

T H E F I G H T F O R common law in Victoria

— an actuary's perspective

Having been involved, with varying degrees of success, in nine of APLA's fights for common law, this article describes actuarial aspects of the continuing fight for common law in Victorian workers compensation legislation. Some of the tactics used in Victoria may be helpful elsewhere.

Kennett's con job

On 7/10/97 the Victorian Minister for Finance announced the abolition of common law entitlements, together with a reduction in the long-term weekly benefit for the seriously injured from 90% to 75%. Maim payments were to be based on whole person impairments assessed under the American Medical Association's "Guides to the evaluation of permanent impairment", with a 10% threshold. Premiums were to be increased from 1.8% of wages to 1.9% of wages and superannuation. A Government statement said:

"All changes are cost-neutral - no reduction in total benefits paid to workers by WorkCover".

While this was encouraging, the government's reliance on independents in the lower house, and the opposition control of the upper house, made any positive outcome uncertain.

Freedom of Information requests

The Victorian Freedom of Information Act is powerful, particularly with a sympathetic government. Unlike Queensland, WorkCover enjoys no special exemption. Starting on 19/10/99, we requested 15 documents from WorkCover, and one from the State Revenue Office. We also made 4 requests for reviews of decisions. We received all the documents requested, apart from a consultant's report to the State Revenue Office, inexplicably classified as an "internal working document".

The documents obtained under FOI helped in several ways

- we identified major areas, such as weekly benefits, where WorkCover's actuaries agreed, and we could safely accept their advice
- we found some areas, such as maim benefits, where the actuaries disagreed, and further work was clearly needed
- we obtained a large amount of data, which helped make detailed estimates for proposals by APLA or the Victorian Trades Hall Council
- some documents contained evidence of WorkCover policies that might not necessarily be regarded as in the public interest.

Section 11 of the Freedom of Information Act requires each agency to publish each year a list of documents, including any report prepared by a consultant. Compliance by WorkCover with this requirement would have made it easier for us to obtain the relevant documents. Unfortunately, WorkCover and other government agencies have apparently been advised that they no longer need to comply with this requirement. Further action on this issue is likely.

Unfortunately, WorkCover and other government agencies have apparently been advised that they no longer need to comply with this requirement. Further action on this issue is likely.

Help from the Minister for WorkCover

Initial failures by WorkCover to respond to letters and phone calls were disturbing.

On 12/11/99 I wrote to Bob Cameron, the Minister for WorkCover, seeking his help in persuading WorkCover to share its data with its stakeholders. On 24/11/99 he responded that he understood that WorkCover would be making its data available

Policy of the Bracks government

Labor's policy for the September 1999 election included:

- restoration of common law rights for seriously injured workers
- premium levels competitive with other states
- restoring the Freedom of Information Act to a force for disclosure, rather than cover up.

Richard Cumpston is a director of Cumpston Sargeant Pty Ltd consulting actuaries, Level 24, 500 Collins Street, Melbourne VIC 3000,
PHONE (03) 9614 5099, **FAX** (03) 9614 5114,
EMAIL Richard_Cumpston@Cumsarcom.au



to stakeholders. Following that letter, WorkCover treated APLA more seriously, and waived freedom of information charges.

APLA's survey of common law settlements

Thanks to a strong lead by Ron Pearce of Ryan Carlise Thomas, we received details of recent common law settlements from 7 firms. Using the first 211 of these cases, we prepared a report dated 31/12/99, titled "Progress report - common law costs and settlements". We supplied this to WorkCover and the Department of Treasury & Finance, and received:

- a letter of 21/12/99 by Taylor Fry on WorkCover's own survey of common law settlements, providing some valuable data on impairment levels.
- a letter of 7/1/00 by Taylor Fry, suggesting the APLA and VWA samples were in close agreement.

Slater & Gordon sample of impairment assessments

Paul Mulvany prepared a document titled "The first assessments - a comparison of lump sum benefits payable to workers injured before and after 12 November 1997". This gave impairment assessments under the former and present systems for 45 recently injured workers, considered by Slater & Gordon to have strong or marginal cases for impairment benefits under the present system. With Paul's consent, we gave this document to Treasury & Finance, WorkCover and their actuaries. We found it very helpful in estimating the cost of present and proposed impairment benefits, and the actuaries advising Treasury & Finance made some use of it. With hindsight, APLA should have encouraged other members to make similar assessments. Paul's assessments strongly support the view, held by many lawyers, trade union officials and medical panel members, that the 1997 changes greatly reduced the number and amount of impairment payments.

Missing documents

Some documents appeared not to be adequately distributed. In particular, a 1997 assessment of 98 back cases, suggesting that large reductions in impairment benefits would result from the new legislation, was sent to Treasury and Finance on 7/1/00, but had not reached WorkCover's actuaries by 18/2/00. To help overcome this problem, we circulated our documents widely.

Rejecting confidentiality agreements

We rejected a Treasury and Finance suggestion that we sign a confidentiality agreement, on the grounds that it might prevent us from advising APLA promptly.

With so many working party members and advisers, we thought it very likely that some leaks would occur. Our report of 18/2/00, titled "Common law working party - cost estimates", was based on data obtained under the Freedom of Information Act, or supplied to us on a non-confidential basis. This meant that the report could be made public.

Meetings with actuaries advising WorkCover and Treasury & Finance

We met three times with actuaries advising WorkCover or Treasury & Finance. These meetings were initially at the

Need expert assistance in hearing loss claims?

Acoustical Consultants, Renzo Tonin & Associates are a leading firm of professional Engineers and Scientists specialising in noise and vibration control.

Established in 1982, we have twice won the bi-annual Australian Acoustical Society "Excellence In Acoustics Award - Category 1"

We do more than just measure noise, we also :

- Provide expert witness reports and representation in court
- Assess occupation noise management programs
- Measure and assess occupational noise exposure
- Provide noise control recommendations and hearing protector selection
- Evaluate the probability of noise induced hearing loss

For further information or inquiries, please contact Matthew Harrison, Senior Engineer

Renzo Tonin & Associates Pty Ltd

Level 1, 418A Elizabeth Street Surry Hills NSW 2010

Ph : (02) 8218 0500 Fax : (02) 8218 0501

Email : rtatech@ozemail.com.au

Website : <http://web.one.net.au/~rtatech>

INTRODUCING THE ACCIDENT & INJURY DIARY

THE INJURY MANAGEMENT & APPRAISAL SYSTEM[®]

COMPENSATION DIARY SYSTEMS
DESIGNERS OF SPECIALTY DIARIES FOR PROFESSIONALS

A.I.D. © 1999 *The Diary for Persons Injured*
in Car & Work Related Accidents

- ✓ LOGS DAILY EVENTS • Appointments • Personal & accident details • Pain levels • Insurance particulars
- ✓ TO DO'S & COMMENTS • Expenses & claimable items • Past injury details • Doctors seen in past • Information resource guide for injured parties benefit
- ✓ DOCTORS have more information to diagnose patient needs more effectively
- ✓ SOLICITORS have all relevant data to quantify clients injury & expenses through to court appearance or negotiations
- ✓ PATIENT documents progress for doctors & rehabilitation providers • results ascertain quickly if therapy should continue or change • easily seen if injuries respond or are worse

MOBILE **0409 718 218**
P.O. BOX 6184 PENRITH SOUTH NSW 2750 AUSTRALIA

This diary is an invaluable tool for any patients' doctors, solicitors and rehabilitation providers.

“One of the most disturbing trends, all around Australia, is for actuarial advice to be given in the form of overheads...”

suggestion of working party members, who wanted the actuaries advising various parties to form a sub-committee. Fortunately this well-meant suggestion proved impracticable.

These meetings were of some value, particularly in identifying a similar approach to the estimation of common law costs and offsets. They

also helped correct the use of a preliminary figure of \$61 billion for 1999-00 wages and superannuation, instead of a more realistic \$64 billion. The meetings may have encouraged the actuaries to adopt middle of the road assumptions.

Unhelpfulness of actuarial overheads

One of the most disturbing trends, all around Australia, is for actuarial advice to be given in the form of overheads, with no accompanying report or notes. Some of the problems associated with such use of overheads are:

- as terms and methods are not fully explained, the overheads may not be properly understood by their recipients;
- even if verbal explanations are provided when a concept is first used on an overhead, these explanations may be forgotten by subsequent meetings;
- errors can readily occur, as the overheads may not have been produced by a normal process of checking and peer review;
- the overheads will generally be inadequate for any independent review;
- the full report may be much delayed, or in some cases never produced;

Final decisions in the absence of an actuarial report

It is alarming that major recommendations are sometimes made well before a completed actuarial report has been received. Although major changes to Victorian benefits were made on 12/11/97, our freedom of information requests show that WorkCover received actuarial letters on the changes on

21/11/97 and 2/12/97, and a draft report on 16/1/98. The review of the West Australian workers compensation system published its report on 30/6/99, quoting actuarial advice which was not put into a report until 7/9/99. At one stage the Victorian working party was expected to meet on 21/2/00, receive an actuarial report and make its final report on that day. That ambitious timetable was spoilt by the non-availability of the actuarial report.

Help from the Victorian Trades Hall Council

APLA received solid help from Leigh Hubbard, VTHC Secretary, and from Bill Shorten and Martin Kingham, other trade union members of the working party. They combined to add a dissenting view to the working party's report, and may have been successful in having our report of 18/2/00 included in the working party's report.

We found it much easier to write a coherent report on the options preferred by APLA and VTHC, rather than comment on the disjointed series of overheads presented to the working party. While the VTHC was keen to see improved maim and weekly benefits as well as restored common law benefits, there was considerable common ground with APLA.

How much room is there to improve benefits?

Combining our estimate of present impairment benefits with cost estimates by WorkCover's actuaries, we think the premiums required under the recent system are about 1.5% of wages and superannuation. Leaving out Victoria, the national average premium is about 2.3%. The cost of common law restoration appears to be about 0.2%, so that there is some room for common law retrospectivity, and for improved weekly and maim benefits.

Was the effort worthwhile?

The end result will not be known for months, and the value of APLA's efforts will always be uncertain. But getting the government's data, adding your own, and working hard to find common ground has to be better than waiting passively. **PL**

Helen Mendels Trading as Costing & Assessing Injury Management Services

ASSESSING, COSTING & EVALUATING MINOR & CATASTROPHIC INJURIES

- Direct liaison with the client
- Examinations and costing home care, equipment, nursing, housing and environmental requirements and social needs for life after an injury
- Holistic, qualitative and quantitative evaluations
- A thorough understanding of industrial issues, awards and market rates

Detailed, cost-effective reports based on a holistic approach. Call us at anytime (02) 9344 4244 041 611 1246

PO BOX 1780 BONDI JUNCTION NSW 1355 FAX (02) 9344 4165 EMAIL ilhelen@magna.com.au