News&Views
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Workplace Relations, Employment & Safety

Workers' Compensation Reform in South Australia

The Return to Work Bill 2014 (SA) is currently under debate in State Parliament. The Bill is intended to deliver the deepest reform of workers' compensation in South Australia since 1986.

The lamentable aspect to this is that it has taken 28 years for a Government to recognise the need for such deep reform and carry it through. All during that time the workers' compensation scheme has staggered from one funding crisis to another, with employers paying some of the highest premiums in the country and some workers suffering very poor outcomes.

The previous piecemeal efforts to patch the scheme up and make cosmetic changes to its administration were predicable failures.

The Bill will create the *Return to Work Act 2014* (SA) **(Act)**, which will commence operation on 1st July 2015.

The main purpose of the Act is to eliminate the pension scheme that allowed a small number of workers to remain on benefits indefinitely while having relatively low levels of impairment.

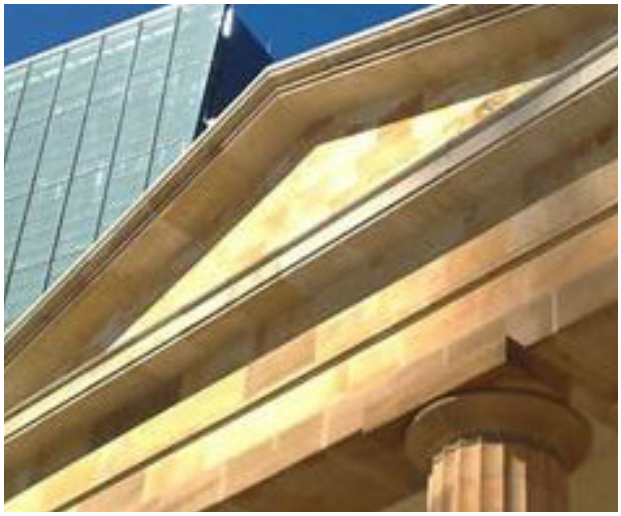
This will happen via a 2 year cap on weekly payments, with medical benefits ceasing 1 year after that. These caps will apply to current claims as well as claims lodged on or after 1/7/15.

These changes alone are expected to rapidly eliminate the scheme's unfunded liability and bring the average premium rate down to 2% or less. In terms of competitiveness, it is relevant to observe that most other schemes have already dropped to the 1.2%-1.5% range. SA is still playing catch-up, even with the new Act.

Among the other principal changes that the Act will deliver:

- *'Seriously injured' status for workers with 30% or more whole person impairment (WPI).These workers will receive weekly and medical benefits indefinitely and care services under the Lifetime Support Scheme. They will also be the only workers who can sue their employers at common law.* [30% WPI is very high, and requires catastrophic levels of disability].
- *A new class of permanent impairment lump sums for economic loss on a sliding scale heavily weighted towards younger, more seriously disabled workers.*
- *A new test of compensability requiring work to be:*
  - *A significant contributing cause for physical injuries*
  - *The significant contributing cause for psychological injuries*

  [Whether or not this will stiffen the test is yet to be seen. While it is an improvement on the current test, interstate case law suggests that 'significant' is not a high hurdle to clear].



- *In conjunction with the soon-to-be-passed Employment Tribunal of South Australia Act 2014 (SA), a revised system of dispute resolution. The word 'revised' is used advisedly. The net result of these changes will be to re-create the current Workers' Compensation Tribunal with the same personnel on the Bench with scope for it to grow into a larger workplace relations tribunal.* [How this is seen as enough of an improvement to justify the cost is yet to be explained by the Government].
- *A panel of Independent Medical Advisers to replace the current Medical Panels.*
- *Revised duty of employers to provide suitable work, including a mechanism to allow workers to appeal refusals to the Tribunal.* [There are potential problems with this, given the above comments on the Tribunal].
- *Clearly expressed rights and obligations of workers, employers and the regulator to make every reasonable effort to achieve return to work.*
- *A schedule of service standards for the regulator and its claims agents.*
- *WorkCoverSA will be re-named ReturnToWorkSA,* [Awkward and clunky as that name is!].

The Act will also retain elements of the current scheme that have been assessed as working satisfactorily.

A clear objective is to change the culture of the workers' compensation system in SA. This is commendable and necessary. However it is to be hoped that there is not too much reliance on the new words alone making the change. In the past, there has been a naïve belief that changing words in the Act will achieve cultural change. A perfect example were the 2011 amendments – 'disability' became 'injury' and 'levies' became 'premiums'. The net result was nothing at all for one obvious reason – the people whose culture needs change – workers and employers, don't read the legislation. They pay others to do that.

The new Act will need resolute and accurate application for it to succeed. Other than the self insurers, the record of SA of doing this is at best indifferent.

Being new legislation, the Act will require extensive testing in the courts before we can be sure it will achieve all the goals set for it. In the event that it is found to have major flaws, the Act has a provision requiring a review of the operation of the Act 3 years after its commencement.

If you require further information about this topic or any other matter affecting your business, please contact Jodie Bradbrook on (08) 8227 2829.

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