PROPOSED CHANGES TO WORKERS COMPENSATION LAW

OCTOBER 2013

The Queensland Government has recently proposed changes to the Workers Compensation Scheme managed by the *Workers Compensation and Rehabilitation Act 2003* ("the Act").

The most important part of the changes concerns eligibility of workers to claim for common law damages. This is done in a number of ways:

- Workers are only eligible to claim damages when they received a Notice of Assessment for injuries which have been assessed by WorkCover as having a DPI (Degree of Permanent Impairment) of greater than 5 percent (presumably this means 5.1 percent and above).

- The way the DPI percentage is assessed has changed. The assessment will now be undertaken in accordance with a new publication called “The Guides to the Evaluation of Permanent Impairment” which is yet to be gazetted. This will replace the old "Table of Injuries" contained within the Regulation.

- A worker can now only deliver a Notice of Claim for Damages only after they have received a Notice of Assessment from WorkCover (not before).

- If a worker does not have a Notice of Assessment, then there is a new procedure for applying for one which requires the completion of a form and the submission of a worker's medical certificate. This can be completed with or without an Application for Compensation.

- The definition of injury has been altered to distinguish between physical injuries and psychiatric injuries such that for physical injuries, the employment must be a significant contributing factor to the injury, and for a psychological injury, the employer must be the major significant contributing factor the injury.

Another major change is a new provision concerning disclosure of pre-existing conditions upon employment. Under the new regime, a prospective employer may give a prospective employee a notice under s.571B of the Act requiring the prospective worker to disclose to the prospective employer any pre-existing injury or medical condition. If the employer gives that notice, which must include a description of the nature and duties the subject of the employment, and a warning about making false or misleading disclosure about a pre-existing injury or medical condition, and the worker does not disclose the pre-existing injury or condition, the worker will not be entitled to either statutory compensation or to seek damage for any event that aggravates the pre-existing injury or medical condition.

Further, a prospective employer may apply to the regulator for a copy of the prospective worker's claims history summary. The employer may use the worker's compensation history for the purposes of employment, but for no other purpose. It is unclear how this new section will interact with current anti-discrimination legislation and prospective employers taking advantage of this section will need to carefully consider their obligations under both the *Fair Work Act 2009* and *Anti-Discrimination Act 1997* in relation to the employment of new employees.

Other changes include the requirement for WorkCover to have an accredited rehabilitation unit and for every claim to be referred to that unit unless for some medical reason the worker is unable to comply with the rehabilitation.
Where workers are eligible to claim damages, the workers' ability to claim damages for care received has also been clarified. Previously, the Court of Appeal has criticised the language used in the Act concerning the restriction of care on the basis that it is confusing, and on a literal reading produces an absurd result. The legislation confirms the Government's preferred interpretation that a worker cannot claim for gratuitous services at all, only services which are actually paid for by the worker.

Detection of fraud has been changed with WorkCover now required to give any information it believes constitutes a fraud to the regulator. The regulator may presumably undertake an investigation of suspected fraud thereafter and has significant powers to undertake such investigation, such as rights of entry.

The transition arrangements are yet to be confirmed, however it appears that some amendments, such as imposition of the 5 percent threshold will commence on a date to be proclaimed. Other provisions, such as the requirement for workers to undertake compulsory rehabilitation will commence immediately upon assent.

Overall, the effects of new legislation will mean that it is significantly more difficult for a worker to claim common law damages. As the Guides for the Evaluation of Permanent Impairment have not been released yet, it is unclear as to exactly how much more difficult it will be for workers to be assessed over the threshold. In the long term, it appears that the number of claims made by claimants for common law claims will ultimately decrease, however in the interim, there may be a rise in the level of disputation in relation to the level of impairment.

MacDonnells Law has an experienced State wide insurance team who can provide legal advice on all aspects of insurance and injury law. If you would like further information on this issue, or wish to discuss our legal services in general, please do not hesitate to contact our team.

This article is intended only to provide general information about current legal issues and does not constitute, nor should it be used or treated as, professional or legal advice. Readers should make their own enquiries or seek legal advice before making any decisions concerning their own interests.

Contact Us

Scott Keft | Partner and Accredited Specialist Personal Injuries
P +61 7 4030 0645
E skeft@macdonnells.com.au

Debbie Bridges | Special Counsel
P +61 7 3031 9749
E dbridges@macdonnells.com.au

Lisa McGowan | Lawyer
P +61 7 4030 0529
E lmcgowan@macdonnells.com.au

Paul Sterling | Partner and Accredited Specialist Personal Injuries
P +61 7 4722 0286
E psterling@macdonnells.com.au

Julian Brown | Senior Associate
P +61 7 4030 0506
E jbrown@macdonnells.com.au

Bianca Leigh | Lawyer
P +61 7 4722 0238
E bleigh@macdonnells.com.au

www.macdonnells.com.au