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31 Aug 2012

The Research Director
Finance and Administration Committee
Parliament House
George St
Brisbane Qld 4000

Re:- Operation of Queensland's Workers' Compensation Scheme.

I attach my submission in respect of your enquiry into the above matter.

My submission is outlined within the guidelines of your terms of reference.

I have not commented specifically on the reference to Section 5 of the Act as I believe I have addressed most of those issues.

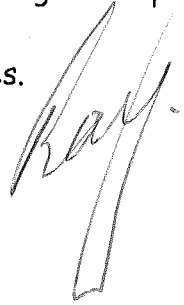
I apologise, in advance if my submission is in any way out of context. I only received the terms of reference last week and the copy of Section 5 today.

I shall await, with anticipation the outcome of your deliberations.

For your information I also append a copy of my C V.

Would you kindly acknowledge receipt.

Yours. Ray V Hodges.



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Subject- Operation of Queensland's Workers' Compensation Scheme

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1. As you are aware the Workers' Compensation Act was enacted in 1916 with various subsequent amendments.

   One major amendment occurred in the late sixties.

   The Building Workers Union successfully reached an agreement with employers to the effect that the employer be responsible for the payment of the gap between the average weekly earnings and the workers Award rate for a period of 26 weeks during the workers disability.

   This was known as enhanced benefits.

There was a provision, in that agreement' that the worker could elect to accept an additional weekly payment in lieu of the enhanced benefit.

It was the employer's responsibility to arrange suitable insurance cover.

The Government of the day came to the conclusion that if this included private insurers it would give them a "foot in the door" to fully underwrite Workers' Compensation.

Therefore an amendment was made to the Act that the SGIO(Q), who then administered the Act, would include the enhanced benefits, where applicable, in determining the weekly payment rate.

If any amendment to the Act is made to lessen the period of enhanced benefits it will have no effect on injured workers entitlements.

It remains the employer's responsibility.

2. Comparisons

The Queensland Scheme was always regarded as having the best system in Australia. Low premiums and very good benefits to injured workers.

A very healthy reserve fund was held by the Office and by considered budgeting and strategic and efficient management was able to comfortably remain in the black.

Unfortunately, our Accounts Department was transferred to the Department of Employment and Labour Relations.

As I retired in 1999 I am unaware of the comparison now' but I would not be surprised if Queensland's rating has dropped.

3. Current financial position

Having read of the deficit operating result for 2010-11, premium income, investment returns and claim payments it is blatantly a very serious problem.

At various times I was acting Manager Claims. I did a budget in 1986 Which amounted $500,000,000.

If allowed to continue it will, no doubt, have a dire impact on the economy of Queensland and on employers and workers.

4. 2010 reforms

As I retired in 1999 I do not have current information to address this issue.

However I can comment on the growth in Common Law.

There are a Number of issues that need to be contemplated .

Government informed the Law Council that they would permit Legal firms to advertise.

Instructions, from the Executive, were given to the Common Law Officers that small claims, which I referred to as legitimate but frivolous, were to be settled expeditiously.

Nothing wrong with that per se.

However it created a ground swell of small claims.
There was a concern on "long tail" actions.

This was really not a well thought out plan of action.

It took away the authority of the Damages Claims Officers to effectively manage the action.

It became well known to plaintiff solicitors that they could offer their services with a guarantee of a swift settlement with a minimum of fuss.

I personally settled an action for $750.00.

In the latter years of my career there was an erosion in the level of authority for Damages Claims Officers in that it reduced the limit on which they could settle actions.

The files had to be referred to a higher authority with a recommendation.

The problem was that those Officers had little or no experience.

In one action recommended that an offer be made to the Plaintiff of $900,000.

It was our (my Lawyer Barrister and myself) opinion that the quantum was $1,000,000.

It was not approved

The Court awarded $980,000.

In another action, on advice, I recommended an offer of $900,000 nett taking into account an expected 10% reduction for contributory negligence.

It was always going to be, to the experienced eye, a $1,000,000 result.

That also was rejected.

The award was for $1,100,000 without any contributory negligence.

Incidentally, the judgment took twelve months to be handed down.

A couple of months later in an issue of Proctor a matter was reported in identical circumstances and a 10% reduction was given.

The greatest debacle of incompetence, which was settled out of Court was a matter in which Liability was accepted and quantum was agreed at $4,000,000.

Workcover was one of ten Defendants.

When the file was transferred to me I considered that the statutory claim had been incorrectly accepted despite having been referred to a higher authority.

The Plaintiff was not a worker and this compromised my position.

I recommended that we extricate ourselves from the action as the Plaintiff was not a worker.

It was not accepted.

My follow up recommendation was that, in view of the decision to

proceed, our case was severely compromised due to:-.

(a). The Application for compensation was incorrectly accepted.

(b) The cessation of benefits was incorrect because it was not done retrospectively.
(c) Our insured Defendant was in liquidation. We had no access to their files.

(d) We faced nine other hostile defendants.

I recommended that in my opinion I estimated a 30% chance of losing.

I therefore recommended that our contribution be limited to $1,300,000.

At the final settlement conference, whilst I attended, a higher authority was instructed to take over negotiations.
He succumbed and contributed $1,600,000.

Negotiating is not learned in a couple of months.

During this period instructions were also given to cease negotiations at two weeks away from the trial date.

No "on the door of the Court" settlements.

This was the prime time to achieve an equitable result for Plaintiffs and especially desirable for those of doubtful character who were most vulnerable.

I once settled an action literally on the door of the court, I was in

attendance. The plaintiff accepted the payment into court of $1.00.

Obviously on the "door of the Court" settlements lessened the Courts case load and reduced costs.

Damages Claims Officers were instructed to limit settlements to a maximum of $1,000,000 a month

This unnecessarily delayed settlements and increased costs.

By the way, all instructions were given verbally.

It was decided by the Executive to regionalise Common Law claims.

Again no expertise.

The expertise was in Head Office and such an exercise fragmented decisions.

This was at the time when major changes to the Members of the Executive were made.

An unwise decision in my humble opinion.

5. In commenting on self insurance arrangements I refer you to my Recommendations in the following item 6.

6. My recommendation in this area is modeled on the Workers' Compensation Board of New York.

That Board does not issue policies nor pay claims.

It is merely a regulatory body whose sole function is to control the Act and settle disputes.

It is the responsibility of the employer to protect injured workers by way of self insurance or through private insurers.

Any disputes are determined by the Board.

Similar to Q Comp and to the other Australian state three of whom permit private insurers.

The Board is composed of 15 commissioners and an in house presiding Judge.

Should this proposal be implemented it is paramount that all stakeholders be assured of the benefits.

An additional benefit would be that the already overloaded Court system would be relieved of Statutory disputes and litigation matters.

Such a regularity board, in my opinion, might comprise representation , At least in the following areas:-
Government.
Employers.
Unions.
A member fully conversant with the Workers' Compensation Act.
Medical Practice.
Legal Profession.
Mediation.
Work Place Health and Safety.
Accountant.
The Public.
Presiding Judge
Support staff.

There would be of course a right of appeal to the judiciary.

I note that the title is now The Workers' Compensation and Rehabilitation Act.

In my humble opinion the Office should never have been in rehabilitation.

There is and old adage "know the business you do and do the business you know.

In my experience, having been at various times Acting Manager of rehabilitation, I became aware of an interest by the counselors in Common Law which they relayed to injured workers.

Such advice was outside their areas of responsibility.

I consider that this contributed to an increase in common law actions.

7. Summary.

As previously stated The Workers' Compensation Act began in 1916 and since then no real basic changes have been made.

It is a matter that needs to be revised to keep aligned with the present ever changing times.

Perhaps now is the opportunity.

The solution to a problem is simple.
Discover (which has been executed)
Uncover and
Recover.

I have a philosophy.

when one has a problem don't worry about, solve it.

It may be advantageous to reflect on the New York scheme.

This may be a radical plan but initiatives must be taken.

. In 1994 I went on an authorized study tour of America during my annual leave and at my own cost.

On my return I reported my findings to the Executive.

It was not acknowledged.

I visited Workers' Compensation authorities in the States of California, Michigan and New York.

The scheme in New York was most interesting.

I had the pleasure of sitting in on a case being heard by the Judge involving asbestosis.

In New York there is no avenue for an action directly against the employer.

Any action is against the manufacturer of, say, an unsafe piece of equipment.

The Defendant can bring in the employer as a second defendant.

Should this submission be implemented private insurers should be authorized by the Board and could be limited as is done in other States.

In this way each insurer would only administer their relevant percentage of current volume of actions.

A much more manageable situation than the present mode.

It could result in no premium increase or hopefully, a reduction.

It would appear that there would be a resultant major loss of jobs.

However I am confident that the private insurers would head hunt the present staff for their experience in Workers' Compensation.

Perhaps legislation could be could be decreed to ensure that outcome.

If the status quo remains there would need to be a major overhaul of the system and senior management roles.

There must be willingness from the executive and senior management to appreciate and understand the experience of common law officers, give them the authority and delegation to manage and settle those actions without interference in matters of which they may have little or no knowledge.
With the proviso that, in fact those officers know the Act.

Another facet should be considered.

An injured worker has of course an injury, often very significant compounded by loss of income.

A volatile situation.

A few employers would pay wages until the application was accepted. Those, monies were refunded by Workcover.

Perhaps that system should be extended.

I have had personal evidence where a staff member recently told me that nowadays they don't need to know the Act because it's all on computer;

Perhaps the systems analyst/ programmer got it wrong?

As an indicator, in 1990 the Act was rewritten.

There was a minor amendment to the then, Sections 8(7) and 8(8) which contradicted the existing definition of a worker.

I inquired of the Executive on why so, as the new wording would have dire consequences..

I was not given an explanation.

Shortly thereafter a security officer, who was engaged as a sub Contractor to the Maroochydore Swans Bowls Club, instituted Common Law proceedings against the Club following an injury he sustained.

It was defended on the grounds that the Plaintiff was not a worker!

The Plaintiff was, of course, successful and was granted damages.

A costly exercise.

Also in that rewrite the term, claimant, was introduced.

The injured worker is an applicant until the Application is approved when he/she reverts to the injured worker.

All these errors.

The plot thickens.

I fear George Orwell was correct.

There in, perchance, lays the real problem.

It could be epidemic.

In 1978, together with Jim O'Dwyer Manager Claims Head Office, Don Richardson Accountant and John Schultz Manager Toowoomba, we wrote the Code of Conduct.

It included "Welfare of the staff".

When I last looked at the code that paragraph was missing.

For 11 years I was the Workcover representative on the Queensland Mines Rescue Brigade Committee.

That Committee was funded equally by the Mines Department, Mines Management and Workcover.

If this is still the case private insurers and self insurers would need to be addressed on this issue.

The overall current situation is not anecdotal.

It is the volatile combination of all the fore going ingredients which detonated the explosion and subsequent fall out.

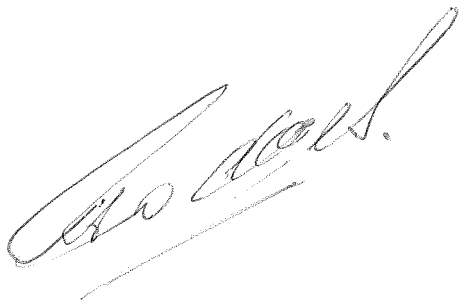
In 1990 the then government head hunted a Victorian academic who was installed as our Director General.

He summonsed a meeting with senior staff at which he made it patently clear that we were not there to serve the public

but to serve the Minister;

A defining moment.

I respectfully tender my submission and trust that it may be of some assistance in your deliberations



Ray V Hodges

31 Aug 2012

Acknowledgements. The Workers' Compensation Board of New York.