



Supplementary Submission from

**New South Wales Local Government, Clerical,
Administrative, Energy, Airlines & Utilities Union**

To

**Joint Select Committee on the
NSW Workers Compensation Scheme**

New South Wales Local Government, Clerical, Administrative,
Energy, Airlines & Utilities Union
(United Services Union)

5 June 2012

Authorised by Graeme Kelly, General Secretary

**SUPPLEMENTARY SUBMISSIONS BY THE UNITED SERVICES UNION TO THE
JOINT SELECT COMMITTEE ON THE NSW WORKERS COMPENSATION
SCHEME**

The Union appreciates that a number of issues were raised when Ms. Young of the Union attended before the Committee on 25 May 2012 and the Union takes this opportunity to make the following supplementary submissions by reference to the enquiries made of Ms. Young by members of the Committee.

Red tape

Regarding the WorkCover Authority and an open and transparent review, the Union at this stage is not in a position to provide you with a comprehensive outline of what is regarded as waste, duplication and red tape. Many of the matters conveyed to the Union are anecdotal, however it is clear to the Union that the paperwork that is generated appears to be unduly complex to the injured worker and such complex paperwork is generated irrespective of whether you dealing with a modest claim or a substantial claim.

Further the Union does say:

1. Anecdotally the WorkCover Authority in the management and review of workers compensation claims with the agents has a very strong focus in its auditing on process, rather than a strong focus on the substance. It is a case of ticking the box that something has occurred rather than critically evaluating the management of the file.
2. Having workers travel long distances to see doctors for medico legal consultations may have its place however the question really has to be asked as to the frequency with which workers are sent for these medical assessments. Further the reports are not disclosed to the worker unless there is a dispute.
3. A significant amount of paperwork is generated with return to work plans and work injury management plans and that paperwork whether prepared by the insurer or the employer or a combination of both or a rehabilitation provider is highly repetitive and often times is drafted at a level above the appreciation of the injured worker.

Payment of a Death Benefit

It is acknowledged that within the workers compensation scheme there is a strong focus on compensation for the injured and incapacitated worker and as appropriate

an adjustment on that weekly compensation to allow for dependents. That adjustment is in relation to weekly compensation.

A death benefit where there is no dependency and simply a payment to the estate may appear anomalous, however those family members have suffered a great loss referable to the death of the worker. Merely because those family members were not dependent as at the date of death does not mean that at some stage in the course of the relationship they may well have become dependents of the deceased worker.

Seriously injured workers and a 30% threshold

There is no appropriate threshold as the Union rejects the notion that the establishment of a threshold for serious injured workers has a role to play. There is already a system in place where there is a differentiation between workers which the Union does not support namely:

1. For a worker who has a psychological injury for them to recover any monies pursuant to Section 66 they must be at least 15% whole person impaired.
2. For an injured worker to be able to recover money for pain and suffering under Section 67 they must be at least 10% whole person impaired.
3. For a worker to be able to run an action for modified common law damages they must be at least 15% whole person impaired.

A whole person impairment percentage is not determinative of issues of incapacity for work and continuing economic loss or indeed the need for care or medical management. Finally it should be remembered that the whole person impairment system when originally introduced involved a significant modification from a methodology originally created for the purposes of triage assessment, for the initial prioritising of medical treatment.

Journey Claims

The workers compensation system is a no fault system and it is consistent that the no fault provisions operate for all purposes whether at work or on a journey to or from work. The Union would be opposed to see a fault system introduced for journey claims as it leaves open the potential for a further undermining of the scheme, which is essentially no fault.

7 Point Reform Plan of Bar Association

1. Commutations

The Union supports the use of commutations, subject to a mandatory proviso that the injured worker had independent legal advice on what they are receiving and what they were in substance giving up.

It would also be desirable that the worker had independent financial advice. The criteria as currently in place is quite strict and again in practical terms there is a heavy evidentiary onus to persuade the WorkCover Authority. Whilst historically the commutation process had a protective character to it in that the Judge had to consider whether it was in the interests of the worker the Judge had a wider discretion.

The Union does not necessarily say that the approval of the commutation should involve a Judge, but rather greater weight should be given to the wishes and desires of the injured worker.

The Union is mindful that historically commutations had a role in facilitating the settlement or compromise of claims before a final determination had been made as to whether liability had been established and this is particularly in the context of contested claims. The Union is not adverse to the re-introduction of that possible use of commutations.

2. Work Injury Damages Claims

The Union is supportive of the right of the worker to bring such claims. It needs to be remembered that if a worker does successfully resolve a claim for work injury damages then that obviates the risk for the scheme of any further exposure to:

- (a) Reasonably necessary medical expenses.
- (b) Further claims pursuant to Section 66 and/or Section 67.
- (c) A continuing long-term obligation to pay weekly compensation.

3. Guidelines for Scheme for agents

In an adversary system the Union has no objection to each party having the opportunity to qualify and as appropriate re-qualify or secure further expert evidence. However the underlying reality is that the insurers have unlimited resources in practical terms to secure such expert opinions.

Such experts however it should be understood would have already considered the injured worker from the perspective of whole person impairment and no doubt in the ordinary course would have contemplated issues such as capacity to earn. Accordingly since the claims are only about economic loss the only reports on which the insurer could be allegedly disadvantaged from securing, would in practical terms be about liability.

Under the Guidelines the insurer may have to make a decision within 42 days however if there is a legitimate basis for seeking an extension of time, then such a mechanism could be implemented for both parties, up to the time of filing proceedings in Court.

4. Revocation of Section 151Z(2)

The Union is amenable to this approach.

5. Death Benefits Payable to Dependents

Please see the earlier submissions made by the Union in that regard.

6. More than one Whole Person Impairment Assessment

The Union is opposed to this type of language and supports the proposition that if there is evidence available that there has been a further deterioration albeit only 1% then that is a sufficient basis for an additional claim. It needs to be remembered there is no system of half a percent.

7. Journey Claims

Please see the Union's submissions above.

Expenditures on Rehabilitation

The Union has a very serious concern that monies are being poorly spent on rehabilitation as it appears the process in terms of a return to work can at times involve nothing more than the rehabilitation provider acting as a middle man between the various interested groups and signing off on return to work plans. There should be no presumption that expenditures on rehabilitation provide an actual return. There should be an actual assessment as to the value and the direction each rehabilitation will take.

There have been numerous reported instances where there have been attempts to commence rehabilitation processes when the injured workers are still clearly totally incapacitated. This is premature and invasive and whilst it might be well intentioned it undermines the credibility of the process.

If you are in hospital with a leg broken in 3 places you do not need to have an introductory phone call or letter from the rehabilitation provider.

Commutation

Please see submissions above and note the Union does not consider that the current restrictive approach should be maintained.

Multiple Factors

The multiple factors include:

1. Global financial crisis.
2. Claims handling/management procedures.
3. Short sighted reduction in premiums without an early insight into adverse consequences.

Premiums

If amendments are put in place which reduce workers benefits, then it should not only be the injured persons who have to make a sacrifice in the interests of the viability of the scheme but also the employers.

The employers contributions are tax deductible and as part of the expenses reasonably incurred in the operation of their business. There is no system of insurance which guarantees that there is going to be no increment.

The Union is supportive of increase in the premiums as part of any reform agenda and submits that the alleged loss of employment opportunities in the State of NSW referable to workers compensation premiums is an ill-defined and uncertain number if any.

As to the Union raising concerns about a reduction in premiums with Unions NSW and including to Unions NSW's representative on the WorkCover Board, in the limited time available the current Union management are not aware of any such communications and similarly were not alerted to any communications from the WorkCover Board about the potential downside of premium reductions at the time they were implemented.

As to the issue of the Fund running at a loss or its financial position having deteriorated by way of a clarification of Ms Young's answer she was answering in the context of recent research she had been undertaking and not by reference to her own personal long-term knowledge, that the Fund was in difficulties.

Indeed it would be interesting to know when the disclosures of difficulties were first published and by whom.

Journey claims and other insurers

There may be confusion in this question asked by the Honourable Paul Green, however the Union was seeking to make the point that there are situations where the

workers compensation insurer can recover the workers compensation costs from another insurer.

A classic example of that situation is where the injured worker is in a motor vehicle accident so the CTP insurer is ultimately held to be liable and the workers compensation insurer is reimbursed for the costs of managing the workers compensation claims.

Conclusion

It needs to be remembered that we are in a situation where the number of workers who are injured has decreased dramatically over the years and yet the capacity of the scheme to provide services to the residual injured workers and benefits to them appears to be decreasing.

The Union thanks the Committee for considering its Submissions.

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Graeme Kelly

