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 Your Ref.:

4 September 2012

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

**By Email: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)**

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**04 SEP 2012**

Finance and  
 Administration Committee

Dear Committee Members

## **WORKCOVER QUEENSLAND REVIEW**

I write in relation to your review and enquiry into the operation of the Queensland Workers' Compensation Scheme.

My practice is in Ipswich and Gatton and I regularly act for people injured during the course of their employment to obtain compensation and assist them in returning to work after an injury.

The Queensland Workers' Compensation Scheme provides, pursuant to its legislative requirements, a balance between the objectives of providing fair and appropriate benefits for injured workers and their families, and keeping the scheme affordable for employers.

It is the most financially sound scheme in the country with its funding ratio the highest in the country (I believe as at 30 June 2012 at 117%) with premiums, on average in the last fifteen years, being the lowest in workers' compensation schemes in Australia.

Our scheme has consistently outperformed other States in nearly all key areas, largely due to its short tail no fault statutory scheme balance with access to common law for meritorious claims.

The scheme has been regularly reviewed and amended over the years with the most recent extensive review in 2010.



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*my solicitor*

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The changes which took effect in July 2010 significantly reformed common law claims and associated claim costs which is now resulting in reduced costs to the scheme.

WorkCover Queensland's own assessment of the impact of these changes is that the current compensation scheme is sustainable in its current form.

There have been suggestions made that an impairment threshold for access to common law damages should be introduced.

This, in essence, would move the scheme to becoming a pension based scheme and would put the financial health of the current Workers' Compensation Scheme at risk.

This pension based styled scheme has failed in other States.

The existing common law damages scheme in Queensland reduces the number of smaller claims and unmeritorious claims by:

1. containing tough fraud provisions in the WorkCover legislation;
2. having a common sense approach to assessments of liability due to tough liability provisions;
3. making claims financially viable usually only where an injured person will suffer loss of income due to restrictions on damages and legal costs.

These measures have delivered stability to the scheme whilst ensuring that injuries having significant impact on an injured worker are able to be appropriately compensated.

Impairment thresholds, should they be introduced, would necessarily operate unfairly given that an impairment assessment assesses the percentage of physical injury, without regard for the impact the injury has on a worker's life as result of the disability suffered.

By way of example, a labourer working in the mines may be significantly affected even though his impairment is small. He may be unable to work in his previous job and other heavy physical occupations losing significant amounts of income because he is no longer suited to such jobs as a result of the injury. Such a worker may be at significant risk of unemployment due to a small impairment coupled with little education or experience to obtain work in more sedentary roles in circumstances where the injury was caused by his employer through no fault of his own.

Such a technical medical assessment does not reflect the actual impact an injury will have upon an injured worker's life, in particular, their ability to earn income.

A significant burden may be placed upon the public health system for rehabilitation and treatment of injured workers who do not meet the statutory minimum for impairment thresholds.

At the present time, the WorkCover scheme pays for these expenses in the statutory claim. Where a worker makes a common law damages claim these expenses are refundable to the statutory scheme upon the successful completion of the claim, in circumstances where the scheme is then "refunded" such costs by the increased premiums of the negligent employer.

Should impairment thresholds be introduced, the "negligent employer" would no longer be ultimately responsible for these costs which costs would then be borne by public health authorities and, ultimately, the Queensland government.

The heavier burden placed upon the public hospitals for treatment and rehabilitation would cause more pressure on a public health system which is presently under significant pressure.

Working in a regional area, I consider it is vital to workers reliant on a vehicle for journey claims to continue to be covered.

Workers in regional areas can be required to travel long distances to work, often late at night or in the early hours of the morning.

Where a motor vehicle accident is caused by the negligence of another party (other than the worker) the statutory claim costs can also be ultimately paid by the person responsible for the motor vehicle incident.

The statutory claim costs of Workcover Queensland or the self-insurer can be recovered whether the injured worker makes a claim under the Motor Accident Insurance scheme or not. See section 207B of the Worker's Compensation and Rehabilitation Act 2003, in particular subsection (7).

This is another example of the appropriate party being liable for the statutory claim costs.

The scheme in its present form is working well and we have avoided many of the difficulties experienced in other States.

Given that the worker's compensation scheme is fully funded and has the lowest premiums in Australia on average over the last 15 years, there can be no justification for taking away the rights of injured workers.

Yours faithfully

**McNamara & Associates**

Per:-



**Peter Wilkinson**