

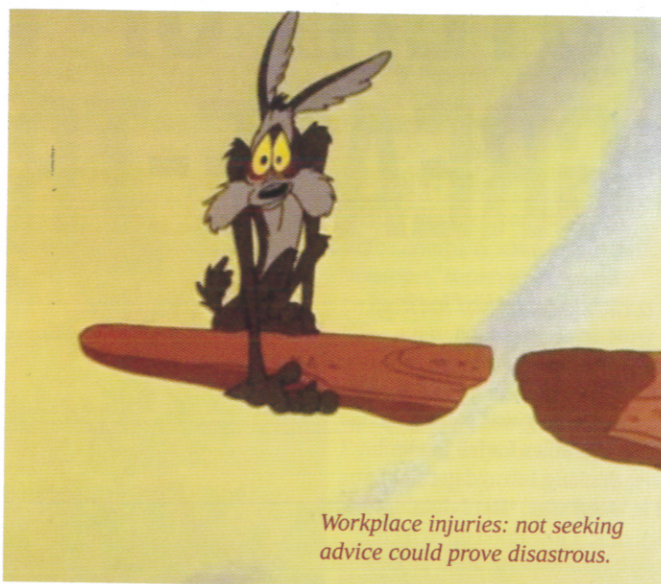
SHOULD I MAKE A COMPENSATION CLAIM ?

TWU members injured at work invariably worry about whether lodging a claim will affect their job.

First, it is important to know that there is a *six-month* time limit for lodging a compensation claim and a *three-year* time limit for lodging a damages claim. Missing these time limits can sometimes be fatal to your rights and often employers will argue the failure to claim means the accident didn't happen! Most employers have rules which require employees to report the occurrence of an injury. Once reported, the employer is legally obliged to advise the nearest office of Workcover Queensland. Failure to do so is an offence under the *Workers' Compensation and Rehabilitation Act*.

Once a compensation claim is lodged, the law provides solid protection for the injured person in the first 12 months after the injury. It is illegal for an employer to dismiss an injured worker during this period and is punishable by a fine. So what happens after the 12 months period has ended?

During the entire period for which a worker is entitled to compensation employers have an obligation to 'take all reasonable steps' to provide rehabilitation. Workcover can impose heavy penalties for non compliance. However, if after this period ends an injured worker is unable to perform the *inherent requirements of their job description*, then



UNFORTUNATELY WE OFTEN SEE THE DISASTROUS CONSEQUENCES OF MISSING TIME LIMITS TO MAKE CLAIMS WHEN THE CONDITION LATER DETERIORATES

their employment is at risk. One way of providing better protection in this situation is to make sure your job title actually reflects your duties. For example, if you have been permanently transferred from driver duties to lighter warehouse duties, make sure your job description is formally altered to warehouse duties. Then the 'inherent requirements of the job' test is easier to meet.

Commonwealth anti-discrimination legislation may also apply if an employer is discriminating against you because of your injury.

No-one likes being injured or making compensation claims. Unfortunately, your union often sees the disastrous consequences of missing time limits to make claims when the condition later deteriorates. Lodging a claim is like insurance against what might happen in the future.

So our advice is, *don't take risks concerning your health*, it's the most precious thing you own. Report injury and lodge your claim.

Report your injury, lodge a claim and get advice from our specialist personal injuries lawyers, Maurice Blackburn. That advice is free to members.

WHA

THE QUEENSLAND Branch has represented its members employed as drivers with Arkwood Organic Recycling in an arbitration before Fair Work Australia. Arkwood operates both in NSW and in Queensland mainly carting 'biosolids' from sewage treatment plants to farmland, where it is used as fertiliser and soil conditioner. Biosolids are the by-product of treating sewage — yes, that's right, they do use treated poo to grow crops in Australia. The question for Fair Work Australia was whether members were covered by the Waste Management Award 2010 or the Road Transport and Distribution Award 2010.

Commissioner Ingrid Asbury heard evidence from drivers, Arkwood management, a biosolids expert and an expert from the waste management industry. Oshie Fagir, legal officer from the NSW branch, gave evidence about the history of the Waste Management Award and the Award Modernisation proceedings. The Commissioner also took the time to travel to farmland west of Toowoomba to see dumping and spreading operations. Unfortunately, the country air was not so fresh, the flies were in plague proportions, and it was a stinking-hot day.

The environmental legislation in Queensland allows for biosolids to be classed as a resource, so that land application can be exempted from certain licencing requirements. Similar legislation in NSW classes biosolids as a waste product at all times. While state legislation and the history of the Award will be relevant considerations, the real task for FWA is to decide whether

REVIEW OF MODERN AWARDS

FAIR WORK Australia is presently conducting a two yearly review of Modern Awards. Some of the Modern Awards that cover TWU members include the Road Transport and Distribution Award, the Road Transport (Long Distance Operations) Award, the Passenger Vehicle Transportation Award, and the Waste Management Award.

Modern Awards became operative in 2010. The number of Awards that operated within the federal system were reduced in number to about 120 Modern Awards through a process of amalgamation and simplification. It is not surprising that some issues have arisen as a result of the Modernisation process.

The Award review process will be co-ordinated by TWU National Office. Branches have submitted suggested variations to most of the Modern Awards which cover TWU members and the Queensland Branch Industrial Department expects to play a lead role in some of the variation applications.

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WHAT A LOAD OF CRAP

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Brendan Bogle and Peter Biagini



The Sunday Telegraph

COUNCIL DELEGATE VINDICATED — AT LAST!

UNFORTUNATELY, THE COUNTRY AIR WAS NOT SO FRESH, THE FLIES WERE IN PLAGUE PROPORTIONS, AND IT WAS A STINKING-HOT DAY.

biosolids are waste within the natural and ordinary meaning of that term. Arkwood maintained its view that biosolids are not waste, while the TWU maintained that Arkwood was a participant in the waste management industry.

The case was arbitrated in February 2012 and Commissioner Asbury has reserved her decision.

Members employed at a local government Council made a number of complaints to their management regarding bullying behavior by another employee of the Council, who also claimed to have management's approval in targeting certain employees.

The Council re-located the employee, who was accused of bullying while it conducted an 'investigation' of the complaints. Council, subsequent to their 'investigation', found that the employee in question had no case to answer, but would be 'spoken to' about his 'emerging leadership style'. Members were unhappy about both the investigation and the outcome.

At a subsequent meeting of employees, management announced that the employee would be returning to the depot. Knowing that there were on-going concerns from members, a TWU delegate spoke up and indicated that he didn't feel safe about that person

returning to the depot at that time. Management scoffed at his concerns and so he indicated that he wasn't the only one who felt like that. Members at the meeting then raised their hands to indicate they too had concerns about the employee's return.

The TWU delegate was subsequently asked to 'show cause' why disciplinary action shouldn't be taken against him for bullying, following which he was issued with a 'first and final warning' for 'causing a show of hands' at the meeting. The 'first and final warning' was issued in October 2011. The TWU attempted first to sort the issue with the Council; however, when our attempts to have any form of disciplinary action removed from our member's record failed, we notified a dispute to the Queensland Industrial Relations Commission in November, 2011.

The matter was the subject of four separate dispute conferences in the QIRC

between November, 2011 and February, 2012. It had to be made absolutely clear that the TWU would continue this matter to a formal hearing if it were not resolved, as we could not and would not tolerate a situation where a TWU delegate was disciplined for doing his job as a delegate.

The ultimate outcome was that all disciplinary action against our member was dropped by the Council. While the matter took some four months to be resolved, the lesson is — never give up! Congratulations to our delegate for seeing the process through. The outcome will assist in ensuring that TWU delegates at that workplace can perform their role without the threat of disciplinary action. And TWU delegates everywhere can rest assured that the TWU will defend delegates' rights to perform their role without fear of disciplinary or other action against them.