

**Submission  
No 213**

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

**Organisation:** Eire Contractors Pty Ltd

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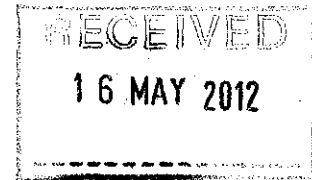
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ABN: 42 099 338 888

14 May 2012

Ms Rachel Callinan  
Director  
Joint Select Committee on the NSW Workers Compensation Scheme  
Parliament House  
Macquarie Street  
Sydney NSW 2000



Dear Director,

Thank you for the opportunity to make a submission to the Inquiry into the NSW Workers Compensation Scheme.

We believe that reform of the NSW Workers Compensation Scheme should be based around principles that produce positive outcomes for injured workers, employers and NSW taxpayers alike. For the following reasons we do not believe the current scheme satisfies any of these principles.

- **A premium increase will not fix the underlying problems of the scheme – reform of the legislation and management processes must occur.**

It would seem that too many uncorroborated claims are allowed to be processed and paid without adequate investigation. The insurance companies do not seem to care if a claim is valid and there is no duty of care towards properly managing claims. It seems that in many cases it is probably easier for them to pay than to investigate!

- **Any increase in premiums will impact on profitability and consequently employment numbers.**

The scheme needs lower capped benefits, including claimable medical expenses, to make it sustainable. The capping of benefits & claimable expenses needs to be better explained to employers, workers & medical practitioners. By just pushing up annual premiums & not reducing payouts isn't going to stop the flow of money out of the scheme. We are in the civil construction and our premiums are high due to the "high risk" ranking of the industry, yet our profit margins are low, which is common across the sector.

- **Any increase in premiums will further weaken the competitiveness of NSW employers.**

If premiums were to increase 28%, there will have to be a corresponding increase in our Tender prices, and considering that all of our work is based on government & semi-government contracts, this cost will be paid by the tax payer.

- **The scheme is too complex for most employers and employees to manage their way through it. This needlessly creates an adversarial relationship between employers and employees.**



- **The focus of the Scheme must be to get people back to work safely and quickly – at the moment there is not enough motivation for injured workers to go back to work quickly.**

Benefits under the scheme need to be set at a rate which motivates injured workers to go back to work almost immediately if able to do so. If workers weren't going to receive as much in benefits, they would have no alternative but to return to work & place less burden on the scheme. In our experience, Doctors are being too conservative in their approach to return to work, and recommend recuperation away from the workplace for periods that are too long & don't allow them the opportunity to be productive employees.

- **Work capacity assessments are a critical part of the claim management process. Assessors should be accredited by WorkCover to undertake them – and not be limited to Doctors but also include other allied health professionals.**
- **There must be more structure in the work capacity assessment dispute process. Clear lines of authority are required.**
- **The link between safety initiatives and reduced premiums is not clear enough, particularly in a high risk industry such as ours. No one wants people to get hurt, but budgets are not limitless. We thus need an insurance model that better rewards through lower premiums good safety performance and injury management practices.**
- **There must be more power for WorkCover and Agents to investigate fraudulent claims and personal injury aggravation of claims.**

There appears to be no onus on the employee to prove that an injury or illness happened at the workplace, Particularly in the situation where the employer was not advised at the time, but the worker later visits a Doctor & tells that Doctor that it did happen at work. There is no onus on the Doctor to verify the story with the employer before going down the track of issuing a WorkCover Medical Certificate & workers compensation.

Any dispute by the employer appears to have no weight in the process & the insurer has no option but to grant any application for workers compensation & pay the medical bills. We have experienced this very situation where an employee couldn't prove how an injury occurred, the Doctor agreed that it happened at work because the Doctor was told by the worker that it did happen at work, the claim was accepted by our agent even after we challenged it because we were advised that we didn't prove that it didn't happen at work. We didn't feel that we had to prove that it did because there were no witnesses to the alleged incident & the worker couldn't state when or how it happened.

In another situation we had an ex-employee visit a doctor claiming incapacity to work 18 months after reporting a minor injury to us that at the time did not require medical attention. The doctor made a statement that the injury (as reported to us) had over time progressively got worse, to the point where the person could no longer work. We challenged the claim based on our knowledge of the ex-employee's work activities since leaving our employment, the person's previous self-employment, and the tasks the person did while still working for us after the injury. Nonetheless, the insurer paid out the claim as a lump-sum to our disgust.

If the scheme placed an onus on the worker & their doctor to prove that the injury or illness did happen at the workplace & that it did reduce or remove their capacity to work, then fraudulent claims & claims where for aggravation of pre-existing injuries would be reduced.



- **There must be more power for WorkCover and Agents to enforce timely compliance of a worker to an agreed injury management plan.**

It is doubtful that any responsible employer wants to see a genuinely injured employee disadvantaged by any insurance scheme. However an injured employee also needs to be made to take responsibility for their early return to work. An injured employee must expect to meet an injury management plan in a timely manner.

- **There must be more power for WorkCover to effectively manage Agents. The two largest Agents that have been identified as not performing adequately should have been managed better and/or lost market share.**

I would again like to thank the Committee for the opportunity to make this submission.

Yours sincerely,

**Thomas Kelliher**  
**Managing Director**  
**Eire Contractors Pty Ltd**

This submission is made of behalf of the above organisation.