

4 May 2016

CONFIDENTIAL

Research Director
Education, Tourism, Innovation and Small Business Committee
Parliament House
George Street
BRISBANE Qld 4000

By post and by email: ETISBC@parliament.qld.gov.au

Dear Research Director

National Injury Insurance Scheme (Queensland) Bill 2016

Thank you for the opportunity to provide comments on the Bill. Queensland Law Society appreciates being consulted on this important legislation.

This response has been compiled with the assistance of the Accident Compensation and Tort Law Committee who have substantial expertise and practice in this area.

The Society appreciates that there is some urgency around this issue, and consequently the response period has not allowed for a comprehensive review of the Bill. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified.

The Society is a strong advocate of evidenced-based policy and notes that the Bill has been introduced following Report No. 11, 55th Parliament, from the Education, Tourism, Innovation and Small Business Committee. To that end, the Society is supportive of the general principles underpinning the Bill, with the exception of Clauses 42 and 149 in relation to contributory negligence.

The Society welcomes the sentiments expressed by the Treasurer in his introductory speech on the first reading of the Bill that:

*"The principal features of the bill are as follows. The National Injury Insurance Agency Queensland will be established and will pay the reasonable and necessary treatment, care and support expenses of participants in the scheme. This includes: medical treatment; pharmaceuticals; dental treatment; rehabilitation; ambulance transportation; respite care; attendant care and support services; aids and appliances; prostheses; educational and vocational training; and home and transport modifications. The National Injury Insurance Scheme Fund will be established to be used for the purposes of the scheme, which will be solvent from day one."*¹

¹ Queensland, *Parliamentary Debates*, Legislative Assembly, 19 April 2016, 1022-1024.

We now provide our feedback on the Bill.

Members of the Committee have had the benefit of reading, the submission of the Australian Lawyers Alliance ("ALA") in response to the Bill. A copy of the ALA submission is attached with this letter. The Society commends the work that went into the ALA submission and wishes to agree and endorse the remarks stated in the ALA submission, in particular the recommendations raised in relation to:

- Applying a reasonableness test to the meaning of "treatment, care and support needs" in Clauses 8 (f) and (g).
- Expanding the definition in Clause 10 of when a claim is finalised to include a court sanctioned claim.
- Reversing the position in Clause 24 to provide that if the agency fails to decide the application it is taken to be a decision to accept the person as a participant. Similar considerations should be made in relation to Clauses 32, 39 and 48.
- Adopting a reasonableness test to the definition of excluded treatments under Clause 9(d).
- Employing the use of a reasonableness test in relation to price setting under Clause 37 to allow for potential market differences in pricing of services in metro and rural areas.
- Confining contributory negligence reductions to non-care heads of damage only in relation to catastrophically injured persons under Clauses 42 and 149.
- Extending the time period specified in "acceptance period" under Clause 44(8), to 60 days to allow participants sufficient time to collate information and respond to the agency and insurer in relation to whether they accept the awarded treatment, care and support damages.
- Revising the review provisions in Clause 110 and 111 to require the agency to inform an applicant of the result of an internal review decision and the external review processes available to the applicant.
- Specifying that medical tribunal decisions under Clause 123 are reviewable under the *Judicial Review Act 1991*.

Further Comments

The Society submits that it respectfully disagrees with the ALA submission with respect to "Participants absent from Australia". The Society is supportive with Clause 52(1) in its current form under the Bill.

The Society maintains that in relation to Clause 42, the exclusion of the Agency from liability to contribute if a finding of contributory negligence is made of 25% or greater is an unnecessary removal of a participant's rights. In the Society's view the other provisions of Chapter 2 Part 4 Division 4 offer the Agency the necessary means to protect the participants from pursuing such potentially disadvantageous claims.

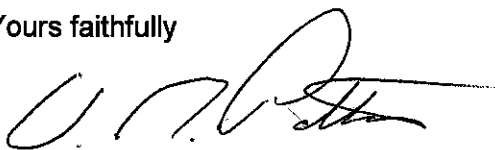
The Society further submits that the Agency has sufficient protection through Clause 43 applications. Similarly, a Clause 43 application would provide the participant with the opportunity to have a court consider why the participant considers it is in his or her interests to pursue the claim, notwithstanding the contributory negligence finding.

The Society contends that a blanket imposition of a removal of a participant's right without at the opportunity to have a court consider alternative solutions may result in an unfair system, which may not necessarily be in the best interests of the participant or the community.

Thank you again for the opportunity to provide feedback.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Annmaree Verderosa on 3842 5872 or a.verderosa@qls.com.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Bill Potts', written over a horizontal line.

Bill Potts
President