

**Submission
No 192**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Aged & Community Services Association of NSW & ACT
Incorporated

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PARLIAMENT OF NEW SOUTH WALES
Legislative Council

**Inquiry into Workers' Compensation System
New South Wales**

SUBMISSIONS By

**Aged & Community Services Association of New South
Wales & ACT Inc.**

1. Introduction

Aged & Community Services Association of NSW & ACT Inc (ACS) is the leading peak organisation for not-for-profit aged care services including residential care, community care and retirement villages in NSW & ACT.

We have over 300 members who manage 1940 services to more than 100,000 people: 716 residential care facilities (229 high care and 487 low care), 453 retirement villages and 771 community care services (217 CACP services, 77 EACH programs, 61 EACH Dementia programs, 217 HACC services and 199 of other community care services).

The services provided by our members include:

- 12,597 High Care Places
- 24,825 Low Care Places
- 17,957 Self Care Units
- 12,218 Community Aged Care Packages
- 1,515 Extended Aged Care at Home Packages
- 722 Extended Aged Care at Home Dementia Packages

ACS members are typically registered charities with not-for profit status, and provide 86% of the low care places in the sector in NSW and 45% of the high care places. There are over 610 retirement villages in NSW and 65% are Not-For-Profit. In NSW, 3.6% of people aged 65+ (32,340 people) live in a retirement village, and are of an average of 80 years. Our members provide 83% of the community care places, a vital part of helping older Australians stay in their communities.

At last count approximately 305,000 people are currently employed in aged care in Australia which represents 2.7% of the workforce. More than 122,000 aged care employees work in NSW.

2. RESPONSE TO ISSUES PAPER PROPOSALS

Any reforms proposed by this Inquiry need to strike the right balance between providing injured workers with the support, assistance and encouragement needed to recover and return to work as quickly as possible, and premium levels which do not undermine the ability of our Members to provide services to our clients and residents.

We are a member of the NSW Business Chamber, which we understand has provided comprehensive submissions in Response to the Issues Paper Proposals. In general, we support and commend the NSW Business Chamber Submissions but would make the following comments for consideration by the Parliamentary Inquiry from the perspective of our membership in NSW:

2.1 Severely Injured Workers

We support the option of providing fairer compensation to those catastrophically injured as compared to current benefits.

2.2. Removal of Coverage for Journey Claims

We agree with the recommendation of the NSW Business Chamber that the scheme no longer provide for journey claims.

2.3.Prevention of nervous shock claims from relatives or dependents of deceased or injured workers

We agree with the Submissions made by the NSW Business Chamber and support the recommendation that the scheme no longer provide for payments to relatives and dependants for nervous shock.

2.4.Simplification of the definition of pre-injury earnings and adjustment of pre-injury earnings

We agree with the Submissions made by the NSW Business Chamber and support the recommendation for the calculation of pre-injury earnings to be simplified as proposed subject to the expected increased cost of to the scheme being affordable within the overall reform package.

2.5. Incapacity payments - total incapacity

We agree with the recommendations of the NSW Business Chamber. We can see no reason for continuing any differentiations between award and non-award employees.

2.6. Incapacity payments - partial incapacity

We agree with the recommendations of the NSW Business Chamber and support an approach that provides for injured workers who have a partial capacity for work receiving a financial incentive to return to pre-injury employment.

We support the proposal that at any stage between 13 and 26 weeks where a worker reaches 80% of pre-injury hours they should be rewarded with 100% of average weekly earnings (less any amounts earned). In this way, an injured worker who is partially incapacitated worker is rewarded for increasing their hours.

2.7. Work Capacity Testing

We agree with the recommendations of the NSW Business Chamber and would support the introduction of work capacity testing along the lines of the Victorian Model's approach to partial work capacity assessments.

2.8. Cap weekly payment duration

We agree with the recommendations of the NSW Business Chamber and would support the introduction of a capped duration of weekly payments along the lines of the Victorian Model's approach for those certified as partially incapacitated.

A different approach should be taken towards severely injured workers however.

2.9. Remove “pain and suffering” as a separate category of compensation

We agree that ‘pain and suffering’ should be linked to a Whole Person Impairment objective measure.

Consideration of the “nature and condition” of each claim should be a factor as to the amount awarded. For instance, an employee with significant degenerative changes made symptomatic by a work injury should receive a compensation payment that accounts for the pre-injury degeneration/deterioration.

2.10. Only one claim can be made for whole person impairment

We agree with the recommendations of the NSW Business Chamber and support the view that the ability to have one assessment should reduce administration costs and influence injured workers to focus on recovery.

2.11. One assessment of impairment for statutory lump sum, commutations and work injury damages

We agree with the recommendations of the NSW Business Chamber and support the ability to have one assessment to reduce administration costs and influence injured workers to concentrate on recovery.

In this regard, the fast-tracking of impairment assessments to an “approved medical specialist” should provide a final, binding opinion in disputes about permanent impairment assessments and is strongly recommended.

2.12. Cap medical coverage duration

We are unaware of any evidence to support that the capping of medical coverage will limit scheme costs.

The information in the Issues Paper does not help to quantify how much medical treatment costs add to the proportion of the total expenditure. Comparative performance monitoring doesn't singularly identify medical costs. Consequently, there is no reason to suspect that on medicals alone NSW has the highest expenditure.

Rather than artificially capping medical costs we would recommend a system of periodic reviews of the workers condition and treatment regime be introduced to oversight the appropriateness of ongoing treatment costs.

2.13. Strengthen regulatory framework for health providers

We agree with the recommendations of the NSW Business Chamber and agree that an evidence-based approach which puts all providers on notice that treatment should be outcomes-based should be a necessary aspect of any framework. In the same vein, consideration should be given to the further training of health and medical providers as to the role and responsibilities of Nominated Treating Doctors.

It is of concern that invariably the cost of medical or therapeutic procedures under the workers compensation scheme is higher than where that same treatment is provided outside workers compensation.

In the same way as the Medicare system assesses or identifies over-servicing, so the workers compensation system needs to be more vigilant in policing and auditing health and medical providers.

2.14. Targeted commutation

We agree with the recommendations of the NSW Business Chamber and support the introduction of targeted commutations so long as the cost of the programme does not add to scheme costs or promote a lump sum culture among claimants.

2.15. Exclusion of strokes/ heart attack unless work a significant contributor.

We agree with the recommendations of the NSW Business Chamber and support the recommendation that strokes/heart attacks be subject to the same work test criteria as any other injury.

2.16. WorkCover – Structure & Resources

We agree with the recommendations of the NSW Business Chamber as regards the creation of a separate and independent Workers Compensation Authority.

2.17. Premium System

We agree with the recommendations of the NSW Business Chamber and support the proposition that employers who adopt "best practice" systems of Work, Health and Safety, that are recognised and auditable, should be rewarded through premium reductions.

2.18. Premium Notices

We agree with the recommendations of the NSW Business Chamber in respect of the simplification of premium notices (where possible). Outside of this rationalisation process, the premium system itself can be confusing to small or new employers.

We recommend the provision of training to small or new employers to better understand how to manage their premiums.

Additional Issues

2.19. Fraudulent Claims /Prosecutions

Whilst the overwhelming majority of worker compensation claimants are genuine we would support the allocation of more funds towards combatting the small but damaging incidences of fraudulent claims.

2.20. Legal Fees

The system provides incentives for prolonged disputation between workers and insurer's particularly in the way that lawyers' fees are structured.

If an offer by the insurer is made following an independent medical examination (IME) for whole person impairment, an employee solicitor can charge \$825 plus GST.

If the employee's solicitor refers a worker for another IME, regardless of the outcome, they are allowed to charge up to \$2475.

If the percentage of permanent impairment is over 10% an injured worker is entitled to Section 67 (Pain and Suffering) through negotiation with the insurer. If the matter can't be settled party-to-party it is then referred to a teleconference where, if the matter is settled, the claimant's solicitor is entitled to charge up to \$3525.

There needs to be a review of the structure of awarding fees to solicitors particularly where the fee structure provides a dis-incentive to the early resolution claims.

CONCLUSION

Any across-the-board increase in premiums will have a substantial effect on the delivery of Aged Care Services in NSW.

1. Any reforms proposed by this Inquiry needs to strike the right balance between providing injured workers with the support, assistance and encouragement needed to recover and return to work as quickly as possible, and premium levels which do not undermine the ability of our members to provide services to our residents and clients compared to other States.
2. As the majority of our members costs relate to labour any increase in premiums will have a deleterious effect on service delivery.

3. Our Members incomes are capped by Federal legislation such that they cannot pass on additional costs to clients or residents.
4. Unlike other industries our members do not have the option of re-locating from New South Wales to find a more cost-friendly alternative jurisdiction. Our services are provided to local communities on an as-needs basis and must remain rooted in the local communities from which they arise.
5. The additional cost of workers compensation premiums in NSW on incomes that are the same as every other State means more pressure on our member's ability to provide necessary care and support to frail elderly Australians.
6. As the nature of our operations is to provide care and support to elderly and frail Australians we are unable to avoid premium increases through changing our labour mix. Aged Care is and will always remain a labour-intensive industry which cannot be significantly changed by technology or mechanisation nor, on a philosophical level, should be.

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