

REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE WORKCOVER AUTHORITY

Organisation: Injured Workers Support Network

Date received: 14/02/2014

Subject: functions of the WorkCover Authority under the Workplace Injury Management and Workers Compensation Act 1998

The Honourable David Clarke, Chair
NSW Legislative Council Standing Committee on Law and Justice

Dear Mr Clarke,

Based on the accounts provided by workers who were injured at work, we have identified some common issues relating to their injury management and return to work experiences. We believe that information on their injury management and return to work experiences will contribute to the Law and Justice Committee's review on the exercise by the WorkCover Authority in the performance of its duties under the Workplace Injury Management and Workers Compensation (WIMWC) Act 1998.

We understand that under sub-section 22(3) of the WIMWC Act, WorkCover has the following general duties and must exercise its authority in the following areas:

- (i) **Work Health and safety(WHS)** – to promote the prevention of workplace injuries and diseases as well as to develop health and safe workplaces in NSW
- (ii) **Injury Management (IM)** – to promote the prompt, efficient and effective management of injuries to workers,
- (iii) **Workers Compensation (WC) Insurance** – to ensure the efficient operation of WC insurance arrangements
- (iv) **Co-ordination of the WHS and Workers Compensation (WC) Legislations** – to ensure appropriate co-ordination of WHS & WC legislations for the administration of the WC schemes

Our submission below is related to the above four functions of WorkCover Authority.

(I) WHS –

The object of the WHS and its predecessors were to offer protection to workers to ensure that they are not exposed to risks to health and safety in the workplace. While the injured workers work in different industries, accounts of their workplace health and safety experiences showed that health and safety is a more like a “tick and flick” exercises to cover the organisation's risk rather than for the genuine concern for workers' health and safety. For example, it is not uncommon for workers who have raised issues relating to compliance of standards, policy governance and professional standards were exposed to systemic bullying by senior staff of their organisations. The duration of the bullying varied greatly from 2 to 6 years. When workers rang WorkCover regarding the bullying and the negative health consequences such as sense of helplessness, depression and social isolation, they were consistently told to raise the matter internally and that WorkCover were unable to intervene in the internal management of the organisation.

Adequacy of regulatory functions:

When dealing with physical risks to health and safety, WorkCover seems to be able to enforce the absolute nature of the WHS duties to ensure that workers are not exposed to risks to health and safety.

However, when it comes to psychological risks to health and safety, WorkCover seems to be unable to appreciate the absolute nature of the WHS duty of ensuring that workers are not exposed to psychological risks to health and safety. As a consequence, WorkCover's enforcement activities has not shown that it is able to get employers to comply with the WHS law of ensuring that workers are not exposed to psychological risks to health and safety.

Contrary to popular misconception, bullied workers do not want WorkCover to intervene in the internal management, because good management behaviour should not harm the person's dignity, it should empower workers to use their initiative to work in a productive, ethical and civil manner. Even in the case of performance management, good management practice would aim at providing structure support such as training, mentoring, to lift performance rather than using bullying tactics to put the person down or to harm the person's dignity.

Bullied workers just want employers to stop the systemic bullying behaviour that poses risks to their psychological health and safety

Consequences

1. **Inequity** – workers exposed to physical risks to health and danger are provided with more effective compliance activities by WorkCover compare to workers exposed to psychological risks.
2. **Health consequences** - workers exposed to prolonged period of workplace bullying suffer post traumatic stress disorder (PTSD) and the level of PTSD is greater than a train driver who inevitably runs over a person on a train track. A number of workers from various organisations felt so hopelessly cornered and helpless that they've considered taking their own lives. A number of workers have attempted suicide.
3. **Absence of deterrence to stop workplace bullying** – by not dealing effective with systemic bullying behaviour in the workplace, employers will see WorkCover's ineffective action as a behaviour that is tolerated under the WHS Act.
4. **Increase in Injury Management & health care costs**– If the risks of psychological harm posed by workplace bullying is not properly address, it will not only affect the Injury Management cost of the Workers Compensation scheme, but also affects the long term health care cost of NSW.

(II) IM & WC Insurance

While most small to medium businesses are in the workers compensation insurance scheme, some big businesses are self-insurer and manage the IM in house. As a self-insurer, the employer has the ability to appoint its health professional for their injury management program. This creates the opportunity to directly influence the manner in which workers' injuries are managed. In such a

situation, the potential financial benefit associated with rejecting workers compensation claims or the ability to direct health service contractors to provide fast and low effect injury management treatment, potentially, creates a conflict of interest.

Regardless whether their employers are a self-insurer or otherwise, accounts by injured workers seem to suggest that injury management and return to work are managed more often from preventing fraudulent claim of health services. It is extremely rare to hear a worker stating that s/he felt empowered and supported by scheme agents or self-insurer's agents with the ability to decide their injury management and return to work under the guidance of their medical doctor. The monitoring by the scheme or self-insurer's agents came across as keeping cost down rather than for the interest of return the worker to pre-injury state of health and well-being.

Adequacy of regulatory functions:

The half yearly report on WC insurance scheme agents only looked at the composition and distribution of IM claims. It does not provide information relating to the quality of the Injury management program by scheme agents.

In the case of self-insurer, there is no requirement for a self-insurer to put in place a quality assurance program with appropriate IM quality audit. Additionally, the absence of an independent injury management health providers are often hidden from the workers and lacks transparency, impartiality and accountability

Consequences

1. **Cost to the NSW economy:** - more injured workers will mean lowering the hours of potential labour in NSW. This will in turn affect NSW economic output.
2. **Quality of life** – Work place injuries affect the quality of life of workers. The sense of wellbeing of a worker should not be lost or compromised as a result of poor health and safety management.
3. **Cost to the Worker** - Suffering an injury from work will result in a worker having poorer health and well-being. Following the workplace injury, if an injured worker is required to deal with an injury management program that is more focus on preventing fraud rather than rehabilitating the worker to pre-injury health and well-being will add additional stress to the injured worker. A good Injury Management and return to work process should not add stress to further decrease the injured worker's quality of life. The injury management should empower the worker's recovery rather than make the worker feels disempowered.

(III) Co-ordination of the WHS and Workers Compensation (WC) Legislations

The scarcity of evidence from WorkCover's guidance material as well as most organisations that injured workers worked for showed that a co-ordinated approach in achieving a safe workplace, injury management and Workers Compensation Insurance only exist in law rather than operational principles that guide workplace health and safety behaviour.

Our observations suggested that WorkCover seemed to have adopted the assumption that most organisations are compliant with the WHS and Workers Compensation law as there was no interest shown in complaints regarding inadequate WHS management or injury management of self insurers. It seems that WorkCover's paper audit of the self-insurer's systems is accepted as evidence that the self-insurer's paper system is fully implemented and working well.

We hope that our submission contribute to the review of the exercise by WorkCover and their functions by this Standing Committee. We would like to thank the Committee for their role in supervising, monitoring and reviewing the functions of WorkCover to ensure that WorkCover is able to deliver the standard of care provided in the WHS Act, Worker's Compensation and the WIMWC Acts to the NSW workers.

Sincerely