

**Submission  
No 186**

## **INQUIRY INTO NSW WORKERS COMPENSATION SCHEME**

**Organisation:** Australian Services Union

**Date received:** 17/05/2012

---



AUSTRALIAN SERVICES UNION

# ASU

## **WORKERS COMPENSATION PARLIAMENTARY INQUIRY**

### **SUBMISSION BY THE AUSTRALIAN SERVICES UNION**

1. The Australian Services Union (NSW and ACT Services Branch) and its NSW counterpart, the Australia Services Union of NSW (collectively referred to as “the ASU” in this Submission) cover employees in a number of industries, namely:
  - a. Social and Community Services (SACS)
  - b. Water
  - c. Transport, which includes Rail, Buses and Ferries
  - d. Airlines, Shipping and Travel
  - e. Information Technology
  
2. The work carried out by ASU members is diverse and includes roles such as:
  - a. Providing counseling and support to vulnerable and marginalised members of the community (SACS)
  - b. Maintenance and repair of sewer and water pipes (Water)
  - c. Providing security and revenue protection services for Railcorp and its customers on trains and stations (Transport)
  - d. Checking in passengers who are travelling overseas (Airlines)
  
3. The ASU is aware of members in all of the industries it represents being injured at work and relying on workers compensation payments to meet financial obligations and to receive medical treatment.
  
4. The ASU notes that the reform principles in the NSW Workers Compensation Scheme Issues Paper include:

**ACTIVE STRONG UNITED**

- a. promote recovery and the health benefits of returning to work;
  - b. guarantee quality long term medical and financial support for seriously injured workers;
  - c. support less seriously injured workers to recover and regain their financial independence.
5. The ASU is concerned that the proposals discussed in the Issues Paper will:
- a. Not achieve the above mentioned reform principles; and
  - b. Result in injured workers suffering significant financial hardship; and
  - c. Prevent injured workers from accessing appropriate medical treatment which will inevitably undermine their ability to recover and return to work.
6. The ASU supports the submission made by Unions NSW to the Inquiry.
7. In addition, the ASU wishes to make specific submissions about the following proposals:
- a. **Earlier step down to thirteen weeks and decreasing payments for partial incapacity.**
    - i. It is suggested in the Issues Paper that,  
*This approach is in line with research which indicates the longer a worker is away from work, the less likely they are to return. (Page 15)*
    - ii. It is extraordinary to suggest that reducing workers compensation payments after thirteen weeks of incapacity and decreasing payments for partial incapacity will magically result in an injured worker becoming fit for work and being able to return to full duties the workplace. These proposals ignore the fact that injured workers are only eligible for workers compensation in the first place if they are certified by a medical practitioner as being unfit for work. Medical practitioners will not suddenly change their duty to their patients and their subsequent diagnoses simply because full workers compensation benefits

are reduced after thirteen weeks and payments are decreased for partial incapacity.

- iii. Furthermore, the proposal ignores the important role that employers play in facilitating the return to work of injured workers. The ASU has been involved in many situations (some of which are described in the case studies below) where injured workers are certified by their doctors as being able to gradually return to work on suitable duties, but whose employers refuse to provide such duties.
- iv. This results in a vicious cycle, where the worker's recovery is contingent upon the worker being able to gradually resume their pre-injury duties; however the employer's refusal to accommodate the recommendation of the worker's medical practitioner in this regard means that the worker is unable to fully recover. In addition, the worker is left feeling that they are a burden on the employer, which in turn undermines the employment relationship and has the potential to adversely affect the mental health of the worker.

**b. Cap weekly payment duration**

- i. The Issues Paper states:

*It has been suggested that capping weekly payment duration to within a certain timeframe and thereafter ceasing payment of weekly benefits would give workers a fixed timeframe during which they know they need to work toward a certain level of work readiness. (Page 26)*

- ii. There can be no doubt that workers who remain unfit for work for an extended period of time have suffered serious injuries. To suggest that injured workers are able to "work towards a certain level of work readiness" in the absence of support from employers and professional opinions by medical practitioners about a worker's capacity to do so ignores the complex process of treatment and recovery which is unique to every injured worker. Cutting off weekly payments will cause seriously injured workers to suffer extreme financial hardship.

- c. **Cap medical coverage duration.** There is no sound basis to deny injured workers from receiving proper and appropriate medical treatment. Failure to provide such treatment will impede the ability of injured workers to recover fully from their injuries and has the potential to result in serious ongoing health issues for injured workers.
8. The ASU wishes to make the Inquiry aware of some specific case studies where ASU members will be adversely affected by the proposed changes. Please note that names have been changed to protect the privacy of members but can be provided on a confidential basis to the Inquiry for verification purposes.

### **Case Study 1**

9. Julia has worked for her employer for twenty-seven years.
10. Julia was injured when walking up a set of concrete stairs at her employer's premises approximately eighteen months ago.
11. The insurer accepted liability for the accident, and the insurer has paid for all surgeries and medical treatments. Julia has received weekly payments since January 2010 when she was certified as totally unfit for work. She continues to receive weekly payments at the statutory rate.
12. As a result of the fall, Julia broke her left forearm, requiring surgery in which a bone graft was performed. Unfortunately the bone graft did not take, and a second surgery was performed in August 2011 to completely replace the left forearm with Julia's right fibula.
13. Ten days after the surgery, another surgery was performed to replace the skin graft as the initial graft died.
14. As a result of the injury and subsequent surgeries, Julia has a fused left wrist with minimal finger movements. She also has substantial scarring on her left forearm.

15. As a result of Julia's fibula being removed from her right leg, she also has substantial scarring on her leg and has a drop in her foot as a result of constricted and affected nerves in her toes and calf. Julia now walks with a limp and has so much pain and a burning sensation that she currently takes morphine twice a day.
16. Julia has trouble standing for any longer than five minutes as her foot and leg start to swell. Because of the pain in her foot, Julia cannot even walk to the shops.
17. Julia used to be a very active person, including being able to climb ladders for work, however she is no longer able to do such tasks. She cannot drive because she has no use of her foot or arm.
18. Because Julia has very limited use of her left hand and ongoing pain in her right foot, she relies heavily on family members to clean the house, cook, and perform other household chores and especially for transport.
19. Julia is worried about her financial situation because she has not been able to return to work. She often gets depressed about having to rely on people for everything as she used to be a very independent person. She is also very depressed about the affects of her surgery, especially about her physical restrictions and scarring.
20. Because of the scarring on Julia's arm and leg, she is very self-conscious and will not wear a dress but instead wears pants and long shirts to cover the scars. The pain and depression has affected Julia to the point that she has difficulty eating and she has lost approximately 8kilograms since the time of her accident.
21. If the proposals in the issue paper are implemented, Julia will eventually cease to receive any weekly payments and medical expenses, although she currently has no prospect of being able to return to work because of the extent of her injuries.

**Case Study 2**

22. Sharon has worked for a service in a regional area which provides employment opportunities for clients with disabilities for twenty-three years.
23. Sharon is the Assistant Manager of the Service and had a good working relationship with the Manager of the Service until that person retired about a year ago.
24. A new Manager commenced working for the service who was verbally abusive towards Sharon and constantly undermined and humiliated Sharon in front of her colleagues.
25. The conduct of the Manager caused Sharon to suffer from anxiety and depression and Sharon was eventually diagnosed by her doctor as being unfit for work. Sharon lodged a worker's compensation claim which was accepted by the insurer.
26. The Management Committee of the Service refused to investigate Sharon's complaints against the Manager, which hindered Sharon's ability to recover from her illness.
27. Other staff began complaining about the conduct of the Manager, which eventually resulted in the Manager's resignation.
28. After seven months off work, Sharon advised her employer that she wished to return to work on light duties as recommended by her doctor, but her employer refused to accommodate this request.
29. After intervention by the ASU, the employer reluctantly agreed to allow Sharon to return to work on light duties two months after Sharon initially requested this. The ASU is currently in dispute with Sharon's employer because senior management continue to exclude Sharon from meetings and other workplace events and appear to be embarking on a course of conduct designed to force Sharon to resign from her employment
30. This case study illustrates that the assumption made by the Issues Papers that injured workers are reluctant to return to work is incorrect and that employers have a major role to play in facilitating the rehabilitation of injured workers. It is manifestly unjust to limit injured workers' access to weekly payments and medical expenses in circumstances where some employers simply refuse to support injured workers to recover and regain their financial independence.

**Case Study 3**

31. Sunil has worked for his employer for 43 years and is 63 years of age.
32. In approximately 2007, Sunil was performing his duties when a retaining wall fell and hit his left hip, leaving him with ongoing back problems. No workers compensation claim was made at this point in time.
33. In October 2010, Sunil injured his right knee on the steps of his work truck. Sunil underwent medical examinations where it was ascertained that he had two bulging discs in the back (from the initial injury) and needed a knee arthroscopy.
34. The insurer accepted liability for both injuries and paid for the knee arthroscopy.
35. After Sunil's knee injury, he was put off work for a number of weeks then returned on light duties until February 2011, at which time he had the knee arthroscopy. Sunil then returned to light duties until approximately November 2011 when he was issued a final Medical Certificate certifying him permanently fit for suitable duties.
36. The employer has refused to provide any suitable duties since and it appears that Sunil's employment will be terminated shortly.
37. If the proposals in the Issue Papers are implemented, Sunil will eventually cease to receive any weekly payments and medical expenses, even though he is likely to be unemployed as a result of his employer's intention to terminate his employment. As an injured worker who is 63 years old, Sunil has poor prospects of obtaining alternative employment.

**Conclusion**

38. The above examples demonstrate that workplace injuries can affect anyone at any time. All of the case studies are of long term employees, in the latter half of their careers, whose working lives have suddenly been interrupted or cut short by an unexpected, but serious workplace injury. Removing benefits from these and other injured workers will have a profound and long



term effect upon their financial security and well being. The ASU therefore strongly opposes any reforms to the current workers compensation scheme which will result in reduction of benefits for injured workers.

Date of Submission: 17 May 2012

Contact person: Judith Wright, Senior Industrial Officer

Tel: f