

Submission  
No 156

## INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

**Organisation:** Shop Distributive & Allied Employees Association, NSW Branch  
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Partially Confidential



Level 3, 8 Quay Street, Sydney NSW 2000  
PO Box K230, Haymarket NSW 1240  
Branch President  
Greg Donnelly

Telephone: 131 SDA (131 732) Facsimile: (02) 9281 7050  
E-mail: [secretary@sdansw.asn.au](mailto:secretary@sdansw.asn.au) Website: [www.sdansw.asn.au](http://www.sdansw.asn.au)  
Branch Secretary-Treasurer  
Gerard Dwyer

Joint Select Committee on the NSW Workers Compensation Scheme  
Parliament House  
Macquarie St  
Sydney NSW 2000  
Fax: (02) 9230 2981

Dear Messrs,

The Minister for Finance and Services, Greg Pearce, on behalf of the State Government, released an Issues Paper on 23 April 2012, outlining a number of options for reform to the NSW Workers Compensation Scheme.

We oppose any proposed changes that erode the workers compensation benefits of injured workers. Many of the proposed changes are alarming as injured members find it difficult enough under the current workers compensation system. Some injured members have had not been able to afford accommodation and have become homeless after suffering their injury. To introduce diminished benefits is harsh and unfair.

To have a workers compensation system that is so lean and barely supportive of basic needs would negate the very reason for having a workers compensation system, which is to provide a means of adequate and sufficient support for persons injured at work.

The Union's experience is that solicitors make small financial gain from our members' claims. To erode the system further would provide a financial disincentive for solicitors to deal with workers compensation claims. These solicitors will be tempted then to work in other more lucrative areas of the law.

NSW employers have enjoyed a 33% reduction in workers compensation premiums since 2005, delivering them a huge saving of one billion dollars. These proposed cuts to benefits will be a cost borne solely by the injured workers of NSW and their families.

The Government claims the workers compensation deficit was \$4.08 billion dollars in December 2011. The SDA submits that benefits to workers do not need to be cut to overcome the Scheme's deficit for the following reasons:-

1. The deficit is partly due to the investment performance of the Scheme as a result of the flat economic conditions. It is therefore a cyclical issue rather than one which requires radical changes to the scheme.

2. The workers compensation system has more than enough money to meet its current liabilities. If the State Government focuses greater attention on preventing injuries, helping injured workers back to work and reducing costs paid to insurers for administration, then huge savings could be made.

3. Changes can also be made to the Scheme to improve its efficiency;

4. There should be a focus on reducing transaction costs in the Scheme including the remuneration paid to claims agents. These costs have increased significantly in recent years and are a major contribution to the deterioration of the Scheme's performance.

We refer to Annexure C of the Issues Paper which is entitled '*Comparison with other Jurisdictions*' and provide the following comments:

#### **1. Strokes/heart attack**

These are very rare and it is necessary to show that the employment is a substantial contributing factor. It is not sufficient for the workers to simply have the heart attack at work, rather they need to be doing something strenuous to bring the stroke/heart attack on.

The existing provision should be retained.

#### **2. Journey claims**

Although some claims are covered by both the *Motor Accident Act* (if there is negligence on the part of another person) and the *Workers Compensation Act*, this is not always the case. One member who was seriously injured was \_\_\_\_\_ who was travelling from her home at \_\_\_\_\_ to \_\_\_\_\_ when an accident occurred. It was a single car accident (therefore not covered by the *Motor Vehicle Act*) and she suffered severe injuries including paraplegia. The date of accident was 15 February 2006 and at the time \_\_\_\_\_ was 40 years old. As a result of the accident, \_\_\_\_\_'s husband \_\_\_\_\_ had to stop work to not only care for her but also to care for their three children.

The existing provision should be retained

#### **3. Nervous shock claims from relatives or dependants of deceased or injured workers**

We have never had such a claim and such claims would seemingly be rare.

#### **4. Definition of pre-injury earnings**

This can be confusing as it is not clear whether somebody is on an award/industrial instrument or not. The present system does disadvantage permanent part time workers and a case in point is an SDA member. He is officially a 22 hour per week part timer, but in reality worked closer to 33 hours per week for the 12 months prior to the injury. The insurance company paid 22 hours per week. This is obviously a particular disadvantage for SDA members, many of whom are part time and/or casual.

This inequity should be addressed

#### **5. Adjustment of pre-injury earnings**

We are unsure as to whether this is referring to the statutory rate after the 26 weeks or whether it is referring to the awards and therefore pre-injury earnings.

#### **6. Incapacity payments - total incapacity**

Reducing the rate prior to 26 weeks only serves to reduce the income payment and increase financial hardship at an earlier stage. It would be beneficial if the rate was at 80% of the pre-injury earnings (not 80% of award).

After 26 weeks, it is not uncommon for somebody who prior to the injury may have earned \$800 to \$900 a week to be reduced to \$432 per week. There is very little difference between that and the age pension, noting that with the age pension you also get additional benefits with car registration, travel, etc.

The existing provisions should not be reduced.

#### **7. Incapacity payments – partial incapacity**

Removing top up payments would again penalize workers that are unable to go back to their pre-injury duties.

#### **8. Work capacity testing**

This should be open to review by the Workers Compensation Commission. At present the insurance companies do testing which are referred to as section 40 assessments. These tests can give the following outcome;

- a rehabilitation provider may say that a 50 year old shop assistant, who has had an injury to the back, is now able to earn more money working as a secretary, hairdresser or the like.

However, the assessment does not take into account the person's experience, cognitive abilities or the labour market that they are in.

#### 9. Weekly payment duration

Cutting off weekly payments of compensation to members, even those with lower levels of permanent impairment, would be disastrous for those individuals. This would affect a great number of members, but three clear examples are as follows:

- a. worked at is 39 years old and is completely deaf. She had an injury to her elbow and although she has been assessed by our doctor as having a 14% whole person impairment, she has, as yet, not been recognized as having whole person impairment. has been classified as partially incapacitated and her employer, is no longer able to provide her with suitable duties. As a result she is being paid weekly payments of compensation and will find it extremely difficult, if not impossible, to find further employment;
- b. is 50 years and worked at has been assessed as having a 14% whole person impairment and is receiving weekly payments of compensation as if she is totally incapacitated. If the weekly payments of compensation were stopped, she would not be entitled to any Centrelink payments as her husband works. Assuming they had both been earning \$30,000 each, they would have had a household income of \$60,000 before the injury, but fell back to an income of \$30,000 through no fault of theirs. This is also a matter where was doing restricted duties at work. However, the employer advised her that they could no longer provide the restricted duties and she was therefore terminated;
- c. has not received a lump sum for whole person impairment. Whether or not she is over 10% whole person impairment is yet to be determined. Again, if her payments were cut off, it would be a matter where her household income would decrease from \$60,000 per annum to \$30,000 per annum through no fault of hers.

Whilst a single person may be able to access Centrelink payments, a lot of coupled women (who are a large portion of the SDA members) would not be able to access such payments as their partners work. In effect it means that the household income is reduced by half.

#### 10. Pain & suffering

Combining sections 66 and 67 would not be of a great disadvantage to employees subject of course to the monetary amounts of pain and suffering being determined fairly.

Whilst you would take away the subjectivity of the test and there would be no differentiation between a concert pianist who had lost a finger and a butcher who had lost a finger.

#### **11. Claims can be made for subsequent whole person impairment**

The SDA rejects the notion that this acts as a disincentive to injured workers returning to work and lengthens the duration of the claim for weekly benefits.

A case in point is a member called ' , employed by ' . On 27 February 2004 suffered an injury to her left knee in an accident at work when she slipped on a wet floor and injured her left knee. lodged a claim for workers compensation and the insurer accepted liability. In December 2005, recovered a lump sum compensation for 2.5% whole person impairment flowing from the left knee injury. She received an amount of \$3,125.00 for that impairment. Her claim of course remained open.

Subsequently over the years / 's left knee deteriorated to the extent that on 31 January 2010 she had to undergo a total knee replacement. was then reassessed in respect of whole person impairment which resulted in 30% WPI. This means is now entitled to make a claim for additional lump sum compensation in respect of the additional 27.5% whole person impairment which means she is entitled to an additional \$49,375.00. will also be entitled to seek compensation for pain and suffering as she has exceeded the 10% threshold and it is likely would receive pain and suffering compensation of approximately \$20,000.00 in addition to \$49,375.00.

It is noted that one of the changes proposed by the State Government is to abolish the right to pursue top up in respect of lump sums. If this were to be implemented then would be seriously disadvantaged as she would not be entitled to bring the further claims outlined above. y cannot work so the lump sum payment referred to is in no way an excessive figure.

#### **12. Assessments of impairment for statutory lump sum, commutations and work injury damages**

I repeat the comments in respect to paragraph 11.

#### **13. Threshold for whole person impairment lump sums**

Having a threshold for whole person impairment of 10% would get rid of probably 80-90% of whole person impairment claims. It is not uncommon for people to require surgery to knees and shoulders and still come in at only 3% or 4% whole person impairment. By increasing this threshold it would take away the vast majority of claims even though the amount of monies paid out in such claims is minimal. Previously a worker who has suffered a shoulder injury might receive \$15,000 to \$20,000 however as a result of the changes in 2002, this has been reduced to between \$3,000 and \$4,000. To reduce it to zero would be a travesty of justice.

It is extremely difficult to explain to injured workers who have had serious injuries that they only entitled to nominal amounts of money. Some cases in point are:

1.            who works at            suffered an injury in March 2010 to her left shoulder. Surgery was carried out by Dr Kemp in October 2010 and she has returned to work carrying out her normal duties.            has started to suffer from depression following the injury and she is not being compensated for this.            was assessed as having a 9% whole person impairment.
2.            works at            suffered an injury to his back in March 2010.            was compensated in respect to 6% whole person impairment and although he has not required surgery, he is still left with ongoing problems with disc narrowing at L4/5 and has found he is having problems with recreational activities.            is only 34 years old.

Section 66 claims are the only money that the workers receive for what they get put through following an injury. It is a pittance in respect to the pain and suffering that they endure and to take this small amount of money off them would be an injustice. The remainder of the money that is paid by the workers compensation insurer goes to doctors, rehabilitation providers, lawyers etc. To take the money off the injured worker would simply be wrong.

#### **14. Strengthen work injury damages**

The amount of work injury damages claims are minimal, especially in respect to SDA members. It is not common for injured SDA workers to pursue a common law claim for damages as the weekly payments of compensation are not that different to the true economic loss and by pursuing it the employees are giving up their medical expenses.

#### **15. Cap medical coverage duration**

Putting a cap on or a limit on medical expenses is an unfair burden for the injured worker to carry. Any required surgery would be covered by Medicare, but not other important treatments like physiotherapy. The Union notes the Tasmanian system in which the number of years for which medical benefits are paid varies according to the level of whole person impairment. This approach would be preferable to putting in place a dollar cap on medical expenses.

#### **16. Strengthen regulatory framework for health providers**

It is not clear to the SDA how this would be done.

#### **17. Targeted commutation**

At present commutations are extremely rare. It would be appropriate for both the insurance company and the injured worker for commutations to be reintroduced. This would allow the

insurance companies to 'pay out' the injured worker for a fraction of what it would be costing them during the course of their lifetime. It also has the added benefit of not creating administration costs allocated to the management of files. It would be of benefit to the employees in the sense that it gives them closure and the opportunity to move on with their lives.

#### Conclusion

The members mentioned above represent only a small sample of examples, yet, they all show the devastating effect that the proposed changes would have on injured workers.

The SDA does approve of the proposed improvements for severely injured workers which include;

- improved income support;
- return to work assistance where feasible; and
- more generous lump sum compensation for severely injured workers with whole person impairment greater than 30% as outlined in the Issues Paper.

Should you wish to discuss any matter raised in this submission, please call me

Yours faithfully,

Gerard Dwyer

BRANCH SECRETARY-TREASURER