

[REDACTED]

Sent: Sunday, 23 September 2012 11:03 AM
To: Finance and Administration Committee
Subject: Enquiry into operation of Qld Workers' Comp Scheme
Attachments: IMG.jpg

Addendum to previous submission

[REDACTED]

Please find attached a circular received by me which puts in writing the official position of one (but indeed most) of the suppliers of my work. This confirms what I said in my submission of 2 September—received by you on Monday, 3 September and acknowledged by you on that date as Ref: 1.12.846

By way of expanding slightly on that, may I just add the following points:

1. By adopting the position that they are (understandably), my suppliers may, indeed, be merely moving the goalposts. On its current interpretation Workcover will in all probability, pursue me via the incorporated entity I am forced to set up.
2. This leads me back to one of my original points: How can a premium be calculated when the hourly rate is for the most part for the hire of equipment?? WET HIRE is the hire of machine and OPERATOR as a UNIT. There is no apportionment of charges which make up that rate, i.e.

Return on capital, repairs and maintenance, registration, insurances and other fees, not to mention the significant cost of fuel. There is nothing included per se for the compensation of the operator—he merely hopes there is something left over so he might keep body and soul together. Contrast this if you will with the situation where the large firms have a multitude of machines/vehicles and hire “employees” to operate them.

3. Failing any change to Workcover’s current interpretation---Has it given due consideration to the effect this will have on its liability position?

Many thanks for the opportunity to contribute,

I A CHALMER [REDACTED]
[REDACTED]

7 September 2012

Dear Sirs,

RE: OUR CLIENT: [REDACTED]

You may be aware that over the past 12 months (or thereabouts) there has been a significant change in the Law, or a reinterpretation of the Law, as to what constitutes a Subcontractor. Without delving into the legal issues surrounding the same at great length, one test exists at Common Law, a different test seems to be applied by the Australian Taxation Office and yet another test is applied by the Queensland Work Cover office. Some of those tests have similarities and in other respects the tests are quite markedly different.

In any event, as a result of the above matters and in particular due to the confusion as to what constitutes a Subcontractor from the point of view of Taxation, as opposed to the point of view of Work Cover insurances, and as opposed to Common Law, it has become clear that for our client company to remain financially viable it is not in a position to contract with individuals or sole traders as a subcontractor any further. In lieu, and in respect any further works offered on a subcontract basis, by our client company, for the above reasons those works can only be offered to a subcontractor that is incorporated at Law (i.e. incorporated as a Pty Ltd Corporation). We appreciate that there is a cost (approximately \$800 to \$900) to form a corporation and that there are accounting and taxation implications that will arise if you are not already so incorporated (and in respect of which we strongly urge that you take advice from your accountant), but the fact unfortunately remains that it is simply not possible for our client company to provide subcontract works any further to individuals or sole traders that are not a corporation due to the lack of clarity as regards our clients obligations (or otherwise) in respect taxation, legal liability generally, and in respect Work Cover premiums.

We repeat, in that respect that prior to incorporating (should it be your desire to do so and therefore continue a contractual relationship with [REDACTED], you must of course take financial/accounting advice and your Accountant should be able to assist you in forming a corporation if you have not done so already. Any queries regarding the above please do not hesitate to contact the undersigned.

Yours faithfully,

[REDACTED]

[REDACTED]