

30<sup>th</sup> August 2012

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Finance and Administration Committee  
Parliament House  
George St Brisbane

**OUR REF:** RR17280**Via Email:** [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

**SUBJECT:** Submission to the Finance and Administration Committee on the Inquiry into the operation of Queensland's workers' compensation scheme.

Rosenlund Contractors wishes to make a submission for your consideration into the operation of the Worker's Compensation Scheme in Queensland. Rosenlund Contractors is a privately owned company, operating since 1963 employing approximately 50 staff in the civil construction and demolition industry.

*1 - Is performance of the scheme in meeting its objectives under section 5 of the Act;*

Rosenlund is of the opinion that the current Queensland workers' compensation scheme meets most of the objectives under section 5 of the Act, however there is a particular need for consideration to be given to Section 5.4(c) covering "employers' liability for compensation". While this broadly covers most circumstances where an employer may be liable for compensation, there must be consideration given to circumstances where a host employer engages labour hire. Currently there is no "Employer's liability for compensation" when an host employer engages a labour hire worker as under Section 30.2, "the agency or organisation continues to be the worker's employer while the worker does the work for the other person", this leaves the host employer liable for common law damages from the worker.

This enables the injured worker to seek common law compensation from the host employer as well as WorkCover from their employer. It is our experience that all injured workers seek this secondary compensation.

*2 - How does the Queensland workers' compensation scheme compares to the scheme arrangements in other Australian jurisdictions;*

Rosenlund Contractors is not in a position to comment on the comparison of other worker's compensation schemes' outside of Queensland.

*3 - WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth;*

Rosenlund Contractors commends WorkCover for its current strong financial position; however it is penitent for future that issues are addressed that will adversely affect the financial position of WorkCover. WorkCover Queensland having one of the lowest insurance premium rates in the country puts Queensland in a position of strong competitiveness against other states in the country.



To ensure Queensland keeps its strong position, Rosenlund supports a change in the definition of an injury from being "a significant contributing factor" to better reflect the workplace being the *major* contributing factor to an injury before becoming liable for workers compensation. The changes to the definition of an injury should also take into account situations where a worker exaggerates injuries to increase the perceived damages and time taken to assess the damages. Such an example can be seen below;

*Worker A was a worker on a construction site, he was operating heavy equipment and whilst operating the equipment was bitten by a 'spider'. The worker was taken to hospital; anti-venom was administered as per what the worker thought bit him. Despite there being no records of any cases world wide of their being any such medical conditions reported, the worker went onto claim for damages such as Chronic conjunctivitis, ongoing Groin and thigh pain, Depression and anxiety to name a few. As the employer we were able to obtain reports from experts in the field regarding if there is a causal link between the 'spider bite' and the reported medical conditions, and based on the provided information our expert could find no evidence to find any link between the two in hundreds of reported cases. Despite this WorkCover Queensland proceeded to pay statutory damages to the worker for all of the medical conditions.*

*Time taken to assess damages: 453 days*

*4 - Have the reforms implemented in 2010 addressed the growth in common law claims and claims cost that was evidenced in the scheme from 2007-08;*

Since the reforms in 2010 we have seen a growth in common law claims and costs to defend such claims. The construction industry has undergone a fundamental change in how it manages its workforce with more and more industries utilising the services of Labour Hire. Whilst WorkCover still covers the employees and their direct employer (Section 30.2), it does nothing to cover the host employer for injuries the worker may sustain while under direct supervision of the host employer. This has resulted in situations where a labour hire employee is injured onsite, and is able to instigate common law proceedings against the host employer for many hundreds of thousands of dollars even after they have accepted a statutory payout from Work Cover for the injury.

With WorkCover's position of quickly negotiating out of court settlements with workers and their direct employers, it leaves the host employer in a precarious situation where a claim has been accepted and which we have no control over. This in turn leads to common law proceedings under the Personal Injuries Proceedings Act (PIPA). Currently we insure against this risk with Public liability insurance, however this type of insurance was not designed for defending against such a volume of claims and we are finding that premiums are rapidly increasing. What we are finding is that most common law claims are being procured from the 'no win no fee' solicitors, who are very quick to ask for your public liability's solicitors details in order to run up fee's in order to effect a quick payout, with the employer out their excess.

Rosenlund is of the opinion that the reforms of 2010 have done little to address the growth in common law claims in the Construction industry.

5 – Whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment

As an employer who is not able to meet the requirements to self-insure in Queensland, Rosenlund is not in a position to comment on the self-insurance arrangements in Queensland.

#### Recommendations

1. The definition of 'worker' is extended in certain circumstances where a labour hire employee is under the direct supervision of the employer. Or alternatively indemnification of the host employer in circumstances where the workers are under direct supervision of the host employer.
2. Rosenlund Contractors supports the current workers' compensation arrangements and will not support any moves to bring them into alignment with other states.
3. Rosenlund Contractors believes that access to common law damages is a huge burden on the current scheme and recommends that whole person impairment (WPI) threshold of 15% be introduced to common law claims.
4. The definition of an 'injury' should be changed to reflect the workplace being a major and contributing factor to an injury before becoming liable for Workers Compensation.
5. Rosenlund Contractors supports changes to impose cost orders upon plaintiffs who lose cases against WorkCover Queensland.
6. Further restrict and enforce provisions around the advertising of 'no win no fee' compensation claims.

Yours faithfully

**ROSENLUND CONTRACTORS**



**RYAN ROSENLUND**