



18 November 2010

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The Honourable Ann Bressington MLC
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Ms Bressington

Workers Rehabilitation and Compensation (Reinstatement of Entitlements) Amendment Bill 2010

Thank you for referring this Bill to the Society for comment.

It has always been the Society's position that the abolition of common law rights for injured workers was inappropriate. The Society has consistently advocated for the reintroduction of these rights and we note that your Bill is consistent with that position.

However, it appears that your Bill does not go so far as to reinstate all rights that a claimant would normally have at common law when they sue for injuries consequent upon the negligent act of a third party. The rationale behind the Bill is not clear to us. I understand that the Society's Accident Compensation Committee through its Chair, Mr Hugh Rischbieth, has communicated with your adviser, Mr Ryan Hidden, and that Members of the Committee are keen to meet with you to learn the background to the Bill and to discuss the Bill. I trust you will take up this offer as we are keen to achieve a fairer outcome for claimants.

The requirements a claimant would need to meet in order to benefit from the Bill appear to so narrow they would preclude any benefit. The Bill appears to attempt to provide for recovery for the loss of earning capacity or non-economic loss. We assume that it may be because the Act itself provides compensation for loss of earnings and medical expenses.

We also note that the ability to recover is dependent upon "the occurrence of the compensable disability" being "wholly or substantially attributable" to in effect a negligent act of the employer. The phrase "wholly or substantially attributable" is, with all due respect, rather vague. The ordinary rule would be that the ability to obtain compensation should be "attributable" to. This leaves open the ability on the employer/defendant to argue that the worker was guilty of contributory negligence. The proposed wording would appear to leave this in some doubt and seek to establish some vague threshold that the worker would need to reach. We are not sure as to why this restriction is sought.

We also note the proposed amendment to s105A contains a requirement that the employer is "fully insured". This also begs the question of when this criteria is met. It should be sufficient for the insurer to have insurance against common law actions by a worker. If there is a shortfall then the Corporation,

as an insurer of last resort, would step in pursuant to s105C. It is not clear what the intention of the use of the word "fully" is.

However, as a general concept, it is obvious that the Society does support your proposed amendments and at least they are a step in the "right direction".

I trust that this has been of some assistance to you and request that you now meet with Members of the Society's Accident Compensation Committee to further discuss this matter.

Yours sincerely



Ralph Bönig
PRESIDENT