



Queensland Asbestos Related
Disease Support Society Inc.

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Supplementary Submission on Workers' Compensation Entitlements Asbestos Diseases

Prepared for:

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

Supplementary Submission on Workers' Compensation Entitlements - Asbestos Diseases

Introduction

The Queensland Asbestos Related Disease Support Society Inc. ("the Society") wishes to make a supplementary submission following on from the public hearings which took place at Parliament House in Brisbane.

The Society refers to its earlier submission but wishes to make the further following submission:-

Thresholds for Common Law Claims

The Society is opposed to the general introduction of thresholds in the form of minimum percentage whole person impairment ("WPI") for the commencement of common law proceedings.

The Society is particularly opposed to the introduction of thresholds in relation to asbestos related disease and dust-related conditions generally. The reason for this is that asbestos diseases are of gradual onset. The diagnosis of an asbestos related disease occurs decades after exposure. After diagnosis the condition remains progressive and disability gradually increases. This is unlike many other forms of personal injury.

Introduction of thresholds for commencement of common law claims for asbestos disease and dust-related conditions would result in many persons with progressive asbestos disease having to delay their cases until they reached a particular threshold, which in the circumstances of their condition would have been inevitable in any event. Even for a condition such as mesothelioma, a terminal condition, shortly after diagnosis a person may not have a significant measurable WPI as lung function may not have been significantly affected by that stage. Delay in lodging mesothelioma can be very prejudicial to the claimant and this would be a result of the thresholds.

Definition of Injury – "A Significant Contributing Factor"

Currently Section 32 of the *Workers' Compensation Rehabilitation Act 2003* includes a test for causation that means employment must be "a significant contributing factor to the injury" for compensation to be payable.

Any amendment to that section which would lead to the test being something like "the significant contributing factor" or "the substantial contributing factor" would lead to significant detriment to those with asbestos disease.

The reason for the above is that whilst most asbestos diseases are only caused by asbestos exposure, the circumstances of asbestos exposure often is that a person may be exposed to asbestos in employment and self-employment or in different States, meaning that a person exposed equally to asbestos in employment in three

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different States may not satisfy a test such as "the significant contributing factor" because none of the exposures would be more significant than the other. Under the current test, a person is compensated as long as they fulfil the "a significant contributing factor" test and there are rights of recovery available against negligent third parties that allow the burden of compensation to be shared.

Cost of Asbestos Compensation Claims to the Queensland Workers' Compensation Scheme

WorkCover Queensland (and self-insurers) have a right to recover from manufacturers of asbestos products a contribution to the workers' compensation payments made to workers with asbestos disease. WorkCover often recovers a significant proportion of these payments from the manufacturers. This must be taken into account when assessing the true burden on the fund of asbestos disease-related workers' compensation claims.



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