

Members will be aware that on 18 November 1998 the State Government introduced a Bill into Parliament which will effect dramatic changes to the Workers' Compensation and Rehabilitation Act 1981.

The Government had originally introduced an amendment Bill which would have prohibited injured workers from claiming damages from their employers at common law for workplace accidents unless they could show that the disability resulting from the accident was a loss of at least 30% of total body function. This was known as the attempted "closure of the Second Gateway".

That Bill was passed by the Legislative Assembly and was referred to the Legislative Council. In time it was referred to the Council's Standing Committee on Legislation which recommended that it be rejected by the Council.

It is in response to that recommendation that the Government has introduced the new Bill. Its major features are:

1. The removal of the requirement under S.93D of the Act that leave be obtained before instituting proceedings to recover damages at common law;
2. The introduction of the requirement that before proceedings are commenced at common law, the worker must first obtain from the Director of Conciliation and Review at the Workers' Compensation and Rehabilitation Commission a certificate to the effect that:
  - a) the worker's condition is stable; and
  - b) the worker has undergone rehabilitation or it would be inappropriate for the worker to undergo rehabilitation;
3. The replacement of the requirement for access to common law through the Second Gateway that the worker has suffered a loss of future earning capacity of at least \$106,000 with the requirement that the worker will suffer a loss of future earnings of an amount which, over a 10 year period, is at least 7 times the worker's former average annual earnings;
4. In respect of claims which access common law through the Second Gateway, the imposition of a total cap of \$225,000 on the award of damages, including weekly payments and statutory allowances under the Act;
5. The introduction of a statutory definition of negligence which prohibits damages being awarded where the worker's disability has been caused wholly or in part by:
  - (a) the worker's failure to take reasonable care for his or her own safety;

- (b) the worker's failure to comply with the instructions of his or her employer;
- (c) the worker's failure to properly use safety equipment; or
- (d) the worker's wilful damage, modification or misuse of safety equipment.

The amendments effected by the Bill will apply to all claims for damages arising out of accidents in the workplace in respect of which no grant of leave has been made when the Act which the Bill will become receives the Royal Assent. On present indications, that will occur in the week commencing 30 November 1998.

The Government has also announced that it will commission an enquiry into the workers' compensation system which commenced in December 1998 and will report in March 1999 with amendments based on recommendations in the Report to be introduced into State Parliament in Spring 1999.

The Bill has emerged from a series of discussions between the new Minister for Labour Relations, Cheryl Edwardes, and the perceived stakeholders, including the Chamber of Commerce and Industry and the Trades and Labour Council. Although representatives of the Society have also been involved in some of those discussions, the Society has at all times made it clear to the Minister and the other stakeholders that it opposes major aspects of the Bill and, in particular, any capping of damages awarded at common law and the introduction of a statutory definition of negligence. The Society does not believe that the amendments will deliver the cost savings that the Minister is predicting (8.4% overall) and anticipates that further major amendments to the Act will be necessary in 1999.

The Society has always supported an enquiry into the workers' compensation system and will make submission to that enquiry with a view to the enquiry recommending the introduction of amendments which will be much fairer to workers and employers alike and will deliver greater and longer lasting cost savings than will be achieved by the current Bill.

In the meantime, members handling claims for plaintiffs who are seeking damages at common law for workplace accidents in respect of which leave has not been granted and is unlikely to be granted before the amendment Act receives the Royal Assent should advise their clients of the impact of the new amendments and their positions generally.



*Sue Porter catching up with James at the Lizard Bar*

## Farewell JAMES & INGRID

James and Ingrid Hebron have recently moved to Tasmania. Farewell drinks were held at the Lizard Bar in December at which colleagues and friends attended to pay their respects.

On behalf of the Council and Secretariat, we wish both James and Ingrid all the very best in their new endeavours. Rumour has it that they will miss the NT and that there is a book running on when they will be back.

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