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22 July 2014

24 JUL 2014

INDUSTRIAL RELATIONS COURT
INDUSTRIAL RELATIONS COMMISSION
WORKERS COMPENSATION TRIBUNAL
OF SOUTH AUSTRALIA

The Hon John Rau MP
Minister for Industrial Relations
DX336 ADELAIDE

Dear Minister,

I refer to the letter from the Premier dated 8 July 2014 regarding reform of government boards and committees. The Premier invites me to consider whether 'Review Committee Panels' under the Work Health and Safety Act 2012 could be carried out in some other way in the context of a general abolition of government boards and committees.

I have discussed this with Senior Judge Jennings and Industrial Magistrate Michael Ardlie and for the reasons that follow, it is our submission that the 'Review Committee Panels' have an essential purpose that is best met through the current arrangement.

Establishment of WHS Review Committees and Panels

Review Committees are established under Part 12, Division 3 the *Work Health and Safety Act 2012* (the Act).

Part 12 of the Act prescribes the decisions made under the Act that are 'reviewable'. Section 224 provides for 'internal review' by 'the regulator' (the Executive Director of the Department that is directly involved in the administration and enforcement of the Act).

Section 229 provides for 'external review'. An eligible person may apply to the Senior Judge of the IR Court for an external review of a reviewable decision, namely one made by the regulator or a decision made on an internal review. The Act provides that an 'external review' will be conducted by a Review Committee. A Review Committee may,
(a) confirm or vary the decision to which the application relates; or
(b) set aside the decision to which the application relates and substitute another decision.

The constitution of Review Committees is prescribed in Schedule 4 of the Act. It requires the Senior Judge to appoint one member from each of 3 Panels formed under subclause (3) of the Act, for each review proceeding. The Panels are;

- (a) a panel of Judges of the IRC and Industrial Magistrates
- (b) a panel of members nominated by the Minister after taking into account the recommendations of employer associations; and
- (c) a panel of members nominated by the Minister after taking into account the recommendations of the United Trades and Labor Council.

A Review Committee is formed when an application to the Court for external review under the Act reaches the trial stage. Schedule 4 of the Act prescribes the powers and procedures of Review

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Committees. Review Committees function in a judicial fashion. An appeal against a decision of Review Committee is to the Supreme Court.

Consideration

It is a matter of government policy that various administrative decisions made under the WHS Act will be reviewable and that there should two tiers of review. It is a matter of government policy that the higher of those (ie 'external review') be by application to a specialist independent body, namely the Industrial Relations Court and the bench that hears external reviews should be made up of a Judge or Magistrate of the Court and two others from Panels representing employers and employees.

This policy is common in workplace relations. It is aimed at bringing equity across the workplace's spectrum of interests. It is aimed at bringing the different points of view, knowledge and experience to the adjudication process and its outcome, moderated a presiding Judge or Magistrate of the Industrial Court and judicial process.

On the assumption that government wishes to maintain that policy, and there is, in our view, no good reason why it should not, it is our submission that the system of panels and review committees the Act establishes performs an essential purpose that is best done as it is currently and should not be abolished. Alternatively, government could, if it wished, consider removing the panels and 'committee' concept and simply leave the IR Court constituted of a Judge or Magistrate to hear and determines s.229 external reviews.

In our submission the Panels and Review Committees are independent judicial bodies, not a board or, notwithstanding its name, a committee. In our submission, the classification of Review Committee Panels as a board or committee is erroneous.

In our submission the Panels and Review Committees system is efficient in providing the review function for which it is established; it effectively fulfils the policy imperative that the second tier of review of WHS Act decisions be independent of both government generally and the department of government whose decisions are reviewable under the Act. In practice a Review Committee is formed infrequently and when it does the Panel members infrequently claim payment. It is a very inexpensive 'committee'.



John Correll
INDUSTRIAL REGISTRAR.