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2 August 2012

Our Ref: MOC:WT:120001
 Your Ref:

The Research Director,
 Finance and Administration Committee,
 Parliament House,
 George Street,
 BRISBANE QLD 4000

FAX NO. 3406 7500

Dear Committee Members,

REVIEW AND ENQUIRY INTO THE OPERATION OF QUEENSLAND WORKERS' COMPENSATION SCHEME

For more than thirty years, both I and members from my firm have represented Queensland workers who have suffered an injury at work. We have assisted them with both claims for statutory benefits and for damages arising out of their employers' negligence or failure to provide them with a safe workplace.

As part of my work, I regularly meet and have discussions with lawyers from around the country who practice in health and compensation law. It is recognised by them that the Queensland scheme provides the gold standard for a sensible, fair and cost-effective workers' compensation scheme.

The Statutory Scheme:

The Queensland scheme has a strong emphasis on rehabilitation and return to work.

In my experience, except for the most serious claims, Queensland workers are often in return-to-work programmes within weeks of their injury and generally return to meaningful and valuable work.

For example, I am currently acting for an eighteen-year-old man who suffered significant injuries to his ankle and lower leg. This occurred in November 2011. He is currently working three days a week and is hoped to be working four days a week in the immediate future.

A second young man I am representing suffered multiple fractures to his spine because of a motor vehicle accident at his workplace. WorkCover Queensland has now managed, with a sensible rehabilitation scheme, to have this young man back at work in a tailored return-to-work programme.

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Finance and
 Administration Committee

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A Sensible Approach to Common law:

The last changes to the Queensland compensation scheme were made effective for injuries suffered from 1 July 2010. The full effect of those changes is yet to be seen, as many common law claims arising after 1 July 2010 are yet to reach finalisation. One would hope that the full effect of what were significant changes to the scheme would be observed before there would ever be consideration given to any alteration to the scheme.

The existing common law workers' compensation system encourages only those claims with merit to be pursued because:-

- (a) there is a sensible assessment of employers' liability for claims under the scheme;
- (b) restrictions on legal costs, general damages, and the removal of claims for gratuitous care mean that only those claims with significant loss of earnings are pursued.

It is noted that, in the 2010/2011 financial year, the number of claims reduced by 9.6%.

An emphasis in the system on early resolution of claims leads to a significant cost saving to WorkCover Queensland in regard to its legal costs. Early claims resolutions also results generally to settlement of claims for a more conservative sum than if they were taken to trial.

The Injustice of Thresholds:

In the past, there has been a push by some for the introduction of a percentage level of impairment threshold before a Queensland worker should be entitled to access the common law system. This would be an unjust, inequitable and retrograde step.

Often, an injury producing what is assessed as a low level of impairment (say, 5%) to a worker who needs to complete heavy physical work (say, a scaffolder, bricklayer, tiler or builder's labourer) would effectively end their working life.

The common law system does not reward workers. It merely attempts to put them in the same position that they would otherwise have been had it not been for the negligence of their employer.

In all my years of practice, I have never met an injured worker who was glad they had suffered an injury so they could seek compensation. Almost universally, they would just like their life to return to what it was prior to their accident.

An imposition of the threshold on workers, before they could pursue common law damages, would condemn many Queensland workers and their families to penury.

The Social Benefit of a Common law System:

The workers' compensation scheme, as it stands, provides a strong incentive for employers to provide a safe system of work for Queenslanders.

Although it is recognised that Queensland has a reasonably vigilant system of inspection run by the Division of Workplace Health and Safety, inspectors from the Division will often be called to a workplace only if a worker is hospitalised as a result of an injury.

Most workplace injuries do not involve any notification to the Division of Workplace Health and Safety.

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If a worker brings a successful claim for common law damages against their employer for failing to provide a safe system of work, that employer's WorkCover premiums will increase. This provides a strong incentive to employers to provide safer workplaces. Without a strong common law system, Queensland workplaces would become less safe and more dangerous for Queenslanders. The imposition of thresholds would inexorably lead to more dangerous workplaces for Queensland workers.

Summary:

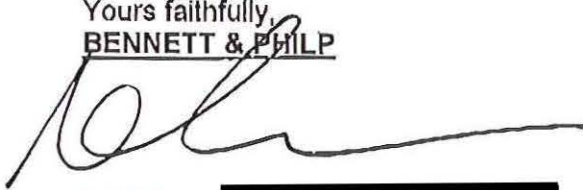
With:-

- a reducing number of claims;
- the average cost of common law claims decreasing;
- the on-going impact of the 2010 reforms to the scheme;
- Queensland having comparatively low premiums for its scheme;

there appears to be little reason to muddle with a system which is largely recognised as having the gold standard for a workers' compensation scheme with its combination of a short tail statutory scheme and Common law benefits for Queensland workers.

Queenslanders have the best with the scheme, as it stands, and I can see no reason why they should not continue to do so.

Yours faithfully,
BENNETT & PHILP



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