

**Submission
No 82**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

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The Hon Robert Borsak MLC
Chair
Joint Select Committee on the NSW Workers Compensation Scheme
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Chair,

I wish to make a brief submission to your Inquiry, particularly in relation to Terms of Reference I (a) and I (c).

I would be happy to address your Committee in person and answer any questions from a specialist Occupational Medicine perspective that could aid the Committee in helping to redefine and improve the operations of the WorkCover Authority in NSW, particularly in relation to improved health outcomes for injured workers.

Background

I have over thirty years experience as a medical specialist in Occupational & Environmental Medicine, and I have been closely involved with the Workers Compensation schemes in NSW since 1982. Initially this was as a specialist Occupational Physician working for ICI Australia and Dulux in Sydney. Experience there included occupational health exposures to heavy metals such as lead and mercury, pesticides, fertilizers, plastics, chlorine, explosives, fibres, chemical intermediates including vinyl chloride monomer and many hundreds of other solvents. Subsequent work was with IBM, the Workers Health Centre, and more recently the Australian Defence organisation.

As a representative of both the Australasian Faculty of Occupational and Environmental Medicine (AFOEM) of the Royal Australasian College of Physicians (RACP) and the Australian Medical Association (AMA), I was involved in the multiple working parties that developed and then refined the NSW Permanent Impairment Guides over many years, followed by the establishment of the Approved Medical Specialist (AMS) and the Authorized Medical Practitioner (AMP) lists for the Workers Compensation Commission.

I was also a government appointed member of the Medical Appeals Panels established under the former Compensation Court of NSW, as well as the Ministerially appointed medical member for more than 10 years on the recently disbanded Workers Compensation and WHS Council of NSW (WC+WHS Council), usually known as the WorkCover Advisory Council.

I have also worked in many other jurisdictions in the OHS/Workers Compensation space, and have a detailed knowledge of what works and does not work (well) in multiple Australian States, the Commonwealth, the UK, Japan, the USA and New Zealand.

In relation to **TOR 1(a)**, I believe that the NSW Workers Compensation Scheme has NEVER really focused on the promotion (or obtaining) of better health outcomes for injured workers.

I acknowledge that the measurement of health outcomes is extraordinarily complex, and requires difficult statistical measures such as Disability Adjusted Life Years (DALYs) or Quality Adjusted Life Years (QALYs) for meaningful measurement. The easy default has been to track Return to Work details and/or Days Off Work on Workers Compensation, plus financial data on costs incurred, pain and suffering payouts etc.

My concern over many years – and highlighted in multiple presentations to the WC+WHS Council and at OHS conferences – is that just because an injured worker has been “forced” back to work usually by financial pressures, this does NOT mean that he/she is now fully rehabilitated and has reached their maximum medical improvement. Many workers end up with life-long disabilities as a result of work injuries and diseases. Chronic pain and ongoing invalidity or impairment are usually not counted. If the person is back at work, and especially if the compensation case is closed, then the system counts this outcome as a “success”.

The situation is even more dire in the case of Occupational Diseases. There is a largely unrecognized epidemic of disease caused (or contributed to) by work. Much of this is hidden in the general Medicare data and is not recognized by patients or their doctors as having a (partial) work cause.

An exception would be in relation to Dust Diseases. Here the scheme has a reasonably good record of identification, diagnosis, provision of treatment and compensation, and in some cases "rehabilitation".

However there has been relatively little money spent by the NSW Workers Compensation Scheme(s) in relation to prevention or research – and I am not aware of any meaningful statistics generated by the Dust Diseases Board in relation to work health outcomes. Certainly they have excellent statistics on the numbers of cases, age and sex distributions, classes of work affected by claims, periods of invalidity, death benefits etc – but little meaningful data that shows the real impact on dust diseases on exposed workers and their families.

With the changes now occurring in the Australian and New South Wales economies away from heavy manual handling and manufacturing work towards "white collar" work, the pattern of injuries is changing. Mental Health claims are rising dramatically in most jurisdictions. The traditional workers compensation schemes cannot cope with the numbers, duration, complexity or costs of these new claims. Attempts to exclude certain types of claim from coverage e.g. those resulting from reasonable management actions and/or disciplinary matters, has at best been a stop-gap measure to try to limit the impact of these conditions without addressing the underlying causes.

In any future restructure of NSW WorkCover and the NSW Workers Compensation Scheme, significant attention needs to be given to Mental Health issues. The DUNT Review has recently provided high level focus on the impact of mental ill health within the Australian Defence Force. A similar review should be undertaken in the NSW civilian sector, and used as a basis for developing a comprehensive policy addressing mental health issues arising (or becoming evident) in the workplace.

In relation to **TOR I(c)**, I have been a long time supporter of the NSW WorkCover Authority. It has undertaken an extremely difficult job in managing the politically and financially difficult agendas involved in ensuring a financially viable Scheme; assessing and collecting realistic premiums from employers; managing the Scheme Agents; ensuring the delivery of appropriate medical and other rehabilitation services to injured workers; combating fraud and over servicing; keeping NSW competitive with the other States/Territories and the Commonwealth; and managing the perennial conflicts between Employer Organisations,

the Unions and the various other professional groups such as the medical craft groups, the lawyers, rehabilitation providers etc.

However, they've not necessarily had the right people with the right skillsets in the right place at the right time(s). They rely on external actuarial and legal advice on many matters, and their specialist Inspectorate is still only marginal in many areas of comprehensive work health and safety advice and regulation.

However, WorkCover NSW has been able to significantly contribute to national initiatives such as the newly harmonised Work Health and Safety Laws, and it is doing similar good work through the COAG processes in relation to proposed nationally consistent Workers Compensation arrangements.

I can see much merit in continuing these national initiatives, as well as merging the current NSW State based compensation schemes into one administrative body viz. the Motor Accidents Authority, the Dust Diseases Board, the Sporting Injuries Scheme and Lifetime Care/National Disability type schemes.

In any revamp of the NSW WorkCover Authority, significant resources need to be added to the HEALTH side of WHS. This has been neglected since the 1920s. Traditional SAFETY is well managed – but there is a dearth of activity in the health, mental health or other longer-onset type health conditions to which work contributes.

Significant occupational health research funding also needs to be a major plank of a revitalised NSW WorkCover Authority. The good work being done by the NSW WorkCover Centre of Research Excellence at Ourimbah is acknowledged – but it is a tiny and poorly funded operation and cannot possibly deliver the benefits expected of it.

Until the late 1980s, the WorkCover Authority had up to five (5) full time Occupational Medicine experts working for it as employees. Today there are none. This whole area of preventive and occupational health advisory services to the workers of NSW and their employers has vanished.

For less than AUD\$5 million per year in additional funding, an excellent service could be re-established. This could be funded by a levy on

employers through the Workers Compensation system, similar to the Dust Diseases Levy.

My suggestion is that the artificial distinction between Dust Diseases and other chronic occupational health conditions be abolished, and the one guaranteed funding system be applied to cover all occupational health, toxicology, noise, chemical exposures and dust exposures.

I congratulate the Parliament of NSW for undertaking this Inquiry.

If you require any further information or would like me to address your Inquiry in person, please do not hesitate to contact me.

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