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

The Research Director
Finance & Administration Committee
Parliament House, George House
BRISBANE QLD 4000

Dear Sir/Madam

RE: WORKERS' COMPENSATION REVIEW

Does the current scheme meets its objectives pursuant to Section 5 of the *Workers' Compensation and Rehabilitation Act 2003*?

We make the following comments:-

- We believe the WorkCover Queensland scheme is achieving a balance between workers and employers better than any other scheme in this country.
- In relation to a recent dependency claim our firm dealt with, WorkCover Queensland acted promptly and reasonably to enable the family to make decisions about their futures.
- In the overwhelming majority of cases we find that WorkCover Queensland, if properly advised, acts fairly in relation to injured workers who have made common law claims. Failure to personally attend compulsory conferences in regional areas is disadvantaging regional workers as a claimant cannot be judged accurately purely based on documents. We submit that if claim managers were authorised to travel to regional areas claims could be resolved at an earlier stage.
- It is our observation that employers, if they desire, are involved with the common law claims and have sufficient input into the claim process. We feel that the employer's interests during the claim process must also be balanced against the animosity and ill feeling often directed at injured workers by employers.

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- It is our experience that almost all of our clients want to return to work following an injury and the short tail nature of the WorkCover Queensland encourages workers to return to work at an early stage. We are pleased to note Q-Comp return to work assist and WorkCover Queensland's common law return to work assistance program have been implemented however we have not observed the schemes to be terribly effective in regional areas at this stage. We consider that there is room for improvement in this area.

- Almost without exception our clients are concerned about making a common law claim and the stigma associated with a common law claim and whether it will impede them from retaining their existing job or obtaining jobs in future. Even without changes to the existing legislation the thought of being prejudiced in employment is sufficient deterrent for many people against making a common law claim.

- We have limited experience regarding flexible insurance arrangements for industry however feel that employers must face some consequences if a worker is injured and the employer has inadequate safety measures in place. Limited workplace health and safety investigations and fines provide little deterrent to employers to ensure a safe workplace and we find that the threat of a common law claim does provide incentive for employers to provide safe workplaces.

- The existing disincentives to those with minor injuries or to those workers with flimsy negligence claims such as no legal costs, the introduction of injury scale valves and the existing restriction of being unable to claim for domestic assistance are already weeding out the unmeritorious claims. The increase in the statutory offers has also encouraged some workers to accept an offer rather than to proceed with a common law claim.

- In the last twelve months we have noticed a decrease in consultations with injured workers at our firm which we believe is a result of the restrictions introduced to the *Workers' Compensation and Rehabilitation Act 2003* in 2010.

Whether the reforms implemented in 2010 have addressed growth in common law claims and claims cost that was evidenced in the scheme from 2007-8

In our opinion the changes to the *Workers' Compensation & Rehabilitation Act 2003* in 2010 has had the desired effect of reducing the numbers of common law claims brought by injured workers. As a firm representing the interests of injured workers, the practical implication of the changes has been as follows:-

1. Prior to the 2010 amendments the claimed general damages were significantly higher than the amount of general damages able to be awarded using the ISV scale (refer to Information Paper prepared by Q-Comp which noted that average general damages payments have decreased from $31,600.00 to $13,900.00). As such, it was generally envisaged that a claimant would receive in a common law claim a sum greater than the statutory lump sum offer in general damages alone making a common law claim far more attractive. Now with the application of ISVs, the general damages which can be claimed in a common law claim are more aligned with the statutory lump sum offer. Thus, if an injured worker's injury does not

have a consequential impact upon their earning capacity it is less likely that a common law claim would be instituted.

2. An injured worker who commences a common law claim has to pay their own legal costs from the damages amount received, unless the matter proceeds to trial and the injured worker is successful in their claim. Again for relatively small claims (i.e. where there is a zero or low applicable ISV and there is little impact upon the claimant's earning capacity) an injured worker is more likely to accept the statutory offer rather than proceed with a common law claim and avoid the uncertainty, cost and stress of pursuing the matter.

3. In order to substantiate an award for future economic loss an injured worker is now required to satisfy the court that he/she has suffered or is likely to suffer loss – a more onerous obligation than in the past. This assists in ensuring that if an award is made for economic loss there is justification for making such an award.

We are aware of the figures released by Q-Comp which show that the changes to the *Workers' Compensation & Rehabilitation Act 2003* in 2010 have reduced the number of common law claims which are lodged and also the amount of damages paid. The number of common law claims lodged in 2011 financial year was 481 less than the 2010 financial year (a reduction of nearly 10%) and the forecast number of claims for the 2012 financial year is expected to be 591 less than the amount of claims brought in 2010. With an average damages award being $120,150.00, this is a saving of approximately $128,800,000.00 to the scheme in 2 years alone.

What changes, if any, should be made to the scheme?

We note that Queensland has a higher incidence of serious claims per 1000 employees (16.7) than any other State or Territory in Australia. Those whose injuries are serious or which impact upon their employment capacity should be able to access common law damages without restriction or limitation and be compensated for their injuries. Introducing a threshold on an injured worker's right to claim damages would place them at a disadvantage than a person who had been injured in a motor vehicle accident or was pursuing a public liability claim where there are no thresholds. Further, in some circumstances, an injured worked may be issued with a relatively low percentage permanent impairment is assessed yet the impairment is such that it effectively precludes them from returning from their pre-injury employment.

By way of an example, the firm has represented a leading hand / operator in a common law claim after he injured his left shoulder and neck at work. He received a PI assessment from WorkCover Queensland of 5% for his left shoulder injury and 0% for his cervical spine injury. He was unable to return to his pre-injury employment and had been reliant on Centrelink benefits for nearly 2 years until the recent settlement of his common law claim. His eventual settlement for the injuries was nearly $400,000.00. If a threshold was introduced injured workers like this man may find themselves unable to return to work, unable to access reasonable compensation for their injury and thus ultimately reliant on Centrelink benefits. This is not a satisfactory outcome for the worker, his/her family or society as a whole as it is the taxpayers who ultimately bear the burden of those who are unable to work.

If changes were proposed to the existing scheme we suggest that the changes should be directed at law firms rather than employers or injured workers.

In our submissions to the 2010 workers' compensation scheme discussion paper we suggested that the imposition of thresholds for the common law scheme would disadvantage injured workers and, while there may be some costs savings in the common law area, those savings would be passed on to the statutory claim as workers sought statutory benefits for longer and would also be passed on by way of dramatically increased costs for the Medical Assessment Tribunals and other Courts dealing with appeals by workers whose injuries did not meet the threshold.

We again reiterate our suggestion that a sliding scale of professional costs should be implemented for common law claims e.g. $20,000.00 for a claim settled for under $100,000.00 net. We are aware of a recent example when one of the better known firms carrying out personal injury work in the state attempted to charge a client $80,000.00 on a settlement of $300,000.00 when the matter had progressed only to the early stages of litigation with a compulsory conference and mediation being conducted. If there were restrictions on legal costs the client in this example would have been able to settle his claim at an earlier stage saving costs to the client and WorkCover Queensland. In the example given above our firm would not have charged more than $40,000.00 for professional costs. This huge disparity in legal costs being charged by firms is undermining the scheme and damaging the reputation of the legal profession. If the goal of the scheme is truly to protect injured workers a sliding scale of professional costs should be implemented without delay.

The other alternative we suggest a ban on personal injury advertisements. We noticed that some of the larger firms are still actively encouraging claims by advertising aggressively despite the restrictions in the *Personal Injuries Proceeding Act 2002*. Aggressive television campaigns during the 2012 Olympic coverage which make a pretence of complying with the *Personal Injuries Proceeding Act 2002* are promoting claims. The State Government should ban personal injury advertising.

Yours faithfully,
CHRIS TREVOR AND ASSOCIATES
Per: mal