

Submission  
No 3

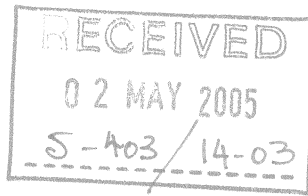
## INQUIRY INTO WORKERS COMPENSATION INJURY MANAGEMENT PILOTS PROJECT

**Organisation:** Injuries Australia  
**Name:** Mr G Cooper  
**Telephone:**  
**Date Received:** 2/05/2005

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**Theme:**

**Summary:**



PO Box 2091  
Gateshead Mail Centre  
NSW 2290  
22/4/2005

The Hon. Christine Robertson MLC  
Standing Committee On Law And Justice  
Legislative Council  
Parliament House  
Sydney 2000.

Dear Ms Robertson

Thank you for extending to Injuries Australia an invitation to contribute to the Inquiry into workers compensation injury management projects.

When these injury management projects were first announced the members of our organisation were both amused and annoyed. Here we had at last an admission by NSW government Workcover insurance that 17 years after the passing of the Workcover Workers Compensation Legislation that the legislated requirement of returning work injured employees to health and employment may not have been carried out correctly, something which our members had been trying to tell the NSW government for many years. Nobody was listening. We were hopeful that our organisation would be asked to participate in these pilot projects so that the matchless experience of our many members could be included in this study. Regrettably we were passed over once again and the very people whom we know are the cause of the constant failure of medical and vocational rehabilitation of work injured employees were the only people allowed to participate. Having only the people who each year make millions of dollars profit out of the system to check out their own failings was only ever going to result in a totally false picture. Naturally they hand picked their subjects and the results were that the whole expensive exercise became a cover up of their illegal activities.

We say illegal activities because from day one the Workcover Workers Compensation legislation clearly stated the duties of those licensed insurers and rehabilitators is to attend to the medical and social needs of the work injured. This was the sole political intent in the first place of those Parliamentarians who debated and passed the work safety and workers compensation legislation. To take the peoples money and not carry out the legislated requirements is theft as well as what some would claim to be subversive. Something not uncommon in the insurance industry. To support our case we have attached, for your information, a copy of that section in the original Workers Compensation legislation that plainly outlines what is required of Workcover licensed insurers and their rehabilitators. This continued failure to carry out the legislated requirements of the Compensation Act resulted in over 100 thousand NSW work injured employees losing their employment, most being dumped onto Federal government Social Security for life. (Please see attachment A)

The results of these pilot projects were not a true picture of the failed injury management system simply because the insurers have never been interested in people. To support this claim we have supplied the members of this Committee a copy of a NSW government Workcover publication which was freely made available to industry and its employees. It is a guarantee of return to work following a work caused injury. It was quite clearly the task of the paid insurers to fulfil this guarantee. They failed miserably as federal Social Security figures clearly highlight. (Please see attachment B)

Business ethics as related to the insurance of humans is an oxymoron. The insurance world is not about the welfare of people. It is ruthless and exploitative with no regard for human feelings or dignity. Perhaps they have become so corroded by their own avarice that they regard people as expendable.

Allow us to quote Lord Acton; "the falsification of history is the greatest of crimes because it denies and debases the meaning of human experience---Truth is ill served when the strong man with the dagger is followed by the weaker man with the sponge. First the criminal who slays, then the sophist who defends the slayer." Given that the very reason for this expensive pilot projects was to improve the results obtained by the insurers and their

rehabilitator why hand them the means of presenting their own results? NSW government Workcover should have conducted the pilot projects themselves so that the exercise could have also been a check on how the insurers and their case managers were conducting themselves.

The one great mistake when the Workcover type of workers compensation insurance was introduced was to allow insurance companies to be involved. How anyone can consider insuring humans and various parts of their body as though they were just another commodity is beyond comprehension. Some may say it is barbaric. Yet that is what was delivered and employers, employees and society have paid dearly ever since.

To those Committee members who may not be conversant with the history of how the Workcover system came about please allow us the space to go over it and hopefully it will explain why some consider insurers actions to be subversive.

The privatised compensation system which existed before Workcover had been so mismanaged by the insurer companies that it had become unaffordable to industry and was totally unsatisfactory to work injured employees. Following Victorias lead in establishing a Workcover system, the NSW government set out to establish a like system of workers compensation. The Unsworth government formulated three variations of how the scheme could be conducted and canvassed widely for opinions from industry and its employees (the true stake holders). Before a decision could be made as to which way to go the Insurance Council of Australia, representing the licensed Workers Compensation Insurers, wrote to the Premier and the Industrial Relations Minister clearly threatening to immediately cease to carry all Compensation insurance unless a scheme was introduced which best served their financial interests, rather than any of the three schemes formulated by the government and now before the users of the system---the employers and the employees---for their consideration.

The chaos in industry that such draconian action would have caused is mind boggling and the Insurance Council of Australia well knew it. That such thuggish standover tactics were even considered by the insurers is a true indication of their inability to accept the ruling of a democratically elected government when their devine right to profit is threatened.

For the Committees information we have included a copy of this notorious missive. If ever there was a reason to exclude insurers from the sensitive subject of human injury insurance than this surely must be it. We hope that the Committee will circulate it as widely as possible for all NSW citizens to read. (Please see attachment C)

What we have written here may give the impression that we are opposed to all insurers. Not so. Along with most other people we value our home and contents insurance and would not consider driving a motor car without some level of indemnity insurance. When a claim is made in this commodity type insurance matters are usually cleaned up swiftly with the minimum of fuss. What we wish to make quite clear is that in the area of compulsory human work safety insurance the insurers are not mentally equipped, trained or motivated to bring themselves to conduct their affairs as efficiently as when handling a claim on an inanimate object such as a motor car. Perhaps one reason for this uncaring behaviour is that the person making the claim is not their client and is seen as a fraud to be treated as harshly as possible.

Another grave mistake when Workcover compulsory insurance was introduced was to not insist that the employees must contribute to the cost of the insurance---thus enjoying the same client status as the employer. Each time that we asked for this to be introduced the loudest howls of protest came from the insurers. We can only assume that this was because it would mean that they would be required to do their injury management work correctly. On this subject we have spent many days studying such an arrangement and ironing out the faults. Employers and employees whom we have discussed this with have greeted the idea with enthusiasm, yet the insurers condemned the idea. It would serve industry well if this or some other Parliamentary would pursue this less costly and more humane method of workplace injury indemnity.

There are a whole raft of issues associated with the conduct of injury management which we would like to discuss with the Committee that we feel cannot be served fully by only placing them in writing. Should it be considered

that the information we have gathered based on the extensive experiences of our members could assist them with their inquiry we will be most happy to make ourselves available to meet with the Committee.

Allow us to leave you with this thought. In compulsory workers compensation insurance there are only three stakeholders. They are the NSW State Government, the Employers and the Employees. Every one else involved is there by choice and are there for profit. They can stay completely out of it if they so wish. The true stakeholders do not have the luxury of choice and they are the only people who should be contributing to the policy and the conduct of the scheme.

We recognise the importance of the Committees work and hope that this inquiry will help towards a better system of work place death and injury indemnity for the people of New South Wales.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Greg Cooper". The signature is written in a cursive style with a long horizontal flourish underneath.

- (b) any disease; and
- (c) any impairment of the physical or mental condition of a person.

## PART 6

## REHABILITATION OF INJURED WORKERS

**Rehabilitation programmes to be established by employers**

152. (1) An employer shall, in accordance with the regulations, establish a general rehabilitation programme with respect to policies and procedures for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of the employer.

(2) Any such rehabilitation programme shall, subject to the regulations—

(a) comply with any guidelines determined jointly by the Board, the Occupational Health, Safety and Rehabilitation Council of New South Wales and the Secretary of the Department of Health;

(b) be developed by the employer in consultation with the workers concerned and any industrial union of employees representing those workers; and

(c) be in writing and be displayed or notified at places of work.

(3) The regulations—

(a) may require any such rehabilitation programme to be approved by the Board or other person or body;

(b) may exempt specified classes of employers from this section;

(c) may provide for the accreditation (with the concurrence of the Secretary of the Department of Health) of providers of rehabilitation services for the purposes of any such rehabilitation programme and may require employers to use the services of accredited providers in connection with the programme;

(d) may create offences with respect to any failure to comply with this section or with any such rehabilitation programme;

(e) may provide that any action of an employer in connection with any such rehabilitation programme does not constitute an admission of liability to pay compensation; and

*Workers Compensation 1987*

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- (f) may make other provisions that are necessary or convenient for the purposes of giving effect to this section.

**Vocational re-education etc. provided by Board** (cf. former ss. 37 (3) (g), 52)

153. (1) The Board may institute, administer or co-ordinate vocational re-education and rehabilitation schemes for injured workers.

(2) The Board may draw from the State Compensation Board Fund such amounts as may be necessary or desirable for the purposes of the vocational re-education and rehabilitation of injured workers.

(3) Without limiting the generality of subsection (2), the Board may draw from the State Compensation Board Fund such amounts as the Board considers appropriate—

(a) to provide financial incentives to employers who offer employment to injured workers unable to find suitable employment and who provide (or assist in the provision of) vocational re-education and rehabilitation for those workers; or

(b) to provide financial incentives to employers who retain or re-employ their injured workers and who provide (or assist in the provision of) vocational re-education and rehabilitation for those workers.

(4) The Board may establish within the State Compensation Board Fund an account, to be known as the Vocational Re-education and Rehabilitation Account, for the purpose of keeping a separate record of the money in that Fund set aside by the Board for the purposes of this section and the money paid from that Fund under this section.

**Rehabilitation counsellors** (cf. former s. 53F)

154. (1) The Board may appoint officers of the Board to be rehabilitation counsellors.

(2) A rehabilitation counsellor shall, as directed by the Board—

(a) assist in devising and co-ordinating rehabilitation programmes;

(b) monitor the progress of injured workers who are involved in rehabilitation programmes; and

(c) consult with employers with a view to expediting the return to work of injured workers.

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(3) Evidence of any communication between a worker and an officer of the Board, acting in the officer's capacity as a rehabilitation counsellor, is not admissible in any proceedings before the Compensation Court or a commissioner unless, during the course of the proceedings, the worker consents to the evidence being so admitted.

(4) A rehabilitation counsellor may inspect the place of employment of an injured worker for the purpose of exercising the functions of the rehabilitation counsellor.

(5) A person shall not obstruct or hinder any such inspection.

Penalty (subsection (5)): \$2,000.

## PART 7

## INSURANCE

DIVISION 1—*Insurance policies*

**Compulsory insurance for employers** (cf. former s. 18 (1), (5), (6))

155. (1) An employer (other than a self-insurer) shall obtain from a licensed insurer, and maintain in force, a policy of insurance that complies with this Division for the full amount of the employer's liability under this Act in respect of all workers employed by the employer.

Penalty: \$20,000.

(2) Where several persons may become liable in respect of an injury to the same worker—

(a) it shall be sufficient to obtain a joint policy of insurance in respect of that liability; and

(b) the premium chargeable in respect of the policy shall not exceed the current rates for insurance of an employer's liability in respect of workers engaged in the same industry, trade or business.

ATTACHMENT B

## What is WorkCover?

WorkCover is a statutory authority which administers the legislation relating to occupational health and safety and rehabilitation and worker's compensation in NSW.

Staff at WorkCover can assist you in making your workplace safer. Advice on rehabilitation and worker's compensation is also available.

## WorkCover's Mission

WorkCover's mission is to prevent work-related injury and illness and their social and economic impacts by:

- improving health and safety in the workplace;
- rehabilitating injured workers; and
- compensating injured workers and their dependants.

## WorkCover's Guarantee of Service

WorkCover is committed to providing high quality, efficient service to the employers, employees and community of NSW. WorkCover recognises that only by shaping its services to meet the needs of clients can WorkCover achieve its corporate mission.

To prevent work related injury and illness and their social and economic impacts by:

- ✓ improving health and safety in the workplace;
- ✓ rehabilitating injured workers; and
- ✓ compensating injured workers and their dependants.

WorkCover aims to provide fair and equitable services while meeting its obligation to the community to restrain costs.

## WorkCover Services

### Services provided by metropolitan and country offices

WorkCover offices are spread across NSW. Staff from these offices can assist you in a number of ways:

- advising on your rights and responsibilities concerning occupational health, safety and rehabilitation and worker's compensation.

For information on worker's compensation and rehabilitation, call our RECOM officers located in WorkCover Regional Offices or the Worker's Compensation and Rehabilitation Information line (008) 806 6626 toll free.

We can also provide advice on WorkCover's compensation schemes for bushfire fighters, emergency service personnel and for those injured workers whose employers are uninsured;

- investigating the causes of accidents, injuries and illness;
- assisting in the mediation and resolution of disputes about occupational health and safety, rehabilitation and worker's compensation; and
- licensing and certification systems for hazardous operations.

### Technical and Scientific Services

WorkCover Techsource provides a wide range of specialised consultancy, testing, education and research services for commerce, industry and government.

Three special centres located at Londonderry, Thornleigh and Sydney City are the backbone of the specialised services associated with workplace health and safety. They cover areas such as:

- factory and general workplace safety;
- pressure equipment fabrication;





INSURANCE  
COUNCIL OF  
AUSTRALIA  
LIMITED

Incorporated in Victoria



20 Bridge Street Sydney 2000  
02 277761 Telex AA73969 ICASYD

28 August 1986

Mr Barrie Unsworth, M.P.  
Premier of New South Wales  
State Office Block  
Macquarie Street  
SYDNEY NSW 2000

ATTACHMENT C

and

Mr Pat Hills, M.P.  
Minister for Industrial Relations  
3rd Level  
Hyde Park Tower,  
Cnr Park and Elizabeth Streets  
SYDNEY NSW 2000

Dear Mr Unsworth and Mr Hills

re: Workers' Compensation Insurance - New South Wales

At a meeting of Chief Executives this week of:

AMP Fire & General Insurance Company Limited  
Australian Eagle Insurance Company Limited  
City Mutual General Insurance Limited  
Commercial Union Assurance Company of Australia Limited  
Employers Mutual Indemnity Association Limited  
FAI Traders Insurance Company Limited (recent name change from  
Traders Prudent Insurance Limited)  
Guardian Assurance Public Limited Company  
Manufacturers' Mutual Insurance Limited  
Mercantile Mutual Insurance (Workers' Compensation) Limited  
M.L.C. Insurance Limited  
The New Zealand Insurance Company Limited  
Norwich Winterthur Insurance (Australia) Limited  
Q.B.E. Insurance Limited  
Switzerland General Insurance Company Limited  
Union Insurance Company Limited

considerable disappointment and concern was expressed with the lack of detailed advice of your Government's intentions to amend the current Workers' Compensation Act of New South Wales.

Licensed Insurers (members of ICA) wish to continue to offer advice and assistance to the Government directly or through the State Compensation Board to find a solution to the spiralling costs and the inherent inefficiencies and deficiencies of the present scheme established in July 1985.

2.

Mr Unsworth and Mr Hills

28 August 1986

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This scheme is now facing failure unless all participants are persuaded to co-operate in producing an equitable, efficient and long term solution.

The predictable opposition from employers and from unions to increased rates or curtailed benefits makes action in these areas understandably unpalatable and difficult. But because they are the only really significant factors capable of balancing the scheme appropriate changes are unavoidable.

If these cannot be effected then the Government will need to seek subsidies from the taxpayers to pay for the underwriting losses caused by inadequate rates and uncontrolled benefits.

Advices to you by way of a formal submission of February 1985, discussions with the State Compensation Board Chairman and personal discussions with Mr Hills earlier this year have failed to elicit any real proposals that would provide any encouragement for insurers to continue writing the business.

Therefore the companies listed above, facing this significant threat to their total ongoing viability and to their shareholders funds, have unanimously agreed that they will be unable to write new workers' compensation business in New South Wales from and after 30 September 1986.

Should the Government wish these underwriters to extend their activities beyond 30 September 1986 as an interim measure they would require the current rates to be converted from maximum to recommended.

However, to service policyholders a decision would need to be taken by early next week. If this is impossible then it must be stressed that these companies, well aware of their obligations to workers' compensation policyholders have taken this decision with the utmost reluctance and only to protect all their other policy and shareholders.

Yours sincerely



John K Westmore  
Assistant Chief Executive