

**Submission
No 14**

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

Organisation: Flight Attendants' Association of Australia

Date received: 17/01/2014



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17 January 2014

The Hon. Mr David Clarke
Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

Submission into the exercise of the functions of the WorkCover Authority

Dear Mr Clarke,

The Flight Attendants' Association of Australia is pleased to provide submissions to the above inquiry.

Yours faithfully,

Jason Hart
National Industrial Officer



Flight Attendants' Association of Australia - International Division

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Submission to the New South Wales Legislative Council
Standing Committee on Law and Justice

Inquiry into the exercise of the functions of the WorkCover Authority

January 2014

EXECUTIVE SUMMARY

Our submission comprises the following:

1. Introduction & Recommendations

The WorkCover website heralds that the stated aim of the NSW Workers Compensation Scheme is to provide protection to workers and their employers in the event of a work-related injury or disease.

The aim of the scheme is to maintain a financially viable workers compensation system that is fair and affordable for employers and improves outcomes for injured workers.

It is our submission that the June 2012 amendments made to the *Workers Compensation Act 1987* do not deliver a system that is fair nor does it provide improved outcomes for injured workers. In fact, we have found the opposite to be the norm rather than the exception.

2. Case Study – Allianz treatment of injured workers

Each year, the FAAA assists more than 80 workers who have filed workers compensation claims. Regrettably however, where those employees are covered by Allianz, we have experienced consistent negativity with the way in which the insurer discharges its obligations.

What we have uncovered is that Allianz's approach to injury and treatment management results in the injured worker remaining unfit to return to the workplace for longer than necessary.

We submit that agents for Allianz who hold the policy for our members, routinely deny treatment costs without objective reasons, do not comply with statutory timeframes, frequently frustrate the treatment of workers by exploiting provisions which build in substantial delays; or simply ignore requirements to issue notices under the act to provide reasons for declination of either the claim or funding request.

1. Introduction

The Flight Attendants' Association of Australia – International Division welcomes the opportunity to make a submission to this inquiry. We very much hope that the Parliament will adopt our recommendations to ensure that injured workers across this State are truly looked after in their greatest hour of need.

Recommendation 1

That Parliament amend the *Workers Compensation Act 1987* to remove caps and limitations on medical and other treatment expenses beyond 12 month from date of injury.

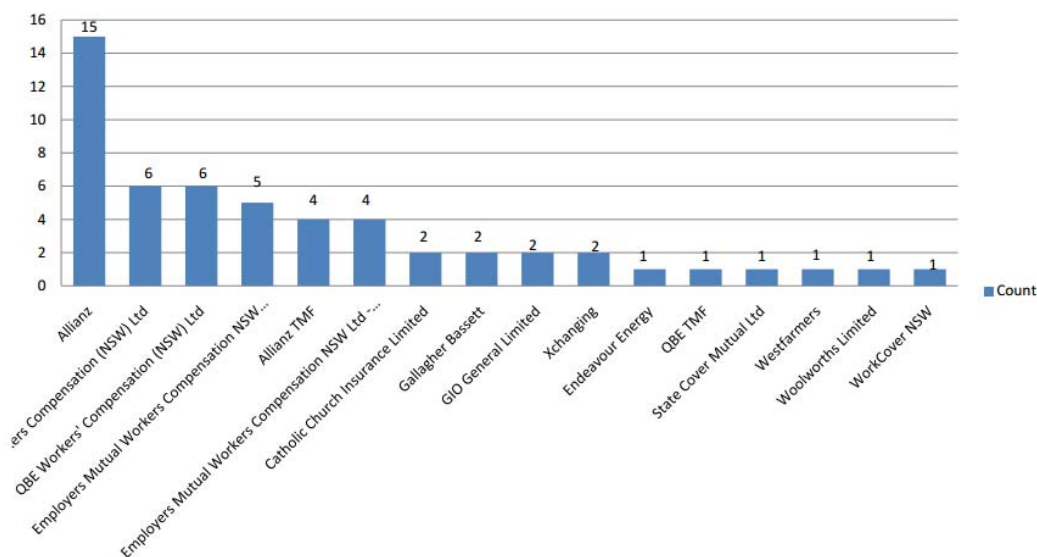
What's going wrong with Allianz?

A periodic performance review from the WorkCover Independent Review Officer (WIRO) indicates that Allianz has the highest dispute rate by workers compensation claimants. Allianz has received more than double the amount of WorkCover complaints than that of any other insurer this year.

In 2012 the NSW Government made amendments to the WorkCover legislation that drastically changed the eligibility for injured workers seeking compensation, and put a one year cap on the payment of medical costs. The changes also, for the first time, saw incapacitated workers being cut off of their weekly benefits without an entitlement to challenge the termination in the Workers Compensation Commission. As a result many workers are being deemed ready to return to work before they are ready, leaving them financially incapacitated. The negative financial position suffered by an injured worker has been significantly exacerbated by the abolishment of lump sum compensation for all injuries unless their Whole Person Impairment is greater than 10%.

Already this year WIRO, who receives the highest escalated reviews, has received 15 complaints in regards to Allianz as an insurer. Allianz is recognised as an authorised scheme agent by WorkCover which means that they are eligible to receive performance bonuses from the NSW Government based on the number of cases they assess as eligible for compensation, this means that they are receiving a bonus for rejecting victims claims.

COMPLAINTS RECEIVED BY INSURER - YTD APRIL 2013



<http://wiro.nsw.gov.au/about/publishing/results/> - Report 4 Activity Summary April 2013

Recommendation 2

That Parliament amend the *Workers Compensation Act 1987* to require a new bench mark for final assessment of claims not exceed 72 hours from date of claim.

Recommendation 3

That Parliament amend the *Workplace Injury Management & Workers Compensation Act 1998* to remove the right of insurers to automatically require an injured worker to attend an independent medical examiner where a request for treatment costs are disputed. That instead, the insurer must accept the treatment proposed by the treating specialist and automatically approve treatment costs within a 24 hour period of receipt of report from treating specialist.

2. Case Study – Allianz playing games with injured workers health

Regrettably, the Flight Attendants' Association of Australia far too frequently is called upon by our members to assist with disputes with the insurer.

Approximately one third of our membership come under the Allianz policy if injury is suffered.

The average length of time an injured worker is kept waiting for a funding request for treatment to be approved, is 6 months. It appears that Allianz deliberately frustrate the claim process and trick workers into believing they need to attend additional medical examinations (separate to IME consultations) for the purpose of obtaining third and fourth opinions.

Invariably, Allianz routinely decline funding requests, for what appears to be the sole motivation of bolstering the financial bottom-line of the insurance company, rather than expediting treatment for seriously injured workers.

Flight Attendant X

- i. In the case of flight attendant X, the date of injury occurred on 28 May 2013 whilst attempting to remove a loaded catering cart from stowage. The cart had jammed and the individual was required to exert significant "wrenching" force in an attempt to release the cart. In so doing the worker suffered significant spinal injuries.
- ii. Radiology investigations undertaken, revealed that the injury had resulted in a lumbar spine disc protrusion with nerve impingement. As a result of the impingement, in addition to significant lumbar spine pain, the worker has and continues to suffer from right leg sciatica.
- iii. From the date of injury in May until the worker sought a referral to a preeminent treating neurosurgeon in September 2013, the injury had been treated in a very conservative manner. Treatment included physiotherapy and an MRI guided cortisone injection to the lumbar spine – all of which failed to alleviate the injured worker's pain.
- iv. The fact that Allianz gave little regard to the three and a half months that this worker remained unsuccessfully treated raises additional concerns.
- v. Following on from the treating neurosurgeon's recommendation reported on 3 September 2013 for a micro-discectomy surgical procedure, Allianz took until 10 October 2013 to respond and deny funding liability.
- vi. Such delays not only sit outside of the legislated timeframe imposed on the insurer to respond to such funding requests, but we find that such an approach by Allianz is endemic with all claims that we assist members with.

Flight Attendant Y

- i. In the case of flight attendant Y, the date of injury occurred on 21 August 2013. Whilst attempting to dislodge a jammed catering cart fell backwards and suffered lumbar spine injuries which are described as right S1 motor and sensory radiculopathy due to sequestered posterolateral disc herniation.
- ii. From the date of injury until the worker was hospitalised in November 2013 for treatment of acute sciatica, the worker had been undergoing a very conservative treatment regime which included physiotherapy and strong analgesics *endone*.
- iii. The medication treatment resulted in severe fatigue, disorientation, confused thinking, psychological disturbances. The treatment regime did not effectively reduce injury pain and sciatica.
- iv. On 27 and 29 November 2013 the worker was reviewed by a treating neurosurgeon who opined that urgent surgical treatment was necessary to relieve the compaction of nerve tissue and to prevent permanent injury occurring.
- v. The treating specialist further diagnosed that the worker was suffering from an acute herniation of the disc.
- vi. On 29 November 2013 the treating neurosurgeon faxed to Allianz a report recommending urgent surgery for the worker. In addition, the specialist faxed a costing for the urgently required surgery.
- vii. Allianz initially claimed that it had not received the report of the neurosurgeon. This appears to be a consistent tactic adopted by the particular claims manager for Allianz. It has the added detrimental affect of delaying any decision of the insurer.
- viii. After the specialist report of 29 November 2013 was re-sent – for the fourth time – Allianz acknowledged receipt by requiring the worker attend an IME assessment. The injured worker was scheduled to see doctor [redacted] who provides medicolegal services for Allianz on 20 December 2013.
- ix. The Flight Attendants' Association intervened due to the urgency and severity of the worker's injury and prospects of being permanently impaired to request that doctor [redacted] see the worker sooner than the scheduled appointment.
- x. In agreeing to see the worker on 16 December 2013, doctor [redacted] responded via email on 12 December stating that the worker did not require surgery. We are at a loss as to how this individual was able to arrive an opinion without having firstly reviewed the worker.
- xi. It would seem to the FAAA that doctor [redacted] provided a favourable opinion to Allianz and such arrangements are typical of the manner in which the insurer operates.
- xii. As a consequence of the IME report, Allianz in a very technical sense denied the funding request. However, Allianz also refused to issue a section 74 notice under the *WIM Act 1998*. As a result, the worker cannot submit a WIRO funding application nor commence WCC proceedings.

- xiii. When complaints were made to WorkCover concerning Allianz's refusal to issue a notice under section 74 of the act, not only did the the agency took no punitive action but also agreed with Allianz's actions.

Recommendation 4

That Parliament abolish the WorkCover agency for its failings to adequately protect injured workers' rights.