

**Submission
No 138**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: National Disability Services

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Workers Compensation Scheme Inquiry Submission

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its membership includes over 200 non-government organisations within NSW. These organisations support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.

The NSW office supports a Disability Safe Project which provides Work Health and Safety and Injury Management Advice from qualified and experienced personnel. NSW members report a wide range of difficulties with the current Workers Compensation system which we would like to see addressed by the Joint Select Committee on the NSW Workers Compensation Scheme.

Cost of workers' compensation

Non-government disability service providers have resource constraints which result in costs associated with workers compensation being funded by fund raising or government grants and this reduces the funds available for the provision of care to people with disabilities.

National Disability Services(NDS) therefore supports any changes to the scheme which will result in a system design which directly relates claims costs to work-related initiatives and evidence based treatment aimed at resumption of normal duties.

A review of the benchmarking data regularly collated from NDS members showed an average claim duration of 8.83 days per claim at the average cost of \$27,104 per claim. A broad overview of this data supports that the Disability Sector is successful in minimising time lost and identifying productive suitable duties. The concern is about costs, i.e. investigations, treatments and services, which cannot be controlled and are not directly contributing to recovery and return to work.

Recommendation: Treating health professionals and scheme agents should take tighter control of these costs and there should be limits on what is undertaken to that which is directed at the resumption of pre-injury status only.

Due to the nature of the workforce in the disability sector anecdotal evidence would indicate that many claims have a contribution of pre-existing conditions or lifestyle factors.

Recommendation: The employer should only be liable for those factors which have a direct causal relationship to the workplace and at some point the employee has a duty to take responsibility for their own health and lifestyle choices.

Notwithstanding the above National Disability Services would not like to see any limitation of benefits to workers with severe and permanent impairment due to the known cost impacts of long term disability on an individual.

Insurer/agent

Many of the non-government disability service organisations are small to medium in size and report difficulty in obtaining a responsive service from their Scheme Agent. This can result in claims being coded incorrectly, liability being accepted when not meeting legislative requirements and requests not actioned within appropriate timeframes. It also results in extended timeframes for claim liability even when pre-existing conditions are present and approval of treatment and investigations which do not produce a positive outcome.

Organisations with low claims numbers do not have the knowledge and expertise to know when inadequate service is provided. National Disability Services has invested in a RTW Coordinator service and has achieved costs savings partly related to improved service from the scheme agent.

Recommendation: Improved options for training of internal staff or reduced bureaucratic requirements for use of a shared RTW Coordinator should be considered.

Recommendation: Another option would be greater investment in the scheme agent so as to improve service provision as this should directly result in lower claim costs and better RTW outcomes.

Many members also report instances where a claim has not been investigated due to the priority paid to the organisation and these claims have often gone on to be very expensive.

Whilst small organisations may not bear the costs of such claims due to the experience factor the scheme does and this has a flow on effect to the industry cost of claims.

Recommendation: Scheme agents should be measured on customer satisfaction and action timeframes.

Accountability of doctors

A frustration of many employers is the attitude of treating doctors who see the workers compensation scheme as a 'cash cow' which will pay for expensive treatment for conditions which are not necessarily work related. For example it is well known that certain conditions are age related but treating doctors continue to write Workcover medical certificates even when the work undertaken could not be regarded as a risk for such a condition. Health related conditions such as stroke or heart attack should not be certified as work related unless it is clear that the work activity directly contributed to the condition e.g. heart attack as a result of severe shock at work.

It is also well known that treating doctors write WorkCover medical certificates for workers who are upset about something at the workplace e.g. performance management, instead of counselling the worker appropriately i.e. emotional upset is not a medical condition and should not be treated as such.

Recommendation: Doctors who undertake such practices should not be allowed to provide WorkCover services and the scheme agent should have the ability to dispute and force claimants to see alternate doctors or utilise independent medical services to overcome such issues.

Accountability of doctors in relation to correct diagnosis and referral to suitable treatment providers at an early stage and an understanding and utilisation of the workplace for the rehabilitation process also needs to be strengthened e.g. a diagnosis of post-traumatic stress due to a client dying even when not cared for by the injured worker should not be made by a doctor and not accepted by the scheme agent.

Recommendation: Doctors who are not up-to-date in modern day practices and WorkCover requirements relating to work injuries should not be able to issue WorkCover medical certificates.

Evidence based medical treatment

National Disability Services would support a scheme which ensures that injured workers only attend treatment providers who are focused on a resumption of work duties and not general support of workers I.e. yoga retreats should not be approved.

Recommendation: The scheme should not support never-ending treatments with no measurable work capacity direction or achievements and should require treatment providers to demonstrate an understanding of the workplace and involvement in return to work planning prior to approval of treatment sessions e.g. 18 months of psychiatric treatment with no progress towards work fitness should not be accepted.

WorkCover Industry Codes

An Australian Disability Enterprise(ADE) is the term presently used to denote supported employment organisations that provide both employment for people with a disability who are unable to work in an open employment setting (via mainstream workplaces) and who require ongoing training and support from the ADE to undertake their work. ADEs provide a diverse range of work activities including packaging, printing, timber and furniture production, horticulture and gardening services, mail management, hospitality and catering etc.

ADEs have a WIC equivalent to the type of work undertaken. Supported employees work closely with trainers/supervisors who undertake risk assessments and implement risk controls. These trainers/supervisors consult with their employees on health and safety issues on a

regular basis, based on their awareness of the communication needs of employees and generally ensure safety through extensive task analysis and matching of the task to the functional abilities of the worker. These workplaces would therefore have a higher standard of safety than their open employment counterpart but allocation to the same WIC disadvantages them.

Other Disability Service areas are seemingly grouped under codes and rates which do not fully reflect the inherent risk of the service and this results in a higher premium than is warranted in many cases.

Recommendation: A review of the Industry Codes is therefore recommended in line with any remodelling of the Workers Compensation Scheme and the goal of aligning the scheme to other states and promoting workplace safety.

Journey claims

Whilst our members would generally support the removal of journey claims when travelling to or from work many Disability Support Workers provide support to people with disabilities in their own homes or in the community and commence work from their home.

Recommendation: If there is to be any change to the availability of journey claims clear distinction between journeys to and from work and work-related journeys should be considered. National Disability Services believes that work-related journeys should be covered under the Workers Compensation Scheme unless the worker's behaviour is the identified cause of the accident. Opening up the system to common law claims or court actions is not desirable.

No fault system

The current scheme as a no fault system results in claims which are outside of the employer's ability to control e.g. currently a worker jams their fingers in their own car door after retrieving their lunch on a non-scheduled break is entitled to compensation and so is a worker who 'perceives' that they have been bullied even though investigations do not demonstrate that this has happened.

Recommendation: Such claims are not aligned to the scheme's goals and should not be covered.

Impairment payments

Unfortunately the workers in the disability sector are not highly paid and the current system does not reward workers for returning to work at an early stage. Such workers are often worse off financially by coming back to work. Limitation in the length of time that payments are made for less serious injuries and increased payments when resuming work is therefore supported. NDS also supports suitable payments for serious injuries directly related to work which do not allow a resumption of work.

Capacity Assessments

Capacity assessments should help doctors to understand the degree of work incapacity/capacity and encourage improved certification and earlier return to work.

Recommendation: Capacity assessments should be designed to be directly related to work activities rather than being generic and should be graded in nature depending on the purpose of the assessment.

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