

Welcome



It seems that Christmas was only last week, yet we have already been past Easter and it won't be long before we reach the end of the financial year!

From a Compulsory Third Party (CTP) perspective, our rates in both Queensland and New South Wales are some of the best prices in the market. This ensures a competitive advantage for our customers when placing their CTP with QBE. The real win is for our motor fleet customers. One of our larger clients managed to save significant dollars when they changed their fleet over to QBE. I urge you to get a quote on your CTP needs, particularly your motor fleet from your QBE Account Manager.

In workers compensation, the harmonisation project (see Page 7) is gathering momentum with an increased focus on ensuring consistency in the format of forms and documentation in use in New South Wales, Victoria, South Australia and Queensland. Additionally, there has been progress in recognition of accreditation for Return to Work Coordinators, as well as the issue of Certificates of Currency and claims and premium reporting. No doubt these changes will greatly assist employers with offices in multiple states.

The review of the ACT scheme is now under way following the announcement by the ACT Government. In Tasmania, Workplace Standards has reviewed all submissions received and has now concluded the consultative phase of the

review of the proposed Injury Management Model. The South Australian Government announced on the 29th March 2007 its intention for an independent review of the South Australia Workers Compensation and Rehabilitation scheme. Some great news for Victorian employers, as the Victorian Government announced a 10 percent cut to the average WorkSafe Injury Insurance Premium rate. This puts the Victorian premium rate at a historic low of 1.46 percent. This is the fourth consecutive 10 percent cut and it is estimated that it will save Victorian employers an additional \$167 million in premiums over the coming year. This adds to the \$1 billion already saved by businesses since the first reduction in 2004/05 and will help Victoria's economy maintain a competitive advantage.

And to round off a busy quarter, there has been a number of key decisions in the Courts that will have an effect on claims management into the future.

The QBE team is here to help you navigate your way through the many and varied challenges that confront business. Please contact us if there is anything we can do to help manage any issues that you may face from a CTP or Workers Compensation perspective or in fact, for any of your insurance needs. Our approach is to find solutions, not just insurance.

Colin Fagen
General Manager, Statutory Classes

Inside

NATIONAL

[Unlawful Termination – Federal Implications for Workers Compensation](#)

[Cross Border Provisions – A National Model](#)

[Document destruction – A New Criminal Offence](#)

[QBE Self Insurance Services](#)

[CTP Case Managers Drive Case Conferencing Down New Roads](#)

[Criminal Code and Civil Liability Amendment Bill 2007](#)

NEW SOUTH WALES

[Harmonisation Project Gathers Momentum](#)

SOUTH AUSTRALIA

[The Safety Achiever Business System Professionals](#)

ACT

[ACT workers compensation system is under review](#)

NORTHERN TERRITORY

[Special Leave Applications](#)

VICTORIA

[Good Safety Makes Good Business](#)

[Electronic Banking Available for Victorian Employers](#)

WESTERN AUSTRALIA

[QBE Connecting in The Outback](#)

TASMANIA

[Tasmanian Injury Management Model – 'It's Getting Closer'](#)

The QBE Connect national newsletter is about providing you with relevant and timely information to assist you in managing your workers compensation risk. If there are any topics you would like to see covered in the newsletter please email qbeconnect@qbe.com



Unlawful Termination – Federal Implications for Workers Compensation

Employers are not only bound by State and Territory requirements relating to the termination of injured workers on workers compensation, but also by federal legislation.

A Federal Magistrates Court decision, *Lee vs. Hills Before & After School Care Pty Ltd (2007)*, has held that employees who are terminated whilst on workers compensation can be protected by unlawful termination laws. Why? Because absence on paid workers compensation leave falls within the definition of paid sick leave of the *Workplace Relations Regulations*.¹

The injured worker was a casual child care worker who had no sick leave entitlements, but was in receipt of workers compensation when she was dismissed.

She claimed unlawful termination.

Employees who have been absent from work for more than three months are covered by unlawful termination when they are on “paid sick leave” because of injury or illness.

The employer argued that the worker was not on paid sick leave.

Article 6 of the *International Labour Convention*, which Australia agreed to, prohibits dismissal of an employee temporarily absent from work due to illness or injury. This concept is included in the *Workplace Relations Act 2006*.²

The question for the Court was whether an employee in receipt of workers compensation was on “paid sick leave”.

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The Court found the following.

- The exclusion of workers on workers compensation from unlawful termination would be inconsistent with Parliament’s obligations under

the *International Labour Convention*.

- It is contradictory that a person who suffers an injury and receives sick pay would be protected from unlawful termination, but if they claimed workers compensation they could be lawfully dismissed.
- If Parliament had intended to exclude workers compensation recipients it could have done so in clear terms.

QBE understands the challenges often faced by employers and would like to ensure that employers are kept informed of such developments such as this one. If you can relate to a similar circumstance with an employee, such as termination, talk to us so that we can review the circumstances. Alternatively you may also need to seek legal advice or information from an industrial relations specialist.

¹ Regulation 2.12.8

² Section 659, *Workplace Relations Act 2006*

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Cross Border Provisions – A National Model

In 1995, truck driver, John Keating, was killed in an accident at Pinaroo, South Australia. He was employed by a South Australia based company and did much of his work in South Australia, but lived in NSW.

His partner was not entitled to compensation as Mr Keating was found not to be covered by either South Australia or NSW workers compensation laws. The Supreme Court of South Australia reached its verdict reluctantly acknowledging the decision was unjust, but that the Court had no choice given the legislation’s drafting.

This situation prompted the States and Territories, in collaboration with the Workers Compensation Authorities and the Workplace Relations Minister’s Council, to develop a national model on cross border provisions.

Current Status of States and Territories

Parliaments of ACT, New South Wales, Queensland, Tasmania, Victoria, Western Australia and South Australia and most recently Northern Territory have all passed legislation consistent with a national model. The Northern Territory Government passed a Bill to incorporate the national model into their legislation effective from 26 April 2007. Employers should be encouraged to contact their insurers in the Northern Territory to ensure a worker engaged in these jurisdictions continues to be covered.

The national model requires an employer to obtain workers compensation insurance for a worker in the worker’s **State¹ of connection**. The State or Territory in which workers compensation insurance and benefits relating to a particular worker are payable is referred to as a worker’s State of connection.

The State of connection is determined by the following tests:

Test A The State in which a worker usually works in that employment.

Test B If no State is identified by test A, the State in which a worker is usually based for the purposes of that employment.

Test C If no State is identified by test A or B, the State in which a principal place of business in Australia is located.

If no State of connection can be determined for a worker and a worker is not entitled to compensation for the same matter under the laws of a place outside Australia, a worker’s employment is connected with the State where the injury occurred.

States/Territories Legislation

As cross border provisions have been actioned with national collaboration, the applicable sections of each legislation read with minimal variance. The table below provides a reference for each state.

¹ State includes Territories



A National Model

The fundamental aims of the national model are to:

- ensure an employer only needs to register a worker in one scheme, irrespective of temporary movements interstate
- ensure that a worker is connected to one jurisdiction
- ensure a worker temporarily working in another State has access to workers compensation entitlements available in their “home” jurisdiction (including arrangements applying in relation to common law)
- ensure a worker has certainty about their workers compensation entitlements
- eliminate ‘forum shopping’ by a worker potentially covered in multiple jurisdictions.

State	Act Reference
ACT	Employment connection test implemented June 2004, section 36B of the <i>Workers Compensation Act 1951</i> .
Northern Territory	Worker’s employment connected with State implemented 26 April 2007, Section 53AA of the <i>Work Health Act</i> .
New South Wales	Liability for compensation implemented 1 January 2006, section 9AA of the <i>Workers Compensation Act 1987</i> .
Queensland	Employment must be connected with State implemented July 2003, section 113 of the <i>Workers Compensation and Rehabilitation Act 2003</i> .
South Australia	Territorial Application of Act implemented 1 January 2007, section 6 of the <i>Workers Rehabilitation and Compensation Act 1986</i> .
Tasmania	Implemented December 2004, section 31A of the <i>Workers Rehabilitation and Compensation Act 1988</i> is the Employment connection test.
Victoria	Implemented September 2004, section 80 of the <i>Accident Compensation Act 1985</i> is the entitlement to compensation only if employment connected with Victoria.
Western Australia	Compensation not payable unless worker’s employment connected with this State. This was implemented December 2004, section 20 (Part 111, Division 1) of the <i>Workers Compensation and Injury Management Act 1981</i> .

For detailed information visit www.austlii.edu.au and select the legislative State applicable to you. For Cross Border Guides visit NSW: www.workcover.nsw.gov.au Queensland: www.workcover.qld.gov.au South Australia: www.workcover.com Victoria: www.workcover.vic.gov.au

Document destruction – A New Criminal Offence

On 1 September the *Crimes (Document Destruction) Act 2006* came into force in Victoria. That followed a report to the Victorian Government, consequent upon the widely publicised decision of the Victorian Court of Appeal in the McCabe tobacco case.

One of the key issues in that case related to the destruction of documents in circumstances where it was argued that litigation was contemplated.

It is now a criminal offence in Victoria to destroy documents or other evidence that are or is reasonably likely to be used in legal proceedings that have commenced or may be commenced in the future. The offence applies to every kind of document, including electronic recordings of any kind.

What does this mean?

Individuals or companies may be found guilty of an indictable offence under the Act. This could result in imprisonment (up to five years) or a fine of over \$60,000 for individuals or over \$314,000 for companies.

As in other criminal offences, it will have to be established that the person or company involved acted with the intent of preventing the document from being used in evidence. In order for there to be a conviction, a court will need to be satisfied that a person or company knows that the document or other evidence is, or is reasonably likely to be, required in evidence in legal proceedings and that person:

- destroys or conceals or renders that document or other thing illegible, undecipherable or incapable of identification; or
- expressly, tacitly or impliedly authorises or permits any other person to perform such an act.

Obviously intent will be established where there was a direct authorisation to destroy documents. However, such an intent may also be established where there is a corporate culture that directed, encouraged, tolerated or permitted the destruction to occur.

Electronic Data

Increasingly business and business processes are undertaken electronically. The destruction or alteration of a hard copy document may be relatively easy to establish. However, as already emerges in the course of discovery in large cases, there are many ways in which electronic data can be changed or destroyed. Although IT experts may be able to recover 'destroyed' electronic information,



this data is relatively easily altered or manipulated. Indeed, it may be altered through backup processes or other data management activities. This might inadvertently breach the Act.

The 'Due Diligence' Defence

A company may be able to defend a charge of document destruction, if it shows that it used due diligence to prevent any negligent or wilful destruction of documents. The onus is on the company to prove that:

- the corporate culture did not encourage, authorise or permit the destruction to occur; and
- the company has and enforces a policy that clearly demonstrates compliance with a document retention and destruction program.

Impact on Litigation

The Act does not address the impact of any conviction for destruction of documents on any litigation in which the destroyed evidence is relevant. In the McCabe case, when dealing with the issue of alleged destruction of documents before the commencement of the proceeding, the Court of Appeal held that the court had to determine whether the conduct amounted to:

- an attempt to pervert the course of justice; or
- contempt of court.

It is also open to a court to draw adverse inferences, which might lead to a party's defence being struck out.

The Court of Appeal had to grapple with those issues on the basis of the evidence given at first instance and the way in which the appeal was framed. A conviction under the Act would save a court from having to grapple with those issues and would almost

certainly lead to consequences of that kind, depending on the significance of the documents.

Managing the Risk

Clearly this is an issue of significance to insurers and, more significantly, the entities which they insure. It goes without saying that documents or other evidence which are, or are likely to be, relevant in any existing or currently anticipated litigation should be carefully preserved. However, the implementation of systems to prevent the destruction of the documents in contravention of the Act should form part of any company's risk management strategy. Steps which may assist compliance include:

- a review of all current document retention policies to ensure they are compliant with the new legislation;
- implementation of a compliance and training program which avoids the conduct that the Act seems to prohibit;
- implementation of a policy which allows for destruction of documents where legally permitted and, when any doubt exists, where legal advice has been obtained;
- ensuring that the administration and enforcement of a compliance program is overseen and monitored by senior management and, ultimately, at Board level.

The sanctions under the Act are potentially severe and any decision to either retain or destroy documents or other evidence must be considered very carefully. This is a message which insurers should share with their insureds.

Source: © DLA Phillips Fox, Insurance Update September 2006. This article does not constitute legal advice. For further information on the content of this article, please contact DLA Phillips Fox.

QBE Self Insurance Services

QBE has a demonstrable record in providing innovative and outcome focused Workers Compensation Services in all jurisdictions across Australia including a number of Self Insurance clients.

Deciding to self insure your workers compensation risk is an important business strategy. Organisational commitment and individual expertise are required to effectively manage your risk. QBE's experience and knowledge can maximise the benefits of Self Insurance to your employees, as well as to the impact on your bottom line.

QBE Self Insurance Services delivers quality solutions to existing and potential self insurers who need assistance in managing their risk. Our staff's knowledge and experience provides you with practical solutions tailored to meet your business needs, including the following.

- Case management services providing skilled on-site staff, claims management systems, technical and legal advice, and injury management assistance.
- Insurance services. A tailored Excess of Loss Policy to protect your business against potentially disastrous workers compensation liabilities.
- Occupational Health and Safety [OH&S] services. Specialist staff to provide comprehensive, practical assistance in



developing and implementing your OH&S management and prevention strategies.

- Integrated health management. An integrated approach to injury prevention, health promotion and injury management to support the health of your work teams and individual employees.
- Education and training programs. QBE can tailor training to your organisations needs and facilitate it at your workplace.
- Specialist services. This includes injury management, actuarial, technical and legal claims auditing, Job Placement, and medical Auditing, utilisation and consultation.
- QBE Connect, a claims management model.
- Assistance in obtaining your Self Insurance licence through actuarial analysis, financial feasibility and licence applications.

Excess of Loss

QBE "Excess of Loss" policy is provided to protect your self insured business from catastrophic workers compensation liabilities. Regulations across Australia require Self Insurers have adequate reinsurance protection against significant liabilities, in excess of a nominated self insured retention amount. This coverage can be tailored to provide the necessary cover to comply with your self insurance licensing requirements. Premiums for Excess of Loss policies are individually assessed and reflect your industry classification, wages, claims experience, trends in your State or Territory, as well as your organisation's demonstrated commitment to safety, risk and claims management.

If you would like to discuss and explore the options of your company becoming a Self Insurer, please contact Gem Riegels-Morgan, Consultant, QBE Self Insurance Services on 02 9375 4101 or email gem.riegels-morgan@qbe.com

CTP Case Managers Drive Case Conferencing Down New Roads

The Compulsory Third Party (CTP) team have taken the case conferencing tool and reshaped it into a vehicle to drive claims to finalisation.

The CTP team are currently test driving their ability to proactively influence outcomes by meeting face to face with injured people and their treating doctors.

Case Managers have commenced visiting medical centres in an attempt to progress claims forward. Case Managers who have met with injured people and their general practitioners have had extremely positive outcomes.

In one particular scenario, the injured person had requested approval for pro-lo therapy. QBE Rehabilitation Advisors had indicated approval of this treatment was not reasonable and necessary. Rather than

calling the injured person (who spoke limited English) or sending out a denial letter, Tom Livanos, QBE Case Manager, ventured out to meet with the injured person, his doctor and an interpreter to discuss the treatment and explain their reasons for not approving pro-lo therapy. The treating doctor indicated treatment would be required for a further two months and confirmed the injured person's injury had essentially stabilised. Following the case conference, in the presence of the interpreter, Tom commenced settlement negotiations and had a deed signed by the time he returned to his QBE office.

Medical treatment would have been disputed without the case conference meeting. The matter would be referred to the Medical Assessment Service and it is likely legal representation would have been



sought. The cost and duration of the claim would have been significantly increased without the use of face to face contact – the QBE Connect way.

A positive outcome was achieved for all stakeholders. Not only was medical status and future treatment established, the claim was progressed to finalisation.

Criminal Code and Civil Liability Amendment Bill 2007

The *Criminal and Civil Liability Amendment Bill 2007* (the Bill) was assented to on 22 March 2007. Significantly, the Bill, amongst other legislative changes, amends the *Civil Liability Act 2003* to exclude the application of the *Civil Liability Act 2003* for all work injuries where compensation is payable pursuant to the relevant Queensland Worker's Compensation Act. However, an injury sustained whilst a worker is on recess or a journey to and from work will not attract the new legislative amendments passed by the Bill.

Prior to the Bill being passed, Section 5 – “Civil liability excluded from the *Civil Liability Act 2003* states in part:

“This Act does not apply in relation to any civil claim for damages for personal injury if the harm resulting from the breach of duty owed to the claimant is or includes:

(b) an injury as defined under the Worker's Compensation and Rehabilitation Act 2003, other than an injury to which section 34(1)(c) or 35 of that Act applies.

Careful consideration is warranted of the definition of an injury pursuant to Section 32 of the *Worker's Compensation and Rehabilitation Act 2003*, which states:

(1) an injury is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.

The application of Section 5 of the Act was examined in *Newberry v Suncorp Metway Insurance Limited* [2005] QSC 210 and *King v Parsons* [2005] QSC 214.

In *Newberry*, His Honour Justice Dutney determined that the exclusion applied to the circumstances of the motor vehicle accident and the *Civil Liability Act 2003* did not apply to the assessment of the Plaintiff's damages. However, in *King*, His Honour Justice McMurdo held that the exclusion did not operate and the *Civil Liability Act 2003* did apply to the assessment of the plaintiff's damages.

Both matters proceeded to the Queensland Court of Appeal in February 2006.

Interestingly, the original judgment in *King* was not disturbed. However, the appeal of *Newberry* was upheld and the provisions of the *Civil Liability Act 2003* did apply on the basis that the plaintiff's employment was not a significant contributing factor to the claim against the third party (driver of the motor vehicle at fault). Essentially, both



claims were restricted by the application of the *Civil Liability Act 2003*.

The intention of the Bill is to restore protection of worker's rights by providing common law damages and reinstate the Government's original intention regarding the protection of worker's rights under the *Civil Liability Act 2003*.

The *Civil Liability Act 2003* will no longer apply to a decision about liability or awards for damages for personal injury if the harm resulting from the breach of duty is or includes an injury for which compensation is payable under the *Worker's Compensation and Rehabilitation Act 2003* or the repealed *WorkCover Queensland Act 1996*.

However, injuries sustained during recess or on a journey to and from work pursuant to Section 34(1)(c) and 35 of the *Worker's Compensation and Rehabilitation Act 2003* and Section 36(1)(c) and 37 of the *WorkCover Queensland Act 1996*, will not be affected by the Bill.

The Amendment to the Bill commences retrospectively in relation to personal injury caused on or after 6 November 2006. The Bill protects parties in relation to injuries after 6 November 2006 that have progressed to trial or where a settlement agreement has been reached.

Unfortunately, Compulsory Third Party (CTP) Insurers in Queensland were not consulted during the drafting of the Bill. Queensland and NSW CTP Insurers have been working with the Insurance Council of Australia highlighting their concerns regarding the effects of the Bill. Major concerns have been raised regarding the potential “blow out” of claim costs in the Queensland CTP scheme.

In particular, amendments introduced in October 2000 to the *Motor Accident Insurance Act 1994* (MAIA), were repealed by the *Civil Liability Act 2003*. Significant changes such as a threshold for gratuitous services, a discount rate of five per cent to be applied for present value of future loss, and damages for loss of consortium or loss of servitium were adopted by the *Civil Liability Act 2003*.

The Bill could easily be interpreted as a roll back of the tort reform introduced in 2000 and 2003 to maintain the viability of the CTP scheme in Queensland.

It will be a nervous wait to witness how a Court will interpret the new legislative changes and apply unfettered common law damages.

Harmonisation Project Gathers Momentum

The drive to develop a greater level of consistency between the various State workers compensation schemes in Australia is gathering momentum. Initially formed as a project between WorkCover NSW and the Victorian WorkCover Authority (VWA), the Harmonisation Project has now gathered the support of the Queensland Authority as well.

The key initiatives identified for action in the short term are:

- the development of common claim forms
- multi-state wage declaration forms and processes
- common rules for Certificates of Currency
- common rules regarding premium payment plans and discounts
- the establishment of “one-stop-shops”, single points of contacts with insurers for multi-state employers
- mutual recognition of Return to Work Coordinators between States
- common rules for claims and premium reporting
- co-development of guidance materials between States.

South Australia, Western Australia and the ACT have all indicated they will participate in these initiatives as they progress, but at this stage the key participants are NSW, Victoria and Queensland.



WorkCover NSW has recently provided QBE with an update on the project, and things have been developing swiftly in the following key areas.

Common Claim Forms

Draft versions of the proposed employer and worker claim forms have been released to Authorised Agents for review and to provide feedback to the Authority. There is work still in progress, however, we envisage the new claim forms will be in use within the year.

Mutual Recognition of Return to Work Coordinators

NSW, Victoria and Queensland have now agreed on training criteria for Return to Work (RTW) Coordinators, and have produced an “add on” RTW training module to each State’s existing program designed to assist trained RTW Coordinators to understand the legislative and operational requirements in all participating States.

Harmonised Payroll Tax System in Victoria and NSW

Victoria and NSW are progressing to a harmonised payroll system. This harmonisation will focus on streamlining administration arrangements and common legislative provisions.

As of 1 July 2007 you will see a number of changes to payroll legislation in both of these states, with both states adopting key aspects of each others respective legislation. For further information visit the Victorian State Revenue Office at www.sro.vic.gov.au or NSW Office of State Revenue www.osr.nsw.gov.au

The additional training will allow the accreditation of RTW Coordinators across multiple jurisdictions, enabling them to develop and conduct RTW programs in multiple States. QBE already conducts RTW Coordinator training in NSW and Victoria, these existing training services will be improved to include multi-state “add-on” modules as early as May.

Certificates of Currency

From 30 June this year Certificates of Currency will be current for 12 months, bringing NSW in line with Victoria. Draft electronic Certificate of Currency templates have been designed, and Authorised Agents are in the process of providing feedback to WorkCover on the formats and implementation timeframes.

We will continue to provide updates via the QBE Connect newsletter as the Harmonisation Project continues.

New Regional Manager for NSW and ACT

QBE is pleased to announce the appointment of Phillip Berner as Regional Manager, Workers Compensation NSW and ACT.

Phillip comes to QBE with extensive senior management experience in the insurance, health, superannuation and telecommunications industries across the corporate, consumer and public sectors. He has spent more than a decade in the health insurance industry, with a particular focus on the intermediated corporate health market.

Please join QBE in welcoming Phillip.



The Safety Achiever Business System Professionals

1. Are you looking to save money on your premium dollars?
2. Do you have registrations for workers compensation in South Australia?
3. Do you currently pay more than \$100,000 workers compensation premium?

If you have answered yes to these questions and want to gain a levy reduction, please read on.

The Safety Achiever Business System (SABS) was developed in 1994 to provide a framework for organisations seeking to improve OH&S and injury management

business systems in order to gain a levy reduction under the Safe Work Incentive.

QBE Workers Compensation in South Australia is currently providing specialised SABS audit and evaluation services to the WorkCover Corporation under a short term contract, awarded in February 2007.

QBE has assisted 40 employers over a period of four years to realise savings with this scheme. One such employer saved \$120,000 in workers compensation premium payments over a one year period alone. Another employer recently assisted by QBE was helped to identify savings of \$1,000,000, simply by utilising QBE's services to meet SABS standards, along with claims management support.

QBE is well qualified to conduct these evaluations, with Mike Boyd, QBE OH&S Risk Manager being involved in the

establishment of the SABS program back in 1994. Mike brings a wealth of experience to the Adelaide team, and is in a very good position to not only provide employers with the services they require, but also the background knowledge, insight and suggestions to make a success of their SABS evaluations.

Using the AS4801 Management Systems approach, QBE can provide your business with a free assessment of your suitability for the SABS program, or suggest other ways in which savings can be made to your premiums. A similar approach is used for assessments against Self Insurance standards and Comcare.

For more information, contact Mike Boyd on 08 8213 5313, or email mike.boyd@qbe.com.

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You can now process the complete range of commercial package products electronically – saving you time and improving the customer service experience.

Our Commercial Packages Insurance encompasses Business, Office and Trades, catering for a wide range of commercial risks.

It provides you with:

- An extensive product range
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- Market-leading eBusiness capabilities including writepay (for instalment billing) and claimwrite (for claim notification and enquiry).

For further information contact your QBE Account Manager or visit www.qbe.com/australia

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ABN 78 003 191 035 AFS Licence No 239545.



ACT Workers Compensation System is Under Review

How can we make it work better?

A consortium consisting of Australian Health and Safety Services, the law firm of Dibbs Abbott Stillman and a Melbourne based actuarial firm Cumpston Sarjeant, has been formed to review the ACT Workers Compensation scheme.

The government has allocated \$400,000 over the next three years to review the private sector Workers Compensation scheme. The minister for industrial relations, Andrew Barr has advised this has been prompted by the fact that ACT has the highest reported public sector workers compensation premiums in Australia. The minister also stated "The review is critical to ensuring the continued viability of the scheme and a full review of the scheme, including an actuarial assessment, would enable the operations of the scheme to be considered in an informed, objective and thorough manner."¹

The consortium was expected to produce a draft report by the end of April 2007 (*this is subject to an extension*), with a target date of completion being June 2007.



QBE has played an active role in this review process through the Insurance Council of Australia (ICA) and independent meetings. Mark Holman, Branch Manager, Canberra, has provided specific comments on various papers provided by other industry bodies and is encouraging that the consortium also talks to employers directly for a feedback.

For a copy of the *ACT Workers' Compensation – How do we make it better?* issues paper, visit the Australian Health and Safety Services contact Mark Holman at QBE on (02) 6201 3310.

¹ Source: ACT Government Media Release, Review of ACT Workers Compensation Scheme 12/2/07

NORTHERN TERRITORY

Special Leave Applications in the Cases of Chaffey v Santos and Smith v Hastings Deering

Applications for Special Leave in both the above matters were dealt with by the High Court in Canberra on Friday 9 February 2007.

Special Leave was granted in the matter of *Chaffey v Santos* (the case that challenges the

validity of the Government amendments in January 2005 and the retrospective application of those amendments). This means that this matter will now need to be listed for hearing of the appeal before the High Court later this year.

In relation to application in *Smith v Hastings Deering* (the original decision that made superannuation part of Normal Weekly Earnings (NWE)), special leave was refused and hence this matter is now at an end. This means that superannuation does form part of a worker's NWE subject to the validity of the amendments passed by the Northern Territory Government that then remove superannuation from NWE in January 2005.

In summarising the above High Court rulings, we can assume at this point in time that for all workers compensation claims submitted with a date of accident up to and including 25 January 2005, when the amending legislation was passed, that superannuation contributions form part of NWE calculations. There is now the potential of increased costs as a result of claims for past entitlements not previously paid with the addition of interest accrued.

For further information please contact Colin Chilcott at QBE on 8982 3810 or email colin.chilcott@qbe.com



Good Safety Makes Good Business

Victorian employers can discover more about the link between their workplace safety, well-managed return to work for injured workers and how much workplace injury insurance premium they pay, at one of WorkSafe's Managing Safety and your Workplace Injury Insurance information sessions, which will run from 18 June to 5 July across the State.

Last year more than 5,800 people, from business owners through to employees, attended information sessions to learn about the latest in workplace safety and the workplace injury insurance system.

This year's sessions will include an update on WorkSafe's new compliance framework, the new Return to Work Inspectorate, return to work coordinator training, making an offer of suitable employment to an injured worker, and workplace injury insurance premium.

"Good safety makes good business in every sense," said WorkSafe Executive Director, John Merritt. "It is the foundation stone

from which your business becomes stronger."

WorkSafe's Director of Premium, Brian Cook, said it was encouraging to see the growing recognition of the link between workplace safety and insurance premiums, and while safety was an important moral and legal obligation, it could also save businesses money.

"All employers, whether individually or collectively as an industry, can influence their premium rates by improving workplace safety and better managing return to work for injured workers," he said.

Not only will people be able to update their knowledge of workplace safety and the Workplace Injury Insurance system, but there will also be ample opportunity to ask questions of senior WorkSafe staff.

Refer to the following table for proposed dates. Further information about the sessions will be available in late May at www.worksafe.vic.gov.au or contact your QBE Premium Officer.

Information sessions:

Date	Location
Mon 18 June	Bendigo
Tue 19 June	Geelong
Wed 20 June	Warrnambool
Thu 21 June	Mildura
Fri 22 June	Melbourne
Mon 25 June	Horsham
Tue 26 June	Ballarat
Wed 27 June	Shepparton
Thu 28 June	Wangaratta
Fri 29 June	Sunshine
Mon 2 July	Traralgon
Tue 3 July	Preston
Wed 4 July	Wodonga
Thu 5 July	Rowville

Electronic Banking Available for Victorian Employers

From 1 July 2007, all Victorian employers will have the option of being reimbursed for workplace injury compensation payments directly into their bank account.

This will provide employers with quicker access to their payments, greater efficiency and less administrative headaches.

VWA Executive Director, Len Boehm, said "This was another step in the VWA's efforts to improve the level of service it offers."

"Providing the direct payment option for employers will give them greater flexibility and choice in using a payment method that best suits their business needs."

Reimbursement payments are currently made by the VWA via cheque and this option will still be available.

How to Register

To access this direct payment option, employers can simply apply to their Agent using the Direct Payment Application Form – Employers, which will be available soon from the VWA's website or directly from QBE.

Important Dates for Victorian Employers WorkCover Premium 2007/08

Date	Activity
May 27	Claims Statement and Premium Simulation Issued
June 14	Gazettal Premium Order
June 19	Policy Renewal Pack Issued
July 31	Return completed Declaration Rateable Remuneration form for 2006/07 and Estimate of Rateable Remuneration for 2007/08
August 15	Gazettal of Industry Rates
September 4	Premium calculated and employers issued with premium notice and invoice
October 1	Annual premium payment due with discount. First quarterly and monthly installment due.
November 1	Annual premium payment due with no discount

QBE Connecting in the Outback

In Western Australia our team often work with employers managing operations in remote locations across the vast geographical extremes of the State. Our recent experience managing a critical injury in the far north west of Western Australia, demonstrates the emphasis QBE places on ensuring the care and needs of those critically injured at work are met.

The injured employee sustained serious head injuries and multiple fractures after falling seven metres from a stationary machine. After requiring transfer by the Royal Flying Doctor Service and treatment in the Royal Perth Hospital intensive care unit, the injured worker regained consciousness and is now breathing without a ventilator.

QBE have maintained close contact with the treating medical team, family members and employer during the critical stages post injury. QBE Workers Compensation and QBE Travel supported and coordinated the injured worker's transfer to Westmead Rehabilitation Hospital in Sydney, where he could continue his treatment and remain close to his family and friends.

By working together, QBE Workers Compensation and Travel divisions were able to:

- confirm transfer directly with the medical team in Perth and if medically appropriate, to transfer the injured worker at altitude rather than sea level, reserving jet transport if sea level transfer was required

- source a bed and appropriate care at Westmead Hospital in Sydney
- work with the Perth specialists to identify an appropriate specialist to assume care in Sydney
- reserve a stretcher and passenger seats for the injured worker and his partner to travel on the same flight
- arrange a medical team to provide care during the transfer.

The injured employee and his family face an extended period of treatment and rehabilitation in Sydney. The QBE team in Perth and Sydney will continue to work closely with the family and medical team, meeting face-to-face at every opportunity to ensure every aspect of care proceeds as smoothly as possible.

TASMANIA

Tasmanian Injury Management Model – ‘It’s Getting Closer’

It has now been 12 months of consultation after the release of the initial draft of the Injury Management Model. An additional paper was released and discussed at the April WorkCover Board meeting, and it is expected to be approved in May.

As there will be legislative changes and amendments to guidelines, we anticipate a minimum of 12 months until implementation of the new model.

The aim of the model is to deliver better health and return to work outcomes for injured workers with lower costs to employers. The key components of the Injury Management Model include the following.

All employers will be required to have an Injury Management Program in place at each workplace

An Injury Management program is a series of documented policies and procedures that establishes a coordinated and integrated process for injury management.

QBE clients will have access to the QBE Injury Management Program already developed as part of our licence agreement.

Introducing the new role of the “Injury Management Coordinator (IMC)”

The role of the IMC will be to coordinate and oversee the entire injury management process with any claim where the worker is

likely to be incapacitated for more than five working days (the period of five days incapacity is yet to be confirmed).

Employers may appoint their own IMC or access QBE resources to help minimise costs. All IMCs must be accredited by the WorkCover Board. The accreditation process is yet to be confirmed and QBE is in discussions with the WorkCover Board to ensure the process isn't too onerous.

Further restrictions on lump sum settlements

Lump sum settlements will not be allowed unless two years has elapsed since the time the claim was lodged with the employer or the tribunal approves the settlement.

Provisional payments of reasonable medical, rehabilitation and other compensable expenses

An employer will now be required to make provisional payments of reasonable medical expenses up to \$7,500 on receiving the injured worker's claim for compensation.

The employer may refer any disputes relating to the suitability or reasonableness of the proposed treatment to the tribunal at any time.

Limits to periods of incapacity on medical certificates

A limit of 14 days incapacity on both initial and subsequent medical certificates will be introduced. In the event the treating practitioner determines that this period is inadequate full medical reasons must be provided.

Obligation to keep the injured worker's employment position open for 12 months

An employer will be required to keep an injured worker's employment position open for a minimum of 12 months from the date the worker became incapacitated unless there is medical evidence indicating that the return to pre-injury work is highly improbable or that the position is no longer available.

Increased obligation to provide suitable and meaningful alternative duties

Employers will now be required to provide their insurer with an indication of generic alternative duties potentially available at the workplace at the time of their workers compensation policy renewal.

The list of alternative duties is to be made available to the treating medical practitioner so an assessment can be made early in the life of the claim whether any of the proposed duties are suitable.

The WorkCover Board have advised that employers will be monitored closely to ensure compliance with these requirements.

The implementation of the new model will result in change for all employers. QBE will be available to assist clients through the process. Detailed information packs providing employers with confirmation of their obligations and requirements will be distributed as soon as the model is finalised by the Government and the implementation timetable is released. If you have any questions concerning the Injury Management Model please contact Craig Robson, QBE State Manager, Tasmania on (03) 6237 3959 or email craig.robson@qbe.com

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