Standing Committee on Law and Justice

Review of the exercise of the functions of the WorkCover Authority and Workers Compensation (Dust Diseases) Board

PSA Responses to Questions on notice (Committee Appearance - Friday 21 March 2014)

Question 1.

CHAIR: We have 29 submissions and a number of them might not be relevant to WorkCover. Can your association go through them and ascertain which issues can be dealt with by WorkCover and then indicate the extent of negotiations on those issues and the view of WorkCover so we can understand what has taken place?

Mr TURNER: I cannot do that today, but I can undertake to have it completed.

CHAIR: Can you take it on notice?

Mr TURNER: Yes.

Recommendation 2: Should the two divisions remain within WorkCover, improving the interactions between divisions would be within the power of WorkCover itself. Previously under the system of tripartite representation bodies the PSA, on the Industry Reference Groups on which it appeared, was able to make comment on the system as a whole and consequently the interactions between divisions in terms of their outcomes for workers. Since the disbanding of these groups in 2012, this holistic consultation has been largely unavailable.

The Workers Compensation Insurance Division and the Work Health Safety Division have both been restructured in recently. These restructures were undertaken quite separately and at different times. As a result there was no real opportunity to discuss better integration of the two separate divisions.

Recommendation 3: It is unlikely that a decision to redirect savings from the worker's compensation system into a range of means to assist workers and improve safety standards would be made solely from within WorkCover. However, WorkCover would be responsible for delivering such outcomes.

Recommendation 4: This has been raised with WorkCover and is detailed in the answer to questions 5 & 6 below.

Recommendations 5&6: Acting on these recommendations should be within the power of WorkCover. A number of discussions on this topic have occurred between the PSA and WorkCover and are detailed in the PSA's submission to Standing Committee No.1 in relation to the parliamentary inquiry into bullying in WorkCover.[i] In this submission the PSA made similar a recommendation to that made here with regards to the need for an independent body to address WH&S issues inside WorkCover, see below:

Who regulates the regulator?

> *In the Association's submission to the PwC inquiry (Attachment A pg 4) we outlined some of the difficulties experienced when the safety regulator also happens to be the employer which is the subject of the safety complaint. Although the results of this investigation were deeply unsatisfactory it did serve as a valuable learning exercise. As a result the CEO at the time became deeply concerned about the inherent conflict of interest of WorkCover as the safety*

regulator investigating itself as a non-compliant employer. A number of valuable discussions occurred throughout late 2010 and early 2011 on this issue and possible resolutions to the problem were tabled.

Three flow charts were provided by WorkCover to the PSA for comment. These were entitled:

- *Complaints to Workcover as the regulator.*
- *Complaints made to WorkCover as the OHS regulator involving Workcover as the employer*
- *Complaints made to WorkCover as the Workers' Compensation regulator involving WorkCover as the employer*

Together they outlined a proposal to have an independent person oversee regulatory investigations into WorkCover. The proposed model was contemplating the involvement of another regulator such as Worksafe Victoria or Comcare. The proposal would in no way prevent WorkCover from exercising its obligations as an employer to investigate and deal with bullying or other safety issues, prior to a complaint being escalated to WorkCover as the regulator.

Unfortunately after the Association provided feedback in April 2011 on the suggested processes there were no more meetings to discuss the matter despite a number of attempts by the Association throughout 2011 to re-invigorate the discussion. As a result the issue remains unresolved to this day and further difficulties have arisen for WorkCover staff and the Association as a result of having nowhere independent to go to make a complaint.

This question of who regulates the regulator has also been the subject of much debate in other state jurisdictions. A common theme has been that a simple solution to the problem would be to undertake reciprocal arrangements with a regulator in another state to deal with safety complaints made against any safety regulator. It must however be acknowledged that the regulators in each state or territory have been building alliances for quite some time as they move towards harmonisation of WHS legislation across Australia, as a result even this reciprocal regulatory investigation arrangement may be subject to undue influence.

This conflict of interest problem has been exacerbated by the new WHS Act 2011 with the introduction of Health and Safety Representatives (HSRs). HSRs have the capacity to issue provisional improvement notices to their PCBU. The PCBU then has a right to ask for the provisional improvement notice to be reviewed by a WorkCover inspector. When the HSR is an employee of WorkCover the conflict of interest arises again with WorkCover, as the regulator, allocating an inspector to review a notice issued by a fellow worker who is an HSR, because WorkCover, as the PCBU, has objected to the notice being issued. The pressure on an inspector placed in that situation is unreasonable. It is an obvious possibility that the inspector could be unduly influenced in this situation to the potential detriment of safety of workers at WorkCover.

Recommendation: *That arrangements be developed for an independent regulator to address compliance issues which arise within WorkCover and SRWSD. This protocol needs to broad enough to cover all aspects of compliance with the WHS legislation such as WHS consultation, and not just safety complaints.*

We note that in their answers to the questions on notice to the inquiry last year, WorkCover advised that they had had discussions with Department of Trade and Investment about the mine safety inspectorate undertaking independent investigations in circumstances where WorkCover employees make complaints about WorkCover as the PCBU not dealing with a WHS matter appropriately. In those further answers in February 2014, which are available on the parliamentary website, WorkCover indicated that the signing of a memorandum of understanding was imminent.[ii] We note that at no time did WorkCover discuss this proposal with the PSA. The PSA has reservations about the appropriateness of the mine safety inspectorate undertaking this work but have not had the opportunity to discuss it to date.

Recommendation 9: This is within WorkCover's power. The Association seeks a restoration of the Industry Reference Groups, or similar forum, which the unions found very useful for raising issues which affected all our members. The PSA raised our objections at the time that the forums were discontinued. These forums were a productive way to bring parties together to discuss a broad range of issues relating to both workers compensation and work health and safety matters from a global perspective.

Recommendation 10: This is within WorkCover's power. Although the CEO meets with the PSA on a regular basis these meetings have not been for the purpose of discussing global health and safety issues but have rather been about internal industrial relations matters. This recommendation is related to the issue addressed at question 9 above but would not have been raised again with the current CEO.

Recommendation 11: This is only within WorkCover's power to the extent that sufficient budget is provided to do so. The issue of inspector resources is discussed in more detail in answer 2 below. The engagement of specialist return to work inspectorate was recommended in the 2011 NSW Government Commission of Audit and is discussed in more detail in answer 2 below. A restructure was undertaken in 2013 to give effect to a number of recommendations and legislative changes. Unfortunately positions were deleted in the existing inspectorate to allow the introduction of specialist return to work officers. Only 6 of the 9 positions were filled in April 2014.

Recommendation 12: This is within WorkCover's power. WorkCover has just completed an intake of new inspectors in April 2014. This is the first intake in a couple of years. The lack of recruitment activity has been raised continuously by the PSA in our Joint Consultative forums for the Work Health Safety Division. The depletion of the number of inspectors has caused work overload issues for the remaining inspectors and this too has been raised in consultative forums.

Recommendations 13&15: This is not directly within WorkCover's power, however it is within WorkCover's power to encourage and allow inspectors to become more involved in the area of workers compensation compliance. In the past WorkCover directed inspectors to focus only on checking the currency of workers compensation certificates. Inspectors were not encouraged to check the validity of the certificate to address the gross under-reporting of employee numbers to the insurers. This has been raised with WorkCover on a number of occasions during joint consultative forums and other discussions.

Recommendation 14: This is within WorkCover's power. As discussed in relation to recommendation 2 above, significant restructuring has just been completed within WorkCover. The structure of each division was discussed without reference to the other divisions as each occurred at separate times. The new structure does not appear to address better liaison between the Divisions.

Recommendation 16: This is within WorkCover's power. This has been raised with WorkCover on numerous occasions and is addressed in further detail in answer 2 below.

Recommendation 17: This is within WorkCover's power. These concepts were all discussed prior to the creation of Business Advisory Officer positions in 2006, which were designed to separate the advisory function from compliance activities. When the decision was made to delete these same positions in 2012, further discussion took place as part of restructure implementation forums, regarding how to incorporate the advisory functions back into the inspector role.

Recommendation 18: This is within WorkCover's power. The need to enhance the skills of managers has been discussed in numerous Joint Consultative forums over a long period of time. Significant effort has been made by WorkCover and Safety Return to Work Support Division toward providing leadership training for managers but more needs to be done and managers need to be monitored and held accountable for their actions and/or inactions.

Recommendation 19: This is within WorkCover's power. Numerous discussions have occurred regarding how to manage complaints of bullying, since the commencement of the Parliamentary Inquiry into bullying in WorkCover last year. The Safety Return to Work Support Division now appears to support this idea and feedback has been given by the PSA on a new policy to reflect this new approach. The PSA is currently waiting on a further draft of the policy for further discussion and input. Discussions on this issue have stalled recently with no further discussion occurring since mid-March 2014.

Recommendation 20: This is within WorkCover's power. As discussed in the PSA's submission on page 6, the issue of insurers not complying with their legislative responsibilities in processing provision liability claims has been raised with WorkCover numerous times in relation to specific individual cases. Unfortunately raising this issue has not resulted in any global improvement in processing nor has it resulted in any productive discussion about the individual concerned. WorkCover's intervention would seem to only result in an immediate advice of the claim being declined. This would seem to be in the absence of any fair assessment of the case. In each case the PSA has been left to engage in legal appeal processes on behalf of the member.

The PSA is of the view, as shared by Unions NSW that WorkCover currently maintains a moratorium on the removal of self-insurers licenses and/or prosecuting scheme agent insurers. This issue has been raised with WorkCover through peak committees such as the OHS and Workers Compensation Advisory Council and WorkCover CEO Forum.

Recommendation 29: This is within WorkCover's power. WorkCover inspectors have become involved in return to work disputes in the past but this is a rare occurrence and seems largely related to the individual inspector's willingness to press to be allowed to complete the work.

Question 2.

The Hon. SHAOQUETT MOSELMANE: The inspectorate division has been run down, as you said, and you recommend the engagement of additional WorkCover inspectors. Is there a way to better utilise existing inspectors or do more inspectors need to be employed?

Mr TURNER: The answer is multifaceted. We address it in the submission to the extent that the inspectorate role has changed and expanded in recent times and therefore extra resourcing and training would assist in that changing role.

The Hon. SHAOQUETT MOSELMANE: What were the key changes?

Mr TURNER: Primarily increasing the powers of the inspectorate and some of issues they look at. They are now involved in the work health and safety side as opposed to just safety in the workplace. There is an issue about the independence of the inspectors. In the past some direction has been given to inspectors and we have been told about this—we can get further information on it, if you wish. Having more inspectors would help with these issues. When inspectors have gone to the workplace to look at stress-related or bullying issues, we believe there have been instructions not to deal with those types of issues.

The Hon. SHAOQUETT MOSELMANE: If there is information you would like to give us as a confidential submission, you have the opportunity to do so.

Mr TURNER: Yes.

By way of background to the PSA's comment about the running down of the inspectorate, the following information is provided:

In the 2013 restructuring of the Work Health Safety Division of WorkCover, 62 FTE positions were deleted, 17 of which were vacant. 23 of the deleted positions were inspectors, 11 of which were vacant positions. 8 of these inspectors were deleted from the Illawarra area, an area of high need. Also deleted were 26 technical specialist roles including Departmental Professional Officers, engineers and State Co-ordinators in specialist technical areas. These positions provided technical support and specialist advice to the inspectorate.

44 new positions were created 31 of these positions were created in the inspectorate. The technical specialist roles were transferred to the inspectorate rather than being an additional support. Effectively 49 positions were replaced by 31, representing a net reduction of 18 positions to the inspectorate.

9 specialist return to work (RTW) inspectors were created as part of this change, however WorkCover is now engaging in discussion with the PSA about downgrading 3 of these RTW positions which were intended to be high level specialists in the area, whilst adding an additional position. Recruitment to base grade inspector positions has just been concluded so a decision to downgrade these RTW positions to base grade is likely to mean they remain unfilled for the foreseeable future as no further intakes are planned.

Previously inspectors did not routinely become actively involved in the workers compensation or return to work areas of responsibility. The introduction of dedicated RTW inspectors was welcomed, but not at the expense of other inspector positions. This new focus on RTW needed to be provided by additional resources in order to avoid a negative impact on the provision of other safety support and compliance functions.

The net reduction of positions in the inspectorate, coupled with the additional responsibilities of the new legislation, have led to the “work overload” issues for inspectors referred to in the PSA's submission.

In relation to the independence of the inspectors, the PSA has been raising this issue on behalf of its members for years. The issue has been canvassed in many meetings including the Joint Consultative Committee (JCC) meetings of both the Work Health Safety Division and the broader JCC for the whole organisation of Safety Return to Work Division, formally Compensation Authorities Staff Division.

These issues were canvassed in some detail last year in the PSA's submission to Standing Committee No. 1 in relation to the parliamentary inquiry into bullying in WorkCover (Submission No.20).[iii] We also understand that individual submissions to this inquiry addressed the same issues in even more detail. See in particular pages 15 – 19 of the Submission by Mr Colin Fraser, a delegate of the PSA.[iv] Mr Fraser's submission details specific examples of managerial interference/intervention in relation to an inspector conducting compliance activities and the actions taken by the PSA to address these issues.

Below is a further excerpt from the PSA's submission, which is relevant to the question here:

Integrity of WorkCover compliance actions

For years the Association has been raising issue with WorkCover in relation to a perceived interference by managers with the inspectors' legislated duties. The Association has received numerous complaints involving concerns from an inspector that, whilst they were in the process of undertaking an investigation into a safety complaint, they became aware that a manager had some interaction with the PCBU which was the subject of the investigation. The concerns covered a broad range of issues including concerns that:

- *the inspector had not been informed of the managers activity with the PCBU,*
- *inconsistent messages may be given to the PCBU,*
- *complaints from the PCBU about the inspector result in their removal from the case,*
- *directions are given to cease the activity with the PCBU without adequate explanation,*
- *the interactions of managers with the PCBU are not recorded in the complaint records system known as WSMS,*
- *notices issued by inspectors against PCBUs were being withdrawn by the manager without consultation with the inspector,*
- *directions given by managers in relation to ceasing or closing a case are not recorded in the complaint records system known as WSMS.*
- *lack of appropriate record keeping results in a lack of transparency to the complaint management process*
- *if managerial decisions are not recorded it creates a risk exposure to potential corruption*
- *the absence of complete record-keeping can leave the inspector exposed to allegations of not appropriately fulfilling their duties, or worse.*

On each occasion that these issues have been raised they have been met with resistance from the management team. On one occasion they agreed to look into the issues only to report that nothing out of order was discovered. No attempt was made to justify that position or to

address the issue of managers not recording their interventions or reasons for their decisions. There was simply no evidence of any action being taken.

Eventually in 2011 these issues became such a problem for the Public Sector Agencies Team in WorkCover's OHS Division that the inspectors collectively escalated the matter to more senior management. The inspectors drafted a protocol to address the issues they were experiencing with their manager's interference in their investigations. Fortunately the Senior Manager appreciated the importance of resolving the issues and the protocol was amended and ultimately adopted as a practice note for the whole operational area. Even then, this practice note was not widely promoted and it was not until June 2013 that it was published on the organisation's intranet after the PSA raised its invisibility at a joint consultative meeting.

Whilst this has been of great assistance, it requires co-operation of all levels of management to accept that they must be accountable for their actions and comply with the practice note. Commitment to this is not universal so the resolution will be of limited value without follow-up for compliance.

Recommendation: *That Work Health Safety Division managers be required to document all their actions and interactions relating to formal safety complaints.*

That compliance in this regard be monitored as part of the performance management process.

In relation to the activities of inspectors being curtailed in response to complaints of bullying, the PSA raised concerns that WorkCover's internal policies encouraged inspectors only to check that an employer had a policy in relation to bullying and to take no further action. In response to our concerns we understand that WorkCover conducted a review of the internal policy on dealing with bullying complaints and that as a result the policy was amended to give further latitude to inspectors to follow up with investigations into bullying. A counselling service was also engaged to allow inspectors to refer people who are in crisis. This intervention was a welcome addition.

In practice however, enforcement/compliance actions being taken by inspectors continue to be resisted by management, so the change to the internal policy has had little effect towards allowing inspectors to take further actions in relation to bullying. This approach would seem to be due to the enormous resourcing implications for conducting investigations into bullying. Such cases are necessarily complex and time consuming to investigate. The focus remains on closing cases within a specified short timeframe; a timeframe unlikely to be met with an investigation into bullying.

A review of the timeframes for resolution allowed for such cases would go someway to addressing this problem, but would require additional inspectors to allow the work to be properly conducted. However there is a better way to address the problem.

The reason bullying investigations are so complex and time-consuming is that there is no Code of Practice and there are no regulations in place to force employers to document their risk assessment procedures, nor the risks identified, nor are there adequate regulations to force employers to act on their own risk assessments. If these regulations were in place it would be a more simple matter for inspectors to enter a workplace and ask to see the risk register and evidence of actions taken by the employer to address the risks identified. This approach would properly place the responsibility for addressing health and safety risks in the workplace with the employer. This would not only assist

greatly in addressing complaints of bullying and other psychological hazards, but it would assist in addressing all health and safety complaints.

If for instance all employers were required to conduct regular employee surveys, as currently the intention of NSW Government as an employer, then inspectors could simply ask to see what actions had been taken to address the psychological risks identified in the surveys.

Question 3.

The Hon. SHAOQUETT MOSELMANE: On page 6 you say that the workers compensation legislation of 2012 had a profound negative impact on injured workers. Please elaborate.

Mr TURNER: I would rather take that on notice

The Legislative changes regarding Workers Compensation that took place in 2012 were an attempt to cut costs in the Scheme as it was claimed to be in deficit in NSW.

This appears to have changed in the first twelve months of the scheme and has rapidly begun to remedy itself.

Journey claims have been abolished.

There is no remedy for “pain and suffering”, which may be factors contributing to the overall saving which have been made through changes in the legislation.

The impact on injured workers in NSW has been a negative one, by the nature of these changes.

The financial impact is the most obvious. An injured worker is now immediately on 95% of their pre-injury income. After 13 weeks, if the worker is seriously enough injured and is still unable to return in any capacity to their workplace, that wage replacement drops to 80% of the pre-injury income. The impact on ordinary wage earners, who depend on their entire income to provide for their families, can be devastating from the first reduction in pay.

Public Service Departments are now not allowing these workers to “top up” these payments with their own Sick Leave or Recreational Leave, due to the changes in the Legislation. The financial obligations of the worker are immediately affected and often enough impact on life and families.

The pressure on injured workers to comply with and understand the obligations on them is difficult to comprehend due to the complexity of the Legislation.

Summary of the changes:

Before:

- Full pay for first 6 months
- Journey to and from workplace covered
- Medical expenses covered indefinitely
- Legal costs covered by insurer
- Diseases, back injuries, heart attacks and strokes covered

- Spouses of workers killed in the workplace could claim for nervous shock
- Lump sum payments where available to workers for permanent injury
- Claim for pain and suffering due to a serious injury
- Ability to seek treatment on medical practitioners advice, not continual requests for approval through insurers

Now:

- Weekly payments reduced immediately
- The majority of injured workers cease to receive payments on or before 2.5 years
- Medical expenses cut out 1 year after weekly wage replacements end, even if the worker has not totally recovered
- Workers must pay for all legal costs, win or lose unless an application for funding is recommended by WIRO office (for an approved solicitor to access an ILARS grant (Independent Legal Assistance and Review service).
- Heart attacks, strokes are not covered and fewer diseases are covered.
- No claim for spouse when partner is killed
- No journey claims (with exemption for Police Officers, Ambulance Officers and Firefighters)
- Increased difficulties around permanent injuries and higher threshold for a claim
- Disruptions to the treatment regime as everything has to be approved by the insurer before treatment can progress.

It is also important to note that many of the changes result in a transfer of the cost of injured workers from the employer and insurer to the tax payer. Where costs of medical treatment are not covered by the insurer, injured workers seek to use Medicare. Injured workers who are unable to return to work or find suitable alternative employment are now resorting to the indignity of applying for Centrelink payments. Where injured workers are forced to sell their homes because they cannot maintain the repayments, there is the possibility they will have to resort to applying for public housing. These represent costs to the taxpayer which should be borne by the insurer.

Question 4.

Mr DAVID SHOEBRIDGE: You might wish to take this on notice, but what about in the workers compensation part of it where you have the nominal insurer, which is WorkCover, which has all the risk and concern about the finances as well as being the regulator in that sphere? Is that an area that you do not wish to canvass other than on notice?

Mr TURNER: I will take it on notice,

If left unmanaged there exists a tension or “moral hazard” between WorkCover’s role as the nominal insurer and WorkCover’s role in regulating the payment and non-payment of claims by

Scheme Agents. The PSA is of the belief that this tension should be managed by ensuring transparency and rigorous checks and balances on decision to deny payments through the restoration of tripartite reference groups, and by access for workers to a genuinely independent appeals process. These measures will ensure that emphasis is placed on achieving savings through creating safer work places, not just on paying fewer claims, and that when claims are denied; objective and independent oversight is accessible for workers.

Question 5.

The Hon. SARAH MITCHELL: I have just one more question, and I am happy for you to take this on notice, given that you have mentioned you did not actually write the submission. In relation to return to work plans, one of your final recommendations is that WorkCover should actively intervene when notified of a dispute over a return to work plan. You say that you found in a number of cases the development of plans had been hindered by the employer's unwillingness to provide suitable employment. Are you able to provide a bit more detail on some of those examples? I am happy for you to take it on notice.

Mr TURNER: I take it on notice to give you detail on it, but

WorkCover has guidelines on their website for workplace return to work programs, but unfortunately there are departments who appear to be not actively pursuing suitable duties for injured workers to make a safe return to the workplace. Whether it is because these departments haven’t the resources to pursue this course of action or it is impractical due to the nature of work available, we can only guess.

There are examples of this in Corrective Services where many injured employees are turned away from a return until they have a medical certificate that says they are totally fit for pre injury duties. The explanation from the department has repeatedly been that the prison environment is a dangerous workplace and that at all times all staff must be fully fit in case of any emergency.

There are very few correctional officers who have been put on alternative duties due to a workplace injury. We have members wanting to participate in a return to work who have been denied the opportunity and left on 80% of their income until a work capacity assessment by the insurer identifies them as fit enough for alternative work and as time runs out are denied income/wage replacement on the grounds that they are fit enough for “other” work.

One prison officer, who was injured while in a training session with Corrective Services, has been denied an offer of alternate duties due to the fact that after her initial claim for a back injury, this injury had been exacerbated in a previous attempt at returning her to prison officer’s duties. She is now able to do modified duties, for example, clerical work, but has had no offers in regard to alternative work within the Department, despite her persistence in requesting it.

She was never informed of positions that have arisen, which she could have applied for while off work. On numerous occasions the Department have failed to reply to her correspondence.

Her claim had been closed on her original attempt at returning to work. The insurer refused to reopen it and she was then without income while making another claim. This second claim was then declined on the grounds it was not a workplace injury.

This prison officer then had to make the calls to Workcover, who then referred her to the WIRO (Workcover Independent Review Office) office. Through this office, she eventually was able to

apply for legal assistance to challenge the decline of her claim by the insurer. She was then in a position to prepare a legal argument with her solicitor and for the Workers Compensation Commission.

Corrective services are now asking her to be “medically assessed” and informed her she could be medically retired, if she cannot perform the full range of duties in her substantive position. She will be amongst many other Corrective Services officers who have been medically retired in this way.

Meanwhile she was without any income and resorted to sickness benefit through Centerlink. She had to sell her home and car as she could not meet the payments. This woman is a single parent. She and her son have now moved four times in the past year due to financial hardship.

She has now written to Workcover and to the Ombudsman to tell them of her plight and ask for practical solutions, but is not hopeful.

This woman is keen to return to any work that is available and is negotiable as to the location. The Department have done nothing to assist her returning to work, but have left her idle.

The PSA has also had reports of workers with a psychological injury being placed back in the same work environment that the injury occurred in. This has happened many times in Schools, Residential Houses (ADAHC - disabilities), Juvenile Justice and in DOCS (child protection) offices, to name a few.

The guidance or involvement of officers from Workcover needs to be proactive if they are endorsing a policy of early return to work. Surely these large employers could find meaningful work while their employees are recovering from an injury sustained in the workplace.

Question 6.

The Hon. PETER PRIMROSE: Thank you, Mr Turner. Can I take you to page eight of your submission so that I can get you to elaborate on one point. You state that under the 2012 changes to weekly benefit calculations a number of public sector pay offices are having difficulty understanding and administering the formulas for calculating the weekly compensation payment. Could you elaborate on the consequences of that and also what you think needs to be done about it?

Mr TURNER: To provide a detailed response, I would rather take that on notice

The formula for calculating workers compensation payments has had some repercussions for staff in many departments.

Issues: overpayments, leading to demands on employees to repay this debt whether still on the WC payments of 95% or 80%, or those who have returned to full time work.

Buisnesslink pay office sent letters out to members regarding overpayments months later and asked for repayment of those debts, which had increased over time. An explanation given to a PSA industrial officer was that it had taken some time to “get our heads around it” (the Workcover calculation of PIAWE is Pre Injury Average Weekly Earnings).

There is an issue in the Department of Corrective Services, as in there has been in ADAHC (Disabilities workers in residences with shift work also) that after the calculations are worked out

on workers comp payments, it is better to work a full week, rather than taking one or two days off and returning asap, as the days taken off do not add up to 95% of that/those days pay.

The Department of Corrective Services took it upon themselves to engage a “debt collecting’ company to retrieve the owed monies, which was stopped by the intervention of the PSA, who have entered negotiations with the department.

The PSA would like to see the WorkCover Authority address this situation as it leaves injured workers in an even worse situation than they had expected. It also encourages workers to extend the time that they are unable to return to their workplaces.

The PSA would recommend that any department making overpayments to their employees by poor administration or inflexible computerised systems, absorb these costs themselves, rather than inflict more hardship on injured workers.

Question 7.

The Hon. PETER PRIMROSE: Please take this question on notice. I am more interested in the complexity consequences. You have highlighted some of them but, in particular, they will highlight those consequences. What recommendations need to address these in terms of the formula or the practice in relation to overpayment? I ask you to address those issues.

Mr TURNER: I will take that on notice.

This question has been answered by our reply to the earlier question posed by The Hon. Peter Primrose. Please see above.

Question 8.

The Hon. SHAOQUETT MOSELMANE: In recommendation 20 on page 7 you recommend that WorkCover holds the insurer and insurers' agents accountable for a failure to comply with the legislative requirements for processing provisional liability. I would have thought that is something that it would have been doing already?

Mr TURNER: Yes. Can I take that on notice?

The PSA’S question is how is Workcover accountable? After all, insurers who have ignored the time frame for provisional liability have been contacted by Workcover when Workcover has received complaints from injured workers. What then? Provisional liability has not been reimbursed for some of the injured public servants who have contacted Workcover for assistance. They have then rung the PSA for further assistance.

Why make legislation that insures can get around and away with ignoring? In Section 267 of the Workplace Injury Management and Workers Compensation Act it outlines the insurer’s responsibility to commence provisional liability payments within 7 days after initial notification, unless reasonable excuse is given.

Many PSA members are complaining that this is being ignored or the insurer extends this period further by asking that an assessment take place through a doctor or specialist they have nominated. Or they just decline the claim. When this happens, the period of time to take any legal action extends the time frame further.

For example, an employee of Juvenile Justice put a claim in for psychological injury on the 9th of September 2013. After not hearing from the Insurer for three months he contacted the PSA, who told him to contact Workcover immediately. The insurer, after the call from Workcover then sent out a Section 74 Notice of decline on the claim. He then asked for a review and that also went over the time frame in the Act again to respond to him, with a further decline. He thought that by ringing Workcover his provisional liability would be back paid, which it never was.

He then found himself falling into financial trouble as he had exhausted all employment leave and his personal savings. By mid-December 2013 he contacted the PSA and was referred for legal assistance, which has delivered him into the next cycle where, after assistance from the WIRO office, he is now preparing his case with a solicitor for the Workers Compensation Commission.

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[i] A copy of the PSA's submission can be found at: https://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/9BA2ABA6183C2A08CA257BE9001AD557

[ii] Answers to questions on notice: https://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/0/F4D3B7CC061C264FCA257C83001E5FC4

[iii] A copy of the PSA's submission can be found at: https://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/9BA2ABA6183C2A08CA257BE9001AD557

[iv] Mr Fraser's submission can be found at: https://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/858D59166096DD81CA257BE9001ABBFB