

**Submission
No 294**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

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Our Reference: AJOH:ML

Your Reference:

17 May 2012

Mr Kevin Anderson
Member of Parliament
Fitzroy Street
TAMWORTH NSW 2340

Dear Mr Anderson,

Re: Workers Compensation

We refer to our conference with you on 17 February 2012. We advise that the writer has been practicing as an Accredited Specialist Lawyer in personal injury for a number of years. Accordingly, the writer has had the opportunity of observing various injuries to injured workers in the north west area of New South Wales.

This correspondence is to highlight to your Government where changes could be made to the current regime with a view to making the scheme more affordable and providing full value to employers for the premiums paid towards indemnifying employees who sustain injuries during the course of their employment:-

1. **Reports Prepared by Rehabilitation Organizations**

Currently the situation is that organizations like Interact and Konnect Rehabilitation prepare reports known as vocational and functional assessment reports. Rehabilitation organizations provide these reports to Insurers. The fees that these types of organizations charge are entirely unregulated and there are reports that fees can range from \$5,000.00 to \$15,000.00. Clearly, this is a significant burden on the scheme. The reports prepared often are of no assistance in relation to the overall resolution of the claim. The fees that these sorts of organizations charge need to be regulated and capped.

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The Minister for Finance recently at a Terrigal conference advised that one third of the pool of revenue to fund the scheme is being spent on case management which in our view is being wasted on the aforementioned type reports provided by numerous rehabilitation organizations including reports prepared by Occupational Therapists and Physiotherapists. We point out that a worker's legal representatives fee are capped and regulated as are reports prepared by Medico Legal Specialists. The fees regulated for a standard medico legal report assessing WPI is \$838.20 pursuant to Schedule 2 of the Costs and Fees Schedule pursuant to section 339 of the Workplace Injury Management and Workers Compensation Act 1998.

2. Power to Negotiate with Insurers on Lump Sum Claims

The situation under the current scheme is that assuming a claimant obtains medical evidence reflecting a permanent injury under AMA 5th Edition of say by way of an example 8% WPI. The Insurer may well have evidence that the injury via the Doctor qualified by the Insurer is 4% WPI. There is no power to negotiate a resolution of the claim at an early point in the proceedings of say 6% WPI. This would prevent matters travelling to what is known as an Approved Medical Specialist and therefore further costs escalating.

3. Commutation

Commutations are designed to bring a claim to an end on a once and for all basis. The proceedings cannot be reopened. The situation under the current scheme is discussions concerning Commutation cannot take place unless there is a finding of 15% WPI under AMA 5th Edition. This is a extremely difficult threshold to reach and I think less than 5% of claims would reach the threshold. Commutations need to be far more flexible as both Insurers and Claimants both like to bring an end to a claim on a final basis.

4. Register of Employers for Suitable Duties

It would be extremely helpful to injured workers who have some residual earning capacity to know that there are employers within the community who are willing to take on somebody in a lighter capacity and provide some form of employment for these types of injured workers. At the moment Rehabilitation organizations provide opinions about jobs that are largely unavailable or unsuitable to the worker in our area. I have not seen anyone who has actually obtained a position via a Rehabilitation provider.

This needs to be corrected and perhaps legislation needs to be introduced into the Parliament providing incentives for prospective employers to take on a worker who is fit for lighter type duties. At the moment, there seems to be a lot of fear that prospective employers will be sued assuming some sort of an aggravation occurs at work. This could be legislated to protect the new employer who has been willing to provide an injured worker with

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an opportunity to rejoin the workforce towards ensuring that if there was some type of reoccurrence or aggravation to an earlier injury, in those circumstances, the employer would not be held liable.

Would you be kind enough to consider the aforementioned issues with members of your Government.

Yours faithfully,
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Per: 

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