CIVIL CONTRACTORS FEDERATION

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5 June 2012

Vanessa Viaggio
Principal Council Officer
Joint Select Committee on the NSW Workers Compensation Scheme
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Ms Viaggio,

RE: Inquiry into the NSW Workers Compensation Scheme

Thank you for the opportunity to respond to the Additional supplementary questions asked of me by Mr Mark Speakman MP on 31 May 2012.

Please find attached herein my response on behalf of the Civil Contractors Federation (NSW).

Yours sincerely,

David Castledine
Chief Executive Officer
Civil Contractors Federation (NSW)

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Civil Contractors Federation
Response to Additional Supplementary Questions

from Mr Mark Speakman MP – 31 May 2012

INQUIRY INTO THE NSW WORKERS COMPENSATION SCHEME – PUBLIC HEARING 28 MAY 2012

1. What is your response to each of the reforms in the "seven point plan" in the submission of the NSW Nurses Association (#73)

Recommendation 1:

Provisions already exist under s53 of the WIM&WC Act 1998. The hiring decision is not aided significantly by providing such incentives as premium reductions. Rather, what our Members most seek is protection from the existing claim costs, such as injury aggravation – currently the protection is up to 2 years. Were the protection indefinite, the whole question of injury history to a new employer becomes largely irrelevant.

Recommendation 2:

S49 and S46 of the WIM&WC Act 1998 already enshrine this compliance obligation, and penalty provisions are already provided for under s56 of the Act.

Further, an educated employer who understands the total cost of an injury will be motivated to offer Suitable Duties. However, if an Agent has not facilitated provision of this information via tasking a Workplace Rehabilitation Provider to attend the worksite and explain both the law and the merits, then it is not surprising that employers do not avail themselves of the benefits.

Recommendation 3:

Agents are already required to facilitate the implementation of Chapter 3 of the WIM&WC Act 1998. If they are not doing so, then that is a contract management issue for WorkCover. If the existing Act is not already being implemented, then no new provision will assist in improving performance.

Recommendation 4:

We think the Act largely speaks to this issue.

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Recommendation 5:

This would cause considerable direct cost burden on the Scheme and strike at the very heart of the indirect cost concern we have raised in our own submission. Implementation of such a model would further widen the chasm between employer and employee.

Moreover, Agents are already required to facilitate the implementation of Chapter 3 of the WIM&WC Act 1998 which covers the underlying concerns raised in submission #73. If they are not doing so, then that is a contract management issue for WorkCover. If the existing Act is not already being implemented, then no new provision will assist in improving performance.

Recommendation 6:

This ground is already well covered by the Disability Discrimination Act 1992. It is already an Offence under that Act for an employer to discriminate simply because of a previous or current workers compensation claim. However it is also appreciated in that Act that employers must protect employees from exposure to a work environment in which the worker may injure themselves *because* of their previous injury. Protections termed "inherent exemptions" are thus expressly provided under s21 of the Disability Discrimination Act 1992. It is our view that no substantive argument has been provided to warrant a change the existing law.

The real issue afoot here is not the question asked, but rather what the prospective employer does with the information.

Recommendation 7:

Our response to Recommendation 6 stands for this Recommendation.

2. How is what you propose in sections 8-11 (pages 20-23) of your submission different from the position in Victoria?

Recommendation 8:

Save for the fact that Work Capacity Assessment (WCAx) can on some occasions be undertaken by parties other than GP's, there is little similarity. In the Victorian Scheme we understand the range is limited and we understand there are no Operational Instructions to control the conduct of the assessments.

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Recommendation 9:

We understand our proposal reflects the Victoria Scheme as it currently is.

Recommendation 10:

We understand that in Victoria Agents do not presently have the power to change the NTD.

Recommendation 11:

We understand that in Victoria medical certificates have a maximum duration of 28 days at which point another assessment is required.

3. What would be the cost of the work capacity testing which you propose in section 8 of your submission and how is this calculated?

Currently, a Medical Doctor (GP) conducts an assessment in the same appointment they conduct their injury diagnosis and treatment plan. This is sometimes booked as a double consultation. The WCAx we propose would take a not dissimilar time to conduct as a standard GP meeting and require a WCA approved proforma (akin to the existing WorkCover Medical certificate) completed during the interview.

As such, we would see the cost of the session and report to vary between $75 to $150 ex GST (depending on the skill type of the Assessor).

Note: In a point of clarification, we would recommend that businesses that are Authorised Workplace Rehabilitation Providers NOT be permitted to undertake a WCAx.

4. How is this work capacity testing which you propose any different from assessments which presently occur under section 40A of the Workers Compensation Act 1987?

The two assessments are extremely different. The purpose of a s40A is to determine what the reasonable earning capacity is of the worker in the open market, taking into account a number of factors including the local labour market, the worker's skills and qualifications, their work history qualifications, their injury, and their work capacity. Due to its complexity and the time required to research and write a detailed and often lengthy report, we understand a s40A Assessment can cost $1,200-1,500 ex GST.

The Work Capacity Assessment proposed in our submission can thus be seen to be but a small subset of the s40A assessment.

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5. Is section 52A of the Workers Compensation Act 1987 in need of reform?

A strong and robust Work Capacity Testing regime, stepped benefits and a strong compliance management application, as we offer in our Submission at Recommendation 8, 14 and 21, would in our view suffice to support s52A as it now stands. However, if our recommendations were not adopted, then it is our view that s52A ought to be altered to reflect arrangements similar to the Victorian Scheme wherein threshold levels are set.