



Employers Mutual
Since 1910

Employers Mutual Management Pty Ltd

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The Chairperson
Finance and Administration Committee
Via email: fac@parliament.qld.gov.au

Dear Sir/Madam

Thank you for the opportunity to provide feedback to the Government in relation to the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* (the Bill). This submission relates to the proposed removal of the common law threshold and associated changes.

Employers Mutual (EM) was established in 1910 to specialise in workers' compensation insurance. EM currently manages over a billion dollars of annual workers compensation premiums across Australia. EM is owned by members and we are passionate about providing services that are return to work focused generating beneficial outcomes for both workers and employers. Most recently, EM have partnered with one of Australia's largest retailers, Woolworths Limited, as the third party claims agent for their State based self insurance licences.

Removal of the threshold to Common Law

The Government purports the reason for the removal of the threshold is to restore the rights of injured workers to access damages to cover ongoing medical expenses and loss of income as a result of disability/loss of capacity sustained through the negligence of their employer. The current permanent impairment model was introduced into the statutory scheme to provide recompense for worker's suffering ongoing disability without the need to pursue common law damages and incur legal costs which often strips the worker of a significant portion of their damages award.

According to the *Regulator's Annual Statistics Report 2013-14*, approximately 26% of all Common Law claims originate from workers assessed with nil permanent impairment. If the Government removes the current 5% threshold, a suggested balanced approach for workers and employers is to adopt a threshold that requires a worker to sustain at least 1% degree of permanent impairment in order to seek damages under common law. This will ensure that workers with an ongoing disability or loss of capacity maintain fair and equitable access to damages but will also ensure a reduction of common law costs to the *Scheme* and reduce the financial burden on employers.

Retrospectivity of threshold removal to 31 January 2015

EM submits that if the current threshold is removed, the removal is not applied retrospectively to claims. As the Government has highlighted in their information paper circulated to the *Stakeholder Reference Group*, "*workers' compensation insurers have already factored the threshold into their outstanding claims liability and provision*". Removing the threshold retrospectively will place unnecessary financial burden on the Scheme, and more specifically on the 26 Queensland Self Insured Employers. EM submits that if the Government elects to remove the threshold, this should be applied to claims with a date of injury after the date of assent of the legislative change.

Introduction of additional lump sum compensation (s193A)

The proposed Bill introduces an additional lump sum compensation payment for workers with a date of injury between 15 October 2013 and 30 January 2015 who have not accepted or rejected a lump sum offer. It is understood that this new section is intended to "*mitigate the negative impact on workers*" who were "*unfairly*" impacted by the introduction of the threshold. EM submits that the legislation in place at the time of these offers was validly enacted and as outlined above, entitlements should not be amended retrospectively.



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However, if the Government elects to introduce this provision, then we ask for consideration of the following. By limiting the entitlement to this additional lump sum only to workers who have not made a decision in relation to their permanent impairment lump sum offer, it is arbitrarily excluding workers, who in good faith, accepted what they believed to be their full entitlement at the time of the offer.

In addition to this, the proposed drafting of this section refers to the lump sum being "*an amount prescribed in the regulation*" but does not provide further details of how this amount will be calculated. It is understood that the proposed method for calculating this entitlement is currently being considered by the *Stakeholder Reference Group*. EM reiterates that the introduction of any additional lump sum for certain workers is unprecedented and will negatively impact the financial viability of the Scheme and place an unbudgeted and significant cost impost on employers who are self-insured.

Further, this section suggests the establishment of a *Panel* to review decisions by insurers in relation to a worker's access to the additional lump sum. In circumstances where the worker will have had the opportunity to have two assessments conducted by a Doctor, as well as the opportunity to be reviewed by a *Panel* of three or more doctors at the *Medical Assessment Tribunal*, it is unclear what purpose the suggested *Panel* will serve. It is understood that the constitution and purview of this *Panel* is currently being considered by the *Stakeholder Reference Group*. It is also understood that this *Panel* will be comprised of legal professionals authorised to consider issues of negligence. This proposal will create a quasi-judicial process that will create unnecessary administrative and legal burden on stakeholders within the Scheme and unfairly distribute compensation to workers.

Other miscellaneous amendments

Included in the 2013 amendments was a change to *Section 186 of the Act* which relates to the assessment and notice of the degree of permanent impairment (DPI). This section was amended to introduce a second assessment by an appropriately qualified Doctor if the worker disagreed with the initial assessment arranged by the Insurer. The intent of this amendment was to allow a worker a further avenue to attain the common law threshold prior to a referral to the *Medical Assessment Tribunal*. If the Government proceeds to remove the common law threshold, then it follows that this amendment is also removed as it places unnecessary administrative burden on Insurers and will no longer be necessary to protect the rights of workers.

Employers Mutual has a wealth of experience in workers' compensation and is passionate about improving the quality of Australian workers' compensation claims management. Employers Mutual would welcome the opportunity to provide further information to the *Finance and Administration Committee* in its consideration of the proposed Bill and the impact on the Queensland workers' compensation Scheme.

Regards



Cass Wild
Group Manager QLD
Employers Mutual

Cc Association of Self Insured Employers of Queensland