

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

Name: Name suppressed

Date received: 14/03/2014

Partially Confidential

**Submission to the Law & Justice Committee of the Legislative
Council's Review of the exercise of the functions of the WorkCover**

Authority

Please accept this submission as it is, provided by me to you at the request of the Minister Andrew Constance on 10 March 2014

**INJURY: PERMANENT HEARING IMPAIRMENT DUE TO PROLONGED
EXPOSURE TO AIRCRAFT NOISE**

WorkCover's primary responsibilities are to administer and enforce compliance with the health and safety (WHS), injury management and workers compensation legislation and to manage the workers compensation system.

The retrospective changes to the law in 2012 have meant they cannot do this for people such as myself who have had a permanent injury to their health that was recognized and properly administered under the old law.

Your committee can change this by recommending to the State Government that the law be changed again to recognize that uncontested work related injury to hearing be dealt with as it used to be. The starting point is to allow the continuation of the old statute based registered agreements between employers and employees that allowed the employer to willingly administer and manage injury management and injured employees to have appropriate medical appliances so that they can continue as productive members of the workforce.

I provide below details of my own personal circumstances to illustrate how the legal system has changed so that WorkCover cannot manage my permanent injury and I am now faced with substantial (unaffordable) ongoing expenses to be able to participate in the workforce, even though my prior employer wishes to continue to assist me.

BACKGROUND TO INJURY

I was employed by _____ for 23 years as an _____.
This employment ended in March 2002 following the 9/11 events in the USA. _____ acknowledged that the exposure to their aircraft noise for 23 years had caused substantial and permanent loss of hearing. We agreed to deal with the issue through the Workers Compensation system rather than an action by me for compensation for personal injury.

_____ and myself reached an agreement in March 2003 under the Workers Compensation Act that I receive a one off cash payment, according to the schedule of \$5000, and that the best available hearing aids be provided as required and maintained for the rest of my life. This agreement was registered under the Act.

Hearing aids last approximately 4 to 5 years. The hearing aids I require to restore my hearing to a functional level currently cost around \$5,000 to \$6,000 each retail. I require Hearing Aids in both ears. In accordance with our 2003 agreement _____ have willingly, over the last 10 years, prior to the law

changing, provided to me and fully maintained my hearing aids. 3 Sets of new Hearing Aids have been required so far.

have now informed me that because the law has changed they cannot continue to honour their agreement and in fact are forbidden from doing so by WorkCover.

THE PROCESS SINCE 2003

2003.

Agreement signed.

Hearing Aid Provider and agree on a price for best available Hearing aids.

(Note: WorkCover not involved in this process)

Hearing aids are provided.

Over the next few years pays for ongoing maintenance & batteries.

2008.

Hearing aids need replacing.

and Hearing Aid Provider agree on a price for the latest high quality Hearing Aids, which include a Bluetooth device for connecting phones etc to the new Hearing Aids.

(Note: WorkCover not involved in this process)

New Hearing Aids are provided.

Over the next few years pays for ongoing maintenance & batteries.

Mid 2013.

Bluetooth Streamer for connecting hearing aids to phones etc needs replacing.

Suddenly an Extra layer of Costly Bureaucracy is inserted into the process.

WorkCover now dictates price that provider can charge instead of negotiating it.

now has to seek approval from WorkCover.

Hearing Provider is forced to accept price lower than wholesale.

informs me that from the 31st of December 2013 they will be forbidden by the NSW Government's New Workers Compensation Legislation from honouring our legally binding agreement to provide and maintain my hearing aids.

They are willing to continue but are forbidden to do so.

No official notification is publicly given to me or anyone else, with a legal agreement for the provision of Hearing aids, of the change in the Legislation.

Just chance that I found out through who are self-insured.

"hints" that it would be a good idea to replace the Hearing Aids now while they are still allowed to pay for them.

Late 2013.

Hearing Aids need replacing.

Again an Extra layer of Costly Bureaucracy is inserted into the process.

WorkCover now dictates price and type of hearing aid allowed to be provided by and requires that the Hearing Aid Provider only charge the wholesale

price for a retail service.

Previously the price and type had always been negotiated directly between
& the Hearing Aid Provider.

is also now required to gain approval from WorkCover before
proceeding.

Approval is finally given but not for the latest model as it is not on WorkCover's
list of approved hearing aids.

Undue interference from WorkCover again.

This is the last set of Hearing Aids is allowed to provide.

Work Cover have told me in writing to talk with Medicare. I am only and
Medicare only provides hearing aids to qualifying age pensioners. WorkCover is
aware of this.

The hearing aids I need are unaffordable to buy without even considering
ongoing maintenance costs..

The Case.

The Stated purpose of the changes to the Workers Compensation Legislation is
to facilitate injured workers return to a productive role in the workforce.

Hearing loss is permanent. It does not return!!

High Quality Hearing Aids help to correct this loss, which enables an injured
worker to resume a productive role in the workforce.

Instead this Legislation Victimises the Hearing Impaired.

It imposes extra costs through new bureaucratic interference from WorkCover.

In 2012 it imposed extra costs on the Self-Insured Employer by inserting
WorkCover into the Replacement and Maintenance of Hearing Aids process.

is Self-Insured.

As from 31st December 2013 it shifts all costs to the Hearing Impaired Worker.

This makes high quality hearing aids unaffordable.

The employer/Insurer no longer bears any of the costs, even though the
employer has accepted responsibility for the Hearing loss.

Legal agreements made in the past in good faith become null & void.

The Insurer is forbidden from honouring such agreements.

The Retrospective nature of the legislation is unheard of, sets a precedent and
brings into question the future reliability of any legal agreements signed in New
South Wales.

The only beneficiary of this change is WorkCover through the increase of its bureaucratic influence & the Insurers.

This implementation of this Legislation by WorkCover fails all tests of fairness.

Law Reform Required

My circumstances are not unique and the affect is the same for many many other people with work based hearing injury. WorkCover cannot fulfil its function to manage our hearing injuries without law reform to recognize the past injury and the legal agreements to manage the injuries that were entered into in good faith.

Personally the provision of High quality Hearing Aids enables me operate our small family run business. I need them to hear on the telephone & to interact with .

Without the changes it is likely I will be unable to continue participate in the workforce and will become a burden on the State.

Yours Faithfully,

Email: