

**REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE  
WORKCOVER AUTHORITY**

**Organisation:** Australian Lawyers Alliance

**Date received:** 3/02/2014

---

**Australian Lawyers Alliance**

**GPO Box 7052**

**Sydney NSW 2001**

The Hon. David Clarke MLC  
Committee Chair  
Standing Committee on Law and Justice  
Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

By email: [lawandjustice@parliament.nsw.gov.au](mailto:lawandjustice@parliament.nsw.gov.au)

3 February 2014

Dear Mr Clarke,

**Review of the exercise of the functions of the WorkCover Authority of NSW**

The Australian Lawyers Alliance welcomes the opportunity to provide a submission to the Standing Committee on Law and Justice ('Standing Committee') in its review of the exercise of the functions of the WorkCover Authority ('WorkCover').

The Australian Lawyers Alliance ('ALA') is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

The ALA have read and entirely endorse the comments and recommendations made within the submission of the Law Society of NSW.

In particular, we emphasise that:

- WorkCover has too many functions to operate efficiently, and is often conflicted in its functions;
- WorkCover's communication with stakeholders is often inadequate, including failure to consult regarding the issuing of guidelines following the *Workers Compensation Legislation Amendment Act 2012* (NSW);
- The role of WorkCover in the development of subordinate legislation must be reviewed;



- WorkCover has a distinct conflict of interest in being nominal insurer and safety regulator, decision maker, overseer of the Workers Compensation Commission, overseer of WIRO, and its functions regarding the licensing of self and specialised insurers.

### **Client experience**

Many clients who experience the WorkCover scheme are traumatised by the lack of transparency they encounter; including aggressive fighting against their claims by scheme agents and insurers and an inability to receive independent advice concerning process and their rights. The scheme is being administered to the disadvantage of injured workers wherein their experience is a traumatising one.

Many clients feel that justice is not served in their case, and are concerned about the individuals after them who will go through the same process.

### **Effect of 2012 changes**

We wish to reiterate that the changes made in 2012 to the NSW workers' compensation scheme have had a deleterious effect on workers' rights.

The axing of the benefits provided to workers for economic loss over the medium to long term means that a large number of injured workers can be expected to only find access to economic support under the welfare system: either Newstart or the Disability Support Pension (DSP), both of which do not provide adequate remuneration.

We note that the Federal government intends to review welfare payments in 2014. The ALA has previously provided submissions on the inadequacy of the Newstart payment for injured workers, in our submission to the Senate Education and Employment Committee in July 2012.

Ultimately, WorkCover NSW must operate in such a manner that its activities and functions are devoid of conflict of interest. Individuals attempting to seek compensation and justice for injury in NSW should not be left out in the cold but should find ready access to support that is adequate and assists them in their ongoing recovery.

The very fact that the scheme's financial position was turned around to the tune of \$4.4 billion in 6 months is evidence that the legislative reform, designed to reduce a substantial deficit over a 5 to 10 year period, went far too far.

The legislative reforms failed to address key recommendations of the Joint Select Committee on Reform of the Workers Compensation and improve the scheme's performance in terms of return to work, early injury resolution and reduced disputation.

We hope that the Committee's findings are reflective of the experiences commonly felt by injured people in NSW, with recommendations for change on the above points.

The ALA looks forward to the opportunity to expand upon this submission in the course of the review.

Yours faithfully,

Jnana Gumbert

NSW State President

Australian Lawyers Alliance