DOWNS & SOUTH WESTERN LAW ASSOCIATION

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

Dear Sir/Madam

Submission to Parliamentary Finance and Administration Committee's

Workers' Compensation Inquiry

Background

DSWQLA represents some 150 lawyers predominantly in private practice across SW Qld from Stanthorpe in the south, to Toowoomba in the east and Roma & Charleville in the west.

Members of the DSWQLA lawyers represent regional and rural injured workers and provide them with advice as to their statutory claim rights under the *Workers Compensation and Rehabilitation Act 2003* and also as to their common law rights for damages for personal injuries for accidents caused through the negligence of their employers. Members also represent regional and rural employers and businesses in relation to their obligations and rights.

DSWQLA submits that the workers' compensation scheme in its current form meets it objectives under s 5 of the *Workers' Compensation and Rehabilitation Act 2003* and that it should be maintained in its current form.

DSWQLA submissions focus principally on specific issues relating to rural and regional workers and employers. The financial viability of the scheme and comparisons to other work injury

compensation "long tail" schemes have been adequately addressed in the submission by the Queensland Law Society and other regional law associations. Suffice to say that the DSWQLA supports the submissions made that:

1. The current short tail scheme should be maintained

2. Current access to common law should be maintained without resort to the imposition of thresholds

3. The ability of injured workers to access common law is an important component in the promotion of good workplace behaviour and reduction of dangerous workplace practices.

4. Based on figures provided to us by the QLS, it is apparent that the 2010 amendments are adequately reducing the number and amount of claims. We understand that numbers of claims in 2010/2011 dropped by 9.6% and are forecast for a further drop in 2011/2012 of 2.5%.

Roles of statutory and common law payments

These two elements of the WorkCover scheme work towards different objectives. Statutory payments are designed to assist the worker recover and return to the work force. These payments provide the means of early intervention.

The common law claim access provides compensation for the workers' loss through negligence to place injured workers in the position they would have been had the injury not occurred. It also acts as a financial deterrent to unsafe work practices and an incentive to employers to find post accident employment for injured workers.

With respect to regional and rural injured workers, DSWQLA highlights the importance of access to common law damages in addition to statutory claims during the rehabilitation period

1. Lump sum compensation offers for assessed permanent impairment to finalise injured workers' statutory claims have been increased over recent years. These offers seldom match the potential common law damages available to an injured worker with a significant disability who are able to establish employer liability for his/her injuries. This is particularly true where workers are not able to return to the workforce either at all or at the same level.

For regional and rural injured workers, the statutory offers do not take into account the additional costs borne as a result of coping with a work injury in a regional or rural setting. These costs are usually recoverable as part of a common law claim for damages – for example

a. Regional injured workers face particular difficulties in securing replacement work because of the lack of available alternative sedentary positions in regional and rural areas. As such, injured workers are often required to move to larger regional or urban centres without the injured worker's statutory claim being sufficient to support the costs of such a move.

b. Regional workers may work for the only big employer in town in smaller centres (i.e. a meatworks, a timber mill). Anecdotal evidence from injured workers suggests that, in an environment of extensive use of a casual workforce, an injured worker bringing a statutory claim finds his/her casual hours reduced in favour of other employees. The worker has no other employment options and so has to move to larger regional centres or commute significant distances without the injured worker's statutory claim supporting such expenses.

2. In regional areas, WorkCover Queensland (WCQ) has difficulty in sourcing local specialist services such OTs, other rehabilitation specialists and specialist doctors to assist employers with return to work plans for injured workers.

Attendance for treatment and assessments in major rural/urban centres has a cost that is considerably more than the transport costs of attending the appointment such as disruption of domestic arrangements for a day and sometimes longer. Anecdotal evidence from workers is that, as a result, they access the available medical help which may be insufficient to adequately treat or rehabilitate them. Such workers often feel forced to leave the employment or are dismissed when unable to perform pre-accident duties. Such workers may be more likely to consider common law action where the compensation from statutory claims is insufficient because the statutory system does not adequately address their needs.

3. Regional employers have in the past made arrangements to retain the injured worker in some capacity. At the outset this is a very attractive offer for the injured worker because their goal frequently is maintain an employed position. However, even with the best of

intentions, these arrangements not uncommonly break down in the short to medium term, especially if the business is not large enough to carry a worker who is not performing at maximum capacity.

4. Workers in regional Queensland are more likely than urban workers to be employed in small local businesses and therefore subject to fewer controls by industrial laws, less union representation and in workplaces with less sophisticated and rigorous workplace health and safety measures. They are therefore at greater risk of injury and more in need of legal protection and access to remedies.

5. Injuries sustained in agricultural accidents are more likely to be catastrophic (caused by such factors as the involvement of dangerous machinery and distance from medical assistance) than light industrial/clerical accidents. The employee is likely to bear a close association with the employer through friendship, family ties or residency in the region over an extended period of time. In such circumstances, an organisation operating at arms length from the parties plays a vital role in access to equity and fairness.

6. The wider community has an interest in seeing the fairest compensation laws in place. It has an interest in ensuring that employment positions are not lost to rural areas through loss of service networks that surround rural industries because of inability of rural residents to support a reasonable lifestyle. Fair compensation law allow injured residents to contribute financially and socially to their community.

<u>General Submissions – statutory claims affecting rural workers</u>

1. The current industry based structure that provides the service delivery method for injured workers has seen the reduction in personal access for workers to claims officers. Non-local officers cannot be expected to have an appreciation of local regional and rural conditions. Regional services and engagement strategies need to be strengthen to improve the personal engagement and local contact for return to work and care arrangements.

   Rural and regional culture is such that people will "drop in" for contact with claims officers when they are "in town". Such local contact is motivating for workers and provides an opportunity for development of a direct relationship between the injured worker and the case manager.

2. Journey claims form a small but, in rural areas, important aspect of the WCQ scheme. Numerous employees travel in the course of their employment on rural roads and the regular reporting of serious single vehicle accidents are indicative of the dangerous road conditions outside the urban road network. Although journey claims make up about 6% of all claims lodged, they provide seriously injured travelling workers with what may be their only avenue of treatment assistance and return to work rehabilitation.

General Submissions re access to Common Law Damages without thresholds

The 2010 amendments to the Workers Compensation and Rehabilitation Act 2003, have addressed perceived concerns by employers of alleged inappropriate access to common law and unmeritorious claims.

The purpose of common law actions for injured workers is to return the injured person to the position that they would have been in had they not suffered an injury as a result of the negligence of the employer to the extent that it is financially possible to do so. The 2010 reforms have limited the recovery of damages by bringing the WCQ common law scheme under the *Civil Liability Act 2003*. Reforms limiting access to awards for legal expenses, together with the reduction in damages has resulted in only those claims of economic viability being brought. This means that a self-selection threshold already exists to reduce the common law claims to those of injured workers who have suffered a significant impact on their life and/or and ability to work.

The statutory impairment assessment process does not make any claim to assess the impact of an injury on an individual. Assessing doctors at the MAT make a point of specifically referring to this at the beginning of the assessment. Introduction of the WRI as a threshold test for access to common law would be a fundamentally flawed use of the purpose of the WRI assessment. A low WRI is no indication of a low injury impact on the ability to work. It is an assessment of the "loss, loss of use or derangement of any body part, organ or system or organ function"[1], not the impact of that loss or the disability associated with that loss.

Introduction of the use of WRI as a threshold would result in inequitable damages payments and increased legal costs for claimants and WCQ as more appeals are made to threshold assessments.

Access to common law rights is a considerable strength of the Queensland Workers' Compensation system.

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[1] AMA Guides (5th edition)

Removal of common law access has already been tried in other jurisdictions (e g South Australia) without any benefit to employers in the form of reduced premiums.

A more effective control of unmeritorious claims, if such is required, would be to increase the use of external legal panels. Lawyers trained in defending claims have the training and skills to analyse the merits of claims. In particular, use of regionally based firms has the advantage of knowledge of local conditions and frequently, people. It is anticipated that there would a cost saving in the use of local firms, particularly as regards travelling costs to settlement conferences which are often not now held locally.

Additional areas for further reform:

1. DSWQLA members have reported a practice of WCQ and self insurers in statutory claims of requiring injured workers to attend Medical Boards in Brisbane without providing up front funding for travel to Brisbane. Travel costs have been subject to a right to claim retrospective reimbursement. There is then a reluctance by workers to attend because the funding costs of travel are prohibitive. A policy of reasonable up front travel funding in all cases would resolve this inequity.

The DSWQLA is available to assist further if the parliamentary committee requires same.

Kind regards

Lisa Hooper
President