

**Submission
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INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: NSW Teachers Federation

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NEW SOUTH WALES TEACHERS FEDERATION

SUBMISSION TO

**JOINT SELECT COMMITTEE ON THE
NSW WORKERS COMPENSATION SCHEME**

ON

INQUIRY INTO THE NSW WORKERS COMPENSATION SCHEME

Authorised by

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Introduction

The New South Wales Teachers Federation (NSWTF) represents 60,000 school teachers in New South Wales teaching a range of students in diverse workplaces. Members work in preschools, infants schools, primary schools, secondary schools, schools for specific purposes, TAFE colleges, juvenile justice centres and in corrective facilities.

The NSWTF supports and endorses the Unions NSW submission particularly in regard to WorkCover and future funding commitments. We know of many cases where workers are injured as a direct result of Work Health and Safety (WHS) issues which have not been rectified in a timely manner. For example:

- the presence of mould in classrooms which has caused chronic lung conditions,
- trips and falls due to poorly maintained grounds and floors,
- manual handling injuries especially in schools with students with special needs without appropriate support equipment and training.

Members report that Department of Education and Communities (DEC) frequently fails to respond in a timely matter to issues that are identified because they claim that there are funding constraints.

Federation believes that an increased focus on injury prevention would be a much more effective way of managing workers compensation costs than by changing the system presently in place. If WorkCover were able to play a more proactive role in the inspection of workplaces regarding workers concerns, many workplace injuries would not occur. The present level of WorkCover inspections does not provide a satisfactory impetus for dangerous conditions and practices to be rectified and this leads to an increased number of injuries than is necessary. This is not the fault of the Workcover inspectors as there are insufficient numbers of inspectors to intervene in this way.

It is important that the NSW Work Health and Safety Act allows unions to prosecute employers who fail to meet their safety obligations because experience has shown that WorkCover does not always investigate or prosecute employers who may be in breach of WHS obligations.

The following commentary relates to the options for change outlined in the NSW Workers Compensation Scheme Issues Paper.

1. Severely Injured Workers

It is unfair to assess severely injured workers by using an assessment of whole person impairment of 30% or more. Many workers who are severely injured would fall well below an assessment of 30% WPI, in particular those workers who have suffered a psychological or psychiatric injury. An example of a Federation member who has been assessed by Approved Medical Specialists and who is totally incapacitated for work is a teacher with chronic major depression who has 15-20% WPI.

The injury occurred when a fight broke out between inmates in a classroom in which the teacher was working.

2. Removal of Coverage for Journey Claims

Despite the fact that this coverage accounts for only fractionally more than 1 in 40 workers compensation claims in New South Wales, the Teachers Federation believes that this needs to remain as an essential part of the scheme. As a part of a state-wide public education system, the majority of teachers are initially appointed to schools centrally and many more thousands are transferred each year. As a result, many teachers are required commute considerable distances to their workplaces each day.

When student enrolment numbers drop within a school, teachers can become nominated transfers who will be appointed to vacancies within the surrounding staffing districts. Such transfers frequently result in the teacher travelling longer distances from home. This can mean a journey of 100km or more to the nearest school in rural areas, or travel in excess of 1 hour in metropolitan Sydney.

This situation is further exacerbated in Sydney where the high cost of housing means that teachers have no alternative but to travel from outlying suburbs to workplaces. It is essential that workers are provided with cover for travel between work and home as, unlike the extensive assistance provided by the Transport Accident Commission in Victoria, the Motor Accidents Authority in NSW provides only very limited coverage except for the most significant of injuries incurred in an accident.

3. Prevention of Nervous Shock Claims From Relatives or Dependants of Deceased or Injured Workers

Under the Civil Liability Act 2002 a close family member is able to recover damages for pure mental harm as a result of the death, injury or placing in peril of a person. The definition for close member of the family includes the same people identified in s 151P of the Workers Compensation Act 1987. For instance, in the case of two essentially identical incidents where there is a recognised psychiatric illness developed in a close family member as a result of nervous shock. The notion that one injury would not enable an award of damages for nervous shock simply because it occurs in the workplace is not acceptable.

Although this form of compensation is not commonly pursued by Federation members, the Federation believes that nervous shock claims for close family members ought to be preserved to support the families of workers who are seriously injured or die at work where the employer has not ensured their safety.

5. Incapacity Payments – Total Incapacity

The statutory rate of \$432.50 after 26 weeks for workers receiving compensation places many workers on below the poverty line. At present the NSW Teachers Federation is dealing with many members who feel compelled to return to work because of financial reasons even if this is against medical advice. Federation believes that to reduce the timeframe for which injured workers receive full assistance will only exacerbate this situation.

It is during the first 26 weeks that a worker is usually most significantly incapacitated and during which rehabilitation is pursued. This period allows some injured workers to make appropriate arrangements to their financial commitments to step down to the statutory rate should they remain incapacitated for a longer period. It provides security for workers who already are poorly paid and will fall below the poverty line after 26 weeks. Furthermore, it is essential that workers only return to work when they are capable in accordance with medical advice rather than as the result of financial stressors.

Even a staged reduction between full pay and the statutory rate between weeks 13 and 26 would cause immense stress on teachers injured at work. For instance a reduction to 75% of the salary of an experienced classroom teacher would mean a loss of \$832.50 per fortnight in gross salary terms and the statutory rate of pay represents less than 26% of gross salary. It is not satisfactory to say that most injuries heal within a timeframe of 13 weeks and that therefore workers ought to be “encouraged” to return to work by way of significant financial pressure. The workers can only extend their time on workers compensation on medical advice and forcing injured workers back too early is likely to lead to further injuries.

Injured workers should receive significantly more support, both financial and other than the statutory rate and to impose any reduction prior to 26 weeks is unfair and unjust.

6. Incapacity Payments - Partial Incapacity

Whilst an increase in weekly payments of workers compensation for partially incapacitated workers may encourage injured workers to increase their hours of work, it would be grossly unfair to punish those workers who are unable to increase their hours. Employers should be encouraged to support workers access suitable duties and where necessary should be penalised when they don't. It is not uncommon for injured workers to be advised that the employer is unable to provide suitable duties, even where the employer is a state government department with lots of workplaces where the worker could be accommodated, for example teachers with significant back injuries should still be possible to be engaged in work which could benefit the students and the school.

Payments should not be made for the purposes of encouraging injured workers to return to work against medical advice. There would be significantly more success with return to work programmed with the provision of adequate support to injured workers and a genuine commitment to providing suitable duties.

8. Cap Weekly Payment Duration

The fact that the government intends to stop weekly payments to long term injured workers is inherently unfair. Workers remain out of the workplace only for as long their treating physician recommends and it is wrong to suggest that it is common for injured workers to remain out of the workforce for any longer than is necessary.

As the legislation currently stands injured teachers are already penalised by being reduced to less than 26% of their normal salary after 6 months. Furthermore, injured workers who are unable to return to pre-injury earning capacity may not have any entitlement to social security benefits if the injured worker's partner is in receipt of earnings.

Federation maintains that the provision of weekly payments should continue until such time as injured workers are able to return to work. It is grossly unfair to remove all financial support to workers who are unable to work on the advice of medical practitioners.

9. Remove “Pain and Suffering” as a Separate Category of Compensation

There already are significant restrictions in place under the existing legislation for workers to qualify for lump sum payments for pain and suffering. The imposition of a 10% WPI minimum threshold for pain and suffering payments already excludes many work injury claims where there is significant pain and distress as a result of the injury. Furthermore, since the amount that can be awarded is legislatively capped and that compensation is awarded proportionate to the worst case scenario there are already significant controls on injured workers qualifying.

Federation maintains that the current requirements for obtaining compensation for pain and suffering already impose significant restrictions on injured workers and that completely abandoning this category of compensation will create significant financial stress on the individual and their family.

10. Only One Claim Can Be Made For Whole Person Impairment

As has been stated elsewhere in this submission, workplace injuries are often of types that deteriorate over time. Lump sum payments for whole person impairment vary from as little as \$1,375 up to a maximum of \$231,000. The system as it currently stands provides a point in time assessment and the compensation is limited to non-economic loss only, subsequent claims merely reflect the increase in WPI and do not represent a major expense. There are already thresholds put in place on claiming for a deterioration of WPI both in time and extent of deterioration. These limitations already have a negative impact on injured workers which will be exacerbated if the proposed changes are implemented

Federation believes that it is only appropriate that if a condition deteriorates resulting in an increase in WPI that meets the current thresholds that adequate compensation be provided. The current to allow top up payments system should continue

12. Strengthen Work Injury Damages

The Civil Liability Act 2002 specifically excludes civil liability for compensation under the Workers Compensation Act 1987 and should not be used as a model for reforming Workers Compensation. For instance Part 1A Division 4 of the Civil Liability Act precludes an injured person from proving negligence if aware of the risk of harm if it was an obvious or inherent risk. Inclusion of such a provision would impose a lesser duty of care for employees in more dangerous occupations. In the context of teachers this would be best seen in the obvious and inherent risks that exist with working in schools where students have special needs where the exhibiting of violent and challenging behaviours puts both teachers and other students at risk.

It is unfair to provide a reduced duty of care on an employer who has a responsibility under the WHS act to maintain safe workplaces so far as is reasonably practicable and therefore lower the likelihood of compensation merely because of the specific conditions that exist in a workplace. Teachers in juvenile justice schools or correctional services provide education for sometimes extremely violent students should be able to access the same compensation as their peers

13. Capping of Medical Payments Duration

Depending on the injury, it is common for treatment to be required over a long course of time including after the worker is back in pre-injury employment. An initial injury may not require treatment until some time after the injury occurs or may require subsequent treatment due to deterioration. For example, those workers who suffer knee injuries often require arthroscopies, and then some years later, a knee or partial knee replacement.

To set an arbitrary time limit after which medical expenses could no longer be obtained is both unfair and illogical. Only injuries that are directly related to the workplace injury are covered, therefore, it is appropriate that continued medical support be provided in such circumstances.

Furthermore, all medical expenses must be certified as reasonably necessary (a practice that Federation members can attest is applied rigorously) and are currently capped by legislation. In light of this fact it is unreasonable to suggest that the provision of medical treatment is in some way an unchecked source of waste in the provision of workers compensation. It is also clearly self-evident that continued provision of adequate and timely medical support to injured workers is more likely to keep them in the workforce and contribute to their rehabilitation.

Federation believes that medical payments must to be maintained to the extent that they are necessary without imposing an arbitrary time limit.

Conclusion

The New South Wales Teachers Federation believes that the present features of the NSW Workers Compensation Scheme provide support for injured workers which should be improved, not cut. Many of the proposed options for change to the scheme aimed at saving money will place significant pressure on workers and their families.

Federation reaffirms its belief that the most effective way of minimising costs attributable to workplace injuries is by the enforcement of a safe workplace. An investment in Work Health and Safety within workplaces, increasing regulation through WorkCover inspections and prosecutions with increased consequences for breaches would have a greater and more long lasting impact in the reduction of workplace injuries and as a result, Workers Compensation payments.