

**Submission
No 196**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Association of Independent Schools of NSW
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The Association of Independent Schools of New South Wales Limited

Level 12, 99 York Street, Sydney NSW 2000
Phone (02) 9299 2845 Fax (02) 9290 2274
Web aisnsw.edu.au Email ais@aisnsw.edu.au
ABN 96 003 509 073

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Joint Select Committee on the NSW Workers' Compensation Scheme
Parliament House
Macquarie St
SYDNEY NSW 2000

Dear Committee Members,

Workers Compensations Issues Paper - Submission

In response to an invitation from the Committee, the Association of Independent Schools of NSW (AISNSW) wishes to provide the following information on what we view as recurring issues in the course of assisting schools in the Workers Compensation process.

AISNSW is the peak body for independent schools in NSW and represents over 450 independent schools which employ in excess of 20,000 teaching and non-teaching staff. In making this submission the Association draws on its knowledge and experience in assisting schools with their concerns and requirements in relation to workers' compensation and associated matters.

Primary Concerns

AISNSW is concerned about the impact on independent schools of inflated premium costs that are arising from:

- complicated and unclear premium calculation methods by WorkCover NSW
- the impact of claims that have been poorly handled by the insurer
- poor practice in assessing for provisional liability especially in regard to psychological injury claims arising from performance management actions
- poor factual investigative practices in assessing difficult claims
- acceptance of claims without investigation even when there is reasonable doubt shown by the employer as to it being a work related injury, and
- the impact of nominated treating doctors who do not facilitate or participate fully in the early return to work of a worker after injury.

In relation to the listed options:

1. AISNSW agrees that for over 30% of WPI there needs to be improved income support, return to work assistance where applicable and more generous lump sum compensation. In line with this, the testing for permanent impairment needs to be rigorous and consistent to ensure that the assessments are correct, especially in light of removing the ability to top-up WPI.
2. Journey Claims: AISNSW agrees that they should be removed with the exception of where a real or substantial connection is made between employment and the incident causing injury.
3. The employer should not be liable for nervous shock claims of family members arising under the workers compensation legislation unless there is a tangible link such as the family member also working for the same employer or witnessing the accident, or arising out of negligence of the employer.
4. AISNSW agrees that there should be a single measure for pre-injury earnings. The calculation should be based on average weekly earnings or base rate of pay, whichever is higher, and should include those regular allowances, penalties and higher rates of pay if that would have continued if not for the injury. The current system is biased toward award based employees and does not reflect the real earnings of injured workers.

The wages benefit should be indexed based on CPI or by step increases as they would be in agreements or awards where applicable.

5. The current NSW step down point does not encourage early return to work by the injured worker and goes against evidence that an early return to duty provides more durable outcomes. For total incapacity - 100% remuneration until the first step down at 13 weeks, to 90% from weeks 14 - 26 then 80% after 26 weeks with work capacity testing undertaken prior to the 52nd week. Remuneration should be based on Whole Person Impairment (WPI) and capacity to work after that point, based on regular set capacity testing intervals.
6. For partial incapacity - up to 26 weeks at 100% pre injury earnings, after 26 weeks – if working more than 50% of their ordinary hours then top up to 100% pre-injury earning, if they are working less than 50% of hours then top up to total incapacity amount only. Capacity testing should be undertaken at regular set intervals.
7. Work capacity testing should be implemented at set intervals to assist the injured worker in moving forward in returning to work and minimising some of the long term claims that trail on due to lack of active claims management.
8. The cap in weekly payment duration can assist in finalising the claims if it is tied to the work capacity testing and WPI determinations. A time limit set on its own may cause hardship in some cases.
9. Pain and suffering should be incorporated into the over 10% WPI and not treated separately.

10. AISNSW strongly agrees that only one claim for WPI should be able to be made per claim when the worker's condition is stabilised. There should be an exception of a significant deterioration of more than another 10% WPI for a subsequent claim. Claims for subsequent injuries should not be affected.
11. One assessment report for impairment in relation to work injury damages, statutory lump sum and commutations may prevent dispute between conflicting reports, however the fact that dispute occurs is an indication that the assessment methodology needs to be reviewed and tightened.
12. The *Civil Liability Act* provisions dealing with the law of negligence should apply to the work injury damage claims.
13. There needs to be a cap on medical benefit duration. For claims with weekly benefits, ceasing 1 year after the end of weekly benefits; for medical claims only a set period based on capacity testing.
14. A stronger regulatory framework for service providers will be useful in weeding out those who provide poor service and billing. There should be the ability for the employer to provide feedback on and have an avenue for complaints to be heard and acted upon in regard to experience with service providers, including nominated treating doctors.
15. Targeted commutation allowing thresholds to be relaxed in certain circumstances may assist in finalising some claims.
16. AISNSW agrees that the removal of strokes/heart attack from being assessed as a claim unless work is a significant contributing factor.

The Association is happy to be involved in any further consultation or submissions to the Committee if required. Please contact Cathy Lovell, Director: Workplace Management on (02) 9299 2845 or at clovell@aisnsw.edu.au if any further information regarding this submission is required.

Yours sincerely,

Dr Geoff Newcombe
Executive Director