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1. Introduction

1.1 The Motor Trades Association (“MTA Queensland” or “the Association”) responds to the Queensland Parliamentary Finance and Administration Committee’s invitation for submissions on the *Workers’ Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* (“the Bill”). The Association’s comments are submitted on behalf of its constituent Divisions and are confined to issues which relate to the interests and fall within the competence of the Queensland automotive value chain.

1.2 The Bill amends the *Workers’ Compensation and Rehabilitation Act 2003* (“the Act”) in order to achieve the following objectives.

- a) Removing the current limitation on the entitlement to seek damages that requires a worker to have a degree of permanent impairment as a result of the injury greater than 5% to access common law since the date of the Queensland State election.
- b) Establishing the ability to provide additional compensation to particular workers affected by the operation of the common law threshold, between 15 October 2013 and 31 January 2015.
- c) Removing the entitlement prospective employers have to obtain a copy of a prospective worker’s compensation claims history from the Workers’ Compensation Regulator.

1.3 The MTA Queensland’s reservations include:

- a) The objects of the Act as set out in Section 5 include the maintenance of a balance between providing fair and appropriate benefits and ensuring reasonable cost levels for employers. The Act as it currently stands, in our view, provides such a balance, and any increase in costs to employers would be to the detriment of our members.
- b) Restricted access to common law claims introduced under prior amendments to the Act brought Queensland into line with other states. Our members would be subject to a competitive disadvantage with inter-state competitors if these restrictions were weakened.

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- c) Following prior amendments to the Act, our members have seen a reduction in premiums which has reduced the financial barrier to some members putting on new employees, and contributed to a level of business costs that allowed all of our members to continue to provide Queenslanders with jobs and services. Any increase in premiums will inevitably make it more difficult for our members to keep existing staff or employee more staff.

1.4 The MTA Queensland acknowledges that “Restoring the rights of Queenslanders injured at work” was an election initiative, and the Queensland Government has a mandate to introduce this policy. Nonetheless we draw the Committee’s attention to the concerns of our members, about the proposed changes.

2. Context

2.1 Amendments in 2010

The Association is supportive of the current legislative measures which in our view maintain the balance of the workers compensation regime. The reforms of 2010 achieved the following positive outcomes.

- They brought claims under the Act into alignment with non-work tort claims brought under the Civil Liability Act 2003.
- They removed the strict liability attaching to employers consequent to the Court of Appeal’s finding in *Bourk v Power Serve Pty Ltd & Anor* [2008] QCA 225.
- They encouraged third parties to engage meaningfully in alternative dispute resolution.
- They confirmed that costs could be awarded against unsuccessful plaintiffs.

Each of these, in the view of Members, helped to keep premiums lower than they would otherwise have been and in some cases facilitated earlier settlement and reduced members’ exposure to unwarranted claims. Nonetheless, it was the reforms introduced in 2013 that achieved the outcomes that provided our members with a truly competitive business operating environment.

2.2 Amendments in 2013

The amendments to the Act in 2013 introduced the following significant reforms.

- A threshold of greater than 5% degree of permanent impairment to make a claim at common law was introduced.
- The method of assessing permanent impairment was changed.
- Employment had to be the major significant contributing factor for psychiatric claims.
- Employers were given greater access to employees’ previous claim history.
- Penalties for fraud were increased.

Each of these reforms was welcomed by our members for reducing premiums and building on earlier reforms to strengthened Queensland's workers compensation regime for employees and businesses.

2.3 Situation in other States

The reforms of 2013 put Queensland in a similar situation to other states and territories with respect to the threshold for access to the common law for compensation claims. The situation in other states and territories is as follows.

New South Wales	Threshold of 15%
Victoria	Threshold of 30% at impairment assessment, or narrative test
Western Australia	Threshold of 15%
South Australia	No common law claims
Tasmania	Threshold of 20%
Northern Territory	No common law claims
Australian Capital Territory	No threshold

As can be seen, only the Australian Capital Territory has a lower threshold than Queensland, and access to the common law for workers in the Australian Capital Territory is restricted.

Our view is that the current arrangements place Queensland businesses and employees in a similar situation to competitors in other states and the territories, and that this reflects a fair balance of interests.

2.4 Benefits Arising from 2013 Reforms

2.4.1. Reduced Premiums

Figures prepared by the Queensland Audit Office under Part 3 Division 3 of the *Auditor-General Act* 2009 and tabled in Parliament on 2 June 2015 ("the Report") show that, as a result of the 2013 reforms, workers' compensation premiums in Queensland reduced on average by 17 per cent, with the average premium rate for businesses dropping from \$1.45 per \$100 of wages to \$1.20 for 2014-2015 and again at this rate for 2015-16.

The Report states that reduced access to common law claims contributed to the lower premium rate for 2014-2015. Despite the reforms of 2010, premiums continued to rise. The Report states, "average premium rates increased by 26 per cent from 2009–10 to 2013–14. In 2015, premium rates fell by 17 per cent. The 2015 premium rate of \$1.20 per hundred dollars of wages is the lowest in Australia, ahead of New South Wales at \$1.40 and Victoria at \$1.27 per hundred dollars of wages".

Our members welcome this trend in premiums which helps them to remain competitive, and which reduces a burden to employing new staff. It is in our members' interest that should amendments be made the priority must be to preserve the competitive premium rates. Our concern is that limiting access to common law to more serious claims has played a significant role in keeping Queensland's premiums at a competitive level.

This concern is supported by findings of the Chamber of Commerce and Industry Queensland ("CCIQ") that the balance provided by the current system represents a benefit to Queensland's business community of approximately \$250 million per year.

2.4.2 Balance between Statutory and Common Law Claims

According to figures released by the Chamber of Commerce and Industry Queensland, common law claims made up over 38 per cent of claim costs in 2012–2013 while only composing 4 per cent of claims, yet the average common law claim settlement was approximately fifteen times more than the average statutory claim. As can be seen above, the current system places Queensland on the lower end of the scale compared to other states in striking a balance between facilitating access to the common law and easing the pressure on the “no fault” statutory system.

Our members recognise the need for a common law system to run alongside the statutory one, but we believe the current arrangement strikes an appropriate balance.

3. Issues

3.1 Premiums

After a 26 per cent increase from 2009–10 to 2013–14, Queensland employers saw a drop in premiums to competitive levels comparable to other states. Our members are concerned that the proposed reforms will see a reversal of this situation and a return to rising premiums for our members. This will put pressure on already stretched margins and provide a strong disincentive to our members taking on new staff.

3.2 Common Law Claims

The introduction of a 5% threshold for access to the common law regime is identified in the Queensland Audit Office report as the main reason for

3.3 Inter-State Competition

Wherever possible, the MTA Queensland’s policy is that there should be national consistency for fiscal imposts and policies affecting the automotive value chain to provide for a seamless policy/financial operating environment. We accept that, as workers compensation is a State matter, there will inevitably be variations between states. Nonetheless, we feel strongly that our members deserve an even playing field on which to compete with businesses in other states, and that competitive premiums and equally balanced common law jurisdictions are important contributors to maintaining that level playing field.

4 The MTA Queensland background

4.1 The MTA Queensland is the peak organisation in the State representing the specific interests of businesses in the retail, repair and service sector of the automotive industry located in Queensland. There are some 14,000 automotive value chain businesses employing in excess of 73,300 persons operating within the State.

4.2 The MTA Queensland is an industrial association of employers registered under the *Industrial Relations Act 1999* and the *Fair Work Act 2009* (Cth). The Association represents and

promotes issues of relevance to the automotive industries to all levels of government and within Queensland's economic structure.

4.3 The Association is the leading automotive training provider in Queensland offering nationally recognised training, covering all aspects of the retail motor trades industry through the MTA Institute of Technology (MIT). The MIT is the largest automotive apprentice trainer in Queensland employing 26 trainers based from Cairns to the Gold Coast and Toowoomba and Emerald. MIT last financial year accredited courses to in excess of 1500 apprentices and trainees.

4.5 We would be pleased to provide further comment on any matters in our submission that may require further clarification or amplification.

Thank you for your consideration.

Yours sincerely



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