Master Builders Queensland and we fully endorse and rely on their view. We do not intend to repeat their comprehensive submission however shall remark on the implications of the amendment in the context of transport operations.

Similar to the construction industry, subcontracting arrangements in the transport industry are extremely common and part of the normal business practices. Not only do many transport businesses have contractual arrangements with all facets of the economy including the manufacturing, retail, mining and agriculture sectors but in many cases larger and medium transport companies subcontract on a regular basis to smaller and owner operator transport business. Often, transport business will have employees on a customer's premises to arrange the freight task exclusively for that customer.

Subcontracting is part of the nature of the transport industry and results in a complex system of contractual arrangements, risk allocations, insurances and indemnities between the different stakeholders involved in the freight task. The road transport industry is extremely competitive, commonly operating on low margins and commercial realities compel many operators to provide contractual indemnities in order to secure work.

Because the Worker's Compensation and Rehabilitation Act 2003 (Qld) 2003 does not cover common law injury claims brought by an employee against a customer or principal contractor, (although these entities have Workcover coverage for their own employees), they often rely on public liability insurance or indemnity clauses to cover the 'gap' created by the lack of Workcover coverage.

In our view the amendments do not resolve the underlying issue and are likely to exacerbate the complexity of navigating contractual liabilities. Customers and principal contractors will still utilise and rely on indemnity clauses and sub-contractors and employers will be unable to rely on Workcover for the contributory component of the common law claim assumed from the customer.

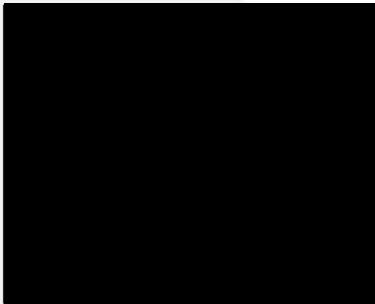
Presently, employers have a level of comfort that WorkCover Queensland, as its workers' compensation insurer, would cover not just for their liability to pay damages to the injured worker, but also for liability assumed to a Principal Contractor pursuant to contractual indemnities.

Public Liability policies available on the market generally exclude liability for claims by workers and contractual liability and employers who hold policies they believe are comprehensive with WorkCover Queensland may in practice encounter situations where they are uninsured.

QTA Ltd believes that the amendments are likely to have adverse outcomes for employers and injured employees by adding an extra complicating factor to the common law claims process, prolonging the ability for an injured worker to obtain compensation and risking the financial viability of businesses and accordingly the ability for the injured work to recover compensation from an uninsured employer.

QTA Ltd agrees with the proposition that the Committee recommend a thorough review process to find the most suitable and equitable solution for all parties concerned including extending Workcover coverage to principal contractors as was the case between 1990 and 1997 and providing a specific Workcover policy insurance product for Principal contractors. We look forward to working with any such review.

Yours Sincerely



Gary Mahon
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