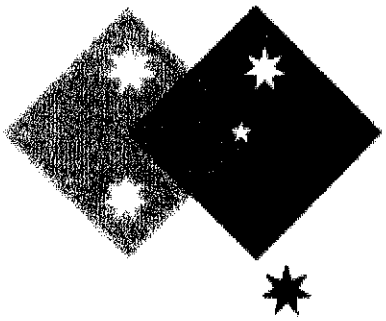
Submission No 2

REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE WORKCOVER AUTHORITY

Organisation: Australian Manufacturing Workers' Union

Date received: 13/01/2014



AMWU

RECEIVED
13 JAN 2014
LAW & JUSTICE

NSW Parliamentary Inquiry

into

WorkCover, WC (Dust Diseases), Motor Accidents, Lifetime Care & Support Authorities

Submission by the AMWU NSW Branch

January 2014

Hon David Clarke MLC
Chair
Legislative Council Standing Committee of Inquiry
Inquiry into WorkCover, WC (Dust Diseases), Motor Accidents, Lifetime Care & Support Authorities
Parliament House
Macquarie St
SYDNEY NSW 2000

9 January 2014

Dear Mr Clarke

I am writing to you in response to the Parliamentary Inquiries into WorkCover, WC (Dust Diseases), Motor Accidents, Lifetime Care and Support Authorities

At the outset I should say that the right to a safe workplace and to just compensation for injured workers is absolutely fundamental to this Union. There are clearly a number of very significant issues that we believe need to be addressed in the current legislation. We are therefore most appreciative of the opportunity to participate in this very important Inquiry.

It is our experience that injured workers in NSW are indeed much worse off than they were under previous Workers' Compensation schemes that operated in this state.

The Government has made many public statements about the cost to the state of the NSW Workers Compensation Scheme. These have been used to justify significant reductions in the benefits to injured workers. However at the same time there have been significant discounts to employers in their annual workers compensation insurance premiums. Of concern is that these discounts in premiums have been made without any apparent improvement in compliance by employers. There continues to be evidence of employers who deliberately evade and avoid their statutory responsibility to insure properly for workers compensation; imposing a significant cost on the statutory scheme. Unfortunately this behaviour is particularly evident in the manufacturing and construction industries where the AMWU has significant coverage.

Australian Manufacturing Workers' Union
(Registered as AFMEPKIU)
NSW STATE OFFICE
133 Parramatta Rd
PO Box 167
GRANVILLE NSW 2142

Exacerbating the cost to the scheme of non compliant employers is the policy decision that WorkCover should focus on workplace health and safety *education* rather than *enforcement*. The increase in workplace injury, including catastrophic injury that has accompanied this decision is demonstrated in our submission and is clearly a cause for concern – in moral and social as well as economic terms.

Our submission also highlights the concern that there appears to be no commitment by WorkCover or any other agency to enforce compliance by insurance companies themselves. Indeed it has been our experience that additional damage has been caused to seriously injured workers because of delays in treatment and the stress often imposed by the often arbitrary nature of their dealings with injured workers. Again, this is clearly an additional cost to the scheme that could be avoided.

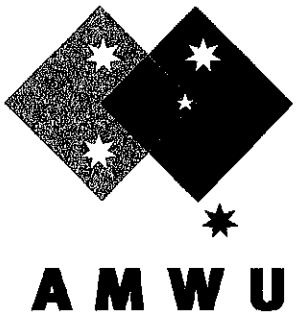
Based upon the evidence we provide in our submission, it appears to us that while the benefits to injured workers have been significantly reduced as a means to reduce the scheme's debt, there has been no attempt at all to reduce the cost of non compliant employers, unsafe employers or non compliant insurers. While this is clearly an ideological policy decision, it is not good public health policy and it is not good economics.

We wish you well with your deliberations and hope that you will consider the evidence that we present in this submission to support significant reform to the current workers' compensation system in this state. We would welcome the opportunity to appear before any public hearings that you may hold.

Yours sincerely

Robyn Fortescue
Acting State Secretary

AUSTRALIAN MANUFACTURING WORKERS' UNION



Reviews of the WorkCover Authority of NSW and

Workers' Compensation (Dust Diseases) Board

Principal Contact: Dave Henry

Organisation: Australian Manufacturing Workers' Union

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make a submission with relation to Reviews of the WorkCover Authority of NSW and Workers' Compensation (Dust Diseases) Board.

2. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU NSW Branch has a membership of 25,000 workers. Our members are employed in the private and the public sectors, in blue collar and white collar positions, and in a diverse range of industries, vocations and locations.

3. **Terms of reference**

1. That, in accordance with section 11 of the Safety, Return to Work and Support Board Act 2012, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the exercise of the functions of the following authorities:

(a) Lifetime Care and Support Authority under the Motor Accidents (Lifetime Care and Support) Act 2006,

(b) Motor Accidents Authority under the Motor Accidents Compensation Act 1999 and the Motor Accidents Act 1988,

(c) WorkCover Authority under the Workplace Injury Management and Workers Compensation Act 1998, and

(d) Workers' Compensation (Dust Diseases) Board under the Workers Compensation (Dust Diseases) Act 1942.

2. That the terms of reference of the committee in relation to these functions be:

(a) To monitor and review the exercise by the authorities of their functions,

(b) To monitor and review the exercise by any advisory committees, established under section 10 of the Safety, Return to Work and Support Board Act 2012, of their functions,

(c) To report to the House, with such comments as it thinks fit, on any matter appertaining to the authorities, and the advisory committees, or connected with the exercise of their functions to which, in the opinion of the committee, the attention of the House should be directed,

(d) To examine each annual or other report of the authorities and report to the House on any matter appearing in, or arising out of, any such report, and

(e) To examine trends and changes in compensation governed by the authorities, and report to the House any changes that the committee thinks desirable to the functions and procedures of the authorities, or advisory committees.

3. That the committee report to the House in relation to the exercise of its functions under this resolution at least once every two years in relation to each authority.

4. That nothing in this resolution authorises the committee to investigate a particular compensation claim under the legislation referred to in paragraph 1.

NSW WorkCover Authority

To monitor and review the exercise by the authorities of their functions

4. Following is the functions of the NSW WorkCover Authority (WorkCover) as the regulator as set out under the *NSW Work Health and Safety Act 2011*;

152 Functions of regulator

The regulator has the following functions:

(a) to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act,

(b) to monitor and enforce compliance with this Act,

(c) to provide advice and information on work health and safety to duty holders under this Act and to the community,

(d) to collect, analyse and publish statistics relating to work health and safety,

(e) to foster a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters,

(f) to promote and support education and training on matters relating to work health and safety,

(g) to engage in, promote and co-ordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator,

(h) to conduct and defend proceedings under this Act before a court or tribunal,

(i) any other function conferred on the regulator by this Act.

5. In the case of some WorkCover changes the Union is unable to provide informed comment. This is principally because WorkCover no longer publishes some significant information. The Union is therefore unable to analyse the data and make an informed assessment in relation to compliance. Compounding the problem of key data now being unpublished is the recent (June 2012) abolition of the Workers Compensation and Work Health and Safety Council (Advisory

Monitor and enforce compliance with this Act.

For reasons explained above, the Union is not in a position to comment on whether WorkCover does monitor compliance with many key aspects of the Act. However, we submit that WorkCover does not enforce the Act to the standard of community expectation. While the Act clearly places responsibility for provision of a safe workplace on employers; WorkCover management publicly stated their focus to be provision of *advice* to employers), whom they define as their 'clients'. This apparent conflict of interest suggests that both WorkCover inspectors and prosecution branch are impossibly compromised in the conduct of their responsibility to investigate, enforce and prosecute breaches of the Act. This is a conundrum that could easily be interpreted by the public as an abdication by WorkCover management of its statutory responsibilities. There is more than sufficient evidence for this concern when prosecution data is aligned with injury rate data.

		NSW
Number of legal proceedings finalised	2005–06	348
	2006–07	303
	2007–08	185
	2008–09	98
	2009–10	81

Compensation Claims

Year	**Total**
2001/02	54,674
2002/03	51,000
2003/04	51,551
2004/05	49,749
2005/06	44,013
2006/07	41,231
2007/08	42,277
2008/09	42,858

6. In 2012–13, 6686 inspection reports were issued, which documented advice provided onsite following workplace visits. In the same period, WorkCover inspectors issued 8186 notices, including 124 penalty notices, 550 prohibition notices and 6111 improvement notices.

7. The current policy, adopted by the regulator since about 2007, is to focus on educating employers at the expense of enforcement in the hope of better safety outcomes. However, this has proven to be a flawed strategy. This is best demonstrated when comparisons of prosecution data is aligned with injury rate data. It can be clearly seen there is a definite J curve in the injury statistics starting in the year that the current policy was adopted.

8. *Provide advice and information on work health and safety to duty holders under this Act and to the community.*

The AMWU is aware of some of WorkCover's previous community campaigns including television advertisements, Safety Week and the Safety Conference held at Sydney Olympic Park and Betty the Asbestos House. We are also aware of a number of advice and information campaigns which have been tailored to NSW Persons Conducting a Business or Undertaking (PCBU's).

We are not aware of any targeted awareness or information campaigns for the manufacturing industry since the removal of the WorkCover Assist Grants which finished in early 2012. . The only information campaign since 2012 of which we are aware has been a generic campaign developed at Safe Work Australia. However, this has not been implemented in NSW.

9. *Collect, analyse and publish statistics relating to work health and safety*.

High level information is provided to Safe Work Australia as part of the *Comparison of workers' compensation arrangements in Australia and New Zealand, Compendium of Workers' Compensation Statistics Australia*. This information is entirely based on workers compensation claims data and arrangements. Unfortunately for reasons already discussed, in NSW WorkCover's *Annual Report* no longer provides any information beyond a reporting on financial and other high level statistics, little of which is focused on actual work health and safety information. WorkCover produced an annual *WorkCover Statistical Bulletin* until 2010, which referenced data from 2008/09. No such report is currently produced.

10. The Union is not aware of any systematic collection and analysis of workplace health and safety data being published since 2010. Moreover, the current collection of information by scheme agents is both inadequate and fundamentally flawed, based upon incorrect categories to describe incidents and compounded by massive delays in the provision of reports from date of incident. Further, we understand that 'self-insured' employers in NSW are not required under their licencing arrangements to provide any meaningful information at all

11. *Foster a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters.*

The Union acknowledges that WorkCover has worked very hard over the years to foster closer relations with PCBU's and their representatives. Unfortunately there has been no similar commitment to fostering a relationship with workers, while any relationship which did exist with workers' representatives has degenerated. In our view this unbalanced relationship in a serious obstacle if WorkCover is serious about addressing even its most basic statutory responsibilities in the workplace and should be addressed as a matter of priority.

12. *Promote and support education and training on matters relating to work health and safety*.

The AMWU has seen no evidence that this responsibility has been addressed since 2012 when WorkCover Assist Grants ceased. Since the inception of the harmonised WHS legislation the union's experience is that WorkCover will only support training when this is requested by the PCBU. We have no experience at all of WorkCover supporting training that has been requested by any worker. For example, the AMWU found it necessary to challenge with the Authorising Authority a decision by WorkCover about which organisation should provide training despite the legislated right for HSR's to choose their trainer. In this particular instance the PCBU bullied the worker to accept their training or face disciplinary repercussions for refusal of duty.

13. In providing this example we are in no way critical of the WorkCover Inspectorate. Instead, it is the Regulator that has failed in its duty to properly train Inspectors. Inspectors cannot be expected to diligently support education and training when they have not themselves been adequately trained.

14. *Engage in, promote and co-ordinate the sharing of information to achieve the object of this Act...*

WorkCover has not in the last 12 months shared any information with the AMWU despite the manufacturing industry in which we operate continuing to have the highest statistics for severely injured workers one of the highest rates of workplace fatalities.

15. In 2011–12, *agriculture, forestry and fishing* had the highest incidence rate of major workplace injuries with 22.2 per 1000 employees. **The industry with the highest number of major workplace injury claims was the manufacturing industry with 3884**. The highest number of workplace injury fatalities was recorded in the transport, postal and warehousing industry with 21, followed by **manufacturing with seven**. Together these two industries accounted for over 51 per cent of all workplace injury fatalities.

16. In 2011–12, there were 10,747 major occupational disease claims, an increase on the 8981 claims in 2010–11. Diseases of the nervous system and sense organs (including industrial deafness) were the major contributors of occupational disease claims, representing 4291 of total occupational disease claims. This is an increase on the 2010–11 figure of 3196. **The manufacturing industry is the major contributor for diseases of the nervous system and sense organs, representing 36 per cent of all reported major claims for this disease category**[i].

17. *Conduct and defend proceedings under this Act before a court or tribunal.*

We rely upon our evidence in paragraph 6. In our experience, WorkCover places a low priority on enforcement and rarely conducts proceedings.

18. As the work health and safety regulator in NSW, WorkCover reports that t undertakes strategic prosecutions for non-compliance with work health and safety legislation. In 2012–13, WorkCover concluded 98 successful work health and safety prosecutions, involving 83 defendants in 54 matters. Total fines awarded by the courts were over $5,259,000. A drop in the ocean when compared to the 348 prosecutions completed in 2005-06 when injuries and fatalities were on the decline.

19. A total of 130 defendants were charged for breaches of the legislation in 2012–13. As at 30 June 2013, 172 defendants were before the courts for breaches of work healthy and safety legislation, not including the two matters currently under appeal involving six defendants.

20. The following functions of the NSW WorkCover Authority (WorkCover) are set out in the *NSW Workplace Injury Management and Workers Compensation Act 1998*;

22 General functions of Authority (cf 1989 s 12)

(1) The general functions of the Authority are:

> *(a) to be responsible for ensuring compliance with the workers compensation legislation and the work health and safety legislation,*
>
> *(b) to be responsible for the day to day operational matters relating to the schemes to which any such legislation relates,*
>
> *(c) to monitor and report to the Minister on the operation and effectiveness of the workers compensation legislation and the work health and safety legislation, and on the performance of the schemes to which that legislation relates,*
>
> *(d) to undertake such consultation as it thinks fit in connection with current or proposed legislation relating to any such scheme as it thinks fit,*
>
> *(d1) to monitor and review key indicators of financial viability and other aspects of any such schemes,*
>
> *(e) to report and make recommendations to the Minister on such matters as the Minister requests or the Authority considers appropriate.*

(2) The Authority has such other functions as are conferred or imposed on it by or under the workers compensation legislation, the work health and safety legislation or any other legislation.

(3) In exercising its functions, the Authority must:

> *(a) promote the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces, and*
>
> *(b) promote the prompt, efficient and effective management of injuries to persons at work, and*
>
> *(c) ensure the efficient operation of workers compensation insurance arrangements, and*
>
> *(d) ensure the appropriate co-ordination of arrangements for the administration of the schemes to which the workers compensation legislation or the work health and safety legislation relates.*

(4) The Authority cannot employ any staff.

23 Specific functions (cf 1989 s 13)

(1) The Authority has, in particular, the following functions:

(a) to initiate and encourage research to identify efficient and effective strategies for the prevention and management of work injury and for the rehabilitation of injured workers,

(b) to ensure the availability of high quality education and training in such prevention, management and rehabilitation,

(c) to develop equitable and effective programs to identify areas of unnecessarily high costs in or for schemes to which the workers compensation legislation or the work health and safety legislation relates,

(d) to foster a co-operative relationship between management and labour in relation to the health, safety and welfare of persons at work,

(e) (Repealed)

(f) to identify (and facilitate or promote the development of programs that minimise or remove) disincentives for injured workers to return to work or for employers to employ injured workers, or both,

(g) to assist in the provision of measures to deter and detect fraudulent workers compensation claims,

(h) to develop programs to meet the special needs of target groups, including:

- *workers who suffer severe injuries*
- *injured workers who are unable to return to their pre-injury occupation*
- *injured workers who are unemployed*
- *persons who live in remote areas*
- *women*
- *persons of non-English speaking background*
- *persons who have a disability,*

(i) to facilitate and promote the establishment and operation of:

- *work health and safety committees at places of work*
- *return-to-work programs,*

(j) to investigate workplace accidents,

(k) to develop policies for injury management, worker rehabilitation, and assistance to injured workers,

(l) to monitor the operation of requirements and arrangements imposed or made by or under the workers compensation legislation or the work health and safety legislation, including requirements and arrangements for all or any of the following:

- *injury management*
- *worker rehabilitation*
- *workers compensation insurance*
- *workers compensation insurer licensing, and to commence and conduct prosecutions for offences in connection with any such requirements and arrangements,*

(m) to collect, analyse and publish data and statistics, as the Authority considers appropriate,

(n) to provide advisory services to workers, employers, insurers and the general community (including information in languages other than English),

(o) to provide funds for or in relation to:

- *measures for the prevention or minimisation of work injuries or diseases*
- *work health and safety education,*

(p) to arrange, or facilitate the provision of, interpreter services to assist injured workers,

(q) to provide and administer (subject to the regulations) a legal aid service for persons who are parties to proceedings relating to workers compensation.

21. The Union has relied in the main upon the *WorkCover Authority Annual Report 2012-2013* and *WorkCover-Scheme 2012 -2013 Annual Reports* for our comments. Our capacity to provide detailed comment has been limited by lack of information in both reports in relation to what is done with or to injured workers. We record our disappointment and frustration that Appendix 2 *Chief and Senior Executive General Manager Workers Compensation Insurance Operations* statement provides more information than the reports itself.

22. Substantial programs remain unreported. For example, the *Return to Work Engagement with Workplaces Program* would be of great interest to the AMWU. Of major significance is the lack of any information, detail or data about improved benefits promised to injured workers at the time of the 2012 reforms. There is no comparison data published for the twelve months since the reforms.

23. *Be responsible for ensuring compliance with the workers compensation legislation and the work health and safety legislation*

We rely upon our comments above in relation to Work Health and Safety legislation. As we have indicated repeatedly, we have seen very little evidence of monitoring and enforcement of compliance in relation to workers compensation other than some limited focus on premium avoidance.

24. The word *ensure* suggests a proactive approach by WorkCover in order to guarantee compliance in relation to *workers compensation legislation and the work health and safety legislation.* Unfortunately, WorkCover is developing a reputation for taking little if any interest in actively seeking to enforce its own legislation. Moreover, the Nominal Insurers Scheme Agents are regularly and frequently seen to misuse and poorly administer the workers compensation process as it applies to injured workers on a daily basis. Yet there is no evidence that we can find of any sanction being applied to a Scheme Agent, despite the legislation allowing for it.

25. Despite the legal obligation on employers to provide meaningful suitable duties to injured workers, there are regular and frequent examples of employers refusing to allow those workers into the workplace. Yet we have found no evidence of even a single instance in which an employer has been sanctioned.

26. Given this experience, in our view that there should be established an independent regulatory unit within the Workers Compensation Division of WorkCover. The sole focus of this unit would be compliance. As it would have no other responsibilities, it would be removed from any influences which currently inhibit this aspect of WorkCover's performance.

27. *Monitor and report to the Minister on the operation and effectiveness of the workers compensation legislation and the work health and safety legislation, and on the performance of the schemes to which that legislation relates.*

As indicated above the current information provided in annual reports is inadequate in describing the effect of the reforms upon injured workers, sparse in fact. It is therefore not possible to provide meaningful comment on this issue.

28. *Undertake such consultation as it thinks fit in connection with current or proposed legislation relating to any such scheme as it thinks fit.*

Evidence suggests that WorkCover thinks it reasonable and appropriate that there is no consultation with workers or their representatives. While we understand that there is regular consultation with Scheme Agents, we are not aware of any recent opportunity provided for sensible discussion and consultation with workers and their representatives. . While WorkCover pays the Scheme Agents for their services, they are very clearly not the only (or even the most important) stakeholder.

What may be described as consultation by WorkCover would fail to meet the definition as set out in its own legislation - the NSW Work Health and Safety Act 2011[ii]. The 2012 legislative reforms themselves were introduced without any consultation with workers or their representatives and since then there have been significant changes to Guides and Regulations without any consultation.

29. *Monitor and review key indicators of financial viability and other aspects of any such schemes,*

Public commentary around the financial status of the NSW Workers Compensation scheme has been regularly manipulated and utilised as a convenient means by which to justify 'reform'. There is no doubt that the NSW Workers Compensation Scheme fund was badly affected by the GFC and the subsequent GEC. In June 2012 the new Government claimed that the scheme was in deficit by $4 billion[iii]. At 30 June 2013 the Government announced that the scheme is in surplus by $900 million, accompanied by a devastating reduction in benefits to injured workers, while reducing premiums on employers

30. Leaving aside ideological decisions about funding priorities; the current investment strategy is clearly a failure. It is absolutely unsustainable for the NSW Workers Compensation Scheme to be so dependent upon the vicissitudes of the ASX. The current approach to financial management is more akin to a stock broking agent than management of the long term financial affairs of injured workers and their families. In our view there should be established an independent source of investment advice, which prioritises long term financial stability.

31. *Report and make recommendations to the Minister on such matters as the Minister requests or the Authority considers appropriate.*

In our experience WorkCover does not give fearless independent advice to the Minister. For example, in its recent submission to a Parliamentary Inquiry into WorkCover, the content and recommendations reflected the same position taken by government members on the Inquiry

32. *Promote the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces.*

The AMWU sees no evidence of comprehensive programs to address the long term incidence of major injury to workers in the manufacturing industry. The union is aware of programs such as Safework Australia's *5/5/10*. However, these programs have been on the periphery of the manufacturing industry, apparently ignoring the fact that this industry continues to have the highest levels of serious injuries across the board, yet still without any targeted programs to address the problem.

33. *Promote the prompt, efficient and effective management of injuries to persons at work.*

Contact by injured workers with the Union arises almost entirely from failings by WorkCover. Our experience is primarily in the manufacturing and construction industries and we are therefore loathe to generalise about the scheme as it applies to injured workers across the board. However, it is fair to say that we have seen an increase rather than any decline in numbers of workers seeking our advice and support in relation to problems with all aspects of the current scheme. Whileever WorkCover's focus remains on cost, to the neglect of timely delivery of services to injured workers there will be significant and perhaps insurmountable barriers for injured workers. We see no evidence of improved management activities aimed at returning workers to their pre-injury health.

34. *Ensure the efficient operation of workers compensation insurance arrangements*

In our view the scheme is, by any measure failing to provide income insurance for injured workers. It has, however, become a lucrative source of income for insurance companies.

35. *Ensure the appropriate co-ordination of arrangements for the administration of the schemes to which the workers compensation legislation or the work health and safety legislation relates.*

The AMWU has raised concerns for over a decade in relation to the administration of self-insurance licences. Some licensees demonstrate a higher level of compliance than others. However, there is little or no attempt by WorkCover to enforce compliance or cull poor performers. The audit process for self-insurers is clearly flawed. We have frequent examples of situations where licensees have coached workers to provide a response that does not necessarily reflect the truth. Yet poor audit results do not appear to lead to withdrawal of licence

36. While arrangements for Scheme Agents can be found on the WorkCover website, the crucial documents which set out the KPI's/benchmarks Vs payment are not available and audits are not publicly reported.

37. *Initiate and encourage research to identify efficient and effective strategies for the prevention and management of work injury and for the rehabilitation of injured workers.*

We acknowledge WorkCover's contribution to the *People at Work* project[iv]. However, we remain very concerned that there appears to have been no accompanying research on the physical attributes of manufacturing workplaces, as it is these that cause the most frequent and significant injury to workers on manufacturing sites.

We also recognise the very important work conducted under *WorkCover Assist Research Grants* which were commenced in 2002. Evidence of the successful work sponsored by these grants can still be found on the WorkCover website and remain very useful resources. In our view WorkCover has failed to develop effective strategies to share this resource across industry.

38. The AMWU remains very concerned about WorkCover's approach to research. At minimum, reliable research should be conducted by qualified researchers and peer reviewed before being published. The so-called research which was relied upon by government to justify the 2012 reforms failed in all these respects. For example, the new legislation includes 'step downs' in weekly payments to injured workers Yet reputable research demonstrates an entirely different position: *"The rationale used to support step-downs in weekly payments is that they provide a necessary incentive for motivating injured workers to return to work. Despite this claim there has been no systematic Australian research that demonstrates this to be the case. What evidence there is has been drawn from North American studies and, on closer consideration, it is apparent that the moral hazard arguments and econometric modelling on which these studies are based are flawed. It is also apparent that the return to work process is not the exclusive responsibility of injured workers but rather a joint responsibility that includes employers and scheme*

administrators. The real function of step-downs is not so much one of facilitating return to work but rather that of shifting costs for work-related injury[v]*."*

39. *Ensure the availability of high quality education and training in such prevention, management and rehabilitation.*

The AMWU is not aware of any education or training in prevention, management and rehabilitation. WorkCover currently rely upon contractors both in relation to skills and provision of education. This appears to have been a recent decision and has effectively limited and narrowed the skills pool in WorkCover, resulting in a much limited service.

40. *Develop equitable and effective programs to identify areas of unnecessarily high costs in or for schemes to which the workers compensation legislation or the work health and safety legislation relates.*

WorkCover continues to provide (reduced) benefits to a relatively small cohort of catastrophically injured workers. However, other injured workers, including those who are severely injured have been left to bear the burden of the changes, with very reduced benefits.

41. *Foster a co-operative relationship between management and labour in relation to the health, safety and welfare of persons at work.*

We rely upon our previous response.

42. *Identify (and facilitate or promote the development of programs that minimise or remove) disincentives for injured workers to return to work or for employers to employ injured workers, or both.*

The AMWU has seen no evidence of the development of programs that minimise or remove disincentives for injured workers to return to work or for employers to employ injured workers, or both.

43. *Assist in the provision of measures to deter and detect fraudulent workers compensation claims.*

The AMWU strongly opposed any fraud against the workers compensation scheme. However the Government's preoccupation with public exposes of relatively rare examples of abuse by workers has overwhelmed the attention deserved by workers who are genuinely injured who are themselves neglected or abused by the scheme and its agents.

44. *Develop programs to meet the special needs of target groups, including:*

- *workers who suffer severe injuries*
- *injured workers who are unable to return to their pre-injury occupation*
- *injured workers who are unemployed*
- *persons who live in remote areas*
- *women*

- *persons of non-English speaking background*

- *persons who have a disability.*

WorkCover reports that it funds a program for workers with in excess of thirty per cent Whole Person Impairment. However the details of this program are unavailable. We would be pleased to learn its details and how to access the program, although we are aware of only nine hundred and forty workers injured between 1987 and 2013.

45. We acknowledge provision of some materials in community languages and interpreter services when required. However we state again that we have seen no evidence of any proactive program to assist these particularly vulnerable workers.

46. We are not aware of any programs which have been developed for any of the other special needs target groups mentioned.

47. *Facilitate and promote the establishment and operation of:*

- *work health and safety committees at places of work*

The AMWU is unaware of any specific activity promoting the work health and safety committees (or Health and Safety Representatives as introduced with the Work Health and Safety Act)

- *return-to-work programs,*

48. The AMWU is unaware of any specific program by WorkCover which facilitates or promotes the establishment of return-to-work programs.

49. *Investigate workplace accidents*

We rely upon our response above.

50. *Develop policies for injury management, worker rehabilitation, and assistance to injured workers.*

WorkCover develops its policies without consultation with injured workers and their representatives; we are not in a position to comment on the content of WorkCover policies as its current approach to consultation precludes us from accessing any meaningful information.

51. *Monitor the operation of requirements and arrangements imposed or made by or under the workers compensation legislation or the work health and safety legislation, including requirements and arrangements for all or any of the following:*

- *injury management*

The AMWU has no insight as nothing meaningful has been published.

- *worker rehabilitation*

52. The AMWU has no insight as nothing meaningful has been published.

- *workers compensation insurance*

53. The AMWU has no insight as nothing meaningful has been published.

> • *workers compensation insurer licensing, and to commence and conduct prosecutions for offences in connection with any such requirements and arrangements,*

54. The AMWU has no insight as nothing meaningful has been published.

55. *Collect, analyse and publish data and statistics, as the Authority considers appropriate.*

As we have said previously, it is a very significant failure by WorkCover to have not published the *Statistical Bulletin*. Reliance upon the RTW Headline Measures Report (August 2013) is a completely inadequate means of establishing the success or failure of the scheme as it effects injured workers.

56. *Provide advisory services to workers, employers, insurers and the general community (including information in languages other than English).*

The WorkCover information service – 13 10 50 free call number – prioritises its rural funding campaign and employers with injured workers. Injured workers themselves are clearly a lower order priority.

In recent attempts to seek assistance from WorkCover using the 13 10 50 hotline minimum waiting times have been in excess of 10 minutes. This compares with industry bench marks of 2 minutes. This longer waiting time is accompanied by the Claims Assistance Service having implemented a new 'triage' approach, "Complaint Framework for injured workers and their representatives". Rather than returning a call within 48 hours, with work commencing from that point, as previously the case; the new process can take weeks to resolve. For example, in a recent case of which we are aware, the process took more than six weeks. This situation clearly has potentially disastrous implications for injured workers.

57. *Provide funds for or in relation to:*

> • *measures for the prevention or minimisation of work injuries or diseases*

The AMWU is unaware of any funding currently provided beyond the *People at Work* contribution to a third party. Manufacturing workers continue to suffer the greatest number of major injuries and have done so for decades. Yet we are aware of no program to address this situation..

> • *work health and safety education,*

58. The AMWU is unaware of any funding currently provided in this space.

59. *Arrange, or facilitate the provision of, interpreter services to assist injured workers.*

WorkCover promotes alternate language information on their web site and publishes limited accompanying documentation. However it appears that these services are designed to be of more practical assistance insurers and client employers than to injured workers.

60. *Provide and administer (subject to the regulations) a legal aid service for persons who are parties to proceedings relating to workers compensation.*

We note that ILARS is a function of the WorkCover Independent Review Officer (WIRO). It is unclear whether the WIRO is subject to this review. ILARS provides funding to injured workers to pursue their matters through the Workers Compensation Commission with the assistance of lawyers of their choosing.

61. Matters do exist with regards to the inconsistency of timing for decisions to award funding.

62. To examine trends and changes in compensation governed by the authorities, and report to the House any changes that the committee thinks desirable to the functions and procedures of the authorities, or advisory committees.

In our view the NSW government should reconstitute the *Workers Compensation and Work Health and Safety Council* and support the role it has played in positively assisting Workcover and its Board. In reconstituting this Council government should consider the relationship between WorkCover and the Council, such that WorkCover has a level of accountability to the Council; and any functions or powers the Council should have, including giving a directive and in providing reports to the Minister and the Parliamentary Committee.

63. WorkCover should be required to develop, through negotiation with injured workers and their representatives, new operational directives for the workers compensation nominal insurers' scheme agents or licenced insurers with respect to the management of injured workers, ensuring injured workers are treated with respect and dignity at all times. These operational directives should then be included into the conditions when contracts or licences next come up for renewal.

64. WorkCover should be required to establish a system to fine and prosecute scheme agents or licenced insurers where they are found to have, without reasonable excuse, withheld weekly benefits or authority for medical treatment from injured workers outside of legislated timeframes.

65. In our view this submission has provided considerable evidence that compliance by WorkCover with its statutory responsibilities is poor. At this point it may be more prudent to consider mechanisms by which to better hold WorkCover to account; including benchmarking WorkCover against its functions by the Parliamentary Committee, to whom an independent 'Inspector General of WorkCover' would report in a similar fashion to the long standing oversight mechanism established for the ICAC. In the same way, the independent NSW Children's Commissioner reports to the parliamentary committee oversighting the Commission of Children and Young people. Such an exercise should be public so as to provide the transparency it deserves.

Recommendations

1. Reconstitute the *Workers Compensation and Work Health and Safety Council* and support the role it has played in positively assisting Workcover and its Board. In reconstituting this Council government should consider the relationship between WorkCover and the Council, such that WorkCover has a level of accountability to the Council; and any functions or powers the Council should have, including giving a directive and in providing reports to the Minister and the Parliamentary Committee.

2.WorkCover should develop, through negotiation with injured workers and their representatives, new operational directives for the workers compensation nominal insurers' scheme agents or licenced insurers with respect to the management of injured workers, ensuring injured workers are treated with respect and dignity at all times. These operational directives should then be included into the conditions when contracts or licences next come up for renewal.

3.WorkCover should establish a system to fine and prosecute scheme agents or licenced insurers where they are found to have, without reasonable excuse, withheld weekly benefits or authority for medical treatment from injured workers outside of legislated timeframes.

4.Consider mechanisms by which to better hold WorkCover to account; including benchmarking WorkCover against its functions by the Parliamentary Committee,

5.Appoint an independent 'Inspector General of WorkCover' with similar functions to the oversight mechanism established for the ICAC and the independent NSW Children's Commissioner who report to the respective parliamentary committee.

NSW Workers Compensation Dust Diseases Board

The AMWU supports the submission of Asbestos Diseases Foundation of Australian (ADFA)

References

[i] WorkCover Annual Report 2013

[ii] **48 Nature of consultation**

(1) Consultation under this Division requires:

(a) that relevant information about the matter is shared with workers, and

(b) that workers be given a reasonable opportunity:

(i) to express their views and to raise work health or safety issues in relation to the matter, and

(ii) to contribute to the decision-making process relating to the matter, and

(c) that the views of workers are taken into account by the person conducting the business or undertaking, and

(d) that the workers consulted are advised of the outcome of the consultation in a timely manner.

(2) If the workers are represented by a health and safety representative, the consultation must involve that representative.

[iii] http://www.dailytelegraph.com.au/news/sydney-nsw/premier-barry-ofarrell-to-slash-workers-compensation-payouts/story-fn7q4q9f-1226309724002

[iv] http://www.peopleatworkproject.com.au/

[v] Provisions of Fair and Competitive Workers' Compensation Legislation, K. Purse