

FLINT FORENSICS PTY LTD

12 August 2003

Mr Mike Woods
Presiding Commissioner
National Workers Compensation and OH&S Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

Dear Mr Woods

Re: Public Inquiry into National Workers Compensation and OH&S Frameworks

Flint Forensics Pty Ltd ("Flint Forensics") accordingly submits the following submission for your consideration in conducting the above Inquiry.

About Flint Forensics

Flint Forensics is a Chartered Accounting firm and provides forensic accounting and specialised financial services for the insurance industry. Flint Forensics is engaged in both income protection insurance risk management and litigated economic loss assessment.

The Productivity Commission Inquiry

Flint Forensics primary interest in this Inquiry and the focus of our submission is on benefits structures. In the terms of reference, the Productivity Commission was, among other things, asked to report upon:

"a consistent benefits structure that provides adequate levels of compensation, including income replacement and medical and related costs, for injured workers and their families."¹

Flint Forensics is strongly of the view that a well designed benefits structure mechanism will both promote the return to work for those able to do so, yet also provide for injured workers who are unable to work.

¹ See: "National Workers' Compensation and Occupational Health and Safety Frameworks - Terms of Reference", www.pc.gov.au, accessed on 16 July 2003.

Specifically, there are several areas where Flint Forensics makes submissions and they are:

- ***the design of lump sum payments***

Lump sum payments need to balance the needs of the injured worker with the capacity of that worker to return to appropriate paid employment. Receipt of a large lump sum award can, among some employees, create an expectation of being "set up" for life. However, it is only in cases of severe incapacity arising from injuries in the workplace that such an outcome should prevail.

Accordingly, Flint Forensics submits that lump sum payments should be designed only to provide economic respite to the extent necessary. Should it be evident that an injured worker retains some work capacity, and lump sum award should be revised accordingly.

- ***the use of structured settlements***

Structured settlements allow injured persons to receive at least part of their compensation in the way of periodic payments (annuities), rather than simply a lump sum settlement. Currently such settlements are not permitted under workers' compensation claims though they could be used to great effect to provide for long term care needs.

With the passage of the *Taxation Laws Amendment (Structured Settlements and Structured Orders) Act 2002*, the *Income Tax Assessment Act 1997*, the *Income Tax Assessment Act 1936* and the *Life Insurance Act 1995* have all been amended so that periodic payments derived from certain structured settlements and structured orders are now tax-exempt.

Flint Forensics submits that structured settlements be permitted under workers compensation claims (as they are under CTP) and that they be awarded similar exemption under tax law. Flint Forensics notes a recent House of Representatives Standing Committee Report recommendation to that effect.²

For further information on structured settlements please refer to the ATO website.³

- ***the application of a consistent discount rate on future payments***

To help foster greater consistency in benefits structures between the jurisdictions, Flint Forensics submits that the Productivity Commission recommend that a consistent discount rate on future payments be adopted. We note that the Motor Accidents Compensation Act 1999 (NSW) and the Civil Liability Act 2002 (NSW) applies a discount rate of 5 per cent to future payments. Whereas, the Transport Accident Act 1986 (VIC) specifies that the present value of the future loss must be qualified by adopting a discount rate of 6 per centum in order to make appropriate allowance for inflation, the income from investment of the sum awarded and the effect of taxation on that income.

Flint Forensics has no strong view on what would make a suitable benchmark for the discount rate, only that it would need to be a legislated figure and one that takes account of both risk and growth factors.

² Recommendation 7, The Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Employment and Workplace Relations, "Back on the Job: Report into aspects of Australian workers compensation schemes", Ausinfo, Canberra, p. xvii.
³ www.ato.gov.au, under "A-Z Topic Index" for "Individuals", "S", for "Structured Settlement".

However, consideration would need to be given to the effect this would have on other lines of insurance. Where there are differences between the discount rates applied, it could facilitate remedy shopping between say, workers compensation and public liability.

Advantages	Disadvantages
<ul style="list-style-type: none"> - Certainty and equity in outcomes - An informed market, which in turn reduces search costs - Enables employees to take out other insurances, as appropriate, with the benefit of certainty in respect of their needs - Greater ability for insurers to price their products - Reduced court costs (litigation) - Reduced costs to insurers 	<ul style="list-style-type: none"> - the potential that one party to any given transaction will profit and the other lose as a result of a "static" rather than dynamic discount rates system

- ***Consistency between jurisdictions***

The issue is that a person has the opportunity and incentive to profit from the variance in benefits structures between jurisdictions. For example, in the case of Flint Forensics, as an organisation it could take out workers compensation insurance in several jurisdictions. In the event of any accident, the incentive would be to make a claim in that state or territory that provides the highest benefits to the worker.

Flint Forensics contends that equity and consistency across all jurisdictions should be one of the prime considerations in the current Inquiry.

Kind regards

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