

The North Queensland  
Law Association

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



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Dear Committee

**Re: Submissions for the WorkCover Queensland Review 2012**

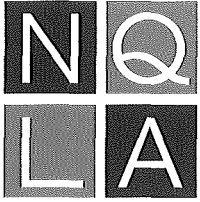
On behalf of the North Queensland Law Association ("the NQLA"), we would like to thank you for allowing us the opportunity to provide you with submissions on behalf of our members in preparation of your committee's review of the current Workers' Compensation scheme in Queensland.

The NQLA was formed on 25 January 1959. The NQLA was the first Regional District Law Association outside of a major capital city and since its formation has continued to be one of the most active District Law Associations in Queensland.

The NQLA currently represents over 300 members from 56 offices which consist of lawyers who practice in North Queensland, ranging from Mackay to the Cape York Peninsula and out west to Mount Isa. We also work very closely with the district law associations in Cairns, Townsville and Mackay.

We believe that the following submissions made on behalf of our members in relation to the WorkCover Queensland Review represent a broad demographic of North Queensland Lawyers who act on behalf of injured workers, employers and insurers and we trust that such submissions will be carefully considered by your committee.

We have had the opportunity and the benefit of considering the comprehensive and detailed submissions prepared on behalf of the Far North Queensland Law



Association and the Australian Lawyers Alliance and the NQLA wholeheartedly endorse their respective submissions.

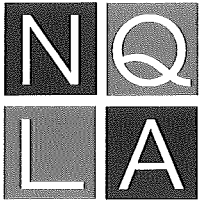
### **The Current Scheme**

The current Workers' Compensation scheme successfully achieves the following:

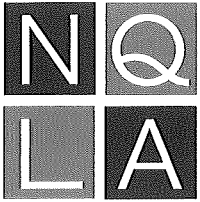
1. **Low premiums for employers** – This is achieved through the '*short-tail*' statutory scheme which limits the amount of statutory weekly benefits paid to an injured worker which in turn encourages an early return to work, and access to common law damages which is limited by significant restrictions on damages and by placing a stringent onus of proof on the injured worker to prove his or her case;
2. **Regulation of Workplace Health and Safety** – Access to common law damages by injured workers encourages employers to continuously monitor and ensure workplace health and safety for their workers. Government regulators such as Workplace Health and Safety Queensland are financially limited and under resourced to provide such a continuous monitoring system and usually operate '*reactively*' as opposed to '*proactively*'; and
3. **Financially sound Workers' Compensation system** - The projected 2012 financial year for WorkCover Queensland indicates an approximate net profit of \$160 million. Other Workers' Compensation systems, such as South Australia, New South Wales and New Zealand, who have adopted a '*long-tail*' or '*ongoing compensation support payments*' scheme and have significantly restricted workers' rights to access common law damages are experiencing severe financial difficulties.

### **Recommendations**

We adopt the recommendations proposed by the Australian Lawyers Alliance and the Far North Queensland Law Association, which can be summarised as follows:



1. **Maintain the ‘short tail’ statutory scheme.** ‘Long-tail’ schemes create an ongoing need for compensation payments to be made to an injured worker particularly where a worker’s condition deteriorates. It is well recognised by the medical profession that the longer a claim is conducted the more an injured worker’s condition deteriorates. By implementing a ‘long-tail’ scheme workers will be discouraged from returning to work in a timely fashion which will adversely impact upon the recovery of the worker;
2. **Maintain the reasonable access to common law damages for injured workers.** By restricting or eliminating access to common law damages employers will be discouraged from proactively ensuring that the work place is safe for their workers;
3. **Maintain the policy changes of the 2010 review.** These policy changes have already increased the deterrent for meritless claims;
4. **Maintain the current permanent impairment assessment regime.** A permanent impairment threshold is unfair for workers whose injury/ies may only represent a small whole person impairment but will significantly prevent them from carrying out their required tasks at work. It is recognised by the medical profession that the current impairment percentages do not accurately reflect work disability. By implementing a permanent impairment threshold it will increase litigation, with both workers and employers being required to engage lawyers to regularly challenge the permanent impairment assessment. This will result in increased legal costs and would fail in reducing premiums as seen in other States and Countries;
5. **Strengthen claims management practices** to ensure industry funds are expended efficiently;
6. **Expand its utilisation of external legal panels** that have the skills to deal with complicated claims and efficiently negotiate claims;
7. **Expand Q-Comp’s initiative ‘Return to Work Assist’** to further encourage an early return to work by the worker and to reduce common law claims; and



8. **Maintain the current Journey Claims.** One of the most significant contributors to the economy in Northern Queensland and the State generally is the Mining Industry. Equally significant are the number of workers in North Queensland who are employed on a Drive In - Drive out/Fly In – Fly Out (“DIDO/FIFO”) basis. Our members believe that there should be no diminishment of the rights of workers to access Recess or Journey claims as identified in the joint Information Paper prepared for the benefit of the Committee<sup>1</sup>.

In order to highlight the potential importance of journey claims for injured workers in our region, we felt it was necessary to highlight the size and scale of the DIDO/FIFO workforce in our region.

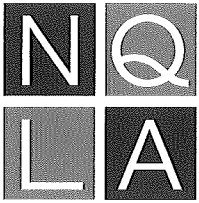
Queensland Treasury and Trade through its Office of Economic and Statistical Research recently published a report into the demographics of the population of the Bowen and Galilee Basins<sup>2</sup>. The Bowen and Galilee Basins Population Report, 2011 (“the Treasury Report”) is focused on quantifying the number of DIDO and FIFO workers living in the Bowen and Galilee Basins region (“the Region”). The Treasury Report is significant in the context of any discussion on journey claims as it is a current survey conducted by the Government on the Full Time Equivalent Workers (“FTE workers”) engaged in the Region and provides information specifically on the number of non-resident FTE workers travelling in one form or another in the region directly related to the resources sector.

The Region accounts for 39 mines currently in production and a further 55 proposed resource projects. The value of the resources extracted is not known

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<sup>1</sup> Information Paper prepared by the Department of Justice and Attorney-General Q-COMP, the Workers' Compensation Regulatory Authority WorkCover Queensland for the Finance and Administration Committee's inquiry into the operation of Queensland's workers' compensation scheme.

<sup>2</sup> Bowen and Galilee Basins Population Report 2011, Office of Economic and Statistical Research, Queensland Treasury and Trade, April 2012.



however it is submitted that it would be considerable. The introduction to the Treasury Report states that *the Bowen Basin is Queensland's most important source of export coal and contains the majority of operational coal mines in the State.*<sup>3</sup>

The Treasury Report makes a number of important findings in the context of DIDO/FIFO workers. Some of these are as follows:

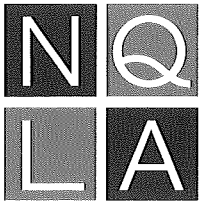
- a) One in five FTE workers in the Bowen Basin was DIDO/FIFO. This equates to 20,520 of the 105,370 FTE workers currently engaged in the Bowen Basin;
- b) Approximately 41 per cent (8,413) of the FTE mining workers travelled as DIDO compared to only 12 per cent (2462) who were FIFO;
- c) Of the DIDO workers identified, 25 per cent 2,103 lived in Mackay and travelled to and from the regions' mine sites;
- d) By 2018 the total FTE workers in the Bowen Basin is expected to increase to 128,550;
- e) Utilising the current DIDO/FIFO percentages against the 2018 projections, the DIDO FTE workforce will increase to 10,971, FIFO FTE workers will increase to 3,211 and the number of DIDO effectively commuting to Mackay will be approximately 2,742.

Reference is made in the joint Information Paper<sup>4</sup> to the coverage of Motor Accident Insurance Commission ("MAIC") with regards to the fault based motor vehicle accident scheme. The authors of the Information Paper state that whilst the MAIC scheme "*would cover more motor vehicle incidents if journey claims were abolished... there will be gaps. These include slips, trips and falls while walking to work.*" With respect, we submit that the gaps suggested in the event of the removal of journey claims from the scheme,

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<sup>3</sup> IDIB at page 5.

<sup>4</sup> OPCIT Information Paper at page 37.

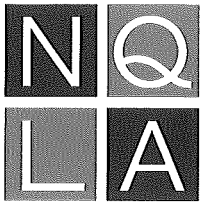


would extend beyond those walking to work. The large number of FIFO workers may fall through this gap if reliance is placed on an at fault motor vehicle accident scheme. Many of the State's FIFO workers spend a significant amount of time in transit to and from their place of employment either via air travel or waiting in airports. Any risk of injuries resulting during this time may be borne by the worker. We are aware that some workers employed by larger employers are considered to be at their place of employment during this period but this may not be the case across the board.

Of more concern is the number of DIDO workers actively travelling daily in North and Central Queensland and any potential increase in their risk if the current journey claim coverage is diminished.

Submission 12 to this Committee by the Queensland Branch of the Transport Workers Union raises concerns in relation to fatigued transport workers travelling to and from their employment and more particularly the disadvantage that these workers may face if they must rely on the MAIC scheme for injury compensation. The issue of fault becomes paramount in these types of cases.

Worker fatigue in DIDO mining workers was highlighted as a serious issue in the Coronial Report handed down by the Coroner Ms Annette Hennessy in her inquest findings into the deaths of Malcolm Mackenzie, Graham Brown and Robert Wilson. The findings were published on 23 February 2011. As part of the findings, the Coroner made 24 recommendations with regards to combating further deaths arising primarily from driver fatigue and more specifically, driver fatigue in DIDO workers engaged in the Bowen and Galilee Basins. Further, the Royal Flying Doctor Service was reported as



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recently as 7 August 2012<sup>5</sup> saying that tired and fatigued DIDO drivers were contributing to the increase in vehicle incidents in the Central Queensland region.

The issue of DIDO worker fatigue and the resultant injuries is a very real issue in our Region and will continue to be so in the future.

The continued access to journey claims under the current scheme is vital to ensuring that the large number of workers engaged in this important sector are not penalized or placed at higher risk by choosing to work in a regional and remote environment which necessitates long periods of travel. Any disincentive to under take this work may have a severe impact on the ability of the State to maximise the current demand for its extractive resources.

Our members who practice in the area of Workers' Compensation believe that the current scheme operates successfully. This is evident by low premiums, a profitable Workers' Compensation System, and a low number of common law claims. Whilst we understand that regular reviews of the Workers' Compensations scheme are necessary, we believe that such reviews should be focused on enhancing the system that we already successfully operate.

Again, we thank your committee for taking the time to consider our submissions.

Yours Faithfully,

Joanne Meade  
President

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<sup>5</sup> The Rockhampton Morning Bulletin; Online edition, <http://www.themorningbulletin.com.au/story/2012/08/07/fatigued-miners-are-creating-accidents/>