RYAN CARLISLE THOMAS LAWYERS

Submission to the Senate Inquiry into Australia Post Injury Processes

Submitted by Ryan Carlisle Thomas Lawyers
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1. Overview

Ryan Carlisle Thomas is a plaintiff law firm with 21 offices and 160 employees across Victoria. We provide legal services to the Communications Division of the Communications Electrical Plumbing Union, a role that includes acting for Australia Post employees who seek compensation for workplace injuries.

As a firm that acts for injured workers across many industries, including the healthcare sector, manufacturing and finance, we speak with authority when we say Australia Post's claims management process is designed to pressure workers rather than designed to achieve an optimum outcome for both the worker and the employer.

This may be in part because Australia Post, unlike most licensees, handles compensation claims in house as opposed to using Comcare or a private insurer to manage the claims eg Allianz or CGU. In our experience, Australia Post claim's managers tend to approach claims in a more adversarial manner and they tend to personalise the claims process. These negative attitudes are often then conveyed to a worker's supervisor/manager and become a barrier to return to work.

For example, workers have reported to us that on their return to work they have been "screamed" at by supervisors, pressured into undertaking tasks beyond the restrictions imposed by their doctors and pressured into increasing their hours prematurely. We have also had complaints that other workers have been told not to talk to injured workers who are on a return to work trial.

In view of this anecdotal evidence, it was with some surprise that we saw that the Safety, Rehabilitation and Compensation Commission this year heralded Australia Post as a leader in rehabilitation and return to work processes, which resulted in an award for their achievements in this area.

It was reported that "Australia Post has achieved impressive results in the areas of return to work, reduction in lost working days and provision costs[1]". These reductions undoubtedly had pleasing economic results for Australia Post; however, the cost of these reductions for injured workers was greater.

We believe Australia Post's claims management processes lead to inappropriate health care for some injured workers, unwarranted return to work, and "suitable duties" which can be characterised as futile and demeaning. GP advice is routinely overturned by InjuryNet doctors who are on the Australia Post payroll, and the bonus structure encourages managers to bully injured employees back to work regardless of their health.

[1] www.srcc.gov.au

* real name has not been used

2. Fitness for Duty Assessments being used to justify claims refusal: case study

Clare* has had a long-standing right shoulder injury as a result of many years of dragging and lifting mail bags which at times weighed in excess of 20kg. Australia Post accepted the injury as a compensable condition. She has undergone extensive medical treatment including two operations.

As a result of a further deterioration in her condition Clare underwent a cortisone injection to help relieve her ongoing pain. This procedure was fully-funded by Australia Post. Clare underwent the injections on 30 July 2009. As a result of this procedure Clare's General Practitioner certified Clare unfit for all duties for a period of seven days in order to allow her to rest and recuperate.

However, on 3 August 2009 Australia Post directed Clare to attend a fitness for duties assessment. The facility nominated doctor concluded that Clare was fit for her full-hours subject to an extensive list of medical restrictions. Accordingly, Clare was denied workers compensation incapacity benefits for this period and Australia Post issued a determination. The determination states that the facility nominated doctors opinion is preferred to Clare's General Practitioner. It is articulated in the following manner *"I consider that the medical advisor that your client attended is fully versed with the suitable duties available within Clare's* workplace and is qualified to determine if these meet her specific medical restrictions".*

This case study demonstrates that Australia Post implements a number of inappropriate practices.

Firstly, it highlights the unilateral nature of Australia Post decision-making. Australia Post relied purely upon the report of the facility nominated doctor who was undertaking a fitness for duties assessment. It should be noted that Australia Post did not consult with Clare's General Practitioner in making the determination. Furthermore, the onus was on Clare to obtain a report from her treating practitioner (the cost of which is not required to be reimbursed by Australia Post) in order to justify her incapacity for work. Further the use of facility doctors and Australia Post's reliance on them devalues the use of certificates of capacity.

Secondly, this scenario demonstrates Australia Post's blatant disregard for Comcare Policy. Comcare states that whilst an employer may request an independent assessment to determine the employee's fitness for duties, it should not be an assessment undertaken for the purposes of determining liability for compensation purposes[2].

3. The Viability of InjuryNet

When employees are injured at Australia Post they are offered a referral to a network of medical practitioners, namely InjuryNet.

Australia Post would contend that InjuryNet provides early intervention and assists in rehabilitation. They would undoubtedly argue that the network ensures injured workers are

[2] www.comcare.gov.au

receiving good quality healthcare from practitioners trained in the workers compensation sphere.

However, InjuryNet overtly base their marketing strategy to attract the commercial sensibilities of employers. InjuryNet advertise their services on the basis that their doctors "understand the commercial impact of their medical decisions[3]". It is our contention that health professionals should base their medical decision-making on a medical rather than an economic or commercial rationale.

In 2008, eleven percent (11%) of injuries treated by InjuryNet professionals became lost-time injuries. In comparison, thirty-one (31%) of injuries become lost-time injuries when treated by other doctors. Similarly the number of hours lost is greatly reduced when workers visit InjuryNet doctors. The average being 14.1 hours for InjuryNet doctors in comparison to 41.9 hours for other doctors[4]. These figures are trumpeted as evidence of the superior quality of the service of InjuryNet doctors. We contend that this Senate Inquiry needs to uncover the reasons for these vastly different outcomes and the potential impact commercial arrangements have on medical decision-making.

A US study on workers compensation costs found that workers compensation medical networks are generally associated with much lower medical costs 16-46% lower if the injured worker is treated exclusively by network providers and up to 11% lower if the worker is treated predominantly but not exclusively by network providers[5]. These statistics may be used by Australia Post to highlight a cost effective and highly efficient system. However, we contend that this merely highlights the reduced level of healthcare services injured workers receive via facility nominated doctors. The reduction in medical costs undoubtedly stems from a reduction in medical investigations and consultations. This in turn can result in mis-diagnosed injuries, the implementation of unsuitable return to work programs and long-term consequences for the rehabilitation of a workers injury.

We request that that the following investigations be undertaken by the Senate Inquiry:

- Uncover situations where injured workers management is not necessarily based on medical principals but with a focus on return to work to benefit employers.
- Disclose the commercial arrangements between Australia Post and InjuryNet.
- Consider codification of Comcare's policy that fitness for duties assessments can not be used to make workers compensation determinations.
- Whether the commercial arrangements between InjuryNet and Australia Post impact upon injured workers care.

[3] www.injurynet.com.au
[4] Ibid

[5] Fox, Sharon, Richard A. Victor, Xiaoping Zhao (2001) The Impact of Initial treatment by Network Providers on Workers Compensation Medical Costs and Disability Payments.

4. Injury Net doctors and Doctor/Patient Confidentiality.

Australia Post employees are referred to InjuryNet on the premise that it is a viable alternative to their treating General Practitioner.

The InjuryNet privacy statement[6] states that personal information collected during a medical consult with an InjuryNet practitioner may be used to comply with Workcover procedures for managing an injury. Thus, an employee's mere attendance with an InjuryNet practitioner indicates their implied consent for the practitioner to discuss their injury and other aspects of their personal health and well-being with the worker's employer.

We contend that Australia Post together with InjuryNet need to provide greater transparency to the injured worker in relation the scope and purpose of their role.

We also contend that the nature of the commercial arrangements between InjuryNet and Australia Post is such that significant potential conflict of interest arises insofar as InjuryNet doctors would be under considerable pressure to facilitate and encourage a worker to return to work even in circumstances where this may not be in the best interests of the worker and indeed where a return to work before a worker has had time to heal may result in further potentially serious injuries.

5. Salary Bonus Policies and Lost Time Injuries.

The number of lost time injuries per one million working hours was 7.1 for Australia Post in the year ending July 2009[7]. It is believed that managers are offered bonus incentives for reducing the number of lost-time injuries for their department.

Australia Post would contend that this encourages managers to ensure Occupational Health and Safety procedures are followed within their sectors. We contend that this policy encourages a culture of management bullying injured workers to attend facility nominated doctors.

Relevant case studies

We have been consulted by numerous Australia Post workers who have felt pressured and harassed into attending facility nominated doctors at their supervisor's or manager's behest. For example:

- Australia Post worker Mr. Barry Lyson advised his union that he injured his leg after a motorbike accident in the course of his work at Australia Post. After having two days off work, his manager arrived on his doorstep and advised he had an appointment to attend a facility nominated doctor in forty minutes time[8].

[6] www.injurynet.com.au, Injury Net Privacy Statement 2004.
[7] Australia Post Annual Report 2008-2009.
[8] www.cashforcompo.org.au

- Another Australia Post worker Mr. Scott Lynch reports injuring his left forearm after unloading bags of mail from the back of his truck. He attended his General Practitioner who advised him to have two days complete rest. Scott's supervisor advised that he should attend the facility nominated doctor in order to "legalise" the decision. As a result of Scott's attendance with the facility nominated doctor his two days leave was not paid as workers compensation.

6. Conclusion

An overhaul is required of Australia Post's return to work policies and strategies and a proper analysis of the impact on workers of the current policies is required.

It is our contention that some Australia Post injured workers are being forced back to work in inappropriate circumstances where their health and the safety of other workers is put at risk.

Further, the commercial arrangements between Australia Post and InjuryNet are such that InjuryNet practitioners may find themselves in a conflict of interest situation when on the one hand a worker and his or her treating doctor is saying they are unfit to return to work but on the other hand, Australia Post, which is paying the InjuryNet doctors' fees are pressuring for the worker to return to work as soon as possible.

We also submit that Australia Post's right to suspend all entitlements under the SRCA when a worker "unreasonably" refuses to participate in a return to work/rehabilitation program[9] even when the worker is following the advice of their own doctor, is excessively harsh and used by Australia Post without hesitation as a weapon to pressure workers to return to work or risk being left without income and without access to medical treatment under the SRCA.

In this connection, we welcome the recent announcement by Minister Gillard that the legislation will be amended so that in this situation, even if incapacity payments are ceased, liability for medical expenses will continue.

Further, when workers develop stress and anxiety conditions because of perceived bullying and harassment over return to work issue or when their payments have been suspended and they are experiencing serious financial pressure including in some cases the potential loss of their family home, Australia Post rely on the exclusionary provisions namely "reasonable administrative action"[10] to reject liability for the secondary condition and in justifying their position they rely upon the sometimes bogus opinions of facility doctors.

Finally, we submit that Australia Post may be acting outside their legal authority when directing workers to attend facility nominated doctors.

[9] s 37 Safety Rehabilitation and Compensation Act 1988
[10] ibid s 5 A (1)

7. About the Authors

Ryan Carlisle Thomas

Ryan Carlisle Thomas was established in 1975 to provide quality legal services to working people, unions and community groups.

Since then, Ryan Carlisle Thomas has grown to employ more than 160 staff in 21 locations. Our firm has offices throughout suburban Melbourne, Ballarat and Geelong. We also own the regional law firm Stringer Clark, which has offices throughout Victoria's Western Districts.

The firm has helped 60,000 Victorians secure compensation from WorkCover and the TAC. It has specialist injury and employment lawyers, a dedicated family law team, and superannuation experts.

Our philosophy is "Clients, not cases".

Leah Hickey, Solicitor, Ryan Carlisle Thomas

Leah Hickey is passionate about personal injury law and workers' rights. She deals almost exclusively with Workcover and Comcare clients at Ryan Carlisle Thomas's Melbourne office. Leah is an active member of both the Australian Lawyers Alliance and the Law Institute of Victoria.

Angela Sdrinis, Partner, Ryan Carlisle Thomas

Angela has been with RCT since 1982 and became a Partner of the firm in 1992.

Angela practises in the areas of personal injury, Comcare, military compensation, public liability, seacare, institutional abuse and transport accidents. She has been Personal Injuries Accredited Specialist since the scheme was introduced in 1993. Angela has been appointed Chair of the Law Institute Personal Injuries Specialisation Committee.

Angela was a founding member of the Australian Lawyers Alliance (formerly Australian Plaintiff Lawyers Association) and has been on both the Victorian and National Councils. She was the first Victorian President of APLA. Angela is also a member of the Comcare Liaison Committee.