



Queensland Asbestos Related
Disease Support Society Inc.

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31 AUG 2012

Finance and
Administration Committee

WorkCover Queensland Review

Prepared for:

Queensland Government Finance
and Administration Committee inquiry
into the operation of Queensland's
workers' compensation Scheme

Submission on Workers' Compensation Entitlements Asbestos Diseases

Introduction

The Queensland Asbestos Related Disease Support Society Inc. ("the Society") is the peak body representing sufferers of asbestos disease in Queensland.

It is the Society's position that current entitlements available under the WorkCover Scheme (both common law and statutory) ought to be maintained to ensure victims of work related asbestos disease are adequately compensated and can cope with the financial burdens associated with asbestos disease.

Asbestos Disease

"Asbestos Disease" is a general term. It is a common misconception that all asbestos diseases are cancerous but that is not so. While asbestos does cause cancer, it also can cause highly debilitating benign non-cancerous conditions.

Asbestos disease can in fact be conveniently divided into malignant conditions and benign conditions. **Malignant asbestos disease** includes:-

- (a) **Mesothelioma**, an extremely painful, incurable and inevitably terminal cancer of the pleura, the thin tissue lining the chest and abdominal cavities. Mesothelioma tumours usually occur in the region of the chest but they are also known to occur in the abdominal region. Mesothelioma is generally non-responsive to traditional forms of cancer treatment and the average survival of persons diagnosed with the condition is 12-18 months from diagnosis. Mesothelioma can be caused by the inhalation of very small amounts of asbestos dust and fibre and can occur in the absence of any other forms of asbestos disease. An average latency period of 25-40 years generally separates the exposure and the development of symptoms.
- (b) **Lung cancer**, a cancer of the tissue of the lung. It is accepted that lung cancer can be caused by significant exposure to asbestos. While lung cancer, which is more amenable to cancer treatments, has a lower statistical mortality than mesothelioma, it is nevertheless a dangerous cancer and in its more aggressive or advanced forms death is virtually inevitable.

Benign asbestos diseases include:-

- (a) **Asbestosis**, a scarring of the lung caused by significant asbestos exposure. It is generally progressive and can be an extremely debilitating illness causing ever more severe shortness of breath and which can require reliance on home oxygen, home help and nursing care and which can eventually cause death.
- (b) **Pleural thickening** is an inflammation of the pleura caused by asbestos fibres, which also can restrict the function of the lung. It too can cause significant symptoms of shortness of breath and chest pain.
- (c) **Pleural Plaques**, are a scarring of the pleura caused by inhaled asbestos fibres penetrating the lung tissue and damaging the pleura. Pleural plaques are generally seen as a marker of past asbestos exposure.

While the malignant asbestos conditions are obviously the most severe, benign asbestos conditions can nevertheless subject sufferers to extremely debilitating symptoms over long periods of time and in advanced cases of asbestosis, shortness of breath can require 24-hour per day reliance on oxygen.

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The Society represents and assists Queenslanders suffering from all forms of asbestos disease as well as those exposed to asbestos but who have not developed any asbestos disease.

WorkCover Scheme

Asbestos disease is a latent onset condition as symptoms do not appear until many years after asbestos exposure. For instance, the average latency period between exposure and diagnosis of mesothelioma is 37 years.

Many Queensland workers have been exposed to asbestos in the past and are now developing asbestos disease.

Specific Asbestos Provisions

The Society notes specific provisions have been enacted under the *Workers' Compensation and Rehabilitation Act 2003* ("the 2003 Act") to compensate workers diagnosed with asbestos disease¹, and this includes provisions that deal with terminal latent onset injuries such as mesothelioma and lung cancer.

The latent onset injury provisions under the 2003 Act have adequately dealt with asbestos disease claims. There is no need for any amendments.

Claim Costs

The average cost for a mesothelioma claim for 2011/12 YTD is \$552,911 and \$195,100 for an asbestosis claim². The lump sums awarded reflect the serious nature of asbestos disease, the increasing benefits under the scheme and the fact the WorkCover Scheme is a "short tail" scheme. In fact the number of accepted asbestosis claims has remained stable over the past 18 months².

If a worker receives a payout for asbestos disease under the 2003 Act and then brings a common law claim, the amount awarded under the 2003 Act must be refunded to WorkCover.

Compared to some common law verdicts in some States, the amount awarded for mesothelioma under the 2003 Act is a modest sum. For instance, a jury in Melbourne recently awarded \$730,000.00 in general damages for pain and suffering caused by mesothelioma³. This award was upheld in the Court of Appeal in Victoria⁴. The Defendant did not appeal the verdict to the High Court of Australia. This verdict is important. It demonstrates the value that society places on the pain and suffering and loss of enjoyment of life suffered by victims of mesothelioma.

WorkCover's financial position is strong⁵. No reason exists to reduce benefits payable to sufferers of asbestos disease.

Report Only Claims

The Society understands "Report Only" claims relate to reported instances of asbestos exposure without a diagnosis of asbestos disease – not "report only statutory asbestosis lodgements".

These types of notifications have increased⁶. This may reflect bad work practices in various industries. The Society continues to educate the greater public and employers about the dangers of asbestos exposure to avoid further instances of

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¹ Sections 36A and sections 128A to 128E.

² Queensland workers' compensation claims monitoring report prepared by Q-Comp – p22 (June 2012)

³ Amaca Pty Ltd v Eric King [2011] VSC 422

⁴ Amaca Pty Ltd v Eric King [2011] VSCA 447

⁵ Information Paper prepared by Department of Justice and Attorney General, Q-Comp and WorkCover Queensland – p4

⁶ Queensland workers' compensation claims monitoring report prepared by Q-Comp – p22

workers being exposed to asbestos. The Society understands that there may be some misrepresentation (inadvertently) between report only or exposure only notifications and actual asbestosis claims (through the use of the wrong injury code). Some exposure only notifications are being mislabelled as asbestosis claims. The Society is not aware as to what extent this occurs and this is based on verbal information provided by Q-COMP.

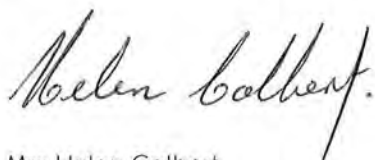
Common Law Claims

Some of those with asbestos disease and who have been exposed to asbestos in Queensland employment bring common law claims. There is no reported increase in asbestos common law claims over the past several years nor is there any evidence of any increase in the average level of payouts, awards or settlements⁵. Any application of a threshold (percentage whole person impairment) to asbestos common law claims would be inappropriate as these conditions are progressive and percentage impairment gradually worsens with time – benign asbestos disease can in some cases deteriorate over a period of 20 plus years.

Summary

The WorkCover Scheme as a whole is adequately dealing with asbestos disease claims. Payment of compensation for asbestos disease in Queensland compares favourably with systems in other States, such as for instance New South Wales. Under the New South Wales scheme a worker is entitled to workers' compensation payments from the Dust Diseases Board plus a common law claim through the Dust Diseases Tribunal. In Queensland, if payments are made under the 2003 Act and a common law claim is brought, payments under the 2003 Act must be refunded. Therefore, in New South Wales a worker would bring two claims whilst in Queensland in most instances a choice is made between either a statutory claim or a common law claim. The New South Wales workers' compensation scheme (the Dust Diseases Board) is also a "long-tail" scheme. The requirement to refund statutory payments from any subsequent common law claim, together with the "short-tail" nature of the statutory scheme, strikes a good balance between the rights of the injured worker and the financial viability of the scheme.

Compensation entitlements for workers diagnosed with asbestos disease must be maintained by the Government to ensure victims of work related asbestos disease are adequately compensated and can cope with the financial burdens associated with asbestos disease. Asbestos common law claims should not be subject to any threshold or any protracted procedural requirements.



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