31 August 2012

Ms Deborah Jeffrey
Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

By email: fac@parliament.qld.gov.au

Dear Ms Jeffrey

Re: Inquiry into the operation of Queensland's workers' compensation scheme

I am a final-year law student completing a paper on the operation of sections 32(5)(a) and (b) of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (**the Act**). These subsections contain two exclusions to workers' compensation entitlements that affect workers who have suffered psychological injuries arising out of reasonable management action or their perception of same. I am writing this submission based on the effect of these subsections on statutory and common law claims. The views expressed in this submission are my own and do not reflect those of any organisation I am associated with.

I note that this Inquiry is being conducted in interesting times in the employment market, particularly in the public sector. The government should consider how the restructuring of government sectors might impact upon claims for psychological or psychiatric injuries. My proposal below would address a number of issues that may arise as a result of these restructures.

The findings of the Kennedy Inquiry in 1996 revealed that the workers' compensation fund could be operating at a deficit of around $290 million. This precipitated a tightening of workers' compensation entitlements for workers who had sustained a work-related psychological injury.

Significantly, the reasonable management exclusions were expanded, to represent a broad provision that captured a large amount of cases. Ultimately, the law was subsequently amended in 1999 to represent section 32(5) as it stands today. Interestingly, the Kennedy Inquiry revealed that the fund deficit was largely attributable to common law damages claims, yet the statutory provisions of the no-fault scheme were amended. Currently, Queensland is the only jurisdiction in Australia to have such a broad exclusion extending to conduct within the ambit of 'management action'. This is problematic for a number of reasons.

Whilst the broadening of the exclusionary provisions for psychological claims may cut costs for insurers and employers, the problem with this is that it does not resolve the problem; it merely shifts it to other bodies such as the social welfare system and the public healthcare system. In order to address the problem that psychological injuries pose to insurers, employers, employees and the community at large, a more holistic approach should be taken, rather than just shifting the burden of work-related injuries.

Whilst I accept that it is not appropriate for all claims for psychological conditions to succeed, the outcomes of claims based on the current tests are often decided on technical terms, such as the words a claimant uses in describing their stressors. The language used in section 32(5)(a) is very vague and ambiguous, leading to difficulties for workers to ascertain their rights prior to lodging a claim. If workers were able to understand more clearly whether their claim would succeed, this may lead to lower administrative costs in terms of processing claims.

It is my submission that the government should enact a new statutory provision to replace section 32(5)(a) and (b) that should read:

> Compensation is not payable to a worker for a psychological or psychiatric injury arising out of:
>
> a) action taken to monitor or review the worker's performance;
> b) reasonable action taken to discipline the worker;
> c) a failure to obtain a promotion, transfer or benefit; or
> d) action taken to demote, transfer, retrench or dismiss the worker.

I note that these exclusions are similar to those that were contained in the *WorkCover Queensland Act 1990* (Qld). I consider such exclusions to be appropriate, as they protect the effective functioning of businesses, and also protect workers from unreasonable disciplinary action, which is not directly covered by industrial relations laws. Employers should have immunity against monitoring and reviewing performance and changing the worker's role to meet the needs of the business. I consider that unfair dismissal laws provide a more appropriate avenue for recourse for workers who feel as though they have been unfairly dismissed. It is a risk that every worker takes, and I do not consider that workers' compensation is the appropriate mechanism to address the consequences of employee dismissals.

I do not consider that section 32(5)(b) of the Act is a particularly helpful provision, and should be removed in its entirety. I consider that section 32(5)(c) is appropriate and should remain as it stands.

It is very important for the government to implement an effective statutory mechanism to compensate workers for psychological injuries, particularly if it decides to remove the availability of common law damages. The government should also consider other initiatives that would address the issue of psychological injuries in the workplace on a more holistic level. Workers' compensation should also maintain an emphasis on rehabilitation.

Therefore, it is my submission that a more effective mechanism be sought to address workers' compensation claims for psychological injuries, such as that proposed above. Furthermore, a more holistic approach should be adopted in order to address the problem. In some cases, workers' compensation is the better mechanism to address psychological conditions, rather than shifting the burden to tax payers through social welfare benefits and public health system.

I hope that my submission assists in your deliberations. I look forward to reading the report in early 2013.

Yours faithfully

Borcsa Vass