

**Submission
No 157**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Workplace Tragedy Family Support

Date received: 17/05/2012

SUBMISSION TO THE NSW WORKERS COMPENSATION SCHEME (INQUIRY) 2012

by Wendy Lark, Facilitator - Workplace Tragedy Family Support Group

I respectfully make this submission on behalf of the families who have been left behind following a sudden, violent, often preventable, and tragic work-related death, and members of the Workplace Tragedy Family Support Group - a group set up in 2007 to support such families. We are mothers, fathers, wives, husbands, sons and daughters of people who went to work one morning, died as a result of work-related incidents, and would never return home again to their loved ones as a result. It is our view that it is a fundamental right of every NSW citizen and worker to return home every night of their working lives.

We address in particular four of your proposals which directly impact on families. We are the ones who suffer for the rest of our lives, which are altered immediately a work-related death occurs. The impact of such a death is deeply damaging, wide-reaching and long lasting. We need a government who will assist us in our loss – not make it even harder for families than it already is.

Removal of the provisions noted in this submission would add insult to injury to families whose loved ones have died from work-related deaths. We also make a proposal to assist in the payment of NSW Workers Compensation prosecution legal costs.

We would like to further expand on these issues by appearing in person before the Inquiry. We understand no similar organisation to ours has been granted the right to appear, while numerous insurers, lawyers, actuaries, bureaucrats and employer organisations have been granted such a right.

ITEM 2 - PROPOSAL TO REMOVE COVERAGE FOR JOURNEY CLAIMS

It is our strong contention that journeys *to and from your place of abode and to and from your place of work* are intrinsically work-related. Such journeys only arise in the course of one's employment. Indeed, it is our view that such deaths would not have occurred at all if the worker had not been travelling to or from his/her place of work.

In particular, many miners, civil engineers working on roads, forestry workers and construction workers have to travel long distances both throughout Sydney and throughout NSW because of the changing nature of their work sites. They are only making those journeys to carry out their employment.

The current and invaluable provisions protecting workers and their families (for journey claims) were introduced and have been recognised as being clearly work-related for 86 years at least - as far back as the **Act 15 of 1926 Workmen's Compensation Act** in which our forefathers deemed and covered journey work-related deaths in the following terms:

PART II.

COMPENSATION.

*7. (1) A worker who receives personal injury—
(a) in the course of his employment, whether at
or away from his place of employment; or
(b) without his own default or wilful act, on the
daily or other periodic journey between his
place of abode and his place of employment,*

As such, protection under Workers Compensation Act for Journey Claims is an inherent right for all past, current and future workers in NSW. With respect, the original premise for workmen's compensation is to protect workers and their families in NSW - the citizens of NSW – not about reducing premiums.

To reverse this provision and remove such coverage for workers in NSW would leave thousands and thousands of families exposed, vulnerable, and at enormous risk, and would unnecessarily exacerbate the pain and suffering of families should such tragic circumstances (such as a death on the way to work) occur.

We have members who have been impacted by such deaths – the worker killed on his/her way to and from work still leaves behind a family – a mother, father, wife, son, daughter. We already suffer for the rest of our lives from the loss of someone whose only intention was to go to and from work.

We reject the premise that *“this would provide a closer connection between work, health and safety responsibilities and workers compensation premiums through eliminating workers compensation costs arising in circumstances over which employers have limited control”*. Employers do have control by the very fact they employ someone, and work health and safety must start from the moment you leave the safety of your home up to the moment you return home from work at night. We are sure you would agree - every worker has the right to come home at night.

We have several examples of families whose loved ones have died through commuting accidents on the way to and from work, who have been recognised by the State as being fully entitled to workers compensation death benefits, just the same as those who have lost a loved one through an accident within the workplace.

ITEM 3 - PROPOSAL FOR EXCLUSION OF NERVOUS SHOCK CLAIMS FROM RELATIVES OR DEPENDANTS OF DECEASED OR INJURED WORKERS

We are pleased that this Inquiry recognises the profound impact of the tragic event of fatality from work related injuries.

We acknowledge that legal costs associated with these deaths are not regulated by workers compensation legislation and can be substantial, including payment for civil liability for nervous shock to family members, and associated regulated and unregulated legal costs.

We reject the premise that *an employer’s liability for the psychological injuries to family members following the serious injury or death of a worker does not fall within the objects of the legislation*. The psychological damage to families is palpable, and at least as relevant as psychological impact on fellow workers who witness such work-related deaths.

We also reject the premise that *removal of such liability would provide a closer connection between work, health and safety responsibilities and workers compensation premiums through eliminating workers compensation costs arising in circumstances over which employers have limited control*.

Such liability already lies with an employer who does not provide a safe working environment. That liability extends to every worker on their job, and the families of those workers who tragically lose their lives.

We have one member who watched his only son – a sixteen year old – be crushed to death in a recycling machine. This man suffers extreme post traumatic stress, cannot get work, has lost his wife and daughter – all as a direct result of and from the impact of his son’s death. **None of this would have occurred if adequate safety measures had been taken by the employer (in this case, the cut off mechanism on the recycling machine was not working)**. This man’s nervous shock is a direct result of his son’s violent, sudden and traumatic death. We have many other members in similar circumstances. The impact of a death is directly related to the fact the death is work-related– and if such death is deemed by the courts as being preventable and prosecutable, then nervous shock as a result is a direct responsibility and outcome of an employer not providing adequate safety controls for the injured worker.

Unless you have experienced a work-related death of your loved one, no-one truly comprehends the nervous shock that is experienced by families, and more often than not, this nervous shock may alter

a family member's life forever. The impact continues for years and years to come. We have several examples of people in this circumstance.

We have experienced nervous shock, and as a medically recognized and diagnosed condition, it goes much further than grief. A person diagnosed with nervous shock is generally so incapacitated that they are unable to function properly and therefore the impact of the death itself is significantly compounded.

ITEM 9 – PROPOSAL TO REMOVE “PAIN AND SUFFERING” AS A SEPARATE CATEGORY OF COMPENSATION

For the same reasons as quoted above, we reject the proposal to remove *Pain and Suffering* as a separate category of compensation.

We refer you to the July 2011 Report - completed by the Work Health & Research Team at Sydney University – entitled *Traumatic Work-Related Death in the Construction Industry: Experiences of Victims' Families* which reviewed the financial, social and health consequences for families following traumatic work-related deaths in NSW. This report can be viewed at http://sydney.edu.au/health_sciences/ageing_work_health/docs/workplace_death_report_september_2011.pdf.

Pain and suffering experiences of the participants in this study revealed a bereavement punctuated by physical and psychological health problems, financial problems, dramatic and irreversible changes to family relationships, recalibration of family roles and structure, and disrupted friendships. Participants described a bereavement further complicated by insensitive institutional interactions that did not respect or acknowledge surviving family members as victims of a work-related death.

Unless you have experienced a work-related death of your loved one, no-one truly comprehends the pain and suffering experienced by families, and more often than not, this pain and suffering may continue for years and years to come. We have several examples of people in this circumstance.

ITEM 16 - PROPOSAL TO EXCLUDE STROKES/ HEART ATTACK UNLESS WORK A SIGNIFICANT CONTRIBUTOR

We totally reject the premise that “*Whilst tragic for all concerned, causation of strokes and heart attacks are not normally associated with workplace injuries and the factors that impact on rehabilitation and return to work are not typically workplace issues.*”

Who is it that has determined that such events are “not normally associated with” workplace injuries and deaths? We have seen no such research to support this claim.

In particular, in heavy industries such as manufacturing, mining, construction and forestry heavy loads are carried and long hours are worked - often resulting in wear and tear on the heart and vascular systems (causing strokes) and as such are major contributors to death from stroke and heart attack. Most studies recognised that work-related stress is definitely a factor in producing strokes and heart attacks.

We would suggest that most work-related heart attacks are similar to work-related asbestosis – the body injury would not have occurred if the worker had not been exposed.

Again we would question how the State, rather than a medical examiner (IF HE HAS been provided with the complete work history of a worker) should rightly have the power to determine whether a heart attack or stroke was either fully or partially work-related. To remove coverage for such work-related deaths from the compensation scheme would be to grossly disadvantage families in these circumstances.

OUR PROPOSAL TO REDUCE COSTS OF NSW WORKERS COMPENSATION SYSTEM

We believe that the fines under the Act for work-related deaths should actually be imposed in full (and in accordance with the Act) by the Courts, to cover the legal costs related to prosecuting such employers who do not provide adequate safety measures for their workers.

According to a current study, the average fine handed down by NSW courts in relation to a work-related death, is only \$27,000 – this is not only insulting to a family (who cannot but equate this figure to the “value” of their dead loved one), but is also well short of the \$550,000 *first offence* penalty prescribed in the Act, which, if imposed, would go a long way to defray the WorkCover NSW prosecution costs and payment of compensation costs.

We have attended court where companies get “discounts” for such things as early plea of guilty – in one case we know of, the guilty plea came two weeks prior to the hearing, despite the fact that the death had occurred three years earlier. This was not exactly an early plea in our view.

We therefore respectfully suggest that instead of cutting coverage of vital provisions for workers in NSW such as journey, nervous shock, pain & suffering, death from heart attack or stroke (all of which also assist bereaved families in the case of a preventable work-related death), the penalties for breaches of the Act (which result in a death) must be imposed, in full, by the Courts, carrying out the full and initial intent of the Act itself.