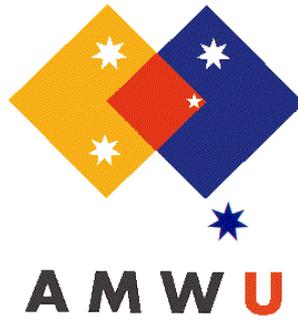


**Submission
No 52**

FIRST REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: Australian Manufacturing Workers' Union

Date received: 29 September 2016



First review of the workers' compensation scheme
September 2016

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Introduction

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make a submission with relation to the First Review of the Workers' Compensation Scheme.
2. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU NSW Branch has a membership of 20,000 workers. Our members are employed in the private and the public sectors, in blue collar and white collar positions, and in a diverse range of industries, vocations and locations. It regularly represents workers in the Workers' Compensation system.
3. The objective of the workers compensation systems needs to be an equitable, fair and just system of income protection, access to medical treatment for workers with work related injuries or illnesses, and a mechanism to aid injured workers back to work.
4. The workers compensation scheme should seek to return injured workers back to the maximum medical recovery achievable and the highest quality of life. Workers compensation legislation is beneficial legislation targeted at injured and ill workers.
5. Workers Compensation was not established to be a driver of the economy and should not be considered as such. It is legislation that should ensure that just payment (no more/no less) is made for loss, be that physical, mental, quality of life, out of pocket expenses or earnings that has been incurred due to a connection with work.

Terms of Reference

6. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
 - (a) Workers' Compensation Scheme
 - (b) Workers' Compensation (Dust Diseases) Scheme
 - (c) Motor Accidents Scheme
 - (d) Motor Accidents (Lifetime Care and Support) Scheme.

In exercising the supervisory function outlined in paragraph 1, the committee:

- (a) does not have the authority to investigate a particular compensation claim, and
- (b) must report to the House at least once every two years in relation to each scheme.

Summary

7. There are many aspects of the NSW Workers Compensation scheme that could be improved. In particular, it must be made easier for straightforward claims to be managed and disputes resolved in a timely fashion. There are a smaller number of more complex claims; difficulties managing these have led to an unacceptable level of disputation, unemployment, bankruptcy and sometimes suicide. Page | 3
8. The AMWU has only focused on 4 broad areas within this submission being the use of private insurers and scheme agents, caps and pre-approval of medical expenses, consultation & Ministerial Advisory Council.
9. The AMWU is recommending to the Committee:
 - That an independent inquiry (with at least the powers of the Ombudsman) be conducted into the NSW arrangements put in place for scheme agents, including a consideration of whether the regulator requires further powers.
 - That the artificial medical caps be removed in an effort to restore justice to injured workers in an effort to stop the cost shifting onto workers, their families and the broader community and allow injured workers to meet their maximum ability to return to or stay at work.
 - That the counterproductive practice of pre-approval of medical expenses is stopped and that any reasonable medical costs incurred by an injured worker are reimbursed in a timely manner.
 - That the Committee establish tight timeframes for compliance of recommendation 13 and recommendation 20 from the Review of the exercise of the functions of the WorkCover Authority / Standing Committee on Law and Justice published September 2014, which have not been accomplished to date.
 - That the NSW Government establish the Workers Compensation and Work Health and Safety Council (Ministerial Advisory Council) broadly in line with the original provision of the WIMWCA 1998 or schedule 2 of the South Australian WHS Act 2012.
10. The AMWU supports the submission of Unions NSW, in particular the evidence and its recommendations stemming from its Return to Work Enquiry.

The use of private insurers and scheme agents

11. The AMWU wishes to draw to the Committees attention the Victorian Ombudsman Investigation into the management of complex workers compensation claims and WorkSafe oversight September 2016i.
12. The use of scheme agents was first introduced in NSW around 2005 following the report Partnerships for Recovery - The McKinsey Review into the NSW Workers Compensation Scheme, September 2003 commissioned due to the failure of the privately insured scheme which predated it. The use of scheme agents delivering the claims management activities of the nominal insurer (icare), which is a statutory body, closely mirrors the model which is in use in Victoria.
13. The Victorian Ombudsman report is based on findings from an investigation of the management of "complex claims" by the five claims management companies contracted by the Victorian workers' comp scheme, all of these scheme agents operate or have operated in NSW.
14. The report highlights a litany of unscrupulous claims management practices used by agents to delay/deny claims for seriously injured workers, particularly those involving work capacity reviews.
15. The report also links agent behaviour with scheme remuneration arrangements which have created a system of perverse 'incentives', that 'reward' agents for blatantly inappropriate claims decisions that often result in severe hardship for the injured workers, and their families, who have been caught up in this fiasco.
16. Given the strong evidence provided by the ombudsman's report and the parallels between the management of the two schemes, the AMWU recommends that an independent inquiry be conducted into the NSW arrangements put in place for scheme agents. The investigation should also focus on whether the regulator requires further powers to appropriately regulate the system.

Caps and Pre-approval of Medical expenses

17. The AMWU has many members who due to the complexity of their injury require ongoing medical assistance beyond 2 or 5 years from the cessation of their weekly benefits who fall below the 20% WPI threshold.
18. The union recommends that the artificial medical caps be removed in an effort to restore justice to injured workers in an effort to stop the cost shifting onto workers, their families and the broader community and allow injured workers to meet their maximum ability to return to or stay at work.
19. The AMWU has members who have had their medical treatments delayed for unreasonable periods of time undermining the recommendations and referrals of

treating doctors and specialists. Research agrees that any delay in medical treatment can have adverse effect on the prognosis and timeliness of recovery. This puts upwards pressure on the scheme undermining its viability.

20. The union recommends that the counterproductive practice of pre-approval of medical expenses be stopped and that any reasonable medical costs incurred by an injured worker be reimbursed in a timely manner.

Consultation

21. Recommendation 13ii and recommendation 20iii from the Review of the exercise of the functions of the WorkCover Authority / Standing Committee on Law and Justice published September 2014, that the then WorkCover, whose regulatory powers have been moved to SIRA, develop an engagement plan and review of all guidelines that apply to the workers compensation scheme, in consultation with stakeholders, have not been accomplished.
22. The AMWU recommends these two matters be readopted with the Committee establishing tight timeframe for compliance by SIRA.

Ministerial Advisory Council

23. The States compliance with the Work Health and Safety Act and the related Intergovernmental Agreement was swept away as a result of the 2012 amendments abolishing the only tripartite mechanism for health and safety and workers compensation being the Workers Compensation and Work Health and Safety Council.
24. In line with the State's obligations under the intergovernmental agreement relating to the Work Health and Safety laws, it is recommended that the NSW Government establish the Workers Compensation and Work Health and Safety Council (Ministerial Advisory Council) broadly in line with the original provision of the WIMWCA 1998 or schedule 2 of the South Australian WHS Act 2012.
25. This recommendation aligns with the Review of the exercise of the functions of the WorkCover Authority / Standing Committee on Law and Justice ignored recommendation 14vii as published September 2014.

Conclusion

26. The AMWU is of a view that the burden suffered by injured workers in NSW could be substantially alleviated. To assist in this we are seeking that the Standing Committee on Law and Justice as the designated Committee consider the adoption of our recommendations to ensure that parties who have a statutory role operate in the

public interest, workers are supported and barriers removed to stay at work or return at work, that processes which interfere with timely treatment be abolished, that injured workers, their representatives and the public be genuinely consulted with regards to the scheme and that a representative body be established to provide guidance and oversight.

27. The AMWU would be happy to contribute via verbal submissions and representations to support our written submission if the Committee views this would assist in its deliberations. Some of our members who have been subject to the NSW Workers Compensation Scheme have indicated a willingness to also attend subject to their capacity.

END

i <https://www.ombudsman.vic.gov.au/getattachment/0eb3f52a-6488-46f5-beb0-5cf051db359d>

ii Recommendation 13

That the WorkCover Authority of NSW develops an engagement plan in consultation with all stakeholders and their representatives, and publish it as soon as practicable.

iii Recommendation 20

That the WorkCover Authority of NSW undertakes a review of all guidelines that apply to the workers compensation scheme, in consultation with stakeholders, to simplify and consolidate the guidelines.

iv [https://www.parliament.nsw.gov.au/lc/proceduralpublications/DBAssets/wppbook/15%20NSW%20LC%20Prac%20Ch14%20\(press\).pdf](https://www.parliament.nsw.gov.au/lc/proceduralpublications/DBAssets/wppbook/15%20NSW%20LC%20Prac%20Ch14%20(press).pdf)

v Letter to Mr David Henry RE: Commencement of the Workers Compensation Regulation 2016, 30th August 2016

vi <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/931/deemed-diseases.pdf>

vii Recommendation 14

That the Minister for Finance and Services establish a WorkCover Authority of NSW Advisory Committee under section 10 of the Safety, Return to Work and Support Board Act 2012 and Schedule 2 of the Work Health and Safety Act 2011. The advisory committee should be comprised of representatives of workers and employers, together with other relevant stakeholders.