Submission No 13

INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

Organisation:

Name: Ms Margaret Reynolds

Telephone: 9439 7173

Date Received: 11/03/2005

Subject:

Summary

Margaret Anne Reynolds

Legislative Council
GENERAL PURPOSE
STANDING COMMITTEES

12 MAR 2005

RECEIVED

Submission to the General Purpose Standing Committee No. 1, March 2005

This is a submission in response to the call from the General Purpose Standing Committee No. 1, inquiring into the operations and outcomes of personal injury compensation legislation. I refer to accidents in the workplace and work-related injuries.

This submission details my experience in dealing with the Workers Compensation Insurer from the middle of 200 to the present. I hope that my experience will throw some light on the difficulties that the new legislation has caused for complainants and also highlight the essential inequity that the changes have built into the system, to the extreme disadvantage of injured workers.

The basic problem as I see it is that the worker is left to manage on their own at a time of crisis and personal and financial difficulties, with an experience that reinforces their feelings that they have been overlooked by the legal system and victimised by the insurance company. The Insurer, in my case the multinational Insurance Company Allianz, has all possible resources at its disposal to thwart claims and deny payment. They are so arrogant that they do not respond to legitimate complaints. Not only that but the Insurer is able to access whatever legal and medical advice it requires in order to

prove its point. Workers do not have unlimited financial resources, particularly in situations where they have ceased employment and lost their job and independence through injury.

My experience began in July 2003 when the Insurance Company wrote to me denying liability except in so far as they were prepared to pay medical expenses. As far as the Insurance company was concerned, I was assessed by one of its in-house Doctors, "in house" because the company for which this Doctor worked is a wholly owned subsidiary of Allianz. At this first medical appointment the Doctor did not request to see any medical reports or x-rays, and he carried out a cursory examination. On the basis purely of observation and subjective assessment, he came to the opinion that I had no case and the Insurance Company had no responsibility except for medical expenses. A month or so later I was sent to another medical Doctor of the Insurer's choosing. The experience was a similar one. The Doctor did not request to look at medical reports or x-rays. I understand that he was not competent in any case to interpret x-rays. This Doctor came up with the report which suggested that I had exaggerated my claim and misrepresented accidents and that no weekly payments should be paid. This was October 2003.

In the meantime I had been submitting claims for medical and travel reimbursements. At no point did the Insurer ever disclose to me the basis on which or the policy according to which the Insurer paid reasonable expenses. I have never seen this policy. When I questioned certain non-payments I was told by the case manager, apparently according to her decision, that certain payments would not be made. The situation struck me as

being rather like the Queen's croquet party in *Alice and Wonderland* where nobody knew the rules. The Queen made the rules so that if the Queen did not like what was happening, she changed the rules.

My next experience was in November 2003. I received in the mail a cheque with no covering letter, with back payments for Workers Compensation weekly payments from 16th June 2003. The cheque amounted to a considerable amount of money. I continued to submit claims for reimbursements, and weekly payments continued after this initial back payment.

In January 2004 I was sent to another Doctor of the Insurer's choosing, on this occasion a qualified orthopedic specialist. His report attested to my injuries and agreed it was reasonable that I had ceased employment in view of those injuries.

In May 2003 I checked on the details of weekly payments to that date and the back payment of Workers Compensation, and found that I had been underpaid by the amount of almost $3000. I wrote to Allianz with a complaint about this non-payment, and received a percentage of that amount. Since May 2004 I have been engaged in on-going correspondence with Allianz about underpayment of Workers Compensation weekly payments dating back to October 2003, and non-payment of reimbursements for reasonable expenses, so far with no result.

In November 2004 i received a letter from Allianz which stated that the insurance

company denied further liability and that it would cease payments of all benefits on 14 December 2004. The decision to deny further liability was based on the reports of two Doctors appointed by Allianz. In September 2004 Allianz sent me to the first of three Doctors, one of whom I had already seen in July 2003 at Recovre, the wholly owned subsidiary of Allianz. On this occasion Dr McMahon consulted x-rays and conducted an examination, on the basis of which he intimated that weekly payments would continue into the future. Shortly afterwards i was sent to a second Doctor at Recovre, Dr Mastroaianni. It was clear from his comments before he began the examination that he intended to reject my claim. My feeling of unease was confirmed when I obtained a copy of his report which misrepresented aspects of the examination. A week or so later I was summoned to a third medical appointment, to be conducted by a Doctor Meachin, who was brought from Orange, NSW. His view was that my injury were not attributable to the workplace accidents.

In September 2004, i obtained under Freedom of Information a copy of my Allianz file to that date. Two of the documents were detailed surveillance reports from an investigation agency, employed by Allianz to "check on my level of activity". These reports contained gratuitous comments about my driving ability, and referred to video footage of me and two members of my family. I was particularly alarmed by the second report, which had been ordered by Allianz after Allianz had received verification of my condition from one of their own appointed specialists. I have recentlyvmade a complaint to Privacy NSW, following an inadequate response to my complaint from Allianz.

In December 2004 i submitted a final claim for reimbursement of medical and other

expenses up to 14th December 2004. Since June 2004 i have been constantly engaged in correspondence with Allianz, complaining about non-payment and underpayment dating back to October 2003. I contacted WorkCover as well as the complaints officer in Personal Injury at Allianz, but have received no reply and no cheque for the outstanding amount of over $7000. WorkCover apparently has no power to direct the Insurer to make overdue payments.

The action by the insurance company to deny further liability is a good example of the power and resources at the disposal of the insurance company which can use unlimited funds to access medical and legal advice of advantage of it. The delay which their decision has caused makes it more difficult for a complainant to continue with their claim, by causing additional stress and financial uncertainty. My distress would have been much greater except for the fact that I had access to a superannuation invalidity benefit which covered my living expenses. If I had been reliant solely on WC weekly payments the action by the insurance company could have had a cataclysmic effect on me and my family and the additional stress would surely have forced me to withdraw from my claim for compensation.

As a result of the decision of November 2004, I have been required to attend further medical examinations in order to follow up my claim for disability. The delays in the compensation process, orchestrated by the Insurer, make it more difficult for a complainant since the legal representative cannot charge fees until the case is settled. The longer a case is drawn out by the Insurer, the less remuneration is involved for the solicitor and the longer he waits to be paid, so there is an inbuilt handicap for the

defendant at the ready disposal of the Insurer.

The scheme also adds an element of pressure of a defendant to settle for whatever the insurance company offers, since the solicitor is denied payment until that happens. Moreover, the upper amount for compensation is risibly low, given that workers with injuries above the threshold above 15% have significant life=long medical and therapy expenses. Manyvof these services have to be accessed from the private sphere, since Medicare does not provide comprehensive cover.

The injured worker as a victim in a least three ways. The compensation scheme as it is set up creates many options and avenues for the insurer to reject, extend and diminish the claim. The worker begins in a vulnerable position, usually with extensive injuries, and in my case chronic pain, and is required to battle at every turn in order to ensure that their rights are not overturned. The Insurance company's practice of surveillance is designed to purely to victimise workers, since no surveillance could be deemed capable of replacing a medical report as a basis for evidence.

The Committee may also wish to take into consideration the medical practitioners in this area. It has been my experience that the medical professionals appointed by Allianz have been at best cursory in their examinations; three have apparently been unqualified to assess x-rays and other scans. My treating GP has also informed me about physical damage to workers done by unqualified medical practitioners during examination.

I think that the Australian Medical Association should take a special interest in Doctors

who work solely for Insurance companies, because of the inbuilt potential in the scheme for bias against workers. WorkCover should pay particular attention to the specialists on the WorkCover Approved Specialists lists. Doctors on these lists should be assessed on a regular basis, based on their reports and how these reports affect outcomes for workers at Commission and Court hearings.

I would be pleased to give evidence to the Committee on any of the points raised here and on other aspects not covered in this submission.