Submission
No 98

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: St Andrew's Village Ballina Ltd

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Partially Confidential

St Andrews
BALLINA
our community-our home

16 May 2012

The Hon Robert Borsak MLC
The Joint Select Committee on the
NSW Workers' Compensation Scheme
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Minister

Re: **NSW Workers' Compensation System**

Thank you for the opportunity to provide information to the Parliamentary Committee regarding our thoughts on how the current workers' compensation scheme can be improved.

Can I say from the start that in providing the information this organisation does so with the intent of making the system much more equitable and transparent for both employers and employees. From the provider's point of view, the current system is not resulting in an equitable outcome for employers and employees.

We have seen a rise non-genuine claims resultant from a bureaucratic process which is providing opportunities for solicitors and practitioners to profiteer at the expense of the scheme.

The effect on our business in providing care for the aged is that in NSW we are at a disadvantage to our sister states due to higher premiums for workers' compensation. This means that we have to find efficiencies in other areas to offset the increased costs of workers' compensation. With funding capped by the federal government, we are unable to increase income but, rather, have to cut costs to offset this expense, which is becoming very difficult. These efficiencies are created from cutting staff which impacts on delivering quality care which, in turn, impacts on residents.

Set out below are our points:

1. *Disparity between the premiums paid by employers and what is paid by the insurer in claims.*
   This has resulted in our premiums being about $900,000 more than the claims experience collectively over the last four years.

2. *WorkCover sets rates for medical examinations and tests such as MRIs, x-rays, etc. that are different from the Medicare rate.*
   Same test but a different rate for no apparent reason. This results in increased cost in claims which results in an increased cost in premiums for employers.

3. *The scheme is a workers' compensation scheme whereby the worker does not contribute in anyway to the scheme.*

   There is no incentive to keep claims and costs low as it doesn't impact the worker in anyway. It is a *'no fault'* system for the worker with *'no recourse'* for the employer. Contributory negligence is not even considered when decisions are made on claims, with employers paying for employee's negligence. The system is far too geared towards the worker.

4. *The solicitors fees are capped with the claimant solicitors capped rate being approximately 20% higher than the insurer's solicitor's fee.*

   Why is there a disparity? There is no incentive for a solicitor to do insurer work - rather a greater financial incentive to do work for the claimant.

5. *The employer, through their workers' compensation premiums, pays for both costs.*

   There is no financial impact at all for an employee to dispute a claim by engaging a solicitor.

6. *If an offer by the insurer is made following an independent medical examination (IME) for whole person impairment (WPI), it costs $825 plus GST. If the employee's solicitor refers them for another IME, regardless of the outcome, they (claimant's solicitor) are allowed to claim $2475. If the percentage of permanent impairment is over 10% they are 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 it is settled and the (claimant's solicitor) is entitled to $3525. Therefore, it could be intimated there is a financial incentive for the employee's solicitor to dispute any offer by the insurer*

   An injured worker from St Andrew's went to a solicitor because they had to accept the WPI offer. Despite being instructed to accept the offer, the solicitor suggested that they should not accept it as they would get them more money. It is in solicitors' interests to keep disputing claims as it increases their fees; this in turn increases costs of premiums for all employers.

7. *If the employee's solicitor serves a WPI notice the insurer has only 10 days to respond.*

   If the report is incorrect and if they don't write back within that timeframe in relation to errors and inconsistencies, it is accepted. There is very little time to arrange another WPI.

8. *The employee can refer themselves for an IME for a WPI without referral from their treating doctor.*

   If the result of that is not pleasing to the worker they can withhold that result from the insurer and they can seek another WPI from another IME. With the insurer only knowing what IME they have received when they are served with the bill. This could be construed as 'doctor shopping'.

9. *There is too much importance placed on the date of renewal in regards to estimates. Employers need to pay premiums based on estimates and not on actual costs.*

   The estimate guidelines are not based on the most likely outcome in NSW, as they are in other states. For example, if you are totally incapacitated at 52 weeks at renewal, regardless of whether or not you have been on light duties for the previous 51 weeks, (may be because of scheduled surgery or relapse for a week) the estimate will be eight years' wages at renewal date. Other states base their estimates on the most likely outcome of the claim.

   In NSW it is based on estimating guidelines that impact premiums based on the time of the year rather than the actual cost of the claim. Employers can recoup money at

adjustment time but lose access to that money for twelve months. There is no recompense for lost income and no payment of interest back to the policy-holder by WorkCover on money they hold or invest. This results in further lost income for employers on top of their premium.

10. *An injured worker is able to see any doctor they like.*
That GP can have no training at all in return to work programs. They issue a certificate indicating that the workplace contributed to the injury based on what the injured worker tells them, with no correspondence at all with the workplace to ascertain whether or not work contributed. Their certificate is paramount in the acceptance of liability - i.e. if there is a certificate, there is a claim. Injured workers should be referred to doctors who have had specialist training by WorkCover on return to work, injury management and workers' compensation, and discussion should always be with the employer regarding whether or not they contributed.

11. *An injured worker can decline recommended treatment for an injury i.e. surgery, medication, etc. and still receive a WPI despite them not having the prescribed treatment for their injury.*
Once they receive their WPI they are still entitled to claim for further treatment including surgery and then make a further claim for WPI.

12. *An injured worker can make a claim at any time for WPI despite having not reached maximum medical improvement or not actually having had any treatment.*
As an example of the WorkCover scheme not working as it should is the case. The arbitrator's findings are attached.

In summary:

- injured her left shoulder in December 2006.
- Medical tests including ultrasounds and MRIs found no structural problems as a result of the injury.
- was offered light duties as part of her RTW plan.
- tendered resignation in early 2007 despite progressing with her RTW plan.
- In April 2009 was awarded lump sum compensation of $29,000 inclusive of pain and suffering for the injury to her left shoulder.
- lodged a further claim for injury to her right shoulder stating that it happened on the 8th May 2009 during a rehabilitation program for her left shoulder injury. did not discuss this with her medical practitioner until three months later. This claim was initially denied but was overturned on appeal and WPI was awarded to for this injury to her right shoulder. Once again this was despite there being no evidence of an injury on MRIs, etc. In addition, statements from the exercise physiologist stating that did not report any injury at the time were not taken into consideration.
- was also awarded at appeal wages back to the date of resignation. She claimed that working at St Andrew's was intolerable and that she was bullied. The arbitrator made this decision on the evidence that her manager rang her at home and enquired how she was going, in addition to asking her on a daily basis how her suitable duties were going.
- This was awarded despite the fact three statements from St Andrew's management indicated that there was no bullying and that left of her own accord.

Further, was offered wages at a rate exceeding her pre-injury duties rate. She claimed that she would have returned to full-time work as an assistant nurse, despite never having worked full-time in the preceding eight years or having completed the necessary qualifications to be employed as an assistant nurse. This was awarded in her favour.

- This claim remains open having cost in excess of $240,000. No injuries have been identified on MRI's, ultrasounds or X-Rays.

- The original injury was noted to be a soft tissue injury.

Currently there is no incentive for i to return to work as she us receiving ongoing wages based on a position that she was not in when she injured her shoulder, as well as on hours that she was not performing at time of injury.

She has made multiple other requests as part of this injury, such as child care costs and breast reduction surgery.

Cases like these have not only caused an increase in premiums to employers but have left the WorkCover Scheme without the necessary funds to pay for what could be called 'genuine' injuries. The legal fees have reached $60,000 for what started as a soft tissue injury to the left shoulder.

NSW Workers' Compensation Scheme Issues Paper.

Please find listed below comments made raised on the Issues Paper.

1 *Severely injured workers.*
We support the suggestion that injured workers who are assessed at having a Whole Person Impairment (WPI) greater than 30% receive improved income support.

2 *Removal of coverage for Journey claims.*
We support the removal of journey claims in NSW. As an employer we have no control over a worker's journey from home to the workplace and, as such, the scheme should not fund such claims.

3 *Nervous shock claims from relatives or dependants of deceased or injured workers.*
These types of claims should only be made available to immediate family and should be capped at the lump sum death benefit.

Points 4, 5, 6, 7 & 8
We support changes recommended with the goal of providing financial incentive for the injured worker to return to work. Currently the scheme provides no incentive for an injured worker to return to work as there are ongoing weekly benefits payable for an indefinite period.

9 *Remove Pain and Suffering as a separate category of compensation.*
NSW should be brought into line with other states. No separate category for Pain and Suffering will assist in the removal of the claimant's solicitor "doctor shopping" in order to achieve a WPI of greater than 10%. We see no equity in a scheme that only pays Pain and Suffering for claims above 10% with those below this figure receiving nothing.

10 *Only one claim can be made for Whole Person Impairment (WPI).*
We support the recommendation – this will assist in the removal of ongoing solicitors' fees and medical costs that arise from multiple WPI claims.

11 *One assessment of impairment for statutory lump sum, commutations and work injury damages.*
We support this recommendation - this would help avoid multiple medical examinations for WPI for the injured worker. When this is in dispute an injured worker is sent to an AMS for a binding decision. We feel this should be the first step rather than the last step.

12 *Strengthen work injury damages.*
No comment.

13 *Cap medical coverage duration.*
We support the capping of medical costs, as is currently the case in other states. This would help alleviate gouging by unscrupulous providers of treatment.

14 *Strengthen regulatory framework for providers.*
We strongly support the need for improved governance of the health providers. Currently there is no education for health providers in workers' compensation claims.

We see this as a specialist area requiring specialist knowledge and, as such, there should be a register of specialist practitioners to manage workers' compensation claims. Currently an injured worker can see any medical practitioner of their choosing, regardless of their skills and abilities in managing return to work.

15 *Targeted commutation.*
We support targeted commutation which would result in the ceasing of long term claims. We see no benefit for the worker to have claims opened indefinitely.

16 *Exclusion of strokes/ heart attack unless work is a significant factor.*
We support the exclusion of strokes/heart attacks in accordance with the recommend-dation made in the Issues Paper. We believe that causation for strokes and heart attacks is not normally associated with workplace injuries, plus factors that impact on rehabilitation and return to work are not typically workplace issues.
This would eliminate the unnecessary charges from solicitors.

Other Matters:

Reference to Point 9, page 2.
An example of the problems with estimate guidelines is when St Andrew's purchased another company. Due to one claims estimate and the impact of merging, we were forced to set up another company entity to enable us to purchase the new business. This resulted in a new construction, solicitor's fees, new ABN, etc.

Once again, thank you for allowing St Andrew's to respond to the Issues Paper and make further comments in addition to that paper. We look forward to a positive outcome from this Parliamentary Inquiry for the betterment of all concerned.

Yours sincerely

P M Carter
Chief Executive Officer