



**CIVIL CONTRACTORS
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4 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 Question on Notice asked of me at the Inquiry on Monday 28 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 Question on Notice**

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

Most directly relevant section of the legislation

Chapter 3 of the Workplace Injury Management and Workers Compensation Act 1998 deals with injured worker compliance. The most directly relevant sections are:

1. S.47 – Workers Injury Management Plan obligations
2. S.48 – Injured workers obligations to return to work
3. S.57 – Compliance by worker

Suggested Changes

The Suggested Changes Required are in two (2) parts:

1. Alteration to the Legislation, s57
2. Changes to the Operational Instruction 1.25

Alteration to s57

The suggested changes to the Act are marked below (see tracked changes).

Note that the asterix text * is intended (but may not be sufficient) to counter the High Court of Australia decision *Fazlic v Milingimbi Community Inc* (1982) 150 CLR 345, which has made it extremely difficult for an insurer to pursue a worker for non-compliance and to confidently cease benefits.

WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION
ACT 1998 -

57 COMPLIANCE BY WORKER

(1) If a worker fails in the reasonable opinion of the insurer* to unreasonably comply with a requirement of this Chapter the worker has no entitlement to weekly payments

Deleted: to

Deleted: after being requested to do so by the insurer,

of compensation during any period that the failure continues, subject to subsection (2).

(2) Subject to subsection (3) a workers entitlement to weekly payments does not cease under this section until the insurer has given the worker written notice to that effect, together with a statement of the reasons for the entitlement ceasing and the action that the considers the worker must take to be entitled to the resumption of weekly payments.

Deleted: A

(3) Following two notices issued pursuant to this section within a twenty four month period, should the worker continue to fail, in the reasonable opinion of the insurer, to unreasonably comply with a requirement of this Chapter weekly payments may be suspended without notice.


(4) The resumption of weekly payments does not entitle the worker to weekly payments for the period in respect of which the worker had no entitlement to weekly payments.

Deleted: 3

Note: See also provisions for discontinuation of weekly payments in the 1987 Act (ss 52A, 54).

Change to Operational Instruction 1.25 'Managing Worker Obligations under Injury Management Plans'

This Operational Instruction outlines the Agent process to suspend a worker's weekly benefits for non-compliance pursuant to S57. WorkCover have engaged Mr Tim Castle to review the Operation Instructions. As such, we have not labored on the detail of the changes to this document. Rather, we have focused on identifying the key issues.


Operational%20I
nstruction%201.2!

The process is extremely difficult, and all risk is placed on the agent with little instructive support. For example, the following are extracts from the document:

"The onus is on the Scheme Agent to ensure a fair process is followed before proceeding to suspend weekly payments of compensation under section 57 of the 1998 Act."

"The Scheme Agent must then make an assessment as to whether the Worker is serious about seeking a genuine and sustainable Return To Work or whether the Worker is deliberately avoiding the obligations so as to prolong time on compensation."

"Firstly, if the Scheme Agent feels it has exhausted all attempts to resolve the problem it may be more appropriate at this stage to lodge in the Commission..."

"Alternatively, instead of commencing proceedings in the Commission, a letter of warning can be written to the Worker before issuing a section 57 Notice giving the Worker up to six weeks to comply. Issuing a warning letter is not mandatory."

Language of this nature does not support the Agent in their endeavours and should be altered such that it is more explicit and supportive.

The fundamental changes to the document should include:

1. Stipulate the time frames for the Agent to Act, and when the process is to commence – for example, on page 2 of the Instruction:

The Scheme Agent must then within two working days of receipt of information indicating failure to comply with Chapter 3 of the 1998 Act,

2. Clarify what is the "reasonable opinion of the insurer" per alteration to subsection 1 and 3 of section 57
3. Establish the process for the new subsection 3 to s57.
4. Alter the section "Scheme Agent Options" on page 2 of 4:
 - a. "If after having considered all of the above issues and completed all of the above attempts to resolve the matter the Worker still does not comply with the Injury Management Plan the Scheme Agent has two further options which must be exercised within two days of conducting its compliance assessment"

Deleted: before suspending Benefits

5. On page 3 of 4, in the section "Warning Letter" the following sentence should be altered as such:

"Alternatively, instead of commencing proceedings in the Commission, a letter of warning must be written to the Worker before issuing a section 57 Notice giving the Worker up to seven days to comply"

Deleted: six weeks