

Impact of NSW Workers Compensation Changes on the Maritime Sector – Not Just a Matter for Employers

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Changes to the NSW workers compensation insurance scheme have just been passed which substantially restrict the range and reduce the level of compensation available to injured workers in NSW. The changes are not only relevant to those within the industry that employ workers in NSW. They are also likely to have an indirect impact on those who do business or deal with organisations that employ workers in NSW – including local and international carriers, vessel operators and others within the shipping industry.

With reduced statutory compensation available, it is conceivable that this will result in an increase in the number of (a) common law injury claims commenced against NSW employers, (b) indemnity claims brought by NSW employers against third parties, such as carriers or vessel operators who are alleged to be responsible for any injury and/or (c) direct claims by injured workers against third parties, such as carriers or vessel operators.

The New Laws:

The new laws reduce the maximum entitlement to weekly compensation payments, abolish awards for pain and suffering, restrict compensation for permanent impairment and restrict payments for ongoing medical expenses, amongst other changes. In most cases the new laws will represent a very substantial reduction in the amount of statutory compensation available to injured workers.

Injured workers have always had the right to pursue common law damages claims against their employer or any third party responsible for an injury for losses not covered by or in excess of the statutory compensation scheme.¹ In times of a more substantial statutory compensation scheme, injured workers might be more inclined to settle for the statutory compensation and less inclined to incur the costs of a common law damages claim.

¹ Subject to certain statutory restrictions, meeting the injury level thresholds for such claims and not making any double recovery.

However, with reduced statutory compensation now available, injured workers might find the prospect of a common law damages claim more attractive.

For example, a stevedore injured whilst working onboard a vessel might now be more inclined to bring a common law claim against his employer. In turn, the employer will be likely to bring an indemnity claim against the owners/operators of the vessel being worked, to the extent that conditions on the vessel caused or contributed to the injury. Alternatively, the injured stevedore might be more likely to bring a claim directly against the vessel owners/operators to the extent that they caused or contributed to the injury.²

The focus on introducing the new laws was on reducing workers compensation insurance premiums for NSW employers. The potential indirect consequences of the changes outlined above and the increased costs to employers and those doing business with them appear to be an unintended consequence of the changes.

NSW employers and third parties dealing with or engaging organisations that employ workers in NSW should consider and prepare for the prospect of increased common law personal injury claims and indemnity claims.

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² See, for example, our article relating to an injured surveyor - *'Liability of Owners and Operators for Injury to Persons Onboard – Are Owners and Operators Liable for Obvious Risks?'*, January 2011 at <http://www.nortonwhite.com/publications>.