

REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE WORKCOVER AUTHORITY

Organisation: Injured Workers Support Network

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Injured Workers Support Network

Submission: Review of the exercise of the functions of the Work Cover Authority(WCA).2014

WORKERS HEALTH

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Introduction:

The Injured Workers Support Network (IWSN) is an organisation whose prime purpose is to assist injured workers in meeting the adjustment needs, psychological issues and re-employment challenges during their injury or illness.

The Network offers-

- * Peer support – opportunity to meet other workers who face the same difficulties and challenges via monthly support meetings
- * Supply information regarding the NSW workers compensation system
- * An opportunity to be supported whilst dealing with their injury, illness or disability

Our Mission is to assist and support workers who have sustained work related injuries, illness and disabilities:

- To provide and share information and experiences about the workers compensation system and the rights of injured & disabled workers.
- To form networks between injured workers and other organisations that has similar aims and objectives.
- To assist and encourage injured workers to establish links within their local community health system, Government Departments, organisations and other individual support groups who can assist injured workers.
- Advocate for a fair system of workers compensation for injured and ill workers and their families

The Injured Workers Support Network (IWSN) welcomes the opportunity to provide a submission in relation to the review of the exercise of the functions of the Work cover Authority (WCA). This inquiry is an opportunity to raise a number of concerns regarding the functions of the NSW WorkCover Authority and how this is affecting injured workers and their families.

Formed on 1 August 2012 Work Cover (WCA)NSW is part of the Safety, Return to Work and Support Division (SRWSD) which was formed under the Safety, Return to Work and Support Board Act 2012 . The Safety, Return to Work and Support Board (the Board) was also established on 1 August 2012, replaces four of the five boards in the former Compensation Authorities Staff Division with a single governing board.

All SRWSD agencies report to the Minister for Finance and Services

The Board has responsibility for determining general policies and strategic direction for the following agencies:

- Work Cover Authority of NSW
- Motor Accidents Authority of NSW
- Lifetime Care and Support Authority of NSW.
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The Board is also responsible for determining the investment policies of a number of funds, which include those of the Workers' Compensation (Dust Diseases) Fund. Apart from investment and staffing responsibilities, the Workers' Compensation (Dust Diseases) Board is governed by their own Board.

The IWSN contend that the functions of Work Cover were previously well defined in the Work Health and Safety Act 2011 and the Workplace Injury Management and Workers Compensation Act 1998,

and were weakened when the NSW Government abolished the Work Cover Board and created the Safety, Return to Work and Support Board (SRWSD).

It appears the WCA is now more focused on being the overseer of the scheme's finances and investments rather than focusing on being seen as a fair and effective regulator to the community at large.

The makeup of the Board predominately appears to be that of lawyers and financiers and does not lend itself as in past years to having access to the views and vast information of those outside the Board's circle. It would appear now that the only views tabled to the Board are those of the Work Cover executive.

A tripartite body, the Workers Compensation and Work Health and Safety Council existed for more than a decade before being totally abolished in 2012.

This body comprised industry representatives, employers and union members who were able to bring to the table a variety of issues from a spectrum of different industries. Further to this, Work Cover held accountabilities to the Work Health and Safety Council which, since its abolition have never been replaced.

Without this mechanism what appears is that the executive of Work Cover are less accountable to the public and seem more interested appeasing and supporting business groups and their political masters, than managing the State's safety regulator –reducing workplace injury, properly managing Scheme agents and ensuring injured workers and their families have a fair and supported workers compensation framework to operate within.

The WCA own website states:
'Our purpose

Our purpose is to increase the competitiveness of the NSW economy through productive, healthy and safe workplaces. We are dedicated to promoting productive, healthy and safe workplaces for workers and employers in New South Wales.

Customer service charter

Safety Return to Work and Support Division (SRWSD) knows our customers value good customer service.

Our aim is to provide customers with the best service we can and we value and encourage customer feedback.

Our customer service charter depicts what you can expect from all SRWSD agencies, what we expect from you, and how you can let us know how we can do better.

All SRWSD agencies are committed to quality customer service, working in partnership with the NSW community and to providing customers with responsive, quality services. "

IWSN is in daily contact with injured and ill workers and their families. Sadly it is the case that the WCA do not put into practice many of these key factors of their commitment to working families. As an advocate for injured and ill workers and their families IWSN continue to be concerned about the apparent dysfunction of the WCA and hold a strong view that this dysfunction is one of the

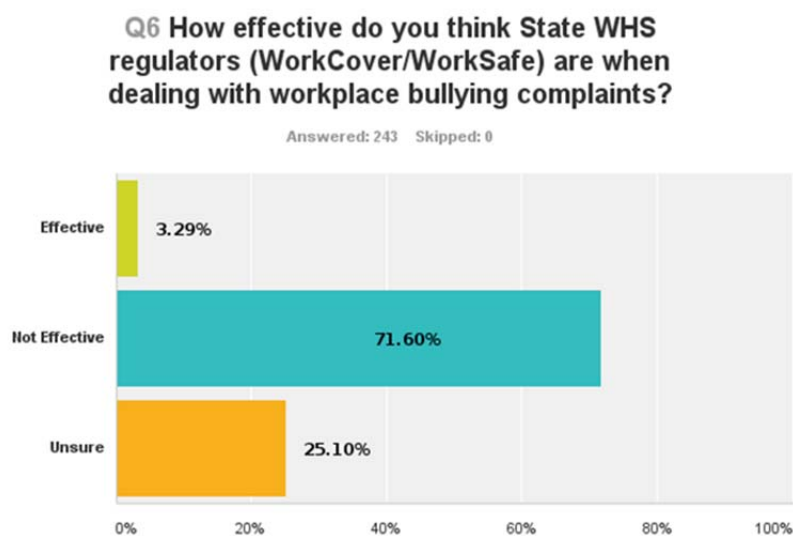
critical factors currently influencing outcomes of injured and ill workers having a successful and durable return to work.

Whilst there have been recent significant changes to the formation of the WCA and to workers compensation legislation workers in NSW workers continue to become ill, injured and die as a result of workplace safety issues. Many now unable to return to paid employment in the short term.

As a result many workers who initially entered the workers compensation system suffering only a physical injury have since developed a secondary psychological injury due to intimidation and poor treatment by Work Covers own Scheme Agents, but also due to lack of accurate information and practical assistance including enforcement of guide lines, from Work Cover Authority personnel.

The Issues:

1. The WorkCover Authority of NSW has a responsibility for overseeing the multiple functions of insurance, investment, compliance and prosecutions, whilst alleging to provide administrative services for employers, injured workers and insurers.
How can one organisation possibly manage the best interests of all parties without a potential conflict of interest?
2. The lack of confidence by the community in general in the WCA to act on issues is poor to say the least. This supported by the publically available and recent submissions before the many Parliament Enquiry panels and our own data.
In 2013 IWSN conducted an online survey in relation to bullying in the workplace and measures which people thought would be appropriate in tackling this issue. Of relevance is the alarming response regarding the WCA?
 - almost 30% of participants stated that they would feel comfortable raising bullying matters with their employer, almost 71% answered that they had **no faith in the regulator in dealing with bullying complaints**



A recent parliamentary submission by the AMWU supports that the lack of confidence in the WCA is not only shared by the community but by the Authority's own staff:

"In recent times a number of our unions Officials have had opportunity to speak confidentially with some Inspectors and raise questions regarding their approach and actions regarding their approach and their lack of willingness to support vulnerable workers. Overwhelming the response has been one of despair. Inspectors report been dragged over the coals by Managers if they act in a manner which is contrary to the current ethos, which is that employers are their clients, not workers. The AMWU has heard that Inspectors are even dissuaded from issuing improvement notices, for fear of an employer making a complaint or seeking a review and the negative attention this will draw to them from the Workcover Leadership. Unfortunately, many Inspectors now accept their role is not that of a regulator. This is as a direct result of the current culture imposed by the leadership who are enforcing this approach. Those inspectors who have expressed concern about the current approach have been warned to keep their heads down for fear of having it chopped. This culture has not only undermined WorkCover as a genuinely independent organisation, but also undermines the good people who are employed by WorkCover, many of whom joined the organisation with the ambition of being part of a positive change toward safer NSW workplaces. Such a culture erodes the effectiveness of WorkCover, disarming it from the tools it is provided under the Work Health and Safety Act 2011, and inhibiting its capacity to be an effective regulator. It appears a small number of senior managers have chosen which of the functions the regulator will be permitted to carry out and actively enforce and that other functions of the regulator are not to be. It is little wonder that we have seen no improvement in safety in our workplaces in recent times and some employers feel emboldened to ignore their obligations under the legislation including Health and Safety Representatives (HSRs) Provisional Improvement Notices and even HSRs requests for training."¹

Under the new workers compensation laws workers report feeling sidelined by both the Work Cover Authority and their Scheme Agents. Neither recognising or choosing not to recognise and address the poor behaviour and tactics being directed to injured and ill workers and their families. With a public perception that the Work Cover Authority are a toothless tiger with a poor and very public record themselves regarding bullying and bad behaviour amongst its own ranks .

Examples given by injured workers in this document have had the names changed to protect their identities .Unfortunately the majority of injured workers report they won't waste their time reporting the behaviour to the Authority.

Injured worker Liza - "To ring Work Cover is a complete waste of time and energy ,that would be an understatement - the system is non-existent - .They can provide little information, the staff are rude, ill equipped and ill informed. You get off the phone feeling battered, bruised and wishing you'd never asked the question"

¹ AMWU Submission to the Allegations of Bullying in WorkCover NSW 14 (Inquiry) 15 August 2013

Injured Worker Dave:

"I would not bother contacting Work Cover as they are very nonresponsive and ALWAYS support the insurer."

Injured Worker Adam:

"I have written to Work Cover to try and get a concise response and have found they are only there to cover up workplace accidents. They will always take sides with the employer and insurer regardless. In my opinion they're too scared to act in case they get bullied themselves"

Injured worker Jill :

"I tried to find out when the insurer was going to pay me as I didn't have any pay for nearly 4 months because the bank told me they would take my house. I was told by the insurer – this is not our problem you should have thought of that before going on compo! They don't give stuff and always make you feel like you're a bludger."

Injured Worker Sally:

Was told by her Insurer allegedly acting under the direction NSW Work Cover. "Other people have had this treatment and it did NOT work for them so it will not work for you. If you want the treatment and want to get better you should use Medicare or your Private Health Insurance to have the treatment".

Changes to the Workers Compensation laws in 2012 have been met with new gusto from Scheme Agents, with widespread reports from clients of intimidation, bullying and harassment from insurers and the unwillingness of Work Cover staff to assist. Injured workers report ongoing significant concerns about mental health and social relations as a result of poor behaviours and tactics undertaken by the Authorities Scheme Agents. Complaints to the WCA about this poor behaviour receives little or no follow up or positive action taken to assist them.

Cases exist where workers have reported the poor behaviour of their case manager to a more senior manager within the Scheme Agent with the result being further aggressive behaviour and/or isolation from the case manager. The spectrum of retribution wide ranging from isolation in the form of not returning calls or emails, withholding payment for reimbursements for medication and travel to delaying approval for medical treatment for weeks.

Workers often left unable to comprehend why they are being vilified by the Agent simply for asking to be treated in a fair and reasonable manner and why if they complain to the WCA no action is taken.

Escalation and dispute mechanisms within Scheme Agents and the WCA appear to fail injured workers when trying to resolve issues.

"I have a psychological injury and live in a regional area, no public transport; no income for 11 weeks now, requested financial assistance in getting to my IME appointment 3 hours away .No reply from the insurer after many attempts to contact and so I couldn't attend because I had no means of getting here. Insurer then cuts me off for being noncompliant! I complained to Work Cover who said they would look into it.Six weeks later still no reply .I quit my job and gave up on my workers comp claim to retain my sanity. They simply don't care". Injured Worker James.

The IWSN consistently receives reports receiving daily reports from Injured Workers on problems relating to:

- WCA providing incorrect and often conflicting information with regards to their claim enquiries. The most common response appears to be an apparent inability on their part to intervene or provide any definitive answers on issues such as work capacity assessments
- Procedure and practice by Scheme Agents on the new work capacity assessments in particular disregard by Agents to legislation and guidelines. Injured workers are being called by their insurer and told they have to attend an IME with less than 24hours notice. The injured worker is then threatened with having their weekly payments stopped should they fail to comply with this request. The Work Cover Guidelines state that any request to attend an IME must be communicated to an injured worker in writing by way of ten working days' notice. The insurers are seemingly able to ignore any guidelines as approved by the WCA without fear of any ramifications.
- The hostile treatment injured workers are being subjected to by the NSW WorkCover Authority and its licensed Workers Compensation Scheme Agents. This includes threats to cut off benefits, refusal of necessary medical treatment and hostile investigation process of all new claims
- Administration and payment of their weekly benefits. Issues relating to payment delays and frequency, PAYG withholding errors as well as incorrect benefit calculations.
- delays in medical treatment approvals by Scheme Agents and little assistance from WCA in assisting injured workers
- reluctance by the WCA to police or act the unfair and sometimes unjust actions of their own Scheme Agents

Recommendations:

1. The NSW Government should immediately reconstitute the Workers Compensation and Work Health and Safety Council and support the role it has previously played in positively assisting Work Cover and its Board. This measure would act as a tool in supporting both the Work Cover Authority generally, reporting to and advising the Minister and NSW government on related matters and as a means for Work Cover employees, Agents and workers and industry to raise concerns regarding all related matters under the auspices of the WCA.
2. The NSW Government must act to ensure should ensure that it is clear in setting its purpose and direction for Work Cover as a regulator. There should be no political interference with Work Cover or its employees carrying out its full functions as set out in legislation.
3. If necessary establishing discrete business accountable to the Minister in the areas of workers compensation compliance and prosecutions. With separate units to deal specifically

with return to work issues and also administration and resolution of dispute resulting from Scheme Agents.

4. As a measure in restoring the public and injured workers faith in the Work Cover Authority the NSW government must immediately seek consultation and co-operation with injured workers, their representatives and Scheme Agent representatives to develop new operational guidelines and directives regarding the management of ill and injured workers within the Scheme.
5. These should include as a minimum respectful and dignified methods of communications in dealing with clients, clear explanation and engagement with workers of processes within the Scheme that are closely aligned to the philosophy of workplace rehabilitation - creating a positive environment that delivers durable return to work outcomes for all stakeholders. This must include clear methods of reporting behavioural issues such as bullying by Scheme Agents to the regulator for investigation and actioning.
6. It is imperative that these agreed operational directives then form part of the Scheme Agent Renewal Deeds due to be renegotiated in 2014. Specifically the new practices must be recognised and like other key issues must form part of agreed performance measures.
7. Ensure transparency and by quarterly reporting on the website the activities of Scheme Agents clearly outlining the interaction of responsibilities and ultimate accountability between Work Cover and its' Scheme Agents. This should also include any adverse findings or binding recommendations that have been made against a scheme agent by organisations such as WIRO.
8. Development a consistent approach and public release of all Scheme Agent workers compensation training and operations manuals and guidelines.
9. Information be provided to workers exited from the Scheme regarding ongoing Governmental services
10. Research and public reporting to be undertaken on the cost shifting of injured and ill workers from the Workers Compensation System to other public funded services such as Centrelink and Medicare.
11. Research and public reporting be undertaken regarding the impacts on Injured and ill workers and their families as a result of being exited from benefits by virtue of work capacity testing.

