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DATE: 31 August 2012

CONTACT: Robyn Davies
DIRECT LINE: (07) 3331 9167
EMAIL: rdavies@trilbymisso.com.au

The Research Director
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000



By Post & Email: fac@parliament.qld.gov.au

Dear Review Committee

Workers' Compensation Review

There will be many submissions made to the Committee outlining the changes that have been made to the Qld WorkCover scheme over recent times and the relative efficacies of this system as compared with those in other states. My decision to make a submission to the Committee comes from a strong belief that our current system works, not only from an efficiency cost/effective point of view that is obviously very important to all stakeholders, but specifically for the recipients of benefits.

Although I write this submission as a lawyer who has acted for plaintiffs with common law workers compensation claims for almost 12 years, I also strongly believe that lawyers' commitment to maintaining the current scheme should not be viewed as a self serving attitude. The law regarding personal injuries has changed regularly over time, and we all simply adapt to that, as we would to any further changes that are made in the future. Lawyers will generally have the capacity to find work in another area of law or related field if necessary. We have that capacity to change. Most of our clients who are injured are in danger of losing that opportunity to change if the scheme reduces their rights to compensation.

This submission is about the rights of injured workers.

Injured Workers

I started acting for clients with work related injuries in 2001 and most of that time has been with Trilby Misso. Most of my colleagues are practicing in this field because they are committed to helping people in need. It is a rewarding area of law in which to practice. Our clients come to us with injuries across a broad spectrum – from finger injuries to serious back injuries that will prevent them from ever working again. We see their pain, not only from the specific injury but also from the effect that injury has on their lives and the lives of their families. We see the effects an injury can have on their sense of self worth. We see that many of our clients with a physical injury also develop a psychological injury as a result of dealing with the pain and also with the physical, social and emotional consequences of that injury. Our clients often cannot work, cannot socialise, cannot play with their kids, have to sell property to cope financially and quite often they experience marriage breakdowns – all as a result of a work injury that could have been prevented.

Our clients regularly tell us it is not about the money - they would much prefer that the accident had never happened. The common law damages that they receive never adequately compensate them for their loss. However my colleagues and I have seen time and time again the huge difference that receiving a lump sum can make to their lives and their ability to go on to again become productive members of the community.

The amount received in common law damages where it is generally apparent that the employer did not do enough to protect the worker from harm varies according to a number of variables. It is therefore not fair to cut off the rights of workers to compensation based on a percentage impairment.

I would like to illustrate the types of common law claims where the payout by WorkCover is not large but has a massive impact on their ability to move on with their lives. These clients typically receive compensation of \$100,000 to \$200,000 – often with quite large refunds payable to Centrelink because they have not been able to return to their jobs following finalisation of the statutory claim. They may have knee, shoulder, wrist or back injuries – typically assessed by WorkCover Queensland and independently at common law level between 2% and 10%. If they have been unable to return to their jobs because of that injury, they often have had to sell their houses, gone into debt with family, and need to retrain and/or make a job change.

Trilby Misso has over the years, made follow up contact with clients whose claims have settled and we have received feedback that shows the empowerment that receiving compensation provides. Clients are able to pay back family for debts incurred while they were unable to work, put a deposit on a house to secure their family's future again, do a course that allows them to re-enter the workforce in a different capacity, buy a business, or simply gives them breathing space to find another more suitable job, usually paying less money and often working reduced hours. The compensation also in many instances allows them to go off Centrelink benefits and to take control of their lives for the first time since the day of their injury.

Examples:

1. A male forklift operator aged 34 who sustained a lower back injury of with 8% whole person impairment (30% of which was pre-existing) who was unable to continue with forklift driving despite having worked for the employer for just under 10 years (he was four months off being eligible for long service leave). He received just over \$100,000 and had swapped roles with his wife and was minding two young children while searching for sedentary employment.
2. A middle aged female cleaner with a shoulder injury of 8% plus a supplementary psychological injury and whose husband was on a pension had to sell her home. Her payout of \$170,000 enabled her to secure her home.
3. A man in his early 20s who was a truck driver in the mining industry and who sustained a knee injury with an impairment of only 4% which did not reflect the impairment it had on his ability to work. He was unable to return to work in that industry and needed to completely retrain. He received just under \$200,000 which meant he was able to go off Centrelink benefits and pay for a TAFE course in a more suitable industry.
4. A young man working as a delivery truck driver. He injured his left shoulder and was assessed with 4% whole person impairment on his Notice of Assessment. He was unable to return to work due to the heavy nature of the role. Settlement monies enabled him to purchase his own delivery truck business and he was able to work at his own pace and within his limitations allowing him to move forward with his life.

Short Tail v Long Tail

The differences between a short and long tail system are contained in the information paper provided to this review.

The short tail system as it exists in Queensland is mutually beneficial to both clients and the insurers. Historically the system has been financially efficient. In my view it also provides our clients with an incentive to return to work (if able) at the earliest possible stage. While they will never be in

the position they were prior to their injury a lump sum payment at the common law stage provides that closure and monies to help get them back on track after a difficult period in their lives.

It is a mandatory requirement of an insurer to refer an injured worker to Q-Comp Return to Work Assist if they are unemployed at the cessation of their statutory claim. I believe this program is a great example of how the current system works to reduce the burden on insurers and help workers in getting their lives back on track. In a long tail system these workers would simply continue to rely on rehabilitation and weekly benefits and often lack the incentive to move forward placing an increased burden on the system.

When considering short v long tail systems it is always a fine balance. In Queensland I believe the system strikes a good balance between fairness for the worker and financial burden on the relevant State entities.

Self Insurance

It appears there is consideration of broadening the criteria to allow a greater number of self insurers to be created. My experience with self insurers in comparison to WorkCover Queensland is that many of them act as a law unto themselves.

My concern with self insurers is that there is an apparent lack of separation of powers from the date the incident is reported through to the settlement of a common law claim. In effect this means that one department deals with the reporting, treatment and dealing with the common law claim. The impact of this from a clients viewpoint is that there is an apparent lack of empathy for the injuries suffered and a greater emphasis on returning the injured person to work or ceasing weekly benefits. They often do not even understand whether they are dealing with their employer direct or the self insurance department. Dealing with a self insurer often leaves injured clients disenchanted and confused as there is no apparent separation of interests between their employer and the entity that is meant to be helping rehabilitate them. There is no separation of powers.

If self insurance is something that is to be increased in Queensland there would need to be greater controls implemented. These controls would need to ensure that employers do not use their power as an opportunity to take advantage of injured workers with a lack of strict regulation; other than the worker appealing to Q-Comp which is often a lengthy and costly process at a time when treatment of the injured worker is critical.

The 5% Whole Person Impairment Question

In previous reviews of the WorkCover system in Queensland there is always discussion of the Whole Person Impairment threshold to allow a worker to make a common law claim for damages. I believe this argument has been discussed ad nauseum. However, it is important to emphasis any required threshold would result in an inequitable situation for people who suffer a minor impairment but a major disability resulting in economic loss. The old impairment v disability argument.

The percentage impairment assessment provided by WorkCover Queensland is usually on the basis of one doctor's opinion. This doctor may be a specialist but not necessarily so. The impairment assessment does not take into account the effects that injury will have on the individual claimant's ability to earn a living or continue with their normal lives. Someone with a knee injury assessed at 2% can have their lives more disrupted if they are a manual worker than someone with a much higher assessment who is a sedentary worker.

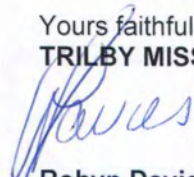
The gentleman referred to in example three above suffered an injury to his knee. If I suffered an injury like this (as I recently have) I would have no trouble continuing in my employment. However, for this young man the impact on his life was devastating. He had intended to work in labour intensive mining work for the foreseeable future. His economic loss was substantial which meant his common law claim was large when considered against the percentage impairment.

I will not provide countless examples but I can assure the review committee that in my experience situations like this are commonplace.

The current Queensland WorkCover scheme as it stands is equitable, the financial difficulties have been addressed and I can see no benefit to the community at large for taking away further rights of injured workers.

Yours faithfully

TRILBY MISSO LAWYERS



Robyn Davies
Principal Lawyer