

25<sup>th</sup> July 2012

The Research Director  
Finance & Administration Committee  
Parliament House  
George Street  
Brisbane QLD 4000



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**SUBMISSION FOR CONSIDERATION OF THE COMMITTEE OF INQUIRY INTO THE OPERATION OF QUEENSLAND'S  
WORKER'S COMPENSATION SCHEME**

Dear Sir,

I wish to submit the following information for consideration by the committee of inquiry into the operations of the Worker's Compensation Scheme in Queensland on behalf of [REDACTED], a privately owned Queensland Company based in [REDACTED] and employing some 300 people. I have been a Director of the Company now for just short of 20 years. I will document a précis of our history with the scheme, and some relevant data to show comparisons to ourselves, our Industry, and also our general insurance (non WorkCover) premiums. Much of this information has already been provided to the Member for Mirani, The Honourable Ted Malone MP, who was kind enough to arrange an audience for me with Attorney General The Honourable Jarrod Bleijei MP on 5<sup>th</sup> June 2012, in his Office at Parliament House in Brisbane. I also furnished much of this information at that meeting, although I suspect the most recent settlement for half a million dollars had not yet been settled.

I would like to commence by drawing the Committee's attention to the attached spreadsheet, **Appendix A**. This table shows a history of Common Law claims against our Company. We had never had a common law claim against us from our purchase of the company in 1993 until 2005. Since that date we have had a procession of Claims that seem to have similar credentials. Almost all claims are made by short tenure, unqualified people. Our local WorkCover representative, as well as [REDACTED] from the WorkCover office in Brisbane, agree that we do not provide an unsafe workplace, and that in many regards we are a model operation. Naturally this only infuriates me when I see that we are powerless to protect ourselves from what I believe are vexatious and frivolous claims that are publicly stimulated by the questionable advertising of law firms making their livings by sharing in the spoils of such claims. From this strong statement you will tell that I am upset by this practice of law firms, but as a businessman I am prepared for and capable of dealing with most things that a challenging business environment throws up, but it is hard to cope with things that are totally outside my control. I will step away from my personal opinion now and ask that you direct your attention to the tables below.

**Appendix A** shows you the actual claims that we have encountered that have gone to Common Law. Prior to the first settlement in 2009 our Common Law Claims history was zero! That alone should raise some curiosity? We either suddenly departed from very safe work practices or changed our working environment to cause this (neither of which is true.) We were certainly very naïve in the face of the first claim, and simply waited for

WorkCover to advise they had defeated the case. We thought in fact the claim was laughable, (but we no longer do.) In fact a Senior Manager witnessed the incident and was never even called on to describe to WorkCover what occurred. We advised WorkCover that we disagreed with their intended settlement as it was a frivolous claim in our opinion. We then discovered we had no say in settlement or otherwise, as Common Law was negotiated and settled by that department within WorkCover. I would make the observation now that effectively they are of the opinion (perhaps quite rightly) that they cannot win once a claim goes to Court, and therefore they need to settle for a lesser amount to save money. The principle of right or wrong seems to play little part. That claim received \$325,000, and then the list goes on until the most recent settlement for \$500,000 for a nail puncture into the palm. I will allow the committee to read the information rather than duplicate it, but suffice to say we now commit significantly greater resources into OH&S. I can in all honesty say that the workplace safety isn't the motivation as much as the protection of the Organisation, and I also believe that our workplace is not significantly safer now than it has ever been due to this increase in OH&S resource, but we certainly respond to incidents (no matter how minor) in a significant way. I am a firm believer that employers have a moral responsibility to provide a safe work place, and I also believe that we have excelled in that area, but our Common Law claim history would suggest otherwise.

From the information in Table 1 below you will see our Premium History. As you can see it has escalated markedly in recent years due to our claims history, and this has seen the premium rise from .77% to 2.58% of our wages. This is without factoring in the footnote explaining that our next year's premium is likely to rise by another \$100,000! This means that the WorkCover premium used to cost around \$498.79 per employee, but now costs \$1541.80 per employee. Add to this the hike in general insurance premiums over the same period (well documented in the news as outrageous as well as fuelled by massive natural disasters,) which has risen from \$133,789 to \$458,957. In fact as untenable as that increase is, the re-insurers have cited Tsunamis, Thai floods, Brisbane floods, etc. and their premium, (for a more significant range of cover for our Company) is virtually the same as the WorkCover increase!

**Table 1 - Premium History**

Year	Premiums Inc GST	% Increase	Wages	Prem % Wages	Profit BIT	Prem % Profit BIT	Staff No	Prem \$ Staff	General Insurance Premium
2011	\$436,329.76	104%	16,940,224	2.58%	6,794,908	6.42%	283	\$ 1,541.80	\$ 458,957.40
2010	\$214,300.91	41%	16,168,000	1.33%	5,592,532	3.83%	252	\$ 850.40	\$ 248,260.48
2009	\$152,017.29	55%	13,445,000	1.13%	4,930,932	3.08%	234	\$ 649.65	\$ 132,643.59
2008	\$97,976.63		12,721,000	0.77%	4,884,831	2.01%	209	\$ 468.79	\$ 133,789.26

NOTE: If we have common law claims of \$100K on top of the \$150K we had for 2007-2008 (which is the newest year that affects the calc) the premium would go up by around \$50K. If we had statutory claims (paying their wages while sick through Workcover) of an extra \$50K for 2011 it would increase the premium by another \$44K. Potentially we could have both and therefore the premium goes up by around \$97k. This of course, all with no change in current factors or estimated wages

**Table 2** below you will note the Industry Rate, which is our risk assessment as a business. In 2009 we had a Company rating of .63% versus an Industry rating of .73%. We now rate at 1.86% versus the Industry of 1.22%. So even if we have become a far more dangerous workplace to the multiple of 3 (which I strongly refute) our entire industry has become almost twice as dangerous? I am curious as to how and why the Motor Industry has suddenly become a far more dangerous place to work.

**Table 2 - Industry Rate**

	Our Rate	% Increase	Industry Rate	% Increase
2012	1.86%	35%	1.22%	25%
2011	1.38%	48%	0.97%	22%
2010	0.93%	49%	0.80%	9%
2009	0.63%		0.73%	

**Table 3 - General Insurance Coverage**

Type of Cover	Amount of Cover
Public & Products Liability	\$30,000,000
Motor Composite	\$400,000
ISR Property	\$28,000,000
Hail	\$8,000,000
Professional Indemnity	\$5,000,000
Management Liability	\$2,000,000

I trust that gives the Committee a quick snapshot of our situation. These Tables and the Appendix are really about financial comparisons and the impact on the Company financially. There is no need for me to repeat all of the figures, but simply to provide the explanatory notes that Table 1 is about WorkCover Premiums and how much they have increased, as well as what % of wages they represent. **Table 2** is about how much our rate has increased over and above a rapidly increasing Industry Rate. **Table 3** is about the amount of cover we get in our general insurance premium for a similar amount of money. The reason for this inclusion is twofold. One is that when you add General Insurance Premiums to the WorkCover premiums it is a crippling burden for business.

Secondly is that the impact on General Insurance Premiums and their breadth of cover are far greater than anything WorkCover has had to cope with, yet the increase is comparable.

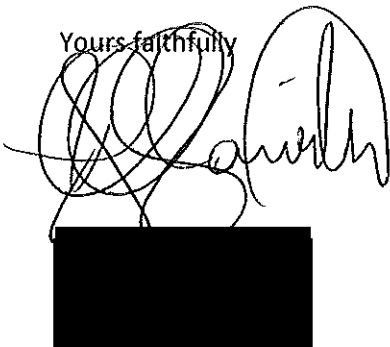
**Summary:** I note that the Committee has been charged to review the performance of the scheme, which I cannot comment on. I am concerned that it has been also requested to compare to similar schemes in other jurisdictions in Australia. If they are as dysfunctional as I believe ours is, or more so, that doesn't make ours better or worse and I therefore suspect it is irrelevant. We should be looking to develop a program that is world leading, even if that means scouring the world for best practice. I have heard horror stories about some of the other States systems, but that gives me little succour. I have covered the main issues with the current system below as I see them.

1. I believe the root of the problem with the Queensland system is based around the fact that anybody can be encouraged to go Common Law by the questionable tactics of some law firms.
2. I also have advice that claimants are schooled on what to say to Medical practitioners as well as any hearing into their claim.
3. I have a personal experience where a good employee who did not wish to claim without talking to me first was told by his Lawyers that he could not do that and even if successful the impact on the Company was \$950. He was awarded \$270,000 for falling off a collapsed chair.
4. The Medical profession is terrified of any litigation that they may attract so they are not prepared to send people back to work for fear of legal redress. In short if you ask for a medical certificate you will get one.
5. The ability to go Common Law so easily and with no risk is the core of the problem. I believe that WorkCover personnel in general, and I know the ones we have dealt with in particular, are very frustrated by the current system.

The solution therefore has to be in the Common Law side of the system, and legislation to stop frivolous claims. I cannot suggest how you achieve this while protecting the employee's rights, but somehow we need to find balance, and the current system certainly lacks that. I am available for any further discussion at this address or on email o [REDACTED] or on my mobile on [REDACTED] [REDACTED] h.

Thank you for allowing me the opportunity to submit, and I wish the Committee every success in finding a solution that is fair to all parties.

Yours faithfully



# APPENDIX A Common Law Claim History

Name	Position	Qualifications	Tenure	Accident Date	Injury Description	Actual Damages paid	Settlement Date	Claim Details	Extra Comments	Opinion
Employee 1		No formal	25/02/2005 to 27/11/2006 (6 months employed up to accident)	5/09/2005	Fell off side step of vehicle while washing the roof and sprained ankle	\$325,000.00	13/03/2009	Accepted a workcover redemption lump sum of \$9,987 for adjustment disorder and then he took out a common law claim as disability assessed at 25% incapacity. Employee is stating that due to accident he has developed an adjustment disorder, and unable to work . Hypersensitivity of his right ankle, unable to participate in social activities, sexual impotence and low libedo, difficulty sleeping, uncontrollable mood swings. Has also developed an alcohol and marijuana abuse disorder.	This incident was our first major claim ever, and we took it lightly as we thought it was incredulous. The incident was witnessed by a senior staff member, who was never interviewed by anybody at Work Cover or elsewhere in relation to the claim. This employee was also involved in a motorcycle accident before his work place accident where he had to be flown to hospital (which was reported to workcover).	We believe this claim was completely frivolous and were amazed at how it was handled and the payout. We fail to see the connection between his stated disabilities and the injury. We were led to believe this individual had tried this on with other employers, and when we told Work Cover we wanted to contest it we were advised that they had no intention of contesting it, just negotiating a settlement, and we had no say in proceedings.
Employee 2		No formal	21/02/2008 to 10/06/2008 (2 months employed up to accident)	15/04/2008	Lifting his own toolbox from back of his own vehicle and incurred right shoulder ligament damage. Though there was some suggestion that he may have incurred the injury from working on his own vehicle afterhours	\$190,000.00	9/11/2009	No initial offer made by workcover so common law claim was taken out. Donna and Chris attended the mediation meeting. Employee stating that constant pain has resulted in a short fuse and lack of decent sleep. Constant pain in right shoulder. Cannot make sudden movements with shoulder and uable to exert any force with that arm.	The comments say it all, but in essence Employee 2 hurt himself because he tried to lift the toolbox by himself. It was common practice that they always had someone else lift with them, but we couldn't show that policy in writing. There were other staff on site available to assist at the time. A forklift and operator were available at the time.	Nobody witnessed the incident and it was common practice to lift toolboxes with someone else.

APPENDIX A Common Law Claim History

Name	Position	Qualifications	Tenure	Accident Date	Injury Description	Actual Damages paid	Settlement Date	Claim Details	Extra Comments	Opinion
Employee 3		No formal	20/05/2008 to 10/10/2008 (2 months employed up to accident)	14/07/2008	Strained her right shoulder wiping down vehicles.Doing repetitious movement	\$115,000.00	11/09/2009	Turned down offer from workcover for \$5,461 and took out a common law claim. Employee states ongoing sholder pain, reduced strenght and a restricted range of movement	This incident occurred unwitnessed and I believe before anybody else was at work. Initially it was done dragging the hose out, then the story changed.The injury happened to coincide with us extending her probation and also coaching on her poor performance.	We are led to believe this was a netball injury with previous reconstructions on her shoulder. But it was unwitnessed and unreported, but we still were found liable.
Employee 4		No formal	19/09/2005	21/09/2009	Faulty chair collaped under him causing him to fall and injure his lower back	\$200,000.00	26/09/2011	Employee 4 turned down an offer of \$12,235 from workcover and took out a common law claim. Dane and Lynette attended the mediation meeting . The two third parties also had to pay a portion of the total claim. Employee stating pain in lower back all the time, cannot lift heavy objects. Unable to enjoy activities with his children including fishing, camping, bike riding. Depression, anxiety and unable to work as a panel beater if desired.	This was a legitmate incident that was witnessed, and third party suppliers were largely to blame. We accept some liability, but Employee 4 was not impacted on earning ability, and has since been promoted. Comment - Employee did hurt himself at work but to what extent is what is questionable.	Employee 4 has a history of back complaints and has virtually admitted that his back issues may have been aggravated by the fall, but not caused by it. He was a Panel Beater by trade before commencing in sales. In spite of third party suppliers showing fault we are still charged \$200k, in spite of Employee 4 being in a better paying job.

APPENDIX A Common Law Claim History

Name	Position	Qualifications	Tenure	Accident Date	Injury Description	Actual Damages paid	Settlement Date	Claim Details	Extra Comments	Opinion
Employee 5		No formal	4/10/2010 (3 months employed up to accident and still officially on the books	23/12/2010	Nail in the palm of his hand from breaking up pallets. He is stating that he is unable to use his entire arm anymore	Has recently been awarded \$500,000 as an out of court settlement by WorkCover.		Has so far accepted workcover offer of \$130,000 and is now going common law claiming for \$810,000. Incapacity assessed at 43% . Employee states he is unable to drive a vehicle, experiencing broken sleep, constant pain. He is less social and stays at home more. Unable to play with his children and take them fishing	Again we feel this claim is frivolous, and the puncture wound was superficial, but Doctors cannot measure pain so they are prepared to say it is debilitating. Employee 5 has never made contact with his employer since the accident or contacted them himself, the limited contact has been by his wife.	We couldn't get Employee 5 back on light duties, but were so convinced this was a false claim we hired a private investigator. Unfortunately he lives in an inaccessible residence, in another town (1.5hrs travel distance from Mackay) and they were therefore unable to see him from the road.
Employee 6		No formal	26/07/2010 (10 months employed up to accident and still officially on the books)	17/05/2011	Lower back strain from pulling a bull bar from back of vehicle. This is an aggravation of an existing injury as is has-been noted he played professional rugby in the past	June updated 2012:Work cover has closed the claim.		Turned down offer from workcover for \$13,652 however no common law claim application has been made yet for this injury however Workcover have indicated this is only a matter of time	Employee 6 was lifting a heavy item without assistance, even though another staff member was present at the time and had offered / was trying to assist. Employee 6 went ahead and tired to move it himself.	
Employee 7		No formal	20/01/2009 (2 years employed until date of original accident and still officially on the books)	19/09/2011	Original reported injury was January 2011 which was a bruised/sprained wrist from using a drill. September injury is an aggravation of the old injury.	June 2012 updated:Work cover has closed the claim.		This is another maybe, and workcover has closed the claim, without it progressing to a common law claim. Employee has now left our business. Suitable duties were available for Employee 7 but he had convinced the doctor to put him off work. After seeing multiple specialists with no real injury agreed upon, the claim was closed.	This workcover claim is stated as a right wrist sprain and they are treating it as a separate event from the January injury. However the January injury is mentioned in the Occ rehab report as stating that the second incident is an aggravation of the original injury.	