

# A SMALL BUSINESS EMPLOYER-WORKERS' COMPENSATION IN THE TERRITORY

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# SESSION OUTLINE

- ▶ **Part 1: Introduction - *ACT Workers Compensation Act 1951* – A Small Business Perspective –**
  - ▶ **Background - Common Law Claims – A Long Term Trend**
- ▶ **Part 2: Employer's Duties –**
  - ▶ **Employee Training, OH&S Policy, Issues For Medical Practice**
- ▶ **Part 3: Workers' Compensation Claims – The Process**
- ▶ **Part 4: Workplace Bullying & Compensation in the Territory**
- ▶ **Part 5: Case Studies – Some Untold Stories**
- ▶ **Part 6: Lessons for Employers**
- ▶ **Part 7: Questions**

# PART 1. INTRODUCTION

## *ACT Workers Compensation Act 1951*

### A Small Business Perspective

- ▶ The focus of this presentation is to provide you with some context showing how the **Workers' Compensation ("WC")** jurisdiction actually works in the ACT.
- ▶ The risks of workplace injury are great for all businesses, but even greater when one considers how the WC system operates in the Territory.

# WORKERS COMPENSATION ACT 1951

## BACKGROUND

- Remember, all statutory workers' compensation schemes in Australia provides '**no fault**' compensation for injury or disease.
- In most jurisdictions, an injury is defined as a physical or mental injury, including aggravation, acceleration or recurrence of an earlier physical or mental injury
- Claims must "**arise out of**", or "**in the course of employment**"
- Disease claims need not have a direct causal connection with work but must have a "**work-relatedness**" connection "**in the course of employment**".

# WORKERS COMPENSATION ACT 1951

- Currently in the Territory it is only required for an employee to show that employment is a “**Contributing Factor**” to sustaining an injury, the contraction of a disease or the suffering of an aggravation.
- (See October 2017, *ACT Amendment Bill*). This proposes to delete the words “**A Contributing Factor**” to “ **A Substantial Contributing Factor**”

# Worker's Compensation: Common Law and Lump Sum Claims – A long Term Trend

An injured worker may choose either:

- A Common Law claim
- A redemption (“commutation”) of statutory entitlements
- A statutory permanent impairment benefit

Very few people chose the statutory benefits option -

Generally, insurers and claimants prefer to settle via common law – this is because insurers can finalise the claims and manage their claims costs and;

Statutory settlements are seen as the lessor option for claimants and Lawyers.

# PART 2 - ACT - EMPLOYER'S DUTIES

## ***Providing workers with information***

- ▶ Information about workplace bullying can be given to workers in a number of ways including:
- ▶ talking directly with workers by holding team meetings, “tool box” talks or speaking one-on-one with them at the beginning of the work day
- ▶ handing out company newsletters or pamphlets
- ▶ including information sheets in payslips
- ▶ displaying posters around the workplace
- ▶ through email messages or intranet announcements

# ACT - EMPLOYER'S DUTIES

## **Workplace Health & Safety Policy**

Some training in OH&S requirements at induction should include information on:

- ▶ The standards of behaviour expected in the workplace including the use of social media, if relevant
- ▶ How workplace bullying/harassment should be reported and how such reports are managed
- ▶ Awareness of the impact certain behaviours can have on other employees and patients, members of the public
- ▶ Regular risk assessments & worker's compensation insurance



# ACT - EMPLOYER'S DUTIES

- ▶ How workplace bullying reports will be responded to including timeframes.
- ▶ Managers and supervisors should also be trained in how to respond to workplace bullying reports and in skills that will help develop productive and respectful workplace relationships.
- ▶ Training should be tailored to meet the needs of workers and suit the nature of the workplace and the workforce, for example levels of literacy.

# SPECIFIC ISSUES FOR MEDICAL PRACTICES

- ▶ Abuse or violence by patients,
- ▶ Abuse, bullying in the workplace.
- ▶ Stress and mental fatigue in the practice,
- ▶ Hygiene, protective equipment, quarantining of patients.

# PART 3 - Worker's Compensation Claims – The Process

- ▶ **STEPS** - In the event of an injury (or travelling to work)
- ▶ Notice to employer as soon as possible;
- ▶ Employer must:
  - Record Injury
  - Notify insurer within 48 hours
- ▶ Insurer must contact worker, and treating Doctor within 3 business days of injury

# Worker's Compensation Claims – The Process

- ▶ Claim form must be submitted to employer by employee within 7 days (including medical certificate)
- ▶ Insurer to accept or reject claim within 28 days
- ▶ Employer must try to find suitable duties

# Worker's Compensation Claims – A Greater Risk in the Territory. WHY?

- ▶ The last significant effort towards reforming the ACT legislation was in 2002 and 2006 and the reforms, were largely technical and peripheral.
- ▶ Reform has stalled since that time because the Unions and the Plaintiff Lawyers in the Territory have been successful in their lobbying of Government.
- ▶ The ACT Scheme is expensive largely because of the access to Common Law claims.

## **PART 4** -Workplace Bullying & Harassment – Workers Compensation in the Territory

- ▶ Workplace bullying has been with us ever since the advent of the industrial revolution. Contemporary research indicates that workplace bullying is widespread and is more prevalent than workplace harassment.
- ▶ Bullying can occur wherever people work together in all types of workplaces.
- ▶ Accepted claims for mental stress in the workplace (about half of which are related to bullying) peaked in 2004, reaching about 8,000 across Australia. Since then claims, have hovered around 6,000 claims each year.

# Worker's Compensation: Common Law and Lump Sum Claims

- The ACT is the only jurisdiction that has no threshold or limit on Common Law claims.
- The ACT is the “**Workers’ Compensation Capital of Australia**”!!.
- Why are the Plaintiff Lawyers spending so much on advertising?.
- Advertising on Canberra public transport, buses, TV, Radio, Internet. We have interstate firms advertising in the Territory using national TV programs.
- Over the years all reform efforts have been nobbled by influence peddling, by Unions and Plaintiff lawyers.

# ACT Case Studies

## CASE STUDY NO. 1

- ▶ Janelle is a 25 year veteran Director of an ACT Child Care Centre
- ▶ Centre employs over 70 staff mostly casual and part-time, (a sizable number of University Students)
- ▶ A complaint received from a parent about poor attitude of senior child care worker at a parent/child care worker meeting
- ▶ Following some routine counselling the employee lodges a WC claim alleging “bullying” by the Director.
- ▶ Insurer investigation into ‘bullying’ was stalled due to absence of staff on sick leave.
- ▶ Another staff member, (who happened to be a friend of the original complainant) also lodged a bullying claim who also went on sick leave.



## PART 5 - ACT Case Studies

- ▶ (Cont.)
- ▶ Employer received a phone call from a prominent local Lawyer suggesting that the employer should 'settle quickly'. A sum of money was mentioned.
- ▶ The Insurer agreed and each of the claimant's received a reported lump sum payout of \$30,000 each in exchange for a resignation.
- ▶ No investigation was ever undertaken as to the veracity of the 'bullying' claims.
- ▶ There was some evidence that the complainant was a bully of younger staff. No action taken.
- ▶ WC premium increased by 8% next year off the back of a good record.

# ACT Case Studies

## CASE STUDY NO. 2

- ▶ Senior Executive employee at a local large community organisation after 18 months employment, claimed that she was the subject of bullying by a Board member.
- ▶ At the employer's request, I conducted an investigation into the allegations. The Senior Executive was on sick leave and continually evaded contact with me as the investigator. Based on the limited evidence available I was unable to substantiate the allegations.
- ▶ The employee lodged a WC claim based on the original bullying allegations. Subsequently, the Insurance company conducted its own investigation and did not support the claim in the first instance.
- ▶ The matter was listed for hearing and on the day of the proceedings the parties settled the matter. The employee received \$300,000 as a pay out, and in exchange tendered her resignation.
- ▶ The veracity of the bullying claim was never tested in Court.

## PART 6 - HOW CAN THIS HAPPEN?

- ▶ Under the current legislation it is not necessary for an employee to prove that they have actually been bullied. It is merely sufficient to establish that they have a reasonable **perception** of being bullied.
- ▶ The statutory scheme of legislation is an “open invitation” for employees to run these types of claims.
- ▶ It is merely sufficient for an employee to establish that work was a “*contributing factor*”.

# Worker's Compensation: Common Law and Lump Sum Claims

There are 17 schemes in Australia, 6 give NO ACCESS to Common Law:

3 of 6 States abolished common law claims in 1980's and 1990's.

Of the remaining schemes **only ACT** has not changed the CL access arrangements over the period since 1985.

**WHY?**

# ACT Case Studies

## HOW CAN THIS HAPPEN?

The ACT Legislation is weak and does not reflect the needs of the contemporary workplace. The ACT legislation is out of step with very other jurisdiction in Australia.

The reform agenda has been such as it has been since 2002 has been 'technical in scope' directed towards employer's and underwriter compliance.

The reform agenda has been politically compromised by the influence of the plaintiff lawyer lobby in the Territory and the trade unions, notably the CFMEU.

This failure must be laid squarely at the door of the ACT Government.

# Lessons For Employers ??

- ▶ The Practice must have a up-to-date Bullying & Harassment Policy
- ▶ And a Work Health and Safety policy.
- ▶ Staff need to be trained in work health and safety requirements.
- ▶ There needs to be regular assessments of risks in the practice using safe steps.
- ▶ Be proactive in addressing workplace conflict, however trivial it may appear – it can easily escalate
- ▶ **What Other Steps?**

# Lessons For Employers - Questions??

▶ Lessons For Employers - Discussion

