

From Greg Smart [gregs@kmsplatt.com]
Sent 19 January 2004 4.26pm
To JIRVINE@pc.gov.au
Subject: Productivity Commission

Dear Jill,

Kerry Splatt would like to note in addendum to his submission numbered IR 197:

The submission that the Common Law exacerbates the reliance of an injured worker on Centrelink benefits can not be substantiated. My firm currently handles approximately 218 WorkCover matters and I can say with confidence that the Common Law in Queensland absolutely promotes the return to work of injured employees.

The Queensland Common Law imposes a strong positive duty to mitigate one's loss and requires evidence of all steps taken to return to work. Any solicitor who encourages a client to remain unemployed to enlarge a claim would be strongly disciplined for breaching professional standards. The Queensland Common Law does not reward a malingerer. Lawyers have a positive duty to advise clients of the need to return to work as soon as possible with appropriate medical advice. The suggestion that the Common Law promotes reliance upon social security to enhance a lump sum payout is wrong and completely ignorant of the positive duties imposed on claimants and their legal representatives by the Queensland Common Law.

The system is designed to remove the cost of maintaining injured workers from the tax payer and onto the party at fault, or their insurer. This is reflected in the absolute requirement that any Centrelink, Health Insurance Commission or Commonwealth Rehabilitation Services outlays or expenses must be repaid out of the final settlement in these matters. Further, the Australian tax payer is protected by the mandatory preclusion periods which prevent injured workers from claiming social security benefits for a period in direct proportion to the "economic loss" part of the settlement.

We note that the Commission has requested anecdotal evidence of claimants receiving lump sum payments and claim social security benefits in addition. As noted, I am responsible for 218 Work Cover claims and I am of the opinion that such occurrences are negligible in number. I would invite the Commission to review first hand [subject to client's consent] each of my files to satisfy themselves as to the procedures in place to protect the taxpayer and the employer. The suggestion that the common law hinders rehabilitation and encourages claimants to rely on Social Welfare is wrong ignorant and yet another distortion of the Common Law in Queensland.

Once again the suggestion that the Common Law, and particularly plaintiff lawyers, encourage injured workers to avoid returning to work is incorrect.

Thank you for your assistance in this matter

Yours Faithfully,

Greg Smart
Law Clerk

KM Splatt & Associate