



Seriously Injured Workers & Breach of Mutuality

Morris v Department for Child Protection

Joe Parisi

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Workplace assault

- Ms Morris was employed in the Child Protection Unit of the Department for Child Protection
- In 2002, she was seriously assaulted by a disgruntled parent over a child removal issue
- Ms Morris was assessed as having a 64% WPI as a result of her physical injuries



Seriously injured worker

- Ms Morris was a seriously injured worker under the Act
- Ms Morris was therefore entitled to income protection until retirement age

Listen. Engage. Solve.

GilchristConnell





Breaking Bad

- Ms Morris is found guilty of trafficking methamphetamine
- A month later, she is arrested for attempting to dissuade a witness giving evidence.
- Bail revoked – put in custody awaiting sentencing on the drug charges



Payments suspended

- The Department suspends weekly payment under s193 of the Act



Termination and Discontinuance

- The Department terminates the employment of Ms Morris for misconduct
- The Department discontinues income support under s48 of the Act based on a breach of mutuality



Second Discontinuance

- After the discontinuance, Ms Morris pleaded guilty to attempting to dissuade a witness from giving evidence
- The Department then issued a second discontinuance based on a further breach of mutuality



Section 48(3) – Breach of Mutuality

A worker breaches the obligation of mutuality if—

- (a) the worker fails to submit to an examination by a recognised health practitioner nominated by the Corporation; or
- (b) the worker fails to provide a WMC; or
- (c) the worker refuses or fails to submit to proper medical treatment for the worker's condition; or



Section 48(3) – Breach of Mutuality

(d) the worker refuses or fails—

- (i) to participate or cooperate in the establishment of a recovery/return to work plan for the worker; or
- (ii) to comply with obligations imposed on the worker by or under a recovery/return to work plan for the worker; or

(e) the worker refuses or fails—

- (i) to undertake work that the worker has been offered and is capable of performing; or
- (ii) to take reasonable steps to find or obtain suitable employment or to comply with any other return to work obligation placed on the worker under this Act,

or having obtained suitable employment, unreasonably discontinues the employment; or



Section 48(3) – Breach of Mutuality

- (f) the worker refuses or fails to participate in assessments of the worker's capacity, return to work progress or future employment prospects (including by failing to attend); or

- (g) the worker does anything else that is, apart from this subsection, recognised as a breach of the obligation of mutuality.



Ready, willing and able

- What else is recognised as a breach of the obligation of mutuality?
- A worker must be ready, willing and able to return to suitable employment.
- Did the conduct of Ms Morris amount to a breach of mutuality?



Outcome of criminal charges

- Ms Morris was sentenced for both charges
- Ms Morris received a three year prison sentence
- The sentence was **suspended** upon Ms Morris entering into a good behaviour bond



Argument 1

- Payments could not be **suspended**

Section 193 – Payments if worker in prison

If a person who is in receipt of weekly payments under this Act **is convicted of an offence** and committed to prison, then during the period of imprisonment the weekly payments will be suspended ... unless the Corporation determines that they should be paid to the dependants of the prisoner.



Argument 2

- Payments could not be **discontinued** because they were not being paid – they were **suspended!**



Argument 3 – the main argument

- A seriously injured worker has **no obligation** to participate in paid employment
- Therefore, a seriously injured worker cannot breach mutuality because they do not need to be ready, willing and able to perform suitable duties
- A Return to Work Plan **must not** impose any obligation on a seriously injured worker to return to work (section 25(11)).



Response to Argument 3

- The Act establishes a scheme of compensation that, amongst other things has, as primary objectives, the support of workers in realising the health benefits of work and returning them to work (section 3(1)).
- The Corporation, the worker and the employer must seek to achieve an injured worker's return to work (section 3(4)).
- A worker with a work capacity is required to make reasonable efforts to return to work (section 43(1)).



Response to Argument 3

Judge:

"It would be surprising if Parliament intended that seriously injured workers would be freed of any obligation to work and if at work that such workers could misbehave in the workplace with complete impunity in connection with an ongoing entitlement to weekly payments."



Response to Argument 3

- There is no correlation between 30% WPI and having no work capacity – it is just an arbitrary cut off.
- For example, male escorts (not my example!)
- For example, sedentary worker with a knee replacement



Response to Argument 3

Judge:

"It is one thing to declare that seriously injured workers who do not wish to be the subject of recovery/return to work plans cannot be compelled to be the subject of such a plan. It is another thing altogether to say that such workers, irrespective of the extent of their work capacity, which in some cases might be the same as it was before the work injury, are under no obligation to seek suitable work or perform it, if it is offered."



Response to Argument 3

- Conclusion: A seriously injured worker with capacity to work has an obligation to perform suitable duties.
- If they don't, payments can be discontinued.
- It would be "abhorrent" if a seriously injured worker could walk away from a job to take up pleasurable hobbies or pastimes and expect to be funded until retirement!



Argument 4

- Ms Morris had **no work capacity** and therefore her payments could not be discontinued based on a breach of mutuality of this type.
- No medical evidence was presented.
- Ms Morris did not give evidence.
- The Department conceded that Ms Morris had **no** work capacity.



Argument 4

- The Department argued that it did not matter if Ms Morris had capacity or not – payments could be discontinued because of her conduct.
- Judge: A “recognised breach of the obligation of mutuality” in s48(3)(g) can only relate to a worker who has some capacity for work.



Questions?

Joe Parisi

E: jparisi@gclegal.com.au

T: +61 8 8215 7006