



The Hon. Shane Mallard
Chair
Standing Committee on Law and Justice
Parliament of New South Wales

Attention: Claire Armstrong

Principal Council Officer
Upper House Committees
By Email:

Dear Chair,

Re: First Review of the Compulsory Third Party Insurance Scheme

Thank you for the opportunity to contribute to this inquiry.

On reviewing the transcript we make the following comments with page and paragraph references or as outlined in the attached documentation.

We remain available to further assist the committee through Shay Deguara at
or

Transcript reference	Comment
Page 39, Last paragraph Ms Maiden line 5	Correction- insert "not" before "fully".
Page 42 second paragraph, the Hon Daniel Mookhey	Provide examples of other forms of law. These are included below in Appendix A- Briefing on other forms of employment protection under law.
Page 43, eighth paragraph, Ms Maiden	Correction- For clarity this should have been with regard to the employer after "no". therefore insert "With regard to employer" prior to "no".
Page 44, nineteenth paragraph, Mr Deguara	For clarity please find document provided to this Parliamentary Committee in the previous Parliament - Attachment B- PWC Report.
Page 45, eleventh paragraph, The Chair	Please find three separate yearly research reports on the Macquarie University research into the Workers Compensation Changes. Attachments C,D,E
Page 46, first paragraph Mr Deguara second line	Correction: remove dollar symbol "\$" before "5 million policies"
Page 46, thirteenth paragraph Ms Maiden,	Whole of life impairment, whole of life assessment. These terms remain ill-defined and poorly understood amongst the legal fraternity that we consulted with. Just as the American Medical Association states that their tables should not be used for medical legal matters such as assigning compensation, they are, and we would require the exact components of any assessment process and title such as: "Whole of life impairment, whole of life assessment". We repeat our submission that arbitrary assessments leave some people worse off.

Yours Faithfully

Shay Deguara
Industrial Officer

Appendix A - Briefing on other forms of employment protection under law.

Attachment B - PWC Letter highlighting drop in Workers Comp journey claims

Attachment C - Markey R., Holley S., O'Neill S., Thornthwaite L., The Impact on Injured Workers of Changes to NSW Workers' Compensation: June 2012 Legislative Amendments, Macquarie University, Report No 1 December 2013

Attachment D - Markey R., Holley S., O'Neill S., Thornthwaite L., The Impact on Injured Workers of Changes to NSW Workers' Compensation: June 2012 – November 2014, Macquarie University, Report No 2 December 2014

Attachment E - Markey R., Holley S., O'Neill S., Thornthwaite L., The Impact on Injured Workers of Changes to NSW Workers' Compensation: June 2012 – November 2015, Macquarie University, Report No 3 November 2015

Appendix A- Briefing on other forms of employment protection under law.

1. Unions NSW submits that by enabling return to work in your own job you end up with more sustainable return to work outcomes and a lower cost to the scheme. This idea is confirmed and supported by the workers compensation system including the National Code of Practice on Return to Work.
2. There are various forms of protection that currently operate in the same way to protect workers from disadvantage and termination. A number of these arise out of state and federal legislation.
3. Examples include the following.

Fair Work Act 2009

4. The Fair Work Act Chapter 3 describes a range of Rights and Responsibilities of Employees, Employers, Organisations Etc.. This Chapter describes what workplace rights are in a scheme of “general protections” and also describes adverse action when these rights are inhibited.
5. Section 340 provides for protection against adverse action against another person because the other person has a workplace right which is defined as including a workplace law including those of the State regulating the relationship between employers and employees.
6. Therefore the Fair Work Act would enable an amendment such as the one that we propose to protect the workers injured in the motor accident scheme if the legislation specified conditions to protect the employment relationship between the employer and employees.

Industrial Relations Act 1996

7. The Industrial Relations Act 1996 has a similar provision in Section 210 preserving employment relationship from harm when seeking the benefit of an industrial law.

Workers Compensation Act 1987

8. The Workers Compensation Act 1987 provides for “Protection of injured workers from dismissal”
9. Section 248 allows for this protection for a nominal period of 6 months, where as Section 243 allows for reinstatement if the workers has recovered and able to return to work.
10. These provisions refer to enforcement through the Industrial Relations Act 1996 for both State and Federal system employees.

11. Both of these sections are used successfully to secure return to work and minimise costs to the workers compensation scheme

Anti-Discrimination Legislation

12. The anti-discrimination legislation both federally and in NSW include provisions to prevent termination, however, they are cumbersome and inefficient in achieving this goal. Both sets of legislation have enabling legislation in the Commonwealth Fair Work Act and the NSW Industrial Relations Act to enable a form of adverse action claim or threatened dismissal claim respectively when discrimination is the issue. However, the bar is very low surrounding an assessment about what is reasonable adjustment. Even if the worker is temporarily unable to do the inherent requirements of the job, their employer may terminate on the grounds that reasonable adjustment would cause ill defined “unreasonable hardship” on the employer.