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11 March 2020

Legislative Scrutiny Committee
By email: LSC@nt.gov.au

Dear Committee,

RE INQUIRY INTO THE RETURN TO WORK LEGISLATION AMENDMENT BILL 2020

We write in response to the invitation for submissions on the *Return to Work Legislation Amendment Bill 2020* ('**the Bill**').

Ward Keller is the Northern Territory's oldest law firm and is a full-service law firm.

Ward Keller's litigation team is particularly adept at representing injured workers and advising in relation to the *Return to Work Act 1986* ('**the Act**').

Having considered the Bill, we wish to address the Committee on three areas of concern:

1. section 75B(1A) amendment

The Bill proposes removing the requirement that a rehabilitation program or workplace based return to work program be provided by an "*accredited vocational rehabilitation provider*". That is, it is no longer mandatory that an employer obtain assistance to provide a rehabilitation program or workplace based return to work.

We note that the Explanatory Statement for the Bill states that the purpose of the proposed deletion of section 75B(1A) is "*to clarify that Return to Work Plans may be completed by a Vocational Rehabilitation provider if the employer requires that as assistance but it is not mandatory*" (emphasis added).

Ward Keller considers that there is a disconnect between the change to section 75B(1A) as summarised in the Explanatory Statement and the meaning of section 75B(1A). Nevertheless, we consider it fair and reasonable that all rehabilitation or workplace based return to work programs be provided by an accredited vocational rehabilitation provider and that this remain mandatory under the Act.

Ward Keller holds the concern that if the proposed amendment to section 75B(1A) is passed, employers will have 'free reign' to require the worker to undertake programs provided be any service provider (noting there is no mechanism in place preventing the employer from contracting with the cheapest service provider regardless of what level of service they are able to provide to a worker). This undermines one of the key purposes of the Act, being to rehabilitate a worker.

We consider rehabilitation is best achieved by those persons and/or providers approved as an accredited vocational rehabilitation provided. Further, section 75B(1A) in its current form is consistent with section 50(7) of the Act.

2. section 78A(5C) amendment

We consider the inclusion of the proposed section 78A(5C) is very problematic for workers.

Allowing an employer the right to commence legal proceedings in pursuit of a debt owed is dangerous and unfair to an injured worker.

Ward Keller holds the concern that if this proposed amendment is passed, it will affect the ability for the worker to fairly pursue his/her entitlements after withdrawing from an agreement during the cooling-off period.

This proposed amendment will be especially problematic for workers who have finalised their claim:

(a) early in their recovery;

(b) for a nominal amount; and

(c) during the cooling-off period

have suffered an exacerbation of their injury (not during any new/separate employment), no longer have the settlement sum funds and due to the exacerbation need to reopen their claim.

In this situation, if the employer initiates debt recovery proceedings to recover the settlement amount, the debt recovery proceedings will add to the worker's problems and costs while the worker seeks to maintain his/her claim. Further, the debt recovery proceedings may lead to the worker being declared bankrupt.

It is suggested that the proposed amendment be redrafted so that the employer cannot initiate debt recovery proceedings while the worker maintains his/her claim.

3. The remaining provisions of the Act

In relation to the Bill generally, we respectfully submit the Bill does not go far enough to address the unfair and unworkable provisions that were introduced into the Act in 2015.

Specifically, we wish to raise the following:

(a) the cap on compensation under section 65(1BA) of the Act ought to be repealed;

(b) If section 65(1BA) is not going to be repealed, then section 65(1BA) ought to be amended to lower the threshold of 15% for a whole person impairment and/or section 65(13A)(b) of the Act ought to be repealed so that psychological sequela injuries are factored into the calculation of a worker's percentage of whole person impairment;

(c) section 65B(4) Act needs redrafting so as to reduce disputes regarding the meaning and application of 'exceptional circumstances' or "other circumstances". Further, subsection 65B(4) requires amending to:

   i. clarify the meaning of "totally and permanently incapacitated"; and

   ii. either remove the word "and" after subsections (4)(a) and (4)(b) or to clarify the interplay between subsections (4)(a)-(c) inclusive; and

(d) the Act provides for complicated mediation provisions. These provisions should be simplified. In addition, the Act should allow for the application of mediation costs to all disputes regarding entitlement to or payment of compensation (not apparently limiting those costs to decisions which require the employer to give a section 69(1)(b) or section 85(8) notice to a worker).

Ward Keller would like to thank the Committee for its consideration of these submissions.

Yours faithfully
WARD KELLER

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