

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Outcome 1 - Employment

Department of Employment Question No. EMSQ16-000077

Senator Cameron asked on 11 February 2016 on proof Hansard page 58

Question

Work for the Dole insurance policy - permanent disability

Senator CAMERON: Ms Milliken, what about total and permanent disability? What if someone is totally and permanently disabled as part of their Work for the Dole work?

Ms Milliken: I do not have a copy of the insurance policy with me to hand today. The participants in Work for the Dole, if they do sustain an injury and require continued support, would be able to seek support through the social security system. The relevant income support payment is potentially the disability support pension, depending on their circumstance.

Senator CAMERON: Would they have any claim against the host employer if the host employer were negligent?

Ms Milliken: It would depend on the circumstances of the case with respect to the host employer.

Senator CAMERON: But, on a principle of the host employer being negligent, is there a claim that the Work for the Dole participant can make, or is the host employer given an amnesty on their normal responsibilities?

Ms Leon: I think we have to take that on notice because—

Senator CAMERON: You do not know?

Ms Leon: Well, there are some—

Senator CAMERON: Surely this is a fundamental issue?

Ms Leon: We do know, but I do not have the advice with me about the liabilities, so I would just like to take it on notice and ensure that I answer this properly for you.

Answer

Under the Group Personal Accident Insurance Policy, the maximum Permanent Total Disablement benefit for a Work for the Dole participant would be \$250,000.

In addition, a Work for the Dole participant who is injured may receive the Additional Capital Benefits depending on the individual circumstances of the incident:

- Lifestyle Modification Additional Capital Benefit of up to a maximum of 80 per cent of the cost incurred or \$10,000, whichever is the lesser amount. Noting this benefit only applies if an insured person is paid a Capital Benefit under relevant payable conditions.
- Out of Pocket expenses for up to \$200 per week, maximum 52 weeks.
- Domestic Home Help for up to \$200 per week, maximum 52 weeks.
- Non-Medicare Medical Expenses for up to \$20,000.
- Additional Capital Benefit/Broken Bones for up to \$2,000.
- Accidental HIV Infection Benefit (if applicable) for up to \$25,000.

These benefits are subject to the terms, conditions and exclusions of the policy.

The Department in no way restricts or limits, through the insurance it takes out for Work for the Dole participants or otherwise, the legal rights that a participant would have to seek compensation for an injury (or rights of their family if the participant is killed), against any person (including host organisations), for breach of a duty of care or for liability that might otherwise arise.

The insurance policy that the Department takes out for Work for the Dole participants does not require a participant to establish liability of a third party before payments under that policy can be made and nor does any payout under the policy limit a participant's rights to seek additional compensation from a third party (for example a host organisation).

While the determination of whether a host organisation is liable for any injury suffered by a participant while undertaking Work for the Dole activities is made by the courts on a case-by-case basis, host organisations are likely to owe a common law duty of care under the general principles of negligence to participants who are engaged in Work for the Dole activities under their supervision.

If a participant is injured while participating in Work for the Dole activities and considers that the injury was caused by a breach of the duty of care owed by the relevant host organisation (whether as a result of the actions of the organisation's officers or of other participants for whom the organisation will be vicariously liable), the participant could bring a legal claim against the host organisation.

Whether a host organisation will be held liable for any alleged breach of duty of care and the extent of any compensation payable as a result will depend on the facts of the case, the operation of relevant law and the view of the relevant court. If a host organisation is found by a court to have failed to take reasonable steps to prevent injury to the participant (breached its duty of care), and the participant is injured as a result, the injured participant may be awarded compensation for the loss and damage which has occurred. Compensation would include both general damages (for pain and suffering) and financial losses (such as medical expenses and other economic losses).