

**Submission  
No 87**

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

**Organisation:** LJ Hooker Belmont

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16<sup>th</sup> May 2012

Joint Select Committee on the NSW Workers Compensation Scheme  
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Dear Sir/Madam,

I am writing in regards to the NSW Government Parliamentary Inquiry to report on the NSW Workers Compensation Scheme and WorkCover NSW. In particular I wish to bring to the Committee's attention, my concern about the perceived imbalance in the workers compensation legislation where the injury relates to a psychological/psychiatric condition. We recently received a "Worker's Injury Claim Form" from a former employee who ceased employment some 18 months ago. Since receiving this claim, we have been forced to spend up to 30 hours dealing with the matter. By way of brief background, the employee's employment was terminated on 19 November 2010 yet her claim for workers compensation was contained in a letter from her lawyer dated 17 April 2012. The claim alleges that the ex-employee developed a psychological/psychiatric injury ("chronic adjustment disorder with features of depressed mood and anxiety") as a result of her treatment at our agency with a specific date of 19/11/2010. We strongly dispute the current claim and whilst it hasn't been resolved at this stage we became concerned very early on in this process that the current Workers Compensation scheme was a "rubber stamp for most claims".

Interestingly, at the initiative of the ex-employee's lawyer, she has presented two clinical reports related to her alleged condition which claims that the circumstance of her employment was the major contributing factor to the alleged injury. The medical conclusion that our agency is responsible for the ex-employee's alleged injury, was made without any investigation of the circumstances surrounding the employment or termination of employment. The medical opinions are based exclusively on the information given by the employee (which I'm certain happens in most cases of this type) and it is clear to us that such medical opinions are beyond reproach.

I strongly believe legal representatives of claimants are taking advantage of the lack of accountability of claims and the process that currently exists. On speaking to our Workers Compensation insurer, one of the representatives comments was whilst there is a two month window of opportunity to lodge a claim, there are many and varied excuses which apparently allow a claimant to proceed with a claim outside of this time frame. In the case referred to in my letter, the ex-employee is seeking compensation pursuant to sections 36 and 40 of the Workers Compensation Act as well as costs and disbursements pursuant to the Workers Compensation Regulations 2010.

Ultimately it is business owners that are being penalised for what will be, in many cases, unmeritorious psychological injury claims.

We have also received advice that the Workers Compensation Act specifically excludes workers compensation payments in respect of a psychological injury if the injury was wholly or predominantly caused by reasonable action taken by the employer with respect to performance appraisal, discipline or dismissal of a worker. Given our experience however, it seems the legislation is heavily biased in favour of the claimant and such claims receive at least provisional approval. This in turn must, in our view, exacerbate the perilous financial position of the scheme. In our respectful submission, the Committee should consider appropriate legislative measures that will better 'filter out' the sham psychological injury claims while preserving the protection needed for those claims with proper legitimacy.

Thank in advance for your consideration of this brief statement.

Yours Sincerely

Robert O'Brien JP  
Principal and Licensee  
LJ HOOKER BELMONT