

Limitation Period Under the WorkCover Queensland Act 1997

Tanks v WorkCover Queensland (unreported) 12 October, 2000

Background

Subject to exceptions, s.11 of the *Queensland Statute of Limitations Act* imposes a three (3) year limit on personal injuries claims. The time starts to run when the rights accrue. Usually, this occurs at injury or when symptoms appear.

Chapter 5 of the *Queensland WorkCover Act* sets up a series of steps which have to be satisfied before access to common law damages is granted.

Section 252(2) clearly states that the provisions of that chapter are substantive. Section 253 then goes on to limit the categories of common law claimants with section 253(1)(a) specifically dealing with situations where a notice of assessment has issued.

A notice of assessment issues only when a worker's injuries have been assessed by WorkCover. A claimant then has to lodge a notice of claim for damages, attend a compulsory conference and make a formal offer before being allowed to make a claim through the courts.

The Court of Appeal previously considered the WorkCover legislation in *Bonser v Melnacic & Ors* (unreported) 8 February, 2000, no. 4369 of 1999, in circumstances where the worker sued someone other than the employer and that party sought to join the employer for contribution.

The case

Mr Tanks was injured on 26 June, 1997. Prima facie, his limitation period therefore expired on 25 June, 2000. A notice of assessment issued on 11 May, 1998. Mr Tanks then lodged a notice of claim for damages on 25 November, 1999. WorkCover refused to respond to it. The worker then applied to Justice Cullinane in the Queensland Supreme Court in Townsville seeking:-


- (a) an order that WorkCover respond to the notice; and
- (b) a declaration that the limitation period had not yet expired.

His Honour considered himself bound by *Bonser* notwithstanding that

the decision dealt with a different factual situation. *Bonser* established that the *WorkCover Act* took away the cause of action which accrues at injury and replaced it with another which accrues when Chapter 5 steps are satisfied.

His Honour allowed the present application by, inter alia, holding that the limitation period could not run at least until the notice of assessment had issued. Because of the specific questions posed in the application, His Honour found it unnecessary to decide exactly when the limitation period started to run.

In the course of the decision, His Honour acknowledged that the provisions dealing with conditional certificates, which are issued in urgent cases, did not sit well with this decision. Also, s.308, which suggests that a claim can only be brought outside three (3) years post-injury in limited circumstances, was read down. According to His Honour, it was improbable that the legislature intended that in certain cases the limitation period could expire before a cause of action even accrued.

The decision provides some welcome guidance to practitioners in the area. It is expected that WorkCover will appeal. It is also likely that further cases will follow, pinpointing when the limitation period starts to run. 

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