

OPENING STATEMENT TO THE STANDING COMMITTEE ON LAW & JUSTICE OF THE NSW LEGISLATIVE COUNCIL

REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE WORKCOVER AUTHORITY

FRIDAY 21 MARCH 2014

The relevant terms of reference for this review addressed in my submission to the Committee and in these remarks, relate to two aspects of the functions of the WorkCover Authority ("WorkCover"):

- (a) to monitor and review the exercise by the authority of its functions; and
- (e) to examine trends and changes in compensation governed by the authority

My submission is in respect to the functions of WorkCover as provided in the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*, the *Workers Compensation Regulation 2010* and various Guidelines issued by WorkCover.

My office was established with the following specific functions:

- To deal with complaints by injured workers about how their claims are managed by insurers.
- To review work capacity decisions of insurers (the final step in the review process)
- To encourage the establishment of complaints resolution processes for employers and insurers.

Given the broad purpose of the creation of the office as described by the Treasurer in the second reading speech, my office is an important accountability mechanism for the Workers Compensation Scheme.

After my appointment and shortly before the commencement of operation of my office I was given the responsibility for the management of the Independent Legal Assistance and Review Service.

That combination of functions gives my office access to a wide spectrum of information about how the Scheme operates.

I have drawn attention in my submission to the position of WorkCover as both the regulator of the NSW Workers Compensation System, and the manager of



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the Nominal Insurer, through the Workers Compensation Insurance Fund , for the NSW Workers Compensation Scheme.

There appears to be an inherent conflict between these functions which is exacerbated by the apparent lack of any regulatory presence in relation to the management of the WorkCover Insurance Fund.

WorkCover is also the regulator of the work health and safety legislation and the manner in which it performs this role is apparent on a daily basis both with education and prevention as well as a presence at any major workplace incident.

The difference between the manner of regulating in the two areas is stark.

If I may demonstrate by referring to just one of the examples in my submission.

The legislation as passed by the Parliament required a discrete group of injured workers to be "transitioned" to the new benefits regime. That was those in receipt of weekly payments immediately before 1 October 2012.

WorkCover decided that it would adopt a policy of transitioning all workers who had made a claim before 1 October 2012. That was directly contrary to the legislation.

Had WorkCover actively adopted a regulatory role I would have expected that it would have been quick to correct the Nominal Insurer.

It is this failure that highlights the inherent conflict.

I more than happy to answer any questions which I am able.

Kim Garling