

Submission of [REDACTED]

Introduction

The overall issue in our paper is how the Workers' Compensation Legislation can better support a person who suffered a work injury, especially when caused by negligence of an employer.

Our overall experience is that people just give up after going through a workers injury compensation procedure. They do not have the strength anymore to fight for any changes in the law or use the options available for complains.

Some need their remaining strength to rebuild their life, but we also know of cases where people finally lost their home and sometimes their family. We heard about cases where people committed suicide, because they do not see a future anymore after being forced into a settlement agreement and voluntarily resignation. Some people lost everything they worked for as they could not find a new job because of age, injury and/or the fact that they have had claimed workers comp. When they tried to get help with regard to their rights and the existing regulations they just "go round in circles" and/or were confronted with too vague legislations, especially with regard to the employer's/insurer's responsibilities.

We hope that you can see that we, although we are not a lawyer nor very competent in the Australian law, tried our utmost to find out exactly about the rights, options and possibilities [REDACTED] might have after his injury, but we experienced that it is not easy and it cost me lots of hours of work and sleepless nights. It was a battle, which was psychologically draining for both [REDACTED] and it must be much more draining for a husband and family father with much bigger responsibilities.

In addition: A "normal" worker, e.g. in the building industry, does not have the knowledge and the possibility to find out what we found out and even this was not comprehensive.

We learned that the aim of the workers' compensation legislation is also to protect the employer, so that companies do not go bankrupt. Although we see sense in this, there seems to be an extreme imbalance between the protection of employers and workers.

Every company needs to be aware that if they act negligently, that they then must bear the consequences. This would result in a much safer work environment.

Submission

Part 1 – Informing the worker

After reporting a work accident/injury or at least as soon as the work accident/injury is accepted by the insurer, the employee should be clearly informed by WorkCover WA about his rights and options.

1.1 Information Sheet

WorkCover as an institution should be introduced to the employee with an easy-to-read-and-to-understand information sheet (written in layman's terms) explaining the compensation process and containing a list of assistance provided by WorkCover WA (make WorkCover WA more user friendly).

1.2 Contents of Information Sheet

This information sheet should include (but not limited to) the information that the injured employee

- will receive the accepted compensation payment until he/she will return to work (either to the pre-injury duties or other suitable employment)
can choose
- all the treating medical experts
and
the Rehab Service

Part 2 – Substantive Provisions

2.1 Employer duty of care

The employer does not need to be too concerned when neglecting his duty of care, as he is very protected by the current law.

By law the employer

- does not need to expect consequences as long as the Whole Person Impairment (WPI) of the injured person is less than 15%

and

- even has a huge benefit from the workers compensation process as the return to work program is fully paid as compensation payment.

There seems to be an extreme imbalance between the protection of employers and workers (especially when negligence is proven).

We understand that claims against an employer lead to increased premiums, but the increase of premiums can be compensated by the employer. E.g. he does not increase payment for his staff members or only adjust the wages with a smaller increase. He also can change to a insurance company that makes a better premiums offer. He might even be able to compensate part of the insurance premium in his annual tax claim. As a result, we have the impression that there are no real consequences for the employer.

2.2 Threshold to make a negligence claim

An injured worker can only make a common law negligence claim when the WPI is assessed with a minimum restriction of 15%.

The WPI assessment does not take into account, what kind of pre-injury job and duties the injured person needed to fulfil according to his job description.

A knee injury with a permanent restriction of not being able to kneel, squat, climb ladders, carry equipment or tools in excess of 15 kg, etc. does have a much greater consequence for i.e. an Electrician (and any other worker in the building or similar industry) than for an Administrator (or any other person working while being able to sit and might even have the possibility to elevate the leg for comfort while working).

While an Electrician is not able to do his pre-injury duties anymore an Administrator is still able to continue with the previous job.

We understand that there are two different processes in place, one for WPI and one for incapacity, but this should be changed in the Workers' Compensation legislation to allow people who are unable to continue in their pre-injury employment to make a common law claim.

WPI on its own is actually insufficient for the grade of restriction relating to the workers specific occupational circumstances. The assessment should include the workers restrictions with regard to his specific pre-injury duties (which needs to be given a name :-) E.g. Whole Occupational Restriction – WOR.

2.3 Return to work program

We support that worker working in a return to work program, in a modified duties position (suitable employment), etc. and are working at least 50% of their normal working week, will be paid wages for the time working and only receive compensation for the balance (and thus not exhausting the prescribed amount), as outlined in the Bill (see Part 3, Division 2 and cl 165)

2.4 Workers' compensation history

We support that the Bill suggests that job applicants may not be questioned in re. to previous workers comp cases as outlined in cl 505 of the Bill.

We understand that an employer may still request information about an injury which may impact on the worker's ability to perform work (to adhere to workplace health and safety law).

2.5 Sharing of medical assessments and frequency of re-assessments

We support that the Bill provides for regulations to determine requirements imposed on insurers for the number and frequency of re-assessments as well as a concrete time period in which the assessments need to be shared between insurer, employer, employee before the decision-making procedure takes place, as stated in cl 183 (2) & (3) of the Bill.

2.6 Limitation Period

We understand that the Termination Day has now been removed and replaced with the general limitation period for personal injury matters.

The injured worker should receive clear information about his options and specifically about the consequences of pursuing certain options. Injured workers should be provided clear information at the beginning of the limitation period and when the end of the limitation period is approaching.

Part 3 – Settlements

We support that the settlement procedure has been clarified and simplified in the Bill.

We support closing the loophole currently allowing to use the 92(f) deed not only for genuine common law cases (15% WPI and negligence by employer), but also for non-genuine common law cases.

This ensures that an injured worker who doesn't have a negligence claim can no longer be forced into a deed (contract), which is self-drafted (not standardised) by the insurance lawyer and can therefore contain the demand of voluntarily resignation.

However, we also believe that WorkCover WA should regulate settlements made for common law claims to ensure unfair and unreasonable clauses (e.g. forcing resignation) are not included in the settlement document.