



SERVICE PROFILE

DW Workplace Solutions

Introducing a New Workplace Injury Management Consultancy fully supported by Donaldson Walsh Lawyers

DW Workplace Solutions now offers the firm's Self Insured and Registered Employer clients a comprehensive, quality resource to assist with the full spectrum of injury management.

Launched earlier this year, the consultancy works closely with the DW Self Insurance, Workers Compensation and Workplace Law team to provide a host of time-saving, cost-effective injury management services.

These include:

- Advice and assistance with all aspects of injury management throughout the life of a claim
- Strategic direction on complex or long-term claims
- Sensitive internal and conflict claims
- Mentoring of your internal personnel, such as Claims, Rehabilitation and Return to Work Coordinators
- Short-term support/leave replacement
- Outsourced claims administration
- Process review
- Documentation review and development, including procedure manuals and letter templates
- Legislative compliance review and advice
- Self Insurance Injury Management System review
- Self Insurance applications, renewal and maintenance.

Led by one of the industry's best

DW Workplace Solutions is headed up by Ms Hedy Babi, a leading injury management professional with over 17 years in the industry.

Hedy's experience spans everything from hands-on claims administration to development of national injury management strategies at global companies.

She's had national responsibility for injury management, including self insurance in SA, as well as managerial responsibility for a large team of consultants managing claims on behalf of insurers, government bodies and self-insured organisations.

Hedy is extremely excited about her new role. "I've had dealings with John [Walsh, DW Managing Partner] many times over the years," she said. "I've developed an enormous respect for him and his team, so I'm absolutely delighted to now be working side-by-side with them."

Not surprisingly, the feeling's mutual. "With someone of Hedy's quality on board there's really no workplace injury situation that this consultancy can't assist with or manage," said John. "The phrase 'one-stop shop' is quite a cliched one, but it's extremely accurate in this instance."

A focus on exceeding expectations


According to John, who also heads the firm's Self Insurance, Workers Compensation & Workplace Law team, the thing

that really sets DW Workplace Solutions apart is the extent and depth of its service.

Whether it's specific advice that's required, strategy development or in-house, hands-on case management, the team's committed to providing a level of value to clients that takes them by surprise.

"For example, imagine you're establishing or restructuring your organisation's internal Workers Compensation capability," he said.

"You could engage DW Workplace Solutions to help you with everything from identifying your requirements, to the design and implementation of systems, policies and procedures, and then the recruitment and training of personnel."

"And while all that was taking place," added Hedy, "we could be providing hands-on claims management - in your own offices if that suited - to ensure you had all the time you needed to assess exactly what roles you needed to fill and which staff should be full or part-time." 

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INSIDE THIS ISSUE

2 | National Business Names Register

Deferral of National System

2 | Employer Alert

Omit to Provide Manual Handling & Other Training at your Peril!

3 | Lessons Learned the Hard Way

Audits by the Fair Work Ombudsman

4 | Abolition of Business Stamp Duties in SA

Will it Happen and When?

6 | New WorkCover Employer Payment

Replacement of the Current Levy System

8 | WorkCover Update 2011

The Year of Uncertainty, the Rabbit's Been Caught in the Spotlight!

9 | Long Term Ground Leases

What are They and How Do They Work?

10 | Abandonment of Goods

Retail Leases

11 | How Do Sellers Get Paid For Their Goods? Take 2...

Retention of Title and the Personal Property Securities Act - Implementation Delayed

12 | What's in a Name?

Geographical Indications, Traditional Expressions and Wine Labelling

15 | Staff Profile: John Walsh

Four-quarter Effort



NEWS & VIEWS | Madeleine Crawford

National Business Names Register

Deferral of National System


A national business name register has been proposed to replace the current state-by-state system of business name registration.

The proposed national system was discussed by Alan Branch, in an article entitled "Business Names Go National" which featured in our Autumn 2010 DW Report. For further information about the proposed national system, and particularly its ramifications for the franchising industry, please refer to this article which is available on our website, www.donaldsonwalsh.com.au.

POSTPONED



The proposed national system was originally due to commence in April 2011 but has now been deferred to the first half of 2012. The reasons for the deferral are not clear, however it is possibly due to the requirement that each State, Territory and the Commonwealth must pass legislation to implement the new system.

Earlier this year, the Department of Innovation, Industry, Science and Research released public exposure drafts of the *Business Names Registration Bill 2011*, *Business Names Registration (Transitional and Consequential Provisions) Bill 2011* and the *Business Names Registration (Fees) Bill 2011* for consideration. The deadline for providing submissions on the exposure drafts has now closed. 



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CASE IN POINT | Margaret Kaukas

Employer Alert Omit to Provide Manual Handling & Other Training at your Peril!

Danke v. Tabcorp Holdings Limited [2011] QDC 2

Failure to properly train employees in manual handling and other tasks – even very simple and straightforward tasks – can be extremely costly for employers.

In a recent decision, the Queensland District Court ordered an employer to pay almost \$240,000.00 in damages to a secretary who had suffered a back injury when lifting a box of photocopying paper.

The employer had denied liability and described the task of lifting the paper as "simple and trivial".

The employee in question was the minutes secretary of the employer's Health and Safety Awareness Committee and, although she conceded in cross examination that it would be "common sense" to get as close as she could to the box in order to lift it safely, she asserted that the box was difficult to pick up as it was placed close to a wall and that, as she had never received any training, instructions or directions on how to lift properly, she had not realised that she was picking it up in an incorrect manner.


The District Court found that, while the secretary could have lifted the box in a different manner, the employer had failed to provide her with adequate safety instructions and that there was no excuse for this failure.

The employer had failed to take reasonable care to avoid the foreseeable risk of injury (by providing training in manual handling, and in directing the personnel who delivered the boxes to place them on the worker's desk), and noted that the steps the employer should have taken were simple, easy and cost free.

This case highlights the necessity of providing training in manual handling and other tasks, even in circumstances where it might be thought that the tasks in question are so simple or straightforward that no training should be necessary.



Although in South Australia, employers cannot be sued at common law for damages arising from workplace injuries, an employer who fails to take appropriate action to avoid the risk of injury may be subjected to a prosecution by SafeWork Australia if an employee suffers injury. In addition, employers may incur indirect costs as a result of work injuries and workers compensation claims.

If you require any further information about this case, or Occupational Health and Safety obligations and training in general, including the harmonised Occupational Health and Safety Laws to be introduced in 2012, please contact Margaret Kaukas of Donaldson Walsh's Insurance and Workplace Relations Team. 

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Lessons Learned the Hard Way

Audits by the Fair Work Ombudsman

Most employers knew from the commencement of the Commonwealth Fair Work Act (the Act) and the Modern Awards that there was a bumpy road ahead when it came to compliance. And they weren't wrong. The regular stream of publications from the Office of the Fair Work Ombudsman (FWO) serves as a constant reminder that employers' difficulties with paying their staff at the right rates and providing correct entitlements have far from subsided.

\$9,000 in entitlements to two employees. Similarly, Macquarie Business Solutions Pty Ltd and its director were fined a total of \$21,750 for refusing to pay any wages at all to two employees for four months' work. In both cases, the FWO explained that deterrence was an important factor in prosecuting these employers.

"...encounters with the FWO are likely to be expensive and time-consuming if you haven't lived up to your obligations as an employer."



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"...employers' difficulties with paying their staff at the right rates and providing correct entitlements have far from subsided."



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However, the FWO prefers not to bring prosecution actions where an employer is willing to enter into an enforceable undertaking to repay amounts to employees and to take steps to prevent further contraventions. But this option can also be costly.

its workers \$138,000. The café agreed to an undertaking to report its wage rates to the FWO for the next three years.

The lesson to be learned here is that, regardless of whether underpayments are rectified by enforceable undertaking or court order and civil penalty, encounters with the FWO are likely to be expensive and time-consuming if you haven't lived up to your obligations as an employer.

In addition to its ability to investigate whether an employer is complying with the Act, the FWO holds the power to prosecute those who don't. Prosecutions for breach of the Act can result in the imposition of civil penalties of up to \$6,600 for an individual and \$33,000 in the case of a company, as well as orders to pay compensation to underpaid employees.



Toys "R" Us recently struck a deal with the FWO to voluntarily repay over one million dollars in underpaid entitlements. The company was also required to publish a letter of apology for their errors, and set up and publicise a whistleblower hotline to staff to prevent further breaches.

As the saying goes, prevention is better than the cure, so be proactive and ensure that you are – and continue to be – complying with the Act. It could save you significant costs and inconvenient remedial actions in the future.

The FWO generally pursues prosecution when underpayments have been deliberate and there is a need to deter others from doing the same. It has been successful in a number of these cases.

A company by the name of Lufra Investments Pty Ltd was recently fined \$40,000 and its managing director almost \$8,000, when they refused to pay approximately

Enforceable undertakings to remedy substantial underpayments often include arrangements for future audits of employers' record-keeping and other procedures over a certain period of time. This was the story of a café in NSW that underpaid

If you require any advice about your obligations as an employer, please contact Margaret Kaukas or Megan Langford of our Workplace Relations Team.



"The FWO generally pursues prosecution when underpayments have been deliberate and there is a need to deter others from doing the same."

Abolition of Business Stamp Duties in South Australia

Will it Happen and When?

ANTS and the deal on GST

In 1998 the Commonwealth Government introduced legislation for its "A New Tax System" (ANTS) package for the introduction of the Goods and Services Tax (GST). The Commonwealth Treasury said that:

As part of a A New Tax System (ANTS) the Commonwealth would introduce a Goods and Services Tax (GST) on behalf of the States and Territories (States). GST revenues accruing to the States will provide a robust source of revenue that will replace Commonwealth Financial Assistance Grants (FAGs) and Revenue Replacement Payments to the States, as well as the revenue from nine inefficient State taxes.

Following meetings between the Commonwealth and the States, including a Special Premiers' Conference, an *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* (IGA) was signed on 9 April 1999.

Agreed Reforms

In the IGA, the States agreed as part of the trade-off for the GST, among other things, to abolish "inefficient" taxes including:

- bed taxes from 1 July 2000;
- FID and Debits tax from 1 January 2001;
- a number of business-related stamp duties from 1 July 2001; and
- stamp duty on non-residential conveyances of real property from a date to be determined.

The States agreed not to reintroduce these taxes, or similar taxes, in the future.

In the election that preceded ANTS and the GST, the GST was "sold" on the basis that it would result in the abolition of these State taxes.

The Progress So Far

In its Budget Paper No. 3 for the Budget for the 2007/2008 year, the Commonwealth asserted that:

the Australian Government fully implemented its commitments by:

- removing the wholesale sales tax;*
- implementing the GST; and*
- ensuring that all GST revenue is provided to the States and Territories.*

"In the election that preceded ANTS and the GST, the GST was "sold" on the basis that it would result in the abolition of these State taxes."



The Budget Paper goes on to say that:

the States and Territories partly implemented their commitments by abolishing a first tranche of state taxes by 1 July 2005:

- accommodation tax;*
- financial institution duty;*
- quoted marketable securities duty;*
- debits tax.*

The Budget Paper also noted that the IGA contained a provision to review the abolition of the remaining state taxes by 2005, once GST revenues proved to be sufficient to do so.

In 2006, the Australian Government agreed with the States and Territories on a schedule for the second tranche of state taxation reform, with a timetable for the abolition of a further five taxes:

- Non-quoted securities duty
- Lease duty
- Mortgage duty
- Credit arrangement and rental duty; and
- Cheque duty.

The schedule also provided for the partial abolition of the final tax listed for abolition in the IGA, stamp duty on non-residential property conveyances. The States and Territories only agreed to the abolition of this tax in respect of non-residential property. The Budget Paper says:

"Even though GST revenues are now sufficient so that the States and Territories would not be worse off, relative to if the previous financial arrangements had continued, they have so far refused to fulfil their commitments by nominating a timetable for abolishing this final remaining tax".

The New IGA

The States and Territories and the Commonwealth have signed a new IGA, effective from 1 January 2009. COAG (the Council of Australian Governments) describes the new IGA as follows:

"COAG has reaffirmed its commitment to cooperative working arrangements through an historic new IGA that provides an overarching framework for the Commonwealth's financial relations with the States and Territories".

Schedule B to the new IGA deals with *Taxation Reform*, and reaffirms the agreement of States and Territories to abolish and to reintroduce "specified inefficient taxes which impede economic activity".

The IGA affirms the intention to abolish taxes referred to in the previous IGA, in clause B2, and goes on to say that:

"Each party agrees to abolish, before 1 July 2013, taxes listed in clause B2 which have not yet been abolished".



“The abolition of stamp duty on non-quoted marketable securities and non-real property transfers will be deferred to 1 July 2012”



The Remaining Taxes for Abolition (SA)

In South Australia, the applicable taxes in accordance with the Schedule that remain, and which are imposed by the *Stamp Duties Act 1923 (SA)* are:

- (e) *Stamp Duty on Non-Quotable Marketable Securities*
Stamp duty levied on transfers of marketable securities in private companies and trusts, and in public companies and trusts where the securities are not quoted on the Australian Stock Exchange or another recognised stock exchange.
- (g) *Stamp Duty on Non-real Non-residential Conveyances*
Stamp duty levied on the value of non-real non-residential conveyances.

The second category of the remaining taxes, *stamp duty on non-real non-residential conveyances*, is commonly described as stamp duty on businesses or business property.

The addition of “non-residential” to “non-real” does not appear to add anything. The concept seems to be that conveyances (or transfers) of property other than real property, whether or not residential, will be free from duty, and any transfer of real property will still be dutiable.

As the time for abolition of the final remaining taxes draws nearer, many businesses, or parties contemplating transactions involving business property or non-marketable securities are concerned to know whether the changes will be implemented, and, if so, when this will occur.

The Timetable for Abolition

The South Australian Government had previously announced that these remaining taxes would be phased out (rather than abolished in one step) over a two year period from 1 July 2009, with full abolition of the taxes from July 2010. However, in the Mid Year Budget Review 2008/2009 for South Australia, the former Deputy Premier and Treasurer The Hon Kevin Foley announced that:

“The abolition of stamp duty on non-quoted marketable securities and non-real property transfers will be deferred to 1 July 2012

... the Government remains committed to the abolition of these taxes and the revised timeframe is consistent with the Intergovernmental Agreement on Federal Financial Relations (due to commence from 1 January 2009). The taxes will no longer be phased out but rather will be abolished in full from 1 July 2012”.

In the announcement the Treasurer confirmed, as has occurred, that there is no change to the timetable for the abolition of mortgage duty and rental duty which were fully abolished from 1 July 2009.

“The concept seems to be that conveyances (or transfers) of property other than real property, whether or not residential, will be free from duty, and any transfer of real property will still be dutiable.”

The announcement of the Treasurer in the Mid Year Budget Review is referred to on the Website of Revenue SA, which advises in relation to stamp duty on a transfer of a business that:

“As part of the Government’s commitment under the Inter-governmental Agreement on the Reform of Commonwealth-State Financial Relations (IGA), stamp duty on non-real property transfers and unlisted marketable securities was to be abolished by 1 July 2010. The Treasurer announced that South Australia will be deferring the abolition of stamp duty on non-real property transfers and unlisted marketable securities until 1 July 2012.”

The statement of the Treasurer is quite unequivocal as to the date for abolition of the remaining taxes with effect from 1 July 2012. However, there is, as yet, no legislation, or draft Bill, and until legislation has been passed to amend the *Stamp Duties Act* to abolish these taxes, there is no guarantee that this will occur.

The previously announced date for abolition was 1 July 2010. The Treasurer’s announcement in the Mid Year Budget Review in 2008 extended the deadline. This measure was, however, taken at the time of the Global Financial Crisis and it is to be hoped that there is no similar reason to defer the current stated deadline of 1 July 2012.

What Will be Abolished?

The IGA description of the first class of stamp duty to be abolished, *Stamp Duty on Non-Quotable Marketable Securities* is described above. This includes “marketable securities” in private companies and trusts, and non-quoted public companies and trusts. The expression “marketable security” is not now used in the *Stamp Duties Act (SA)*. This was replaced in 2002 by the concept of a “financial product”.

Shares or similar securities of a company are included in the definition of *financial product* in Section 2 of the *Stamp Duties Act*, as is an interest in a managed investment scheme under the *Corporations Act 2001* of the Commonwealth. There may be doubt in some circumstances as to whether units or other interests in a trust are within the concept of a *financial product*. However, a transfer of a unit or interest in a trust, whether or not a *financial product*, should be a *non-real non-residential conveyance*, and will, presumably, not attract stamp duty if the abolition of these duties occurs.

Until legislation is available, it is not possible to say conclusively that all transfers (“conveyances”) of anything other than real property will not attract stamp duty. However, this is the intent of the IGA, and should be the case.

Real Property Claw-back

A draft Bill has been released for the amendment of the *Stamp Duties Act (SA)* which is entitled *Statutes Amendment (Land Holding Entities and Tax Avoidance Schemes) Bill 2011*. These amendments to the *Stamp Duties Act*, if passed, will replace the current concept

Continued on page 6



New WorkCover Employer Payment System

Replacement of the Current Levy System

of "land rich" entities in the Act by introducing the concept of a "land holding entity". The provisions of the Bill substantially extend the concept of "land". Under Section 92(3) this will be taken to

- "... include an interest in anything fixed to the land, including anything –
- (a) separately owned from the land; or
 - (b) fixed to the land but notionally severed or considered to be legally separate from the land by operation of another Act or law (so that a separation by another Act for the purposes of that Act will not affect the operation of this paragraph for the purposes of the imposition and calculation of duty under this Part)."

Further, subsection (3) applies to all items fixed to the land, "whether or not they constitute fixtures at law", although there is a discretion in the Commissioner to determine that an item should not be treated as land.

When legislation is introduced for the abolition of duty on non-real non-residential conveyances, a dealing with an interest in a land holding entity (with underlying local land assets of \$1 million or more) will almost certainly continue to be assessable for stamp duty although this may, arguably, be in breach of the provisions of the IGA.

It is also likely that any amending legislation for the Stamp Duties Act to exclude non-real non-residential conveyances from stamp duty will contain similar provisions to those in the proposed land holding provisions of the Act, deeming a wide class of items will be taken to be fixed to and form part of "land", so that any conveyance of these items will remain dutiable.

The Road Ahead

For anyone contemplating a dealing with property which may become exempt from stamp duty under the provisions of the IGA in relation to marketable securities or non-residential non-real conveyances, there is hopefully some certainty (but no guarantee) that relief will be effective from 1 July 2012, but there may well be artificial and contrived provisions in legislation which attempt to expand the definition of "land" to retain items within the axable net. ↩

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WorkCover has commenced the process for introducing a new employer payment system for medium to large employers. Consultation workshops have been held and a discussion paper released for comment with WorkCover now understood to be working towards finalising the model for implementation for the 2012/13 financial year.

The aim is to introduce an "Experience Rating System" where the amount the employer pays in premium (WorkCover's preferred term to levy) is impacted by their claims costs which should provide an incentive for employers to focus on OHS and Injury Management practices to improve their claim numbers and costs.



The Bonus/Penalty Scheme that previously operated in South Australia provided for employers to receive a bonus or penalty on their base levy dependent on their claims performance. However, since July 2010 employers have been paying levy based on their industry rate with no impact from claims costs. Levy is calculated at location level with the industry rate determined for each location by reference to predominant activity of that location.

From the information available to date, the proposed starting point for the new payment system is to calculate the employer's base premium as the employer's remuneration by their relevant industry rate. This base premium would then be adjusted by the employer's claim costs for the period divided by the industry claims costs for the period. An employer with claims costs better than the industry claims costs should receive a discount on their base premium. A sizing factor would be applied to determine the level of impact of the employer's experience on their calculation with the extent of the impact increasing with the size of the employer.

While WorkCover has indicated that the aim is not to increase the amount of premium collected, review of some of the aspects put forward during consultation suggest that an increase may be inevitable for some employers.

These include:

- At what level (remuneration and/or base premium) the system will commence.
- The proposed 2-3 year period for the included claims costs.
- The sizing factor to be applied.
- Calculation of premium at employer level based on the predominant activity for the employer as a whole rather than location level based on the location's predominant activity as is currently the case. The impact for employers whose predominant activity carries a higher industry rate than some of its locations is

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something that businesses will need to consider. Allocation of premium between locations would become an employer responsibility.

- The inclusion of claims estimates in the claims costs used for the calculation in addition to actually incurred costs. Currently there is no estimating process applied in South Australia so a process would have to be developed and then implemented. The inclusion of estimates would increase the component of claims costs for all employers.

“Employers in the building industry in particular have cause for concern.”

- Potentially increasing the current levy rate cap from 7.5%. The possible financial impact for industries sitting at the current levy rate cap could be significant dependent on the level of their true levy rate. True industry rate information was not available during the initial consultation workshops. Employers in the building industry in particular have cause for concern.
- Changing the definition of compensability so that costs for secondary disabilities would be included in the premium calculation. This, together with the inclusion of estimates, has the potential to significantly increase the claims costs included in an employer’s premium calculation. Under the Bonus/Penalty Scheme costs for secondary and unrepresentative disabilities were excluded together with costs for rejected and withdrawn claims.
- Introduction of grouping related employers together to determine the experience formula to be applied.

During the consultation workshops WorkCover discussed the introduction of caps to minimise the impact of costs increases, namely:

- A cap on individual claims cost to limit the impact of a single claim on the premium calculation. While no quantum was proposed, it was noted that NSW has a cap of \$150,000 per claim and Victoria has a cap of \$305,000.
- A cap on premium increases and decreases to protect employers against the volatility of premium costs from year to year. This could include a cap on industry rate movement (currently set at 1% to increase in South Australia but 15% in NSW) and a cap on premium increases. Victoria has a cap of 30% on premium increases and decreases with NSW having a sliding scale that is unlimited for employers with basic premium over \$300,000. A cap of 2.5 times the base premium was discussed at the initial consultation workshop.

“A potential 25% increase is still a large increase for businesses to incorporate into budgets.”

- A cap on premium increases during the transition to a new scheme. Transitional arrangements existed in Victoria and NSW during the introduction of new Employer Payment Systems in those jurisdictions. NSW capped the increase to 25% for the first 3 years and Victoria capped the increase at 30% per year. **A potential 25% increase is still a large increase for businesses to incorporate into budgets.**



It is understood WorkCover has held further invitation only sessions based on the feedback provided on the discussion paper on the new Experience Rating System, however no further details of the proposed system have been released to date.

Employers, in particular their financial officers and accountants, need to keep a close eye on developments given the potential financial impact and limited time for financial modelling in preparation for budgeting for the new systems’ introduction. ➡

Further information about the manner in which premiums may be affected by the introduction of the new Scheme and how affected employers may prepare for its introduction contact:



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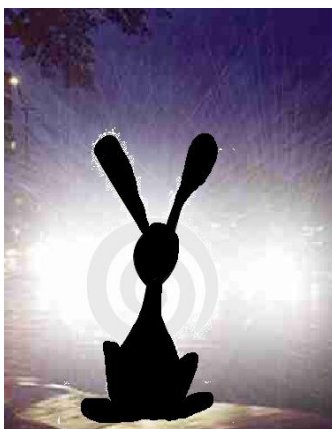
WorkCover Update 2011

The Year of Uncertainty, the Rabbit's Been Caught in the Spotlight!



In March I wrote that employers and workers alike face another year of uncertainty with a range of issues likely to impact upon the troublesome WorkCover Scheme.

In more recent times there have been some further upheavals which give cause for concern and justify my view that we are certainly, so far as WorkCover is concerned, experiencing a year of uncertainty.



With the unfunded liability sitting at \$865 million it is difficult to accept that the position of Chief Financial Officer of this embattled organisation is redundant. Ian Rhodes was, in his role as CFO *“responsible for strategic and day to day management of revenue, finance and investment functions, strengthening actuarial modelling and performance monitoring and reporting capacity”*. With the many financial challenges facing the Scheme and the proposed changes to the Employer Payment System one would think that a CFO had an important role in the structure.

Similarly, it is a little difficult to understand how the position of Deputy CEO can be made redundant at this point in time.

Rehabilitation Report

Mr Thompson's avowed aim to realign the structure of WorkCover and refocus the

Claims management by EML was criticised in the report which concluded that there was *“limited upfront and strategic case management practice”* which was exacerbated by inexperienced case managers.

While it may be appropriate to criticise claims management by EML it would be unfair if criticism were deflected from WorkCover because EML can only operate with the policies and procedures imposed by WorkCover and it would be important to assess the terms of the contract which exists between WorkCover and EML to determine whether there is sufficient incentive for EML to produce outcomes rather than adhere strictly to WorkCover policy, procedures and requirements.

bonus – penalty scheme was removed from 1 July 2010 with all employers now paying the published industry rate.

We can expect WorkCover to introduce an experience rating system to replace the bonus – penalty scheme. The amount an employer can expect to pay in premium will be impacted by

“...although designed as an alternative for self insurance I doubt that it truly competes with the financial and cultural benefits associated with self insurance and the ability to maintain complete control of the injury management process.”

Changes at the Top

A couple of weeks ago it was announced by WorkCover that Jeff Matthews (Deputy CEO WorkCover SA) and Ian Rhodes (CFO WorkCover SA) have been made redundant.

Mr Thompson, who arrived from New South Wales to take over the role of CEO from Julia Davidson just 12 months ago confirmed that the positions of Deputy Chief Executive and Chief Financial Officer were *“no longer required in WorkCover's organisational structure”*. He went on to say that the structure, *“has been realigned with our new strategic direction and has refocused the organisation on enhanced service delivery to injured workers and employers”*.



organisation on enhanced service delivery to injured workers and employers will be tested in the coming months as WorkCover assesses the results of the independent review into the use of vocational rehabilitation services in the Scheme which was carried out by Price Waterhouse Coopers' partner (and my name sake) John Walsh.

The report found that there were too many rehabilitation providers in SA and that claims were over serviced without corresponding outcomes.

One of the key findings from the review is that, *“the Scheme shows little evidence of improved return to work performance, in spite of very heavy referrals to and cost of vocational rehabilitation compared to comparable schemes”*. This is a damning finding for WorkCover particularly as the rehabilitation industry is represented on the Board of WorkCover by Ms Sandra DePoi. Ms DePoi has been a board member since July 2003 and her business interests include one of the largest providers of rehabilitation services to WorkCover.

A New Employer Payment System for the Scheme

During 2010, WorkCover commenced consultation with employers on a new employer payment system. The

industry and employer experience thereby providing an incentive for employers to improve their claims experience through good OHS and injury management practices.

WorkCover is also likely to introduce a retro paid loss system in conjunction with the experience rating system and it will likely be modelled on the system introduced in New South Wales in 2009.

The retro-paid loss system would only be available to large employers with demonstrated capacity and resources to manage their OHS and injury management. The retro-paid loss methodology is designed to provide large employers with an alternative to traditional scheme insurance or self insurance.

However, there are disadvantages associated with the scheme and although designed as an alternative for self insurance I doubt that it truly competes with the financial and cultural benefits associated with self insurance and the ability to maintain

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complete control of the injury management process.

We will provide detailed guidance to employers who may be considering entering into the retro-paid loss system after its introduction into the Scheme has been confirmed by WorkCover.

The Review of the 2008 WorkCover Reforms

The review headed by former SA Courts Administration Authority Chief Bill Cossie and senior Price Waterhouse Coopers' partner Chris Latham has received many submissions from employer and union groups. Criticisms are understood to have included the assertion that the new provisions were confusing, complex, unreasonable or unworkable.

I understand that the report will be tabled in Parliament and made public at the end of the month. The report following so soon after the review into rehabilitation will further highlight the poor performance of the Scheme and Patrick Conlon will have the difficult task of deflecting criticism from the role that government has played in the continued deterioration in the performance of the Scheme.

For further details visit our website to read our WorkCover Special Report. 

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INSIGHT | William Esau

Long Term Ground Leases

What Are They and How Do They Work?

A ground lease will typically be granted by a government instrumentality in favour of a lessee. It is a long term lease of land. Long term can mean anything between 50 to 100 years.

Donaldson Walsh has been involved in ground leases for some important Adelaide Developments.

"A lengthy ground lease (say for 99 years) is in some ways the same as ownership of the land, however there are some important differences."

Often the lessee will pay a lease premium in consideration of the grant of the lease. One issue for consideration will be whether the lease premium amount is of a capital or income nature. If an amount is paid in consideration of the grant of a ground lease, it may be fully deductible in the year in which the payment is made. Alternatively the payment may be characterised as a capital outlay and therefore form part of the cost base of the asset being the lease interest. Various income tax rulings should be examined to work out the best taxation position regarding a lease premium payment.

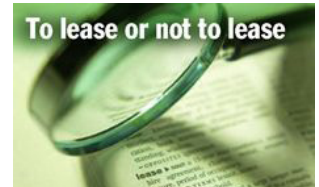
A lengthy ground lease (say for 99 years) is in some ways the same as ownership of the land, however there are some important differences.

A long term ground lease provides exclusive rights in favour of the lessee to occupy and use the land for a period of many decades. In this sense it is akin to owning the land. However

"At the end of the ground lease, albeit after many years, all of the improvements on the land revert to the lessor."


important differences exist between an ownership interest (that is, a "fee simple" interest) in land and a ground lease interest in land, such as:

1. There are some circumstances in which a ground lease might be terminated. For example if there is a breach of a condition requiring the land to be maintained. Therefore it is important from a lessee's perspective to make sure that the circumstances in which the ground lease can be terminated are very limited and that any termination right which does arise, only arises after adequate notice of a breach of the lease has been given and the lessee has been given adequate time to remedy the breach.
2. A mortgagee bank will not value a ground lease interest at the same level as it will value a fee simple interest in land. This is because although the ground lease is registered and the lessee has a registered interest in the land for the term of the ground lease, a mortgagee will consider that because the ground lease might be terminated it does not offer the same type of security as a fee simple interest.
3. It is not possible to divide land subject to a ground lease. Therefore if a lessee takes a ground lease over a large parcel of land and wishes to divide the land later on, this cannot be done because the lessee is not the owner of the land. It may be appropriate to seek to include a provision in the ground lease requiring the lessor to divide the land in certain circumstances and to issue new ground leases over the divided allotments.



4. At the end of the ground lease, albeit after many years, all of the improvements on the land revert to the lessor.
5. The terms of the ground lease may contain restrictions as to what activities can be conducted on the land.
6. A ground lease may also contain restrictions as to the ability of the lessee to sell or transfer the ground lease to another party. It is usual to provide that the ground lease can be assigned to a prospective assignee provided they are responsible, respectable and solvent. Often there is a mechanism within the ground lease by which the lessee is required to establish this to the satisfaction of the lessor before getting approval to the transfer.

One of the benefits of a ground lease is that because it is not an ownership interest in land, the value of the lease interest and therefore the amount to be paid for it by the lessee should be less than the value of the land itself.

Donaldson Walsh can assist in advising in relation to long term ground leases. 

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Abandonment of Goods

Retail Leases

Where a Retail Lease is terminated and goods are left on the premises, what can a landlord do with the goods? Can it simply dispose of them? Sell them? Take possession of them?

A landlord that finds itself in a situation where goods are left on commercial premises after termination of the lease must follow a particular procedure, as laid out in section 76 of the *Retail and Commercial Leases Act 1995 (SA)* (“the R&CL Act”) or, where the lease is entered into prior to 1995, section 67A of the *Landlord and Tenant Act 1936 (SA)* (“the L&T Act”). The goods concerned must have been subject to the lease, for example stock or fixtures and fittings, as opposed to personal belongings.

It is important to note that the procedure for abandonment of goods differs to that in relation to distraining goods and is not a substitute for distress because it does not give the landlord an express right over the goods in priority to that of the tenant. Distraint or distress is the seizure of someone’s property in order to obtain payment of rent or other money owed. If the landlord has an option of distraining, then it would be preferred to distraint rather than relying upon the rights under section 67A of the L&T Act or 76 of the R&CL Act. The latter should only be resorted to where the lease has been terminated and the right to distraint has therefore clearly been lost.

Given that the majority of current commercial arrangements were entered into after 30 June 1995, this article focuses on the process under the R&CL Act. However the process is similar under both acts.



The Two Day Rule

If goods are left on a commercial premises, then after the expiration of two days from the termination of the lease the landlord can, without prior notice to the tenant, remove and destroy or dispose of (but not sell) the goods if:

- “(a) the goods are perishable foodstuff; or
- (b) the value of the goods is less than the total estimated cost of the removal, storage and sale of the goods” – section 76(1)(a) of the R&CL Act.

It is recommended in these circumstances that the landlord keep detailed records of the goods left behind before disposing of them, including details of the type, quantity, age and condition of the goods. Photographs or a video record of the goods should also be kept. A valuation of the goods could also be obtained by way of further protection, although the costs of doing so would not be recoverable from the tenant under section 76(1)(a) of the R&CL Act and accordingly a landlord is likely to be reluctant to incur that expense if the goods are simply disposed of. However, if the landlord chooses to remove, store and sell the goods under section 76(1)(b) of the R&CL Act (as discussed below), the reasonable costs of doing so, including of any valuation, can be recovered from the proceeds of sale of the goods.

Removal, Storage and Sale of Goods

If goods left at the premises are not perishable or the value does not exceed costs of removal, storage and sale of the goods, the landlord must store the goods in a safe place for at least 60 days (from termination of the lease).

The landlord must also, within seven days after storing the goods or having the goods stored, do the following:

1. Give notice of the storage of the goods to the tenant,

Section 76 (3) of the R&CL Act says that the notice must be in the form prescribed by regulation for the purposes of the paragraph. Accordingly, by reason of Regulation 13 of the regulations concerning the R&CL Act, the notice must include the following information:

- A general description of the goods left on the premises by the tenant;
- Details sufficient to identify the premises at which the goods were left;
- The date of termination of the lease;
- A statement that the goods will be sold if not reclaimed by the payment of reasonable costs as required under 76 of the R&CL Act within the 60 day period referred to in that section; and
- A statement of how the goods may be reclaimed, which would include details of where the goods are stored and where they can be collected from by the tenant or other interested party.

Reclaiming the Goods

Where a person is entitled to possession of the stored goods and they have made contact with the landlord, they are entitled to reclaim the goods, upon payment to the landlord of:

- (a) the reasonable costs of removing and storing the goods;

where the tenant has informed the landlord of a forwarding address; and

2. Give notice of the storage of the goods to any other person who has, to the knowledge of the landlord, an interest in the goods and whose name(s) and address(es) are known to the landlord; and
3. Publish notice of the storage of the goods in a newspaper circulated generally throughout the State.

“If the landlord does not strictly comply with the required procedures, then the tenant may issue legal proceedings against the landlord seeking indemnification for the goods, including recovery of the proceeds of sale of the goods, and damages in relation to the sale of the goods, including conversion.”

NEWS & VIEWS | Lisa Dowdy

How Do Sellers Get Paid For Their Goods? Take 2...

Retention of Title and the Personal Property Securities Act - Implementation Delayed

PPS Act

Currently supply businesses use a 'retention of title' [ROT] clause to protect themselves, from the insolvency or default of the buyer, by stipulating that the ownership of, or title to, goods sold does not pass to the buyer until payment is received.

A ROT clause provides that in the event of default by the buyer, a seller retains ownership of the goods and is entitled to repossess the goods.

Delay Until October

The Personal Property Securities Register [PPS Register] (established under the *Personal Property Securities Act [Act]*) has been billed as one of the most significant changes to security law in Australia. The Act requires registration of a seller's interest under a ROT clause before it can be enforced. The PPS Register was originally set for implementation on 1 May 2011.

However the implementation of the Act and commencement of the PPS Register, relating to the registration of all security interests over personal property (including ROT clauses), has now been delayed until October this year.

Please refer to the article in the Spring 2010 DW Report for more information on the Act and its impact on ROT clauses.

While a delay had been mooted for some time, the States and Commonwealth confirmed that the delay would be occurring at the Council of Australian Governments on 13 February 2011.

Notwithstanding the delay, given that the PPS Register will signify a change in a business's ability to secure rights over property, particularly rights created by ROT clauses, it remains prudent for businesses to review their documentation and security registration procedures as a matter of priority in order to ensure their ability to adequately protect their interests come October this year, when the PPS Register will come into force.

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- (b) the reasonable costs of giving notice under section 76 (2)(b) of the R&CL Act, and
- (c) any other reasonable costs incurred by the landlord as a result of the goods being left on the premises; (section 76(4) of the R&CL Act).

Where Goods are not Reclaimed

If after the relevant notices have been given by the landlord, the goods have not been reclaimed within 60 days after removal and storage, the landlord must as soon as practicable after that time cause the goods to be sold by public auction.

Section 76(6) of the R&CL Act provides that the landlord may retain of the following amounts from the proceeds of sale of the goods:

- (a) the reasonable costs of removing, selling and storing the goods;
- (b) the reasonable costs of giving notices under section 76 (2)(b) of the R&CL Act;
- (c) any other reasonable costs incurred by the landlord as a result of the goods being left on the premises; and
- (d) any amount owing to the landlord under the lease.

Any remaining balance after deduction of the above amounts must be paid by the landlord:

- (a) to the tenant; or
- (b) to the Commissioner for Consumer Affairs (refer www.ocba.sa.gov.au) if the landlord does not know the whereabouts of the tenant.

Conclusion

It is critical that the landlord follows the steps set out above, prescribed by section 76 of the R&CL Act (or 67A of the L&T Act, where applicable), in relation to abandoned goods (remembering, however, that a right to distrain is also available if the lease is still in existence).

It is important that these steps are strictly complied by the landlord, including the giving of 60 days notice to the tenant and any other interested party, notwithstanding any outstanding rent and/or other moneys that may be due and owing by the tenant to the landlord. If the landlord does not strictly comply with the required procedures, then the tenant may issue legal proceedings against the landlord seeking indemnification for the goods, including recovery of the proceeds of sale of the goods, and damages in relation to the sale of the goods, including conversion.

DW has the expertise to assist landlords in relation to the procedures and the preparation of documentation for both distraint and abandoned goods left on the premises. It is important that landlords seek legal advice regarding the provision of the necessary notices and compliance with the required procedures in that regard, in order to ensure that the landlord does not expose itself to a claim for damages by the tenant.

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What's in a Name?

Geographical Indications, Traditional Expressions and Wine Labelling



On 1 September 2010, the Agreement between Australia and the European Community on Trade in Wine [Australia/EC Wine Agreement] entered into force. From that date, the use of 2,488 geographical indications [GIs] set out in Annexure II of the Australia/EC Wine Agreement, and the use of hundreds of traditional expressions [TEs] set out in Annexure III, has been, and continues to be, prohibited, unless certain exemptions apply.

It is an offence under the *Wine Australia Corporation Act 1980* (Cth) (formerly the *Australian Wine and Brandy Corporation Act*) to sell, export or import wine in trade or commerce with a *false description and presentation* or a *misleading description or presentation*. The penalty for either offence is 2 years imprisonment and/or a maximum fine of \$13,200, or, for a corporation, a maximum fine of \$66,000.

What is a false description and presentation?

The description and presentation of wine will be *false* if:

- a) it includes the name of a country, or any other indication that the wine originated in a particular country, and the wine did not originate in that country; or
- b) it includes a registered geographical indication, and the wine did not originate in a country, region or locality in relation to which the geographical indication is registered; or
- c) it includes a registered translation of a registered geographical indication, and the wine did not originate in a country, region or locality in relation to which the geographical indication is registered; or
- d) it includes a registered traditional expression, and:
 - i) the wine is not a wine in relation to which the expression is registered; and
 - ii) the wine is in a category of wine in relation to which the

- expression is registered; and
- iii) the expression is in a language in relation to which the expression is registered; or
- e) it is not in accordance with any provisions relating to the description and presentation of wine as are prescribed [by Regulation] for the purposes of this paragraph.

What is misleading?

The description and presentation of wine will be *misleading* if:

- a) it includes a registered geographical indication, and the indication is used in such a way as to be *likely to mislead* as to the country, region or locality in which the wine originated; or
- b) it includes a registered translation of a registered geographical indication, and the translation is used in such a way as to be *likely to mislead* as to the country, region or locality in which the wine originated; or
- c) it includes a registered traditional expression, and:
 - i) the wine is not a wine in relation to which the expression is registered; and
 - ii) the wine is not in a category of wine in relation to which the expression is registered; and
 - iii) the expression is in a language in relation to which the expression is registered; and
 - iv) the expression is used in such a way as to be *likely to mislead* that the wine originated in a country, region or locality in relation to which the expression is registered or that the wine is in a category of wine in relation to which the expression is registered.

“There is obviously an overlap between the concepts of “false” and “misleading”. A description can be false or misleading even if it contains an indication of the country, region, or locality in which it originated.”

There is obviously an overlap between the concepts of “false” and “misleading”. A description can be *false* or *misleading* even if it contains an indication of the country, region, or locality in which it originated.



Some examples of the 2488 GIs which are currently prohibited from use, subject to exemptions, include *Alsace*, *Bordeaux*, *Bourgogne*, and *Beaujolais*.

Some examples of the hundreds of TEs which are currently prohibited from use, subject to exemptions, include *Chateau*, *Grand Cru*, *Premier Cru* and *Solera*.

For a full list of protected GIs and TEs, see the Register of Protected Geographical Indications and Other Terms available on the Wine Australia website at www.wineaustralia.com.

Sensitive GIs & TEs

The Australia/EC Wine Agreement and the *Australian Wine and Brandy Corporation Regulations 1981* (Cth) have allowed phase out periods for 12 registered geographical indications and 6 registered traditional expressions that are considered to be “sensitive” [Sensitive GIs and TEs].

"It is an offence to sell, export or import wine in trade or commerce with a false description and presentation or a misleading description or presentation. The penalty for either offence is 2 years imprisonment and/or a maximum fine of \$13,200, or, for a corporation, a maximum fine of \$66,000."

These Sensitive GIs and TEs are:

GIs	TEs
Burgundy	Amontillado
Chablis	Auslese
Champagne	Claret
Graves	Fino
Manzanilla	Oloroso
Marsala	Spatlese
Moselle	
Port	
Sauternes	
Sherry	
Tokay	
White Burgundy	

During the phase out period, the use of these Sensitive GIs and TEs is not an offence. However, for all Sensitive GIs and TEs except Tokay, this exemption will **come to an end at midnight on 31 August 2011**.

The use of the term "Tokay" will continue to be exempt from the offence provisions until 1 September 2020, 10 years after the Australia/EC Wine Agreement entered into force.

What does this mean for Wine Producers and Marketers?

Wine producers must have *already ceased* using the 2,488 GIs and the TEs set out in Annexure II and Annexure III of the Australia/EC Wine Agreement from 1 September 2010.

Wine producers *must cease* using the Sensitive GIs and TEs, except Tokay, on or before 31 August 2011.

Wine Australia has indicated that, pursuant to the Australia/EC Wine Agreement, once the GI "Champagne" ceases to be exempt as a Sensitive GI, the term "*methode champenoise*" will also be prohibited from use. This is because the protection afforded to GIs and TEs also extends to the use of GIs or TEs accompanied by expressions such as "*kind*", "*type*", "*style*", "*imitation*", "*method*" or the like.

Wine producers must therefore cease using the term "***methode champenoise***" on or before 31 August 2011.

The offences apply to any person who sells, exports or imports wine, so that retailers and wholesalers of wine must also comply with the requirements.

Grape varieties which are also GIs or TEs

Under the Agreement on Trade-Related Aspects of Intellectual Property Rights [TRIPS Agreement], use of a geographical indication is not protected where the relevant indication is identical with the customary name of a grape variety existing in a territory, for example, Australia, as of the date of entry into force of the WTO [World Trade Organisation] Agreement, being 1 January 1995.

"The offences apply to any person who sells, exports or imports wine, so that retailers and wholesalers of wine must also comply with the requirements."

This exception only applies where the geographical indication is being used to describe the grape variety only, and does not apply to its use in the description and presentation of wine other than for this purpose.

This is, however, a controversial subject. It is clear that, under the Australia/EC Wine Agreement, the following grape varieties, which are also GIs or TEs, may be used in the description and presentation of wine: *Alicante Bouchet, Barbera, Carignan, Carignane, Chardonnay, Orange Muscat, Pinot Chardonnay, Rhine Riesling and Trebbiano*.



The EC has also conceded that the terms *Sangiovese, Vermentino and Fiano*, among others, may be used in the description and presentation of wine, even though these terms are incorporated in larger GIs.

"Wine producers must cease using the term "methode champenoise" on or before 31 August 2011."

However, the EC has been less willing to concede this in relation to the varieties *Montepulciano* and *Prosecco*. While Wine Australia maintains its position that these terms are not prohibited from use in the description

and presentation of wine where they are used to identify the grape variety, wine exported to the EC which uses these terms may not be accepted due to the domestic law of the EC regarding the use of these terms.

Transitional provisions have been in effect for the names "*Hermitage*" and "*Lambrusco*", however these will also come to an end on **1 September 2011**.

"That which we call a rose. By any other name would smell as sweet."



Wine Australia, with funding provided by the Australian Government, has developed alternative names for "*Sherry*" and "*Tokay*". These are "*Apera*", as an alternative to Sherry, and "*Topaque*" as an alternative to Tokay.

1 Romeo and Juliet (II, ii, 1-2)

Continued on page 14

“As 1 September 2011 is fast approaching, all wine producers should be reviewing the description and presentation of their wines now, if they have not already done so.”

Wine Australia has applied to IP Australia to register certification trade marks in respect of these new names, with “*Topaque*” having achieved registration and “*Apera*” pending registration.

These alternative names may be used by producers if the style of wine produced meets the requirements of use of the certification trade mark, and a licence agreement for use of the certification trade mark is entered into with Wine Australia. While the licence agreement appears that it will be royalty-free, an initial licence fee may be payable.

The rules for the use of the certification trade mark “*Topaque*” are available on the IP Australia website at www.ipaustralia.gov.au.

The equivalent terms for *Fino*, *Amontillado* and *Oloroso* as descriptors for *Sherry* or *Apera* (as it may now be known) will be *Dry*, *Medium Dry*, *Medium Sweet*, *Sweet* and *Cream*.

Effect on Wholesalers and Retailers

The Wine Australia Act provides some phase-out relief from the offence provisions for wholesalers and retailers of wine in Australia, subject to conditions. These exemptions operate to allow use of GIs, translations of GIs, registered traditional expressions and registered additional terms in the marketing and sale of wine in Australia.

The use of a registered GI, translation of a registered GI, or a registered TE, or a prescribed term [additional term] **[Term]** will be exempt from the offence provisions if:

- the offence provisions would apply to the use of the Term; and
- the wine was lawfully produced before 1 September 2010, or, in the case of Sensitive GIs and TEs, 1 September 2011, or, in the case of *Tokay*, 1 September 2020; and
- the Term is used by a wholesaler of wine acting in the course of the wholesaler’s business **[Wholesaler Exemption]**; or
- the Term is used by a retailer of wine in the course of the retailer’s business **[Retailer Exemption]**.



The Wholesaler Exemption, in relation to fortified wines, will cease 5 years from the day the use of the Term was prohibited. In relation to all other wines, the Wholesaler Exemption will cease 3 years from the day the use of the Term was prohibited. After this time, a wholesaler will be prohibited from using GIs or TEs in the description and presentation of wine for which the GI or TE is not permitted.



The same exemption periods as above apply for the Retailer Exemption, *however*, importantly, if at the end of the exemption period the retailer has stock-on-hand which uses a Term, then the retailer may sell all of that stock-on-hand.

As 1 September 2011 is fast approaching, all wine producers should be reviewing the description and presentation of their wines **now**, if they have not already done so. 📄

MORE INFO:

A photograph of three people in business attire standing against a white background. On the left is a woman in a black suit. In the center is a man in a grey suit with his arms crossed. On the right is a man in a dark suit with his hands in his pockets.

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SUITS OFF | Staff Profile

Four-quarter effort

John Walsh, Managing Partner



There are four things about which John Walsh cares deeply. His workplace and those he works with. The Port Adelaide footy club. Jewel of the Eyre Peninsula, Coffin Bay. And, of course, his family. Each brings out a slightly different side in him. But equally, each intertwines, harmoniously helping him along the road to his single, simple goal: to stay happy and healthy. So, just an ordinary, everyday bloke then? Well, yes... if you consider this level of personal commitment and integrity *ordinary*.

“So, just an ordinary, everyday bloke then? Well, yes... if you consider this level of personal commitment and integrity ordinary.”

But predictably, for those who know him, John feels these achievements pale in comparison with the quality of relationships he's managed to build and maintain with his clients. “Professionally, that's what I'm most proud of,” he says. “In some cases those relationships stretch back over 25 years. So to have that level of mutual trust and respect is very rewarding.”

John attributes his clients' loyalty, in large part, to honest, open communication. As his firm's “straight talk” tag-line implies, if something needs to be said, he'll say it. And, of course, he seeks and appreciates the same from his team.

First Quarter: Work



In some ways - the *good* ways - “Work John” is old-school. Firstly, he's not inclined to talk himself up. When a matter's resolved favourably he's far more likely to simply get on with the next job than bask in the glow. He's also a big believer in the familiar advice that if something's worth doing, it's worth doing well. He started practicing in the areas of self-insurance, workers compensation and injury management back in the late '70s and has done so exclusively ever since 1991.

He's well and truly mastered these fields and has even influenced them at the legislative level, having acted as counsel in a number of cases that have impacted on the interpretation of the *Workers Rehabilitation & Compensation Act* and advised stakeholders and legislators on its reform. Recently, this expertise has also allowed him to establish a comprehensive workplace injury management consultancy, “DW Workplace Solutions” (see page 1), to complement his firm's service offering.



Second Quarter: Port

You may not see his black-and-white stripes, or the big teal vee, but rest assured, they're there. John doesn't just support the Port Adelaide Football Club, he breathes it.

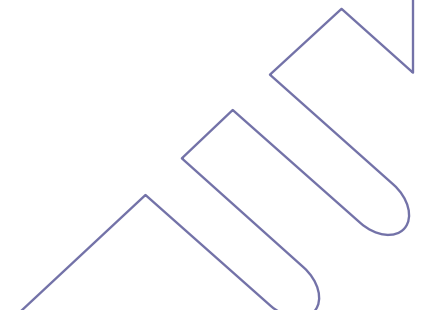


The Magpies won his heart not long after he started school and as soon as he was old enough to catch a bus to the club's home ground at Alberton he was there. “I used to sit in the back of the Fos Williams Stand and watch the game through binoculars,” he laughs, “because at that time I didn't realise I was short-sighted!”

Getting to some of the away-games by bus was difficult, but once he got his driver's licence there was no stopping him - even his own urge to pull on the boots took a back seat. “Such was my passion for the club that I gave up playing school football myself when the timing of those matches prevented me from watching the Magpies.”

Naturally John's followed the Power with similar conviction since its entry into the AFL in 1997 and, despite their current on-field challenges, still religiously braves the elements to cheer them on. “Going to the footy in the winter is a great release,” he says. “Barracking and chiding the umpire is remarkably therapeutic.”

Continued on page 16



Four-quarter effort

John Walsh, Managing Partner

Third Quarter: Coffin Bay

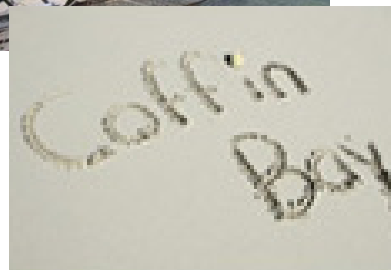
If Port's in John's blood, Coffin's in his marrow. He's been regularly making the long trek west - 40km beyond Port Lincoln on the way to Ceduna - all his life and still considers it his sanctuary. "No matter what life throws at me," he reflects, "the burden's always lifted when I drive into Coffin Bay."



Throughout his childhood, John and his extended clan would stay there with close family friends Pat and Henry King every January. "The Kings' shack was a converted railway carriage," says John. "In those days there was no electricity. We had hurricane lamps and a bottled-gas fridge and stove. There was only a long-drop toilet. And when there were lots of us the men had to sleep on the roof!"

The visits continued throughout his teenage years and into adulthood. Then around 10 years ago John and his wife Janet bought their own shack on the foreshore. "We generally spend a month there over Christmas with our two boys, Patrick and Michael," he says. "There are few more enjoyable experiences than being out on the boat at Coffin catching whiting and enjoying the scenery or walking along Long Beach with Janet and Digger dog."

John feels the depth of his affection for the area has even given him a greater appreciation for the spiritual connection that indigenous Australians have with their land. "When I go for a walk at Coffin Bay, every tree I pass, every jetty or rock, can trigger a strong memory of an experience connected to my family. It's a very special part of my life."



Fourth Quarter: Family

Though it's obvious when talking with John that he loves and values his family above all else, when it comes to illustrating that fact he can't help but do so by relating it to the interests already discussed.

"I'm very fortunate to be able to share all my great passions with my family," he says. "My children both barrack for Port and my wife, Janet, is as fanatical about the club as I am. She actually regards being at the MCG in 2004 for the Power's Grand Final win as the happiest day in her life - even better than our wedding day!"



Similarly, John feels blessed to have one of his sons, Michael, working at DW with him. And the whole family has also caught or inherited the Coffin Bay bug. "Getting over there at Christmas feeds our souls. I think we all cherish the way it keeps us grounded and reminds us what really matters.

"That and the local oysters. They're pretty good too." 



LIKE TO TALK?

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