



The Honourable Rod Welford MP



Queensland
Government

In reply please quote: 2004/01103

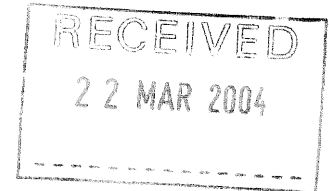
Your reference:

Attorney-General

Minister for Justice

17 MAR 2004

Senator George Brandis
Chair
Senate Economics Legislation Committee
Room SG.64
Parliament House
CANBERRA ACT 2600



Dear Senator Brandis,

Thank you for your letter dated 17 February 2004 seeking my comments on the Senate Inquiry in to the *Treasury Legislation Amendment (Professional Standards) Bill 2003* (Cth) ("the Bill").

The Queensland Government supports the passage of legislation that allows for the effective application of its proposed professional standards legislation ("PSL").

The Queensland Government supports the implementation of PSL. The experience of professionals as a result of the hardening of the insurance market is that they are unable to obtain either affordable insurance cover or any cover at all for certain activities. As a result, professionals have advised they are now ceasing to provide those services, many of which are invaluable to the Australian community.

It is accepted that the implementation of PSL will assist in placing downward pressure upon insurance premiums in a number of ways. First, the mandatory implementation of risk management strategies and complaints procedures will ensure that professionals become more aware of the risks they are exposed to. In responding to these, they will reduce the likelihood that the risks will eventuate, making them a more acceptable risk to insure. Of course, this also protects the community by ensuring appropriate systems exist to allow a professional to identify any problem before it gets out of hand.

Second, the majority of claims currently being made against members of each profession will remain within the limits of liability set during approval of relevant professional schemes. As a result, it will only be the rare excessively large claim,

18th floor State Law Building
50 Ann Street Brisbane

GPO Box 149 Brisbane
Queensland 4001 Australia

Telephone +61 7 3239 3478

Facsimile +61 7 3220 2475

Email Attorney@ministerial.qld.gov.au

Website www.justice.qld.gov.au

commonly known as the "spike claim", that will exceed the limit. It is the need to make provision for spike claims which places great pressure upon insurers to maintain high premiums (in light of collapses of entities such as Enron in the United States). In the majority of instances, PSL will have no effect upon consumers dealing with a professional. The larger commercial parties have the capability to protect themselves through other strategies.

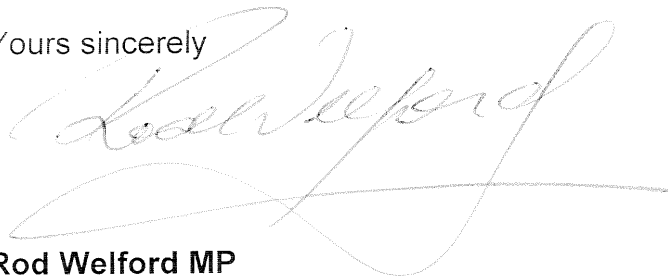
The proposed Queensland legislation is in a substantially similar format to that of the New South Wales' *Professional Standards Act 1994*, upon which the Western Australian *Professional Standards Act 1997* is based. I also note that Victoria and South Australia have recently released Bills also based substantially on the New South Wales legislation.

Currently, two matters remain open for discussion between the state governments in development of nationally uniform PSL - whether schemes under the legislation will allow contracting out of the limitations on a contract specific basis, and whether breaches of fiduciary duty are to be excluded from the limitations provided by the legislation. These issues focus upon ensuring continuity in the provision of professional services and appropriate consumer protection. I am confident these issues will be resolved in the near future through the work of the Insurance Issues Working Group, the officers group set up through the Ministerial Forums on Insurance.

However, the legislative schemes will be irrelevant, and their effect minimal, if the gaps which currently exist in Commonwealth Acts continue. The New South Wales legislation has been in place for 10 years, but as a result of the Commonwealth legislation, did not have any affect on the insurance levels of professionals in that state during the "insurance crisis". It is therefore imperative that the Commonwealth Acts be amended.

Thank you for providing me with the opportunity to provide comments to your committee. Should you wish to discuss any issues further, I will welcome the opportunity.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rod Welford', with a long horizontal flourish extending to the right.

Rod Welford MP