

December 2009

WORKCOVER INSIGHTS – Legislative Review

The Government has now presented to Parliament an Amendment Bill to the Workcover legislation.

We have prepared a summary of the likely changes arising from the Hanks Review.

We take this opportunity to wish you the Compliments of the Season and a safe and happy holiday.

Regards

Tim Adam
Principal

Introduction

In December 2007, Peter Hanks QC, was commissioned by the Workcover Minister, the Hon Tim Holding, to conduct a review of Victoria's *Accident Compensation Act 1985* ('The Act').

The Act establishes the Workcover Scheme which provides compulsory insurance for workers injured in the course of their employment.

The terms of reference required Peter Hanks QC to make recommendations that would simplify and rectify irregularities in the Act, balance the interest of workers, employers and other stakeholders, and maintain the financial viability of the scheme.

After reviewing submissions made by 150 interested parties, the final report ('Hanks Report') containing 151 recommendations was released in August 2008.

Having considered findings of the Hanks Report, the State Government provided a response in June 2009, supporting the Report's recommendations it proposed to implement.

What follows is a summary of some of the major changes likely to be adopted, with a particular emphasis on amendments which will provide benefits to injured workers.

Lodgement of Claims

At present, injured workers must notify their employers of an injury within 28 days. A Workcover claim form must then be obtained, completed and provided to the employer as soon as possible after the injury occurs.

The Government has indicated that it supports a proposal to introduce electronic and telephone systems of injury notification and claim lodgement.

In the immediate aftermath of an accident injured workers are often incapacitated and focussed on obtaining appropriate medical treatment. The enhanced lodgement methods will make it easier for claims to be processed and for these workers to obtain timely access to Workcover benefits.

Notification of Acceptance

Under the current system, the Workcover Insurer has 28 days to notify an injured worker if their claim is accepted. A failure to notify within this time limit will lead to immediate acceptance of a claim. However, this requirement only applies where an injured worker is claiming weekly compensation benefits. A claim for medical expenses only is not subject to any time limit for acceptance.

In recognising this anomaly, the Government has indicated that it intends to remove the distinction between weekly payment claims and medical expense only claims so that the time limit to notify a worker of acceptance will apply to all claims.

Weekly Compensation Benefits

Where a person is unable to work as a result of a workplace accident, they are currently entitled to receive weekly compensation at 75% of their pre-injury average weekly wage after the first 13 weeks.

The Government has indicated that they intend to increase this rate to 85%. This brings the Workcover system in-line with amounts payable for loss of income under the TAC Scheme.

Currently the Workcover scheme only allows for the payment of weekly compensation beyond 130 weeks in limited circumstances.

The Government proposes to allow weekly compensation to be paid outside of the 130 weeks, where an injured worker must take time off work to undergo surgery to treat their workplace injuries.

Superannuation Contributions

At present the Workcover system does not provide for the payment of superannuation entitlements to injured workers.

The Hanks Report has recommended that injured workers still receiving weekly compensation payments after 52 weeks should receive superannuation contributions. The Government has indicated that they will support this recommendation.

Increased Maximum Lump Sum Impairment Compensation

In order to provide additional compensation for workers who are seriously injured, it is proposed that the maximum amount awarded for Permanent Impairment Compensation be increased from \$396,690.00 to \$484,000.00.

This increases the benefit to a level equal to the maximum amounts that can be awarded by a Court for pain and suffering compensation in a common law claim.

It is hoped this will provide a disincentive to workers who would otherwise commence common law proceedings for pain and suffering compensation, as any damages awarded must be reduced by the permanent impairment compensation that has previously been paid. Common Law claims are considered to be costly and time consuming for all parties.

Spinal Injuries

The Government has also indicated that it proposes to increase the impairment benefits payable to workers who suffer spinal injuries by 10%.

This increase recognises that under the assessment guides used by Workcover, spinal injuries often do not rate highly, despite the injury resulting in a significant decrease in the worker's capacity.

Psychological Injuries

At present injured workers are only entitled to receive compensation for psychological injuries where they can establish at least 30% permanent impairment rating. For physical injuries a 10% permanent impairment rating is sufficient.

Despite the higher thresholds which must be met by those suffering psychological injury the benefits payable to them at 30% are much less than a person who suffers a 30% physical impairment.

The Government has therefore agreed to increase the compensation payable to those with psychological impairments of 30% to amounts that are comparable with the compensation payable for physical injuries at 30%.

This makes the treatment of psychological injuries under the Act fairer and more consistent with the increased awareness and recognition of mental health problems in the broader community.

Dependency Benefits

To receive a death benefit under the current system, surviving partners of a deceased worker must establish that they were dependent on the deceased, even if they were residing together at the date of death.

It is proposed that the Act be amended so that a partner who was living with the deceased at the date of death will be deemed to be a dependent.

This will reduce the stress on surviving partners to provide Workcover with supporting documentation in circumstances where they are still attempting to work through their own grief.

The Government has also indicated its support for the recommendation that the lump sum death benefit be increased from \$265,590.00 to \$484,830.00, also to bring it in line with the Common Law maximum.

Currently the dependent children of the deceased worker may be entitled to receive a pension until the age of 16 years or 21 if they are a full time student.

It has been proposed that full time students should be entitled to receive a pension until they reach 25 years. This is consistent with the equivalent provisions under the TAC scheme.

Conciliation

The Government has agreed to a recommendation that Workcover pay the costs incurred by an injured worker when they attend Conciliation to resolve a dispute with the Workcover Insurer.

This would include reasonable transport costs and any loss of wages. It will ensure that workers are not further disadvantaged when they seek to appeal decisions made by the Workcover Insurer which affect their benefits.

At present an injured worker must attend Conciliation prior to issuing any Court Proceedings to dispute a decision of the Workcover Insurer. The Government has supported a proposal that in certain circumstances a dispute may be dealt with by a Court at first instance.

Conclusion

The Hanks Review is the first independent review of the Act undertaken in the twenty years since its enactment, and, in our opinion it was much needed.

It is anticipated that the proposed changes will come into effect by early 2010, subject to amending legislation being drafted and passed by parliament.

Whilst a number of key recommendations have not be adopted by the State Government, the Hanks Report is likely to result in a scheme that provides greater benefits for injured workers and one that is easier for stakeholders to understand and administer.

The Hank's Report and the Government's response can be accessed online at: <http://www.compensationreview.vic.gov.au/>

The Moores Legal Personal Injuries Team:

For further advice and guidance in this area, contact the Personal Injuries team at Moores Legal.

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DISCLAIMER: *This information is of a general nature only. Specific legal advice should be sought rather than relying on this document. The figures are correct as at 1 July 2009.*

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