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Finance and
Administration Committee

CENTRAL QUEENSLAND LAW ASSOCIATION INC.

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17 August 2012

The Research Director
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sirs,

Re: Workers' Compensation Review

The Central Queensland Law Association (CQLA) wish to make submissions to the review of the Queensland WorkCover Scheme by the Parliamentary Finance and Administration Committee, which was announced by the Attorney-General on 7 June 2012.

The CQLA represent over 100 practitioners within areas comprising Rockhampton, Yeppoon, Gladstone and Emerald.

The CQLA support the maintenance of the current workers' compensation system structure in Queensland. That is:

1. A "short tail" statutory scheme which limits the period over which weekly benefits and medical expenses are paid; and
2. Access to common law damages.

The CQLA submits that:

1. The Scheme is self-funded. Following the effects of the Global Financial Crisis, WorkCover Queensland suffered an operating result of (\$259m) for 2009 – 2010. However, the operating result for 2010 – 2011 was (\$41m) indicating that the current scheme is working.
2. Contextually, there are very few claims. Information from the Queensland Law Society indicates that of 2.3 million Queensland workers in the Workers' Compensation Scheme, around 4.6% make statutory claims and 0.19% make common law claims.

3. It is submitted that due to the ability to access common law damages, the disputation rate under the statutory scheme is significantly lower than other states and disputes are resolved more quickly. This is supported by the 2009/10 Safe Work Australia Comparative Performance Monitoring report which indicates that 81.6% of disputes were resolved within three months compared to 10% in Comcare, 45.3% in New South Wales and 47.8% in Victoria. This reduces costs to both the scheme and claimants.
4. Recent amendments to the *Workers' Compensation and Rehabilitation Act 2003* affecting claims for damages for injuries sustained after 1 July 2010 have further stabilised the scheme and reduced costs. This is supported by figures contained within the Q-Comp Queensland workers' compensation scheme monitoring (May 2012) which indicate that:
 - a) Numbers of claims are down (9.6% in 2010 – 2011 and forecast for a further 2.5% down in 2011 – 2012);
 - b) Average costs of common law claims are down 1.4% in 2010 – 2011 and forecast 6.3% in 2011 – 2012;
 - c) When specifically comparing pre and post 2010 reforms, average total damages are down by 30% for post reform claims.
5. It is the anecdotal observation of Central Queensland practitioners that a "short tail" system encourages a return to work. This is highlighted by the recent statistics of a 98.6% return to work rate in Queensland (Q-Comp Queensland workers' compensation scheme monitoring May 2012).
6. The current WorkCover premium (\$1.45 per \$100 of wages) is below the average premium rate of the last 16 years (\$1.48) and the median premium rate of the last 15 years (\$1.55). It is the same rate today as it was in 2005/2006. It is the second lowest rate in the country.

It should be noted that the state with the highest rate of employer premiums is South Australia, which is more than double the rate paid in Queensland. South Australia operates with a system that has no access to common law damages and has a "long tail" scheme of benefits.
7. The CQLA submits that "long tail" schemes historically have created the greatest risk of significant financial pressure. The New South Wales scheme is \$4 billion in debt. The South Australian Scheme, which operates with a "long tail" system and no access to common law damages, has approximately \$900m in unfunded liabilities. The scheme in New Zealand also operates with a "long tail" system and no access to common law damages. In 2009, it had unfunded liabilities of \$24b.
8. It is the submission of the CQLA that any proposal to restrict access to common law damages is fundamentally unfair. Such an approach will discriminate against injured workers. Central Queensland practitioners have acted for many workers who have suffered injuries with minimal impairment under the American Medical Association (AMA) Guides.

As noted in 1.2 of the Guides (5th Edition), impairment is "a loss, loss of use, or derangement of any body part, organ system, or organ function". Impairment is the "focus of the guides". The Guides do not assess *disability*.

It is submitted that any approach which seeks to limit access to common law damages with reference to the AMA, or any relevant medical guides, is inherently unfair. Medical guides, and the assessment of impairment, are not an accurate reflection of the degree to which an injury can cause loss of a workers' capacity to meet personal or employment demands.

The CQLA supports the maintenance of the current workers' compensation system in Queensland.

Particularly, the CQLA submits that common law rights are a fundamental strength of the Queensland system and therefore should be retained without impairment thresholds.

We welcome the opportunity to discuss the matter further or to provide further submissions.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Gino Andrieri', with a long horizontal line extending to the right.

Gino Andrieri
President
CENTRAL QUEENSLAND LAW ASSOCIATION