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Finance and
Administration Committee

Submission to the
Queensland
Government
Finance and
Administration
Committee into the
Operation of
Queensland's
Workers'
Compensation
Scheme

**SCIACCAs**

Lawyers and Consultants

August 2012

Introduction

Sciaccas Lawyers and Consultants (Sciaccas) provides this comprehensive submission in response to the Queensland Government's inquiry into the operation of the State's Workers Compensation Scheme (the Scheme).

Sciaccas is a Brisbane based mid-tier legal practice operating throughout Queensland and with offices in Brisbane and Gladstone. Our firm, founded by the Hon Con Sciacca AO in 1970 employs some 60 professionals and support staff.

Our firm's submission addresses the relevant terms of reference as outlined in the Queensland Government's Finance and Administration Committee's call for submissions and the motion moved on 7 June 2012 by Mr Ray Stevens, Manager of Government Business in the Queensland Parliament, namely:

- (i) The performance of the Scheme in meeting its objectives under section 5 of the Act.
- (ii) How the Queensland workers' compensation Scheme compares to the Scheme arrangements in other Australian jurisdictions.
- (iii) WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth.
- (iv) Whether the reforms implemented in 2010 have addressed the growth in common law claims and claims cost that was evidenced in the Scheme from 2007-08.
- (v) Whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment.

The above parameters are addressed in terms of the substantive issues they raise and in the context of their impact on injured workers, the legal services industry and the Scheme's performance.

Overview

Queensland's workers compensation scheme has, over a number of years and in comparison with its counterpart schemes in other states proved beyond dispute that it has remained sustainable and well managed; fair to both workers and employees and able, via its processes, to promote safer workplaces and increase early return to work rates for injured workers. The two branches of the Scheme that have ensured this continues optimum performance are:

- A '**short-tail**' statutory Scheme, limiting the period over which weekly benefits and expenses can be claimed, thereby encouraging return to work; or
- Access to **common law** proceedings, although limited practically and financially by significant restrictions on damages, onerous requirements in proving liability and non-recovery of legal costs.

Further, Queensland's Scheme enjoys the second lowest level of employer premiums whilst retaining the most appropriate levels of benefits and options in terms of proceedings, leading to Australia's highest return to work rates and arguably, the lowest dispute levels.

Financially, Queensland's Scheme is in the invidious position whereby, in spite of a severe economic downturn in the form of a Global Financial Crisis (GFC) between 2008 and 2010 the fund today remains self-funded at a ratio of 117% and significantly, without any unfunded liabilities. When compared to other states, this situation is highly commendable and a credit to the prudent financial management of the Scheme.

Conversely, schemes such as NSW's WorkCover are floundering under the burden of \$4 billion in unfunded liabilities, low funding ratios, high employer premiums and low benefits for injured workers.

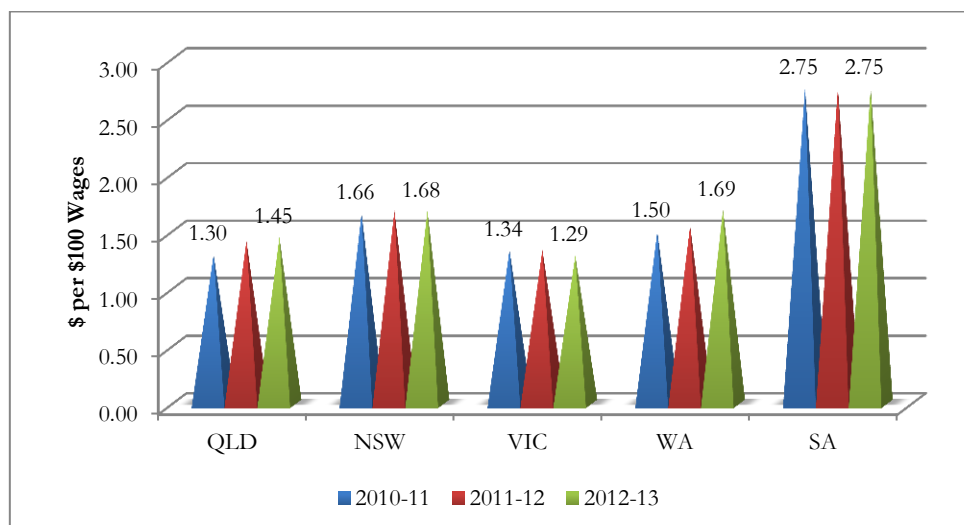
Our firm strongly argues the case that Queensland's workers compensation scheme has performed admirably and is in a state of continued improvement, leading to the conclusion that whilst minor changes and improvements are always welcome, the substantive structure of the Scheme **must** be kept intact.

Comparative Workers Compensation Schemes

Sciaccas contends that the Queensland workers compensation scheme is the most successful of all peer schemes operated across Australia. Our comparison is based on the following factors:

- Low employer premiums
- Funding ratios and recent financial position
- Benefit structure for injured workers
- Return to work rates
- Dispute rates

Figure 1: Comparison of Workers' Compensation Premiums 2010/11 to 2012/13



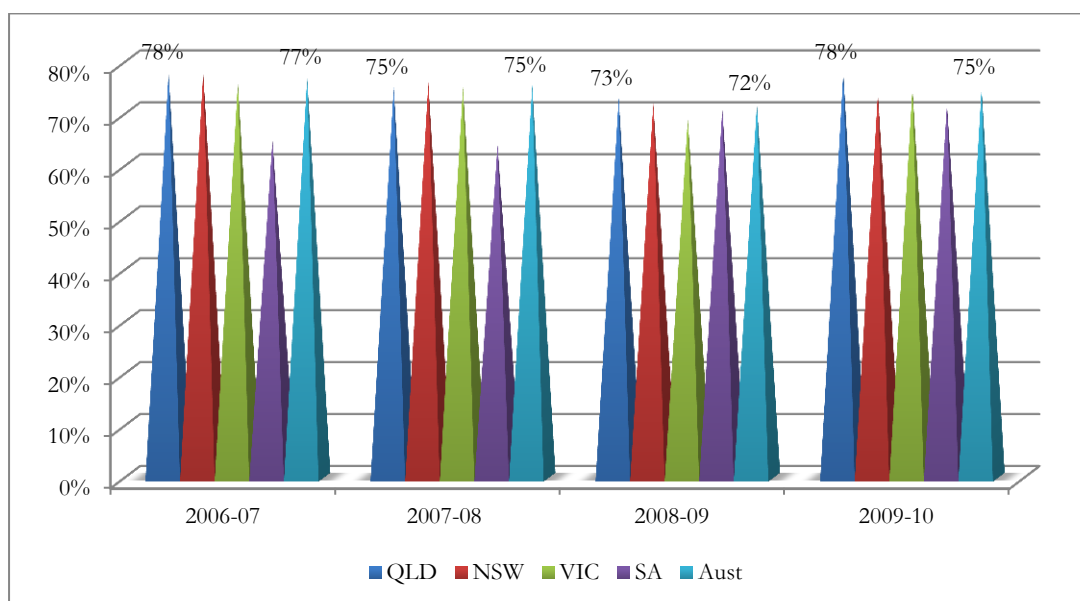
Queensland's scheme has enjoyed Australia's second lowest employer premiums over the last 15 years, second only to Victoria but without that state's large losses and whilst retaining a funding ratio of 117% against Victoria's 97%

Figure 2: Funding Ratios, recent Financial Position and Injured Worker Benefit Structure

Jurisdiction & Fund Type	Funding Ratio	Common law	Recent Financial Position	Benefits Structure
QLD (Central)	117 % (30 June 2012)	Yes	\$160M profit (as at 30 June 2012) NO unfunded liabilities	Short-tail, statutory benefits cease upon medical stabilisation
NSW (Hybrid)	78% (31 Dec 2011)	Limited	\$4.083Billion unfunded liability(as at 31 December 2011)	5 yrs if WPI < 20% retirement age if WPI >20%
VIC (Hybrid)	97% (31 Dec 2011)	Limited	\$641M loss (6 months to December 2011)	Long-tail
SA (Hybrid)	61.6% (31 Dec 2011)	No	\$30M profit \$952M unfunded liabilities(as at 30 June 2011)	Long-tail
WA (Private)	n/a	Limited	N/A	Long-tail

Again, as indicated by the above graph, Queensland's scheme provides for the most comprehensive amount of benefits for injured workers, whilst remaining fully funded and retaining an enviable financial position with **NO** unfunded liabilities burdening the government's fiscal position.

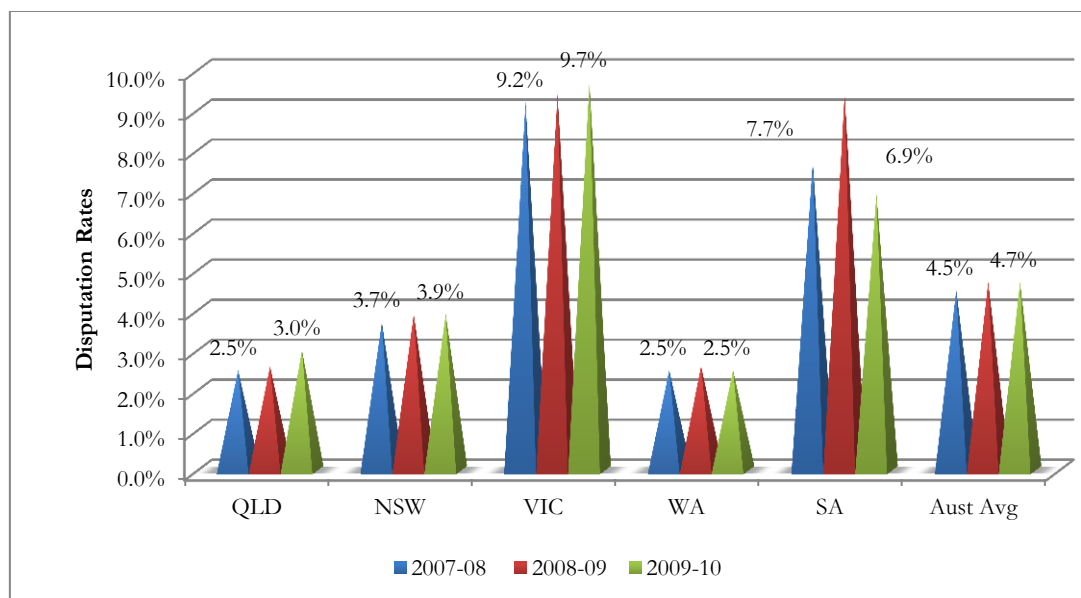
Figure 3: Durable Return to Work Rates



Queensland's comparative returns to work rates have exceeded those of other major jurisdictions in recent years.

The significance of this commendable performance is a reduction of costs to both government and industry via the Scheme's short-tail compensation payments and consequent increases in productivity.

Figure 4: Disputation Rates



Queensland's Scheme enjoys the second lowest disputation rates in Australia and is significantly below the Australian average.

Low disputation rates provide substantial benefits to government in terms of lower costs and faster return to work rates for injured workers.

Sciaccas argues that any eventual imposition of Whole Person Impairment (WPI) thresholds – including even a 0% threshold – is likely to reverse this position and result in significantly higher levels of appeals and referrals to the medical Assessment Tribunal (MAT) and other forms of judicial and/or medical review.

WorkCover's Financial Performance

Examination of recent annual reports, indicate that WorkCover's financial status and performance are extremely sound, especially when compared to the performance of peer schemes in other states.

Significantly, WorkCover has been able to rapidly recover from the GFC and its related investment funds' poor returns during the 2008 – 2010 period.

As outlined in the earlier graph (figure #2), WorkCover's financial health for the 2011/2012 year evidenced by:

- \$160M surplus
- Investment yield performance of \$316M
- Positive equity position of \$520M
- 117% funding of liabilities
- Reduced common law claims and reduced overall number of claims leading to a reduction of capital requirement from \$238M to \$50M

Given the above indicators and the sound financial performance of the Scheme, Sciaccas firmly argues that WorkCover's position will continue to improve and this improvement ought not be potentially jeopardised by initiating dramatic and unnecessary reforms.

Further, the economic and operational indicators below provide additional evidence to substantiate our submission that the policies implemented following the 2010 review will continue to yield substantial benefits going forward; these indicators include:

- Injury rates in Queensland are decreasing;
- Return to work rates are increasing;
- Number of common law claims are decreasing, in part due to the changes in 2010;
- Average cost of common law claims is decreasing due to the changes in 2010;
- WorkCover has successfully altered its claims handling procedures and focuses more heavily on early intervention;
- Actuarial conservatism will decrease as the period of uncertainty following the 2010 reforms passes; underlying assumptions are revised and claims provisions reduce.

Sciaccas held in high regard the members of the previous WorkCover Board and equally, holds in high regard the recently appointed Board members and re-appointed CEO. Our firm strongly believes that their expertise and judgment will allow them to steer WorkCover towards continuing prosperity and financial success.

WorkCover's Financial Performance Post 2010 Review

The Queensland Government conducted a review of the workers compensation scheme in 2010 following a period of declining financial performance of the Scheme, largely as a result of falling investment returns due to the then prevalent global economic conditions.

The graphs below illustrated the above points:

Figure 5: WorkCover Investment Yield Performance (\$billion)

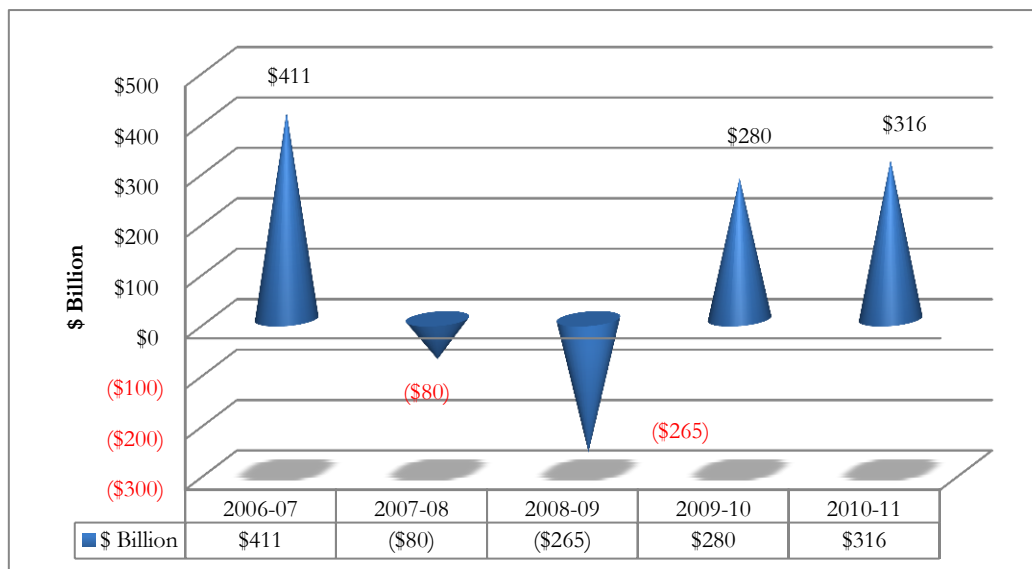
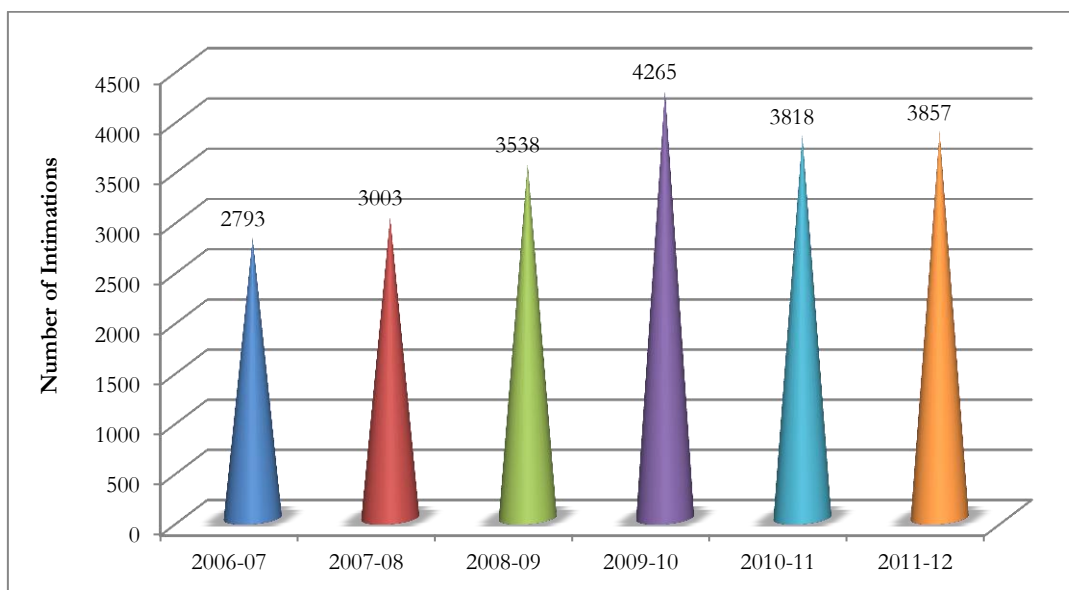


Figure 6: WorkCover Number of Common Law Claims



The conduct of the Government's 2010 review of the Scheme resulted in a number of substantial and deserved changes to the systems, which have now begun to positively influence the performance of the Scheme. The changes effectively:

- Deter workers from initiating highly speculative claims (claimants may be required to pay costs in the event of losing the case),

- Result in the reduction of size of claims (due to the operation of WorkCover which now falls under the *Civil Liability Act*).
- Reduce substantially the amount which can be claimed for pain and suffering and often significant care related costs.

Our firm strongly believes that the above changes will continue to provide positive flow-on effects to the overall scheme, thereby negating any suggestion that the Scheme's two tiered structure requires any structural changes.

Additionally, it is relevant to note that traditional actuarial data does not reflect the full extent of any improvements following legislative changes for periods of up to two to three years.

Consequences of Restricting Common Law

Sciaccas submits that the Scheme's operation post the 2010 review has improved significantly; **however**, we equally argue that any improvement to the Scheme – both past and future – will be severely curtailed if structural changes to the system are considered as a result of the current inquiry, including and particularly, the effective removal of common law rights for injured workers via the introduction of restrictive mechanisms such as impairment thresholds.

Our firm contends that the imposition of even a technical 0% threshold would severely limit the rights of Queensland's injured workers.

The imposition of Whole of Person Impairment (WPI) Thresholds would be a high-risk approach for the Queensland Government because:

- There is substantive evidence indicating increased costs and frustration for employers and employees.

The NSW system is a prime example whereby the limiting of common law rights and introduction of thresholds has arguably contributed to both increases in employer premiums (see figures #1 and 2) and a financial disaster for the scheme whereby unfunded liabilities are currently in the order of \$4 billion.

- The introduction of thresholds inevitably leads to very high rates of impairment assessments stemming from disputation in jurisdictions such as the Medical Assessment Tribunal (MAT) in order to gain access to common law, thereby increasing financial pressures in already stretched administrative tribunals and, contributing to consequential higher costs for employers, workers and the Scheme.

- The introduction of thresholds increases the insidious practice of 'bracket creep', whereby injured workers will seek to inflate the gravity of their injuries to ensure that their claim will 'make the cut'. This practice would doubtlessly increase and, consequentially will have a severe impact on the number and size of claims being assessed by WorkCover.
- Restricting access to common law will require fundamental legislative changes in favour of an extended statutory scheme, leading to the likelihood that injured workers will continue to benefit from 'pension-like payments' for longer periods, viz, the Queensland Scheme would develop into an inefficient 'long tail' system akin to South Australia, Victoria and Western Australia, along with their inherent problems.
- Restricting common law access or imposing thresholds to one class of injured people would create severe social and justice inequalities with other classes of injured people such as motorists and others injured under public liability schemes, where unfettered access to common law will continue to exist.
- Impairment assessments within the context of imposed thresholds are an **extremely inaccurate** guide as to the true, subjective nature of a worker's injury and the impact this will have on their ability to continue working or working in their chosen field or, in the area of enterprise that caters for their, very often narrow skills set.

In many cases, an injury that does not meet imposed thresholds, may in fact be critical to a worker's ability to carry out their duties. Necessarily this situation will lead to longer lead-times before the worker is able to return to full productivity without the financial, medical and rehabilitative support afforded by common law settlements.

Recommendations

Sciaccas Lawyers and Consultants respectfully recommend that the Committee effect **NO** changes to the Queensland Workers Compensation Scheme for the following reasons:

- The newly appointed WorkCover Board is eminently qualified and experienced and will be able to expertly direct the operation and performance of the Scheme.
- The significant changes and improvements to the Scheme that resulted from the Queensland Government's review in 2010 are still progressing through the system and already, in a short period of time have yielded very positive results and will continue to do so in the foreseeable future.

- Queensland's economic conditions have greatly improved since the depth of the GFC in 2008/2009 and the financial position of the Scheme has benefited exponentially from improved fundamentals and will continue to do so as economic indicators improve.
- The imposition of restrictive mechanisms to common law proceedings, such as imposed thresholds and similar instruments will lead to a number of economic and social reactions that will subvert the good progress and achievement, both financial and social of the current Scheme.
- Given the 'health' of the Queensland's Scheme, which is arguably a model for other states to follow, it would appear puzzling why **any** change would be considered; effectively and colloquially, what would be the purpose of 'fixing something that is not broken'.

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