

## WORKCOVER TASMANIA

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IS17082/17315

Ms Patricia Scott  
Commissioner  
Productivity Commission  
GPO Box 1428  
Canberra City ACT 2610

Dear Ms Scott

### ***Inquiring into a Long-Term Disability Care and Support Scheme***

Please find attached a submission from WorkCover Tasmania in response to the Productivity Commission's draft report on disability care and support.

WorkCover Tasmania is a statutory body with a strategic focus on Tasmania's occupational health and safety performance and Tasmania's workers rehabilitation and compensation performance.

The Board's functions, which are set out in section 10 of the *Workers' Rehabilitation and Compensation Act 1988(Tas)*, enable it to have significant input into the initiation and formulation of Tasmania's policy positions on occupational health and safety and workers rehabilitation and compensation.

The Board provides strategic oversight of Tasmania's workers rehabilitation and compensation scheme. Tasmania's injured workers, including the catastrophically injured, are currently compensated through this mechanism. Draft recommendation 16.4 contemplates that "*State and territory governments should consider transferring the care and support of catastrophic workplace claims to the NIIS through a contractual arrangement with their respective workers' compensation schemes, drawing on the successful experiences of Victoria's WorkSafe arrangements with the Transport Accident Commission.*"

WorkCover Tasmania would appreciate being directly involved in any further consultation on this issue.

Yours sincerely

Lisa Hutton  
**Chair – WorkCover Tasmania Board**

12 May 2011

Cc Minister for Workplace Relations

**WORKCOVER TASMANIA'S SUBMISSION:  
Productivity Commission Draft Report into Disability Care and Support**

WorkCover Tasmania welcomes the release of the Productivity Commission's draft report into disability care and support. While WorkCover Tasmania recognises that the scope of the proposed scheme is broad, its submission is largely limited to the effect the proposed scheme may have on catastrophic injury arising from work.

WorkCover Tasmania is concerned to ensure that any introduction of a national scheme does not disadvantage the catastrophically injured by reducing or removing entitlements that may currently exist under workers compensation arrangements.

WorkCover Tasmania is concerned that the report's criticisms of the common law system are broad and sweeping and while they may be accurate in some circumstances they do not hold true for the majority of claimants.

WorkCover Tasmania notes that since the introduction of amendments to the *Workers Rehabilitation and Compensation Act 1988*, which had effect from 1 July 2010, it is reasonably arguable that catastrophically injured workers are more than adequately compensated in this jurisdiction.

It is important that the introduction of any national scheme should be done in a way to ensure that workers compensation premiums are not adversely affected and that state schemes remain viable.

Catastrophically injured workers in Tasmania currently have an entitlement to a lump sum payment for whole person impairment and access to common law. These payment types can be significant and important to sufferers of the catastrophic injury. The introduction of a national scheme should be mindful of these entitlements.

WorkCover Tasmania also notes and supports issues documented in the Tasmanian Government's October 2010 submission to the Productivity Commission.

*"Tasmania has the highest rates of disability in Australia at 23 per cent "*

*"The Tasmanian Government has concerns about how a scheme might impact on existing insurance arrangements, including the no-fault compensation schemes."*

*"Where there are well functioning insurance markets where risks are well managed and an appropriate level of care is provided, a new national disability care and support scheme should not seek to replace these arrangements."*

*"In Tasmania, there is already a highly regarded and efficient no-fault compensation scheme that provides compensation of ongoing care for persons injured in motor accidents. This scheme is administered by the Motor Accidents Insurance Board."*

*"Similarly, Tasmania's workers' compensation system generally operates efficiently although it does not have systems for handling catastrophic brain or spinal cord injuries. The history and practice has been to settle those claims, usually by common law deed, once the treatment processes are complete and the claimant's future losses are clear. How much a claimant receives depends on whether negligence can be established. However, there is often a substantial degree of contributory negligence by the employee that results in damages awards being reduced. There is also justified concern that large lump-sum settlements are often misused or are grossly inadequate for long term support. Coverage of catastrophic injury under a national scheme would seem to offer a more equitable outcome for the very few cases of catastrophic injury (around one per year in Tasmania)."*

*“The cost of disability support for the catastrophically injured could be funded through the employers’ workers’ compensation premium (as it is now) but the entitlement would not be included in any claim settlement. It would be preserved or paid into a disability support fund. Alternatively a percentage of the premium could be paid to the national disability scheme and all eligible claims would be paid by the national disability insurance scheme.”*

*“While there are benefits in transferring care for the catastrophically injured to a national scheme, Tasmania is concerned that the State’s workers’ compensation system would be adversely impacted if a national scheme were to include all those who require long-term care from employment-related injuries, and not just the catastrophically injured.”*

*“The Tasmanian workers’ compensation scheme has recently undergone major reform with an emphasis on early intervention, improved injury management and stronger incentives rehabilitation and return to work. The scheme provides access to some disability support services and some long-term claimants also access Commonwealth funded disability programs. It would be undesirable if case management became more fragmented as a result of the establishment of a national scheme.”*

*“It would also be of concern if workers compensation premiums were to increase as a result of the transfer of all disability-related care to a new national scheme. Again, the issue arises of the incentives under a national scheme to ensure quick rehabilitation, where feasible, and early return to work.”*

*“It would be highly undesirable if existing, well operating insurance markets are negatively impacted through the introduction of a national disability care and support scheme.”*

*“A related question is whether a national scheme would remove common-law rights. For example, would individuals retain the right to seek damages for future care costs as well as economic and other costs? It would be regarded as inequitable if these common-law rights were removed, but access to the scheme was not universal, such as through the application of means testing.”*