Workers compensation and Newstart

Analysis of transition for injured workers

July 2012

Introduction

The Australian Lawyers Alliance welcomes the opportunity to provide our Submission to the Senate Education, Employment and Workplace Relations Committee regarding the Inquiry into the adequacy of the allowance payment system for jobseekers and others.

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

Executive Summary

In essence, we submit that the Newstart payment, and the transitioning from alternative payments such as WorkCover to Newstart, provides inadequate support.

There are complexities surrounding persons' transition from workers compensation benefits to Centrelink benefits, and more assistance should be provided to ensure that injured workers are genuinely supported.

This submission will specifically address:

- the transition from workers compensation payments to Newstart allowance for WorkCover claimants in South Australia;
- the transition from workers compensation income maintenance to Newstart either after receiving a lump sum capital redemption payment from an exempt employer; and
- those claimants whose workers compensation income maintenance is ceased pursuant to a determination based on section 35B of the *Workers Rehabilitation and Compensation Act* 1986.

While the views raised within this submission specifically address the South Australian framework, these issues are of relevance across the nation.

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Adequacy of the Newstart allowance for Workers Compensation claimants

In assessing the adequacy of the Newstart allowance for Workers Compensation claimants who leave or are pushed out of the workers compensation system, you have to first take into account what the workers compensation system in South Australia provides by way of rehabilitation.

When a worker is injured, s/he is paid workers compensation income maintenance at a rate of100% of his or her pre-injury employment earnings for three months, 90% of the pre-injury employment rate for a further three months and then 80% of the pre-injury employment rate thereafter for as long as s/he can substantiate that he is totally incapacitated for employment.

The primary aim of the rehabilitation providers in South Australia assigned to workers by the WorkCover Corporation or its claims agent as well as exempt employers is to transition that worker back to his or her pre-injury employment hours and duties. Where it becomes clear over time that a worker will not be able to return to his or her pre-injury hours and duties, rehabilitation becomes more problematic. Not unreasonably, injured workers consider that if the work injury will permanently prevent them from returning to their pre-injury hours and duties, the rehabilitation provider will change its priorities to finding the worker alternative employment for which the worker is suited by way of age training and experience and if no such employment is available or suitable, train the worker for some form of vocationally suitable employment, and employment which the worker finds attractive or at least satisfactory. That does not happen in South Australia.

In the experience of ALA members, where a worker is not likely to return to his or her pre-injury hours of employment, the rehabilitation provider will do his or her best to minimise the claims agent's ongoing liability to pay income maintenance by finding the worker employment for which the worker may have physical capacity, but which is not necessarily employment for which the worker is vocationally suited and often is employment that the worker finds demeaning and ultimately detests. As most injured workers are unskilled workers in low paid employment, the rehabilitation provider can reduce the Corporation's liability by finding employment of a similar nature. However, as the worker's injury will prevent him or her from returning to heavy duties, the types of employment pursued by the rehabilitation provider are low paid, light unskilled works such as packing or simple light work in the retail industry such as people greeter, car park attendant, etc. When an injured worker has lost his or her capacity to do his pre-injury employment, sometimes employment that has been longstanding and which the worker enjoyed and from which he or she gains self esteem, being rehabilitated for what the worker sees as a demeaning position often leads to symptoms of depression and a downward

spiral, into litigation and an adversarial relationship between rehabilitation provider, the corporation and the worker.

In the past, when these relationships developed, disputes would often be resolved by way of capital lump sum redemption payment where the worker accepted a capital lump sum payment to capitalise his workers compensation entitlement and both the worker and the WorkCover Corporation would go to separate ways.

Ceasing payments of income maintenance

Since 1 April 2009 and the amendments to the *Workers Rehabilitation and Compensation Act* 1986, the WorkCover Corporation now has the avenue of ceasing payments of income maintenance pursuant to Section 35B of the *Workers Rehabilitation and Compensation Act* 1986, 130 weeks after the date of injury, where the corporation will establish that the worker has some work capacity.

When a worker accepts a redemption payment of his income maintenance entitlement is ceased pursuant to Section 35B of the *Workers Rehabilitation and Compensation Act* 1986, he or she will have to transition to Newstart payments as income maintenance unless he or she can get alternative employment quickly.

In the experience of ALA members, few workers find employment quickly under these circumstances, generally, their injuries are significant, complicated by de-conditioning and psychiatric injury. These workers are in a poor frame of mind, have poor self esteem and are angry about the way that they have been treated by the workers compensation system. The other barrier to finding employment is the stigma that prospective employers place on job applicants with a history of workers compensation claims.

In any event, workers facing the transition from workers compensation payments to Newstart are generally debilitated both physically and psychologically and in a poor state generally to find alternative work. Despite having a rehabilitation provider for some period after the claim was made, they would generally be workers with a history of unskilled manual work which they are no longer suited, and they would have received little or no meaningful rehabilitation in terms of being trained in finding work or have any vocational direction.

When a claimant is paid a lump sum redemption payment s/he will be eligible for Centrelink once the relevant preclusion period has passed. These workers will be in a better position than workers whose payments have been terminated pursuant to Section 35B as the latter will have suddenly gone from being on benefits to being off benefits with no financial cushion. Workers who have received redemption payments will at least have the period of the preclusion period to attempt to plan some means of obtaining future employment.

However, it should be remembered that generally these payments are not that substantial and workers generally often do their best just to survive and make the money last for the period of the preclusion. In these circumstances, Newstart is not adequate.

Additional payments and assistance required

The ALA considers that injured workers transitioning from workers compensation benefits to Newstart allowance need some form of additional payment to assist them in having the basic means to find alternative work.

The payment should focus on two aspects of the needs of injured workers in these circumstances. The first need is for the worker to have some form of allowance or payment to assist him or her in procuring the basic tools that job seekers need in 2012 generally. In 2012, job seekers need a computer with broadband internet access. Consideration should also be given to the need for a job seeker to present himself at job interviews with perhaps an allowance being made for clothing.

The second need that is not adequately covered by a Newstart allowance is training for alternative employment. The commonwealth does provide support by way of the Commonwealth Rehabilitation Service. However, the services resources are stretched. Thought should be given to some form of allowance to enable workers to access vocational counselling and assistance to find some form of career direction and training.

The reduction in access to the Disability Support Pension

The ALA also raises concerns given the tightening of criteria surrounding eligibility for the Disability Support Pension.

We believe that this is forcing persons who, until now, have sought relief from the Disability Support Pension, onto the Newstart allowance, which differs greatly in the amount of support provided.

Relevance to remote communities

The ALA also raises concerns regarding the adequacy of the Newstart payment in rural and remote areas, given the high cost of fresh foods, including fruit and vegetables.

Relevance to the operation of not-for-profits

The ALA is aware of examples wherein individuals attempting to gain access through the WorkCover system, have fallen through the gaps in income support.

Ultimately, a lack of appropriate timelines and checks and balances to ensure that people are receiving adequate support and assistance through transitional periods, means that not-for-profits will bear the burden instead of government.

Welfare services must be adequate in the support provided, to ensure that persons are genuinely able to transition to work, when they are physically and psychologically able.

Case Study:

A woman was in the process of claiming for WorkCover payments. WorkCover notified Centrelink to cease her income support payments, as WorkCover payments would be soon paid to her.

The woman was left for up to a month with no income. Desperate, she lived week to week through seeking food vouchers from St Vincent's De Paul.

Conclusion

The ALA recommends that current support provided under the Newstart system is inadequate.

The ALA recommends that increases be provided to the Newstart allowance.

The ALA recommends that the transition periods from alternative forms of welfare assistance to Newstart must ensure that individuals will be able to access support.