WorkCover Queensland Webinar 30 April 2015

Facilitated by John Kinnane

Special considerations at common law when working with a young and ageing workforce

Bill Rogers

[Refer to Slide 1.]

Facilitator: Good afternoon everyone. Welcome to this WorkCover Queensland facilitated webinar and thank you for joining us today as we discuss another key area in relation to common law claims.

This webinar is part of our Understanding Common Law series and today's session is on Special considerations when working with a young and ageing workforce.

[Refer to Slide 2.] My name is John Kinnane and I'm an Industry Manager at WorkCover Queensland and I will be your Moderator for today's session.

[Refer to Slide 3.] Before we start, I would quickly like to take you through how this webinar format works and specifically how you can interact during the session. On the current slide you'll see an image of the webinar Control Panel. You can select 'Audio' on the Control Panel and change between 'Computer Audio' and 'Telephone' depending on your preferred method. If you have headphones and speakers connected to your computer, select 'Mic & Speakers', otherwise choose 'Telephone' to access the dial in details. You can hide and unhide the Control Panel using the coloured arrow and this will make sure that you can see the entire screen.

If you have a comment or a question for the Presenter or Moderator, please type your comment or question in the bottom panel and press 'Send' to submit. Your comments and questions will then appear in the middle section. Please send through your comments and questions as the session progresses and we will try to answer them as we move through the webinar.

I kindly ask all questions are kept to general issues as opposed to any specific claim issues. If we can't get to the question during the session we will either address them at the end of the session or follow up with some summary points or frequently asked questions after we finish the webinar.

[Refer to Slide 4.] The webinar recording and presentation will be on the worksafe.qld.gov.au website in the next few weeks. If we don't get to all of your questions, we will collect them and publish answers on our website afterwards. So we can continually improve our level of service, we would appreciate you completing a short survey at the end of the webinar.

[Refer to Slide 5.] Today's session will look at what employers need to consider to keep their younger and older workers safe and provide tips on any enhancements to instructions, supervision, plant and equipment or systems of work to accommodate workers in these demographics. We will also look at the important rehabilitation obligations and damages that can flow if an older or younger person is injured in the workplace.

WorkCover managed 3,729 common law claims in the 2013-14 financial year. Stat claims were at 82,573. Generally speaking, common law claims are very high cost and take more than a year to finalise. Costs usually include settlement, legal costs and other outlays for the claimant and defendant, and as you can see from the graph, the claims cost for common law claims are high when you compare it to the number of claims received over the corresponding year. This webinar series is designed to help you be aware and educate you on how to mitigate the impact of claims escalating to common law.

Before I introduce today's Presenter I'll commence the webinar by asking you to complete a single question poll. The idea behind the poll is we would like to know who in the audience has experienced a common law claim. So that is the question, "Have you experienced a common law claim in the last two years?" and the possible answers are, "Yes, and it's still ongoing," or "Yes, and it's finalised," or "No," and we'll give everyone a few seconds to respond to the poll please.

It looks like we've had a few people out there that certainly have experienced and are experiencing common law claims.

[Refer to Slide 6.] Today's webinar will be presented by Bill Rogers from Crown Law Brisbane. Crown Law is part of the WorkCover Queensland appointed legal panel of lawyers from a group of selected firms to defend common law claims. Bill holds a Bachelor of Laws, a Bachelor of Business and an MBA. Bill was admitted as a Solicitor in the Supreme Court in 2005. Bill has over 20 years'

experience in personal injuries law and he joined Crown Law in 2010 after more than a decade in senior managerial positions in WorkCover Queensland including the common law division as well as in private practice.

Bill's skills and experience include acting on behalf of WorkCover Queensland in workers' compensation and common law claims, acting on behalf of defendants in personal injury matters, acting on behalf of defendants in public liability matters including attending to all steps required under the Personal Injuries Proceedings Act, drafting court documents, appearing at court applications and attending at both formal and informal settlement negotiations with and without counsel, advising on policy and indemnity issues in personal injury claims, attending to all steps of trial preparation under the uniform or procedural rules, Civil Liability Act and Workers' Compensation and Rehabilitation Act, and investigating applications for compensation in potential fraud matters and making final recommendations to WorkCover as to whether prosecutions could be pursued.

Bill has presented at previous webinars on psychological and psychiatric injuries and he's also presented to the Queensland Law Society and the Crown Law Conference and with that, I will hand you across to Bill to commence the webinar.

[Refer to Slide 7.]

Bill Rogers: Thanks very much John. Good morning or yes, no good afternoon everybody. Today this session is about reducing the risk of common law claims with specific reference to the young and aged workforce.

It's important to understand and realise that there are no separate common law rules or principles that specifically apply to these classes of worker or demographic, but due to inexperience, for example young and ageing factors, there's a potential for courts to demand a higher duty of care for any vulnerabilities employees have. This compares with the normal stance taken by courts when you employ a person with known pre-existing conditions in that they do place a higher duty of care on the employer to ensure the workplace is safe once you have the knowledge the worker has a specific vulnerability or pre-existing condition.

For example, if you employ a person who is required to lift and carry materials in the course of their employment and they have a pre-existing back condition, you should ensure the worker knows what to do, who to ask for assistance from and clearly know his limitations. It's also important that the employee's supervisor and co-workers are aware of the person's limitations and what assistance they may be required to give the person.

Another example is for a person who has a previous mental illness. This places an employer on notice and therefore more care needs to be taken. For example, if the worker reports he is feeling stressed due to workload, refer them to your EAS immediately. Also regular checks with the employee as to how they are coping and whether there are any ongoing issues.

[Refer to Slide 8.] This session will not go through in any detail what your legal responsibilities are other to ensure you're aware you do have those responsibilities and you need to consider these when employing and working with youth and aged workers. As I said, I will not be going to the relevant Anti Discrimination law or Workplace Health and Safety law in this presentation, but you need to be aware of them when you are making decisions in the workplace.

With regards to anti discrimination, discriminating against someone on the basis of age is unlawful in Queensland. This legislation was introduced to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity such as employing, promoting, allocating, training etc.

With regards to the Work Health and Safety Act, Queensland employees have an obligation to ensure the workplace health and safety of all workers regardless of age and fitness. You as the employer are responsible for safe work areas, machinery and equipment, information, instruction and workplace training, personal protective equipment amongst other things.

[Refer to Slide 9.] So why are we focusing to some extent on aged people? It is forecast that the workforce participation rate of people aged 65 and over will increase from 12.9% in 2014 and '15 to 17.3% in 2054-55. Australia's ageing workforce is being encouraged to remain in the workforce longer. We are all well aware that the official retirement age is increasing. It used to be 65, now 67 and could be going higher, and also due to the budgetary and monetary

implications for the Federal Government they are encouraging people to remain in the workplace longer. This is becoming a reality as our life expectancy increases and we are physically and mentally capable of working longer.

The ageing workforce has implications within the common law area of personal injuries sustained at work.

[Refer to Slide 10.] Although it is anticipated the workplace participation of people older than 65 will increase, an older person – now here's the good news everybody – is generally regarded as someone aged 45 years or over and the good news is at this age a personal potentially still has half of their working life to go. Sobering thought that. Studies include that the more sedentary type occupations will experience a greater increase in older workers as this is the type of work they will be attracted to or move to.

[Refer to Slide 11.] The common law in this area is not new, that is the personal injuries area, and is well established. The challenge for employers is ensuring they do not breach their duty of car, having regard to both the young and an ageing workforce. Today we will look at some of the relevant elements of negligence and what effect employing the young or ageing people and what safeguards an employer can take or what an employer will need to consider.

As I go through this presentation I will refer to some key cases which support the propositions of law. I have listed those cases at the end of the presentation and you can obtain these and read them at your leisure.

[Refer to Slide 12.] The first thing we will look at is the duty of care which is probably the overriding principle. It is uncontroversial that an employer owes a duty of care to its employees. This duty requires the employer to take reasonable care to avoid the foreseeable risk of injury to an employee. If the employer does not take reasonable care they are in breach of the duty of care to an employee and I'd refer you to the case Wyong Shire Council and Shirt.

In saying that, the employer's obligation is only to take reasonable care and not to safeguard the employee from all perils, and this is outlined in the case of Finn v Roman Catholic Trust Corporation of the Diocese of Townsville. Therefore, the obligation is to take reasonable care to avoid risks. So what

does this mean when you're employing young people or aged people, or have young people and aged people in the workplace?

Well, for young people they most likely lack experience, understanding and therefore an employer is most likely to be found to have a higher duty of care due to these aspects. As I mentioned before, although there are no specific cases which consider a young or an ageing workforce, it is clear that in the event an employer is aware of a claim, it's pre-existing conditions for example, back problems, mental illness etc., they do have a higher standard of duty of care as they then need to consider the worker's particular vulnerabilities, ensure the system of work and tasks undertaken take into consideration these vulnerabilities.

As previously mentioned, there's no law or cases which specifically look at this aspect to date, but I'm fairly certain that as more people are injured or make common law claims get exposed to courts, that the courts may make some of these sorts of findings. So what is this higher duty of care?

Well, there's a case of New South Wales versus Fahy, F A H Y. Unfortunately that's not in the list at the back, but I've put it in there after the slides were finished. But Justice Kirby in this case stated that the relevant principle concerning the duty owed by an employer to an employee with a special vulnerability, he went on to say "Although an employer may not always have to take active steps to acquaint itself with special or unique weaknesses or predispositions to injury and damage on the part of particular employees, where the employer becomes aware that there is such a susceptibility or should be so aware in the ordinary course of reasonable conduct, special precautions need to be taken by it to fulfil the duty of care that is inherent in the employment relationship."

So this consideration of any of these vulnerabilities is opposed to designing a system of work for a person who has no pre-existing conditions etc. As I said, it's therefore most likely only time before the courts may include this particular vulnerability of the young or the ageing workforce to be considered in some ways as those of the normal workforce who have no pre-existing conditions.

For example, if a person with a back problem is involved in physical or demanding tasks, the employer should – and these are what you should do anyway – provide appropriate training, provide appropriate supervision. Possibly the extra things that employers would be required to do is regularly follow up with the work as to how they are coping and advising the employee what to do in the event they experience further pain or problems etc.

[Refer to Slide 13.] An employer also has an obligation to provide a safe system of work, while this is only a subdivision of the employer's general duty of care to take reasonable care to avoid foreseeable risk of injuries, as case Turner v South Australia, the employer has to have in existence a system of work which obviates the risk.

[Refer to Slide 14.] So when considering the system of work for young people you need to remember that they are most likely inexperienced in both general life experiences and the job you are asking them to do. Young people are developing their skills – physical, social and intellectual – and you as the employer should provide the leadership in assuring they develop appropriately. Any system of work that in place should also ensure that they are supervised. Because of their lack of experience they will require more comprehensive instruction/training, and I can't reinforce this enough, any system of work that is in place should also ensure that they are supervised and the supervision is ongoing.

It is also important to be aware that young people and any of you who were young once will remember this, young people are greater risk takers. Generally they may not appreciate the consequences of their actions or not even think to consider that there may be consequences.

It is also important to understand they come under peer influence. They will be usually influenced as they're learning and they're moulding their behaviours on people around them, and they can learn bad habits quickly. You need to ensure that your supervisor, mentor or co-workers exhibit the behaviours you want the person to learn.

For aged people, a system of work will need to take into consideration the particular vulnerabilities of an older person. For example, studies indicate older workers, although having a lower accident rate, suffer a higher incidence of stress and strain related injuries. So therefore, we need to be identifying the

work that older people or aged people do where there could be stress or more repetitive strain-related type work.

As a consequence, the recovery time for these injuries may be longer the longer they're longer out of the workforce. A system of work should ensure that it is not too physically demanding for the person. To overcome this type of vulnerability the employer should consider rotation through physically demanding tasks, that they should take regular breaks, the use of mechanical aids.

Once again it may appear I am repeating myself, but it is a significant factor and it is more likely an older person will have some pre-existing conditions and you need to take these into consideration.

[Refer to Slide 15.] Your induction and training program should be comprehensive and explain the system of work and demonstrate clearly what tasks the workers are required to carry out. Supervision and feedback systems need to be built into the system of work with all parties understanding who does what and what is required to be done. Supervisors and other workers need to also be aware of the limitations of others in the workplace and how they can and should assist when particular circumstances arise.

[Refer to Slide 16.] Now I want to look at foreseeability. It will only be in a relatively few cases that the risk of injury will be seen not to have been foreseeable. I had an interesting one just this morning, or sorry, just yesterday we were discussing at length. It was an intellectually handicapped person who was able to go out and spend $10 as part of their lifestyle, life expectation and spend up to $10 at a time. The person bought a set of plastic handcuffs from, I don’t know, one of those stores you can buy those sorts of things. Unfortunately the young fellow or the fellow then walked up to the person looking after him who was a middle-aged woman and said "You will need these when you get raped," and subsequently, she suffered a psychological injury.

At first we thought "Is it reasonably foreseeable that a person who bought a pair of plastic handcuffs, toy handcuffs is it reasonably foreseeable that sort of injury could occur?" We're still working through that matter and I have no easy answer for it yet, but probably the test is the risk of injury is foreseeable even though it is quite unlikely, provided that it is not far-fetched or fanciable.

So we're having to look at this particular circumstance. Is it reasonable or is it that far-fetched and fanciable that the employer should have done nothing? I don't have any answer to that one yet.

So you need to look at what activities or tasks in the workplace in the past may have not been foreseeable to cause an injury to a normal workforce. This may now be considered foreseeable and causing an injury to an ageing workforce.

Another example is what weight is reasonable to be lifted. Previous codes identified what weight was considered to be safe to lift. Over the years this has changed and now there are no recommended weights and each activity has to be assessed, taking into consideration the specifics of that task, its weight, its awkwardness etc. It is likely now that another factor that will now need to be taken into account is the age of the person carrying out the task and whether they have some specific issues with it.

Another example, a recent case of an older woman cleaner. Historically the cleaning of pathways required the use of brooms. As mechanical aids became more affordable the employer purchased a motorised blower and part of the person's duties was to use the motorised blower to clean the pathways. She was provided with a two-stroke blower. Unfortunately she injured her shoulder while trying to start the blower. It was contended that the employer should have provided a four-stroke blower as these were a lot easier to start and the worker would not have suffered the injury. They also contended that consideration could have been given to using an electric blower, but that had its own inherent problems as well.

After investigation the outcome was that it was probably foreseeable that requesting a worker, particularly an older worker, to use a two-stroke mower could result in a shoulder injury.

[Refer to Slide 17.]

Reasonable care. For both young and ageing workforce the magnitude of the risk most likely increases and therefore the employer will be required to take greater precautions. The employer will be found liable if they fail to take reasonable care to avoid the reasonable risk. A reasonable response must be determined having regard to the magnitude of the risk and its probability, weighed against the practicability of those precautions which may be taken to prevent it.

For example, the probability of an older person sustaining the injury from starting a two-stroke blower has increased and the precaution the employer could have taken was to provide a four-stroke blower. This alternative would most likely be seen by courts as being a practicable solution to overcome the risk of the injury.

[Refer to Slide 18.] Duty to warn. There is also a failure to warn against an obvious risk may constitute a lack of reasonable care at common law. This is one that I know has caused or created great debate particularly when I've been speaking with employers. One of the thoughts "Well if you warn a person that they can be injured, what happens? They then have an injury." You're pointing out to them that they can have an injury. Unfortunately the courts do say that an employer is under the obligation to warn against an obvious risk.

Training and instructions needs to be more specific and also closer supervision is likely to be warranted if you identify a role or a task that there is an inherent obvious risk in it. So for an example, for a young person what may appear to be an obvious risk to an experienced person may well not be that obvious to a young person who does not have life experience.

For example, we had a recent matter of alighting off the back of the truck. A young person is likely to jump off rather than using some other way to get down. Even if the person is instructed not to jump off the truck and there is another way of getting off, if they see other employees doing this, they will follow what they do and get into the bad habits.

Another example for young people that involved a young person, we had an apprentice carpenter. He'd been employed for about two months, so fairly new to the job. The employer made a decision to use old recycled C-sections which are metal, when erecting walls. These did not have rolled edges like new ones that they purchased and the edges at times could be sharp. The worker was injured while handling and erecting the C-sections. On investigation we found there'd been no specific instructions given in the use of the recycled C-sections and in particular, the young fellow had been not told to be more careful and warning of the dangers of the sharp edges.

In this matter there is also issues in how the apprentice was drilling the C-sections. He was young and had been trying to do his job too fast, maybe to

impress his employer. The investigation showed he was not suitably supervised and for a young, inexperienced apprentice, he should have been more supervised while doing the job. Also with regard to what one would appear to be a normal task of how to drill, he'd only been shown once what to do and then left to his own devices as the employer considered drilling was just a simple job that anybody would know.

In regards to aged people, repetitive injures are probably a significant risk factor. Particularly older women are more susceptible to repetitive type injures of the wrist. So the warning to be provided is not that the person is unable to do the task, but should be done in conjunction with a system of work to reduce the risk of injury. For example, the task could be part of a rotation of duties. There could be regular breaks. Any system or any of this needs to be reinforced and also the worker needs to be told if they experience pain they are to report it so that they can receive appropriate treatment.

[Refer to Slide 19.] Preventability. This is an important issue in a system of work. The plaintiff bears the onus of establishing a reasonably practical alternate system. If there's been a change in the system since the injury then evidence of the change is admissible on the basis of preventability and may be sufficient to discharge the onus. To establish if an alternative system should have been introduced, the court will look at the cost of the alternative, the difficulty of introducing it and the probability of it preventing further injuries. That is, you would not introduce an alternative if it was not going to prevent the same sort of injuries or in fact introduced a risk of other types of injuries.

One of the aspects that it's looked at here is the cost, difficulty and probability. If the workplace is ageing then the probability of more employees being injured may be higher and therefore the argument related to cost and difficulty may not be as successful to defend when going to court.

Those are the main things probably from a pure liability or negligence breach of duty that we need to look at when employing or when there's aged people or young people in the workforce.

[Refer to Slide 20.] What I wanted to do now is just go through what the outcome if there is claims, what impact having an aged or young workforce can lead to. For young people as I've mentioned, young people are exposed to more severe injuries.

They have longer until retirement. We usually find that there are significant awards for damages for younger people.

For example, a 20-year-old carpenter earning $500 a week is injured and will have difficulty working again. This person still has at least 45 years working life. When he was injured he was only earning $500 a week but it's probably expected that once he got his apprenticeship, finished and a tradesman, he'd be earning $1,000. So in a case of a 20-year-old who's unable to work or has difficulty working, there could lead to an award of damages for future economic loss in the range of $400 to $550,000.

For aged people, we are seeing a distinct increase in working life with people still working into their 70s. With more women in the workforce, they may be forced to work until their late 60s and early 70s and we see this quite often too due to insufficient superannuation to retire on. The older a person is when injured, the more unlikely they are to return to the workplace. The older a person is the more likely that asymptomatic, pre-existing conditions will be aggravated by the work.

An example here of a 60-year-old person in a sedentary position earning $800 a week. If they were to retire at 60, sorry 65, an award of $150,000 for future economic loss is possible if they are injured. Increase that to age 70, this increases a potential award up to $280,000 for part future economic loss. This is why it is so important not to expose them to an unnecessary risk of injury in the first place.

[Refer to Slide 21.]

Don't lose focus on providing rehabilitation just because a person is older. You need to provide retraining to older people who are injured. Remember a 55-year-old person may still have up to 15 years of working life and this is going to increase as the years go by.

Also remember some of the agencies out there may not necessarily be capable or consider that they can assist aged people. We recently had a case of a 65-year-old person who was referred to the Rehabilitation Return to Work Assistance to Centrelink. Unfortunately Centrelink said once you're over 65 they don't provide assistance. Therefore there may be some problems with obtaining return to work assistance. We need to be very considerate as who we refer them to.

[Refer to Slide 22.] Training/instruction. All employees should be provided with training appropriate to their position. Training should be specifically tailored to the role they are performing. If they are involved in manual handling and lifting, their training should be how this applies to the tasks they are performing. Too often we see employees are provided with generic manual handling and lifting training which does not cover the specific tasks they are completing.

For example, you have a policy that for lifting objects over 20 kilograms, you should consider a two-person lift. This unfortunately leaves it up to the individual to make the decision and if they are injured they can easily establish there was not sufficient supervision or they had not been given sufficient instruction training in how to lift or that there was no one available at the time to assist them. A more comprehensive training program may include a two-person lift is required for objects over 20 kilograms. If a two-person lift is a requirement, do not attempt to lift the object and see your supervisor or co-worker for assistance. The lift is not to occur until this assistance is provided.

Any policy along these lines should also be understood by the supervisor and all other co-workers and they need to understand their obligation to assist. Too often we hear "Everybody else was too busy to help," "They weren't going to come," "They weren't available for the next half hour and I had to get the job done now."

For a younger person training and instruction should be more explicit and not leave room for assumptions. For example as I mentioned before, an apprentice carpenter asked to drill holes in steel. Don't assume this is an easy task that requires little instruction or supervision just because it is an apparently simple task.

[Refer to Slide 23.] So in summary, employers may be faced with a higher duty of care due to the specific vulnerabilities of young people and ageing workforce. The young people, inexperienced and risk takers, ageing workforce, particular age related vulnerabilities. You need to place specific emphasis on systems of work and training and instruction.

[Refer to Slide 24.] What to consider. Ensure that a person regardless of age, is suited to the task and can carry it out safely. Adapt duties to suit older workers' needs and

abilities. Provide ergonomically designed workstations for all employees and workers. Train all workers in injury prevention strategies. Utilise flexible working arrangements for older works and consider rotation of duties.

These things are important given that aged people are more likely to work in sedentary jobs that may be office bound or involve repetitive tasks.

[Refer to Slide 25.] That's the end of my talk so far. I've put here the cases that I've referred to. As I say, the only one I didn't put in there is New South Wales v Fahy, F A H Y, 2007 High Court case which talked about special vulnerabilities. Special vulnerabilities was also considered in Finn above and we shall add that case to the notes when they go out.

I'll hand you back over to John now.

[Refer to Slide 26.]

Facilitator: Thank you Bill. We've had a couple of questions come through while the webinar's been going on. Bill are you – I'll just fire a couple of these questions at you and if we can get your answer that would be fantastic.

The first question is, and sadly you've defined aged workers as 45 and onwards. What ages do you define young workers as?

Bill Rogers: Good question John. I probably don't really have a definition of them, but I would say probably up to 25. Usually under 25s are considered youths.

Facilitator: The next one. Insofar as employee assistance programs, is it something an employer should be providing? I know for example occupations with critical incidents generally have them as a matter of – or where their employees attend critical incidents generally have them as a matter of course. What's your view with respect to the obligations on employers providing those across the board?

Bill Rogers: I think they're probably something that a person should have in their workplace health and safety policy that there's some sort of assistance or employee assistance program available to workers. This does not mean you should have a separate program and I can understand an employer who might only have three or four employees, it's probably going to be very difficult.

But it probably should be identified as an area that they can provide assistance to their workers and that may just mean a referral to a Psychologist or to their GP. But I would suggest that any employer that has a workplace health and safety policy should have part of that an employee assistance referral program in there.

Facilitator: Thank you. Hopefully that's answered Wendy's question sufficiently. That was good.

There's another one from Errol in relation to obligations on employees to disclose conditions that may impact their work. Insofar as with all the claims you've traversed in your years, do you mind just advising Errol with respect to what the general obligations are on employees disclosing injuries, and I think he's used the type of injury of sleep apnoea and so forth. We see a lot of obligations or we say that employees have obligations to disclose physical injuries and there's certainly something in our legislation now. If I can just get you to elaborate on that, that would be great?

Bill Rogers: Okay. Well I would refer you I suppose, to the Workers' Compensation Regulation which is Section – John, sorry John? There is, the people who are currently being employed, they have to disclose any previous injuries. There's no requirement for an employer to make enquiries of their employees as to what previous injuries or conditions they may have and Justice Kirby, when he stated, "An employer may not always have to take active steps to acquaint itself with special or unique weaknesses." So there's no obligation that you have to go into their background and find these things out.

The point that I'd probably say with aged and youth workers is that as it becomes more prevalent that they may have some vulnerabilities, it may be imputed that you should make – may make some enquiries or ensure that you consider any work design, systems of work etc. for workers who are either young or aged. There's also the eggshell principle where you have to take a worker as they are. There's also that principle, an overriding principle that applies.

Facilitator: Thanks Bill. There's another question from Clara Chan. It says "Bill, you've talked about the rehab to focus on retraining. In your experience what do you

think is reasonable for employers to fund or provide assistance?" saying that also, "How will the court consider this?"

Bill Rogers: Well, the courts look at any mitigating factors that the claimant has undertaken to reduce their damages or their claim. Once again, it's that word "reasonable". There's probably no specific answer that will fit everything, but I think it's what's reasonable. If a worker who has a back problem and all you do for your work and you're digging holes – you're a drilling agency that only digs holes, it's probably not much benefit you're going to be gaining out of retraining them in working computers unless you have a computer section in your business. I think it has to be reasonable, take into consideration what your firm, what the employer – what activities you do and that retraining or reintroduction, re-entering the workforce has to take those into consideration.

Facilitator: Thanks Bill. There's another question from Ben Evans in relation to the obligations or implications for employers when completing medicals, basically given that you're already employing them and obviously can't terminate them rather than make reasonable adjustments.

The question goes on to say "However, do you believe it's an advantage to be aware of a pre-existing injury's functional limitations via this avenue or rather better not to go with this approach?" It's probably a specific question in relation to where Ben's employed, but is it possible that you could address the obligations on employers with respect to medicals overall and whether there's an obligation to seek employee approval to send them to a doctor?

Bill Rogers: Well my understanding is there's no obligation that you can make a person have a medical. It would come down to the policy. If the employer has a policy of having a medical, that's fine. There's nothing wrong with that. The only thing the medical or any outcomes of the medical, if there are any issues with that, they have to specifically relate it to the tasks that the person is doing.

For example, once again if you were hiring telephone call people and a person only had one leg and couldn't walk, that probably wouldn't be a good reason not to give them a job. Any restrictions or any reasons you're getting a medical have to be related to the task the person is going to undertake and there's no legal – anything legal that says you can't ask an employer to undertake a medical prior to employment.

Facilitator: Thanks Bill and thanks for letting us put you on the spot like that.

Bill Rogers: John did say it's Section 571(c) of the Workers' Compensation Rehabilitation Act with regards to having to declare or advise your pre-existing conditions. Thanks John.

Facilitator: Insofar as that section, I just don't have the Act with me at the present time, but we'll certainly clarify that as part of the frequently asked questions and you'll be aware as to what the section in our Act which guides you with regards to what you can ask the employer.

Now we're certainly running out of time. We just want to finish up the webinar. With any of the questions that we haven't been able to get to, we will be responding to those on the website the best we can once we've published the webinar and the questions that have come through with it. So I apologise for not getting to those today.

[Refer to Slide 27.] So thank you for attending today's session and posting your questions. We'll review all of those as I've said and publish on our website with the full recording of the presentation.

Our website has extensive information on common law related issues including case studies and court judgements. We have many case studies published on the website, so it's probably worthwhile digging into those and having a look at some of the scenarios that we've had to encounter for employers.

Additionally, a webinar titled "Designing good work for young workers" is being held on Thursday the 28th of May, 2015 from 12:00 to 1:00pm Australian Eastern Standard Time. It aims to assist employers, particular middle managers and supervisors in gaining an understanding of what good work design for their young workers looks like. Speakers include representatives from Workplace Health and Safety Queensland and discussing the role of the Work Safety Regulator and industry representatives showcasing their implementation of young worker work safety initiatives.

Registration details will soon be available on our website under 'Events'. So check back shortly to register. We'd certainly welcome any feedback on

today's session or suggestions for topics or formats for the future. There will be a short survey which will pop up at the end of the webinar to give you the opportunity to provide that feedback or suggestions on today's session and on future sessions.

Once again, thank you for your attendance today.

[End of Transcript]