Submission No 67

FIRST REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: New South Wales Teachers Federation

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SUBMISSION TO

STANDING COMMITTEE ON LAW AND JUSTICE

ON

FIRST REVIEW ON THE WORKERS COMPENSATION SCHEME

Authorised by

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14 October 2016

Submission

First Review on the Workers Compensation Scheme

Introduction:

The Australian Education Union NSW Teachers Federation Branch (Federation) is the state registered trade union with coverage of NSW public school teachers. Federation represents teachers in New South Wales public pre-schools, infants, primary and secondary schools, Schools for Specific Purposes and teachers working in consultant/advisory positions. Teachers in TAFE and Corrective Services are also represented by the Federation. The current financial membership totals over 69,000 practising teachers and student teacher members.

Federation welcomes the opportunity to lodge a submission to this inquiry as it provides an opportunity to illustrate some of the difficulties faced by our members who have been injured in the workplace, have lodged Workers Compensation Claims and found themselves to be at a disadvantage due to the implementation of the provisions of the 2012 amendments to the New South Wales Workers Compensation Legislation.

Previous submissions and correspondence between Federation and the State Government since the introduction of the 2012 changes to the Workers Compensation Act:

Federation has been a continual and vocal advocate for its members and is well aware of the difficulties faced by members who have been injured at work and lodged Workers Compensation Claims since the *Workers Compensation Legislation Amendment Act 2012 (NSW)* was implemented. In its efforts to reverse the worst of the effects and to ensure efficient and sustainable health and return to work outcomes for its members, Federation has made submissions to the following:

- Review by the Centre for International Economics: 12 June 2014
- Parkes Inquiry Submissions and responses: 25 February, 15 April and 17 July 2015
- State Insurance Regulatory Authority – 30 November 2015
- State Insurance Regulatory Authority – regulation of pre injury average weekly earnings: 7 April 2016.
- Met with SIRA and other members of Unions NSW to present our responses to the Workers Compensation Regulations Review: 10 June 2016

The Parkes Inquiry process provided an open and productive exchange of ideas and areas of concern from a wide range of stakeholders. Those involved represented insurers, scheme agents and unions. The resulting *Parkes Project Advisory Committee Statement Of Principles* presented a consensus of concerns and suggestions. Federation asserts that these principles should be taken into consideration by the Standing Committee on Law and Justice during the present review of the operation of the insurance and compensation schemes listed in its terms of reference.

Federation's submission to the present review is largely on the operation of the Workers Compensation Scheme.

Current and continuing concerns:

In the press release announcing this review, The Hon. Shane Mallard stated, "The committee is eager to hear from stakeholders about the affordability, efficiency and sustainability of the scheme since we last looked at it in 2012, and is interested to hear about any impacts from the recent structural changes".

Among the system objectives identified in Section 3 of the *Workplace Injury Management and Workers Compensation Act 1998 (NSW)* (the *WIMWC Act*) are the following:

> *The purpose of this Act is to establish a workplace injury management and workers compensation system with the following objectives:...*
>
> *(b) to provide:*
>
> - *prompt treatment of injuries, and*
> - *effective and proactive management of injuries, and*
> - *necessary medical and vocational rehabilitation following injuries,*
>
> *in order to assist injured workers and to promote their return to work as soon as possible,*
>
> *(c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,*
>
> *(d) to be fair, affordable, and financially viable,...*
>
> *(f) to deliver the above objectives efficiently and effectively.*

To enable this, the *WIMWC Act* imposes obligations on the insurer, the employer and the injured worker.

It requires the insurer to establish and comply with obligations imposed by or under an injury management plan for the injured worker (Section 45).

It requires the employer to establish a return to work program for injured workers (Section 52).

It imposes an obligation on the employer to provide suitable employment at the request of a worker totally or partially incapacitated by a workplace injury who is able to return to work, unless it is 'not reasonably practicable' (Section 49).

Further, it imposes an obligation on the worker to make reasonable efforts to return to work in suitable employment or pre-injury employment either at the worker's place of employment or at another place of employment (Section 48).

Clearly, the workplace injury management scheme intends the workers compensation system to have the insurer, the employer and the employee regard the workplace itself as an environment for fair, affordable, timely and efficient rehabilitation.

However, it is Federation's submission that this is not how injury management always operates within the Workers Compensation system.

Federation is concerned with the following operational aspects of the workplace injury management and workers compensation system:

1. The implementation of the Return to Work Process
2. The implementation of Work Capacity Decisions
3. Limitations to access to necessary medical treatment.

1. The implementation of the Return to Work Process

The scheme for injury management in the workers compensation system is intended to provide "vocational rehabilitation following injuries in order to assist injured workers and to promote their return to work as soon as possible" (Section 3 (b) *WIMWC Act*).

The *WIMWC Act* requires the insurer to establish an injury management plan (Sub-section 45 (1)) and comply with obligations imposed by or under an injury management plan for the injured worker (Section 45 (7)). These legal obligations include establishing a plan by consultative processes with the employer, the treating doctor and the injured worker.

Additionally, the *WIMWC Act* requires the worker "in co-operation with the employer or insurer" to "make reasonable efforts to return to work in suitable employment or pre-injury employment at the worker's place of employment or at another place of employment" (Sub-section 48 (1)).

However, information provided to Federation from members indicates that the insurer and/or the employer occasionally prevents a return to work plan by failing to provide or fund reasonably costed workplace modifications under their plan.

Workplace modifications to facilitate a return to work need funding by the insurer. The system presently requires the Rehabilitation Provider to negotiate this funding when establishing the Return to Work Plan. It is unreasonable for a Return to Work plan to be dependent on adjustments to the physical working environment without funding being offered by the insurer to put these plans into place.

Provision of reasonably costed accommodations such as ergonomic furniture or the installation of rails in an already existing toilet may mean the difference between an injured worker commencing a graduated return to work or remaining at home without 'suitable duties' at the expense of the system. These adjustments need to be fully funded by the insurer, given the statutory obligations on the insurer under Section 45, and not instead fall on the budgets of the workplace manager. This is as true for small businesses as it is for School Principals.

Federation has had to adopt industrial dispute processes when an injured member's employer has failed to provide suitable duties. This has usually arisen in circumstances where all parties have agreed that the injured worker is not to return to the same position in the same workplace though the injured worker has current work capacity. While this may appear to be recognition that the employer is paying heed to the risk of re-injury to the worker at the substantive workplace, it is usually used by the employer to avoid provision of suitable duties in another workplace altogether.

For example, the Department of Education, in its *Temporary Placement* service program purports to provide suitable duties for school-based employees. Above-establishment positions are funded at other workplaces. Although it does not extend to casual teachers, State office-based employees and TAFE employees, the *Temporary Placement* service program applies to injured permanent and temporary teachers for a defined period of time when medical restrictions on a return to work cannot be accommodated at the substantive work location. As a temporary measure, this appears to be a program that facilitates suitable duties.

However, the Department of Education's *Temporary Placement* service program has only limited scope. Difficulties have arisen when the injured worker's return to work goal is, by agreement, varied from 'same position, same workplace'. When it is agreed that the injured worker is not to return to the same position in the same workplace, and no immediate permanent vacancy is available for a permanent transfer of duties to another school, the injured worker becomes officially ineligible for the *Temporary Placement* service. This is noted in the Department of Education's Work Health and Safety Directorate guidelines on eligibility for the *Temporary Placement* service:

> *The goal of every temporary placement is to assist an employee return to their pre-injury duties at their substantive work location. A temporary placement is not appropriate for an employee who is not expected to return to their substantive position at their substantive work location.* (WHSD 062, May 2014).

The employer evades the provision of suitable duties by withholding consent.

When all agree that the workplace poses a risk of re-injury to the injured worker and the injured worker is sufficiently recovered to work in another workplace, employers usually evade provision of suitable duties in another workplace. This is a case of either the employer not requiring the insurer to fund provision of suitable duties or the insurer's refusal of the employer's request, notwithstanding the existence of legal obligation under Section 45 (7) of the *WIMWC Act*.

Without provision of suitable duties, a worker with current work capacity may suffer unfair economic hardship when the schemes' weekly payments are terminated and the worker's leave entitlements are unavailable. This frustrates system objective (d) under section 3 of the *WIMWC Act*:

> *to be fair, affordable, and financially viable.*

When there is non-compliance by employers and insurers with the legal obligation to provide suitable duties at another of the employer's worksites, industrial disputes have been notified by this union to the Industrial Relations Commission NSW for resolution.

Recommendation 1:

that specific guidance be provided to insurers that obligations under Sub-section 45 (7) of the *Workplace Injury Management and Workers Compensation Act 1998 (NSW)* to comply with injury management plans. Specific guidance should include the obligation to fund the provision of suitable duties at another of the employer's work locations when the injured worker has current work capacity and it is agreed that the worker cannot return to work at the same work location.

The employer is also obligated to participate and cooperate in the establishment of an injury management plan for an injured worker and comply with obligations imposed by or under that plan (Section 46).

Federation members often report their difficulty in obtaining agreement from the Department of Education and TAFE NSW to workplace modifications in a return to work plan when recovering from workplace psychological injuries. This is especially the case for claims of psychological injury.

For claims of psychological injury in the workplace, the triggers for the injury and potential re-injury are usually interpersonal. This is the case when the injured worker has alleged workplace bullying. An injured worker may be well enough to return to some or all duties at work after a period of time. However, the injured worker's return to the workplace presupposes a resolution of the interpersonal factors or organisational factors that may contribute to an environment in which bullying occurs and a re-injury follows.

Where interpersonal or organisational factors present a risk of re-injury, an efficient return to work for the injured worker may require accommodating the restriction that the injured worker does not have- direct interaction with the alleged bully or have unplanned and unsupported one-to-one meetings with that person. Modification of the workplace organisation is ultimately less expensive to the system than treating and making further weekly payments to a re-injured worker.

In an education-based work setting, the return to work of an injured teacher should be promoted under the workers compensation system in a school. This requires a workplace manager, such as a Principal, who is prepared to work with the Injury Management Advisor to provide suitable duties

in the workplace. This should be the case but Federation members have reported that it is not always so. Internal negotiations may result in a change of immediate supervisor in the short term, use of a different workstation or desk or staffroom, or temporary reallocation of either the injured worker or alleged bully to another at-level area of responsibility. These organisational modifications are cost-effective ways of reducing the risk of re-injury and promoting a return to work as soon as possible under the system.

Recommendation 2:

that there be a system requirement for specific guidance to employers on ways they should 'promote', rather than merely 'require', the return to work of an injured worker, particularly workers who have had a psychological injury in the workplace.

Section 49 (1) of the *Workplace Injury Management and Workers Compensation Act 1998 (NSW)* (*WIMWC Act*) imposes an obligation on employers to provide suitable duties for workers capable of returning to work. Those duties must be within the current capacity the injured worker as decided by their Nominated Treating Doctor. Suitable duties must be "the same as, or equivalent to, the employment in which the worker was at the time of the injury", under Sub-section 49 (2).

The sub-section allows for an exemption from the obligation when "it is not reasonable practicable to provide employment in accordance with this section". This wording had provided disputation between employers and injured workers represented by this union. A failure to provide suitable duties when weekly compensation payments are no longer available and the worker is fit for duties gives rise to financial hardship to the injured worker and their families. This outcome is contrary to system objective (b), "to promote a return to work", and system objective (c), "to be fair, affordable and financially viable" under Section 3 of the *WIMWC Act*.

The ways in which the words 'reasonably practicable' and 'equivalent to the employment" have been understood by the Department of Education (The Department) has caused considerable hardship for a number of our members.

For example, one of this union's members, a permanent teacher with a psychological injury sustained in the workplace, had an accepted workers compensation claim. When the injured worker's work capacity improved, the employer provided two temporary placements in other work locations while her return to work goal remained 'same position, same workplace'.

After those two temporary placements when the injured worker was fit for all duties, the employer agreed that the worker should not return to the same workplace owing to a risk of re-injury. In that event, it was agreed that the worker's return to work goal should no longer be 'same position, same workplace'. However, no other return to work goal from the available hierarchy of goals was agreed between the parties. The employer refused to provide further temporary placements pending the availability of a permanent transfer to another work location. This situation caused significant financial hardship to the injured worker and gave rise to an industrial dispute with the employer.

It was only through a notification of industrial dispute in the Industrial Relations Commission of NSW that further temporary placements were provided to the injured worker by the employer pending a permanent transfer to another work location.

A further example is when members who have been injured as a result of alleged bullying, who have not been in their current position for long enough to be eligible for service transfer, and those in promotions positions, are told they can apply for advertised positions. This is not practicable as under Department's processes the immediate supervisor (often the person they have had conflict with) has to be their first referee. According to Section 49 of the *WIMWC Act*, which states *the employer liable to pay compensation to the worker under this Act in respect of the injury must at the request of the worker provide suitable employment for the worker* the obligation to search for suitable duties at an alternate workplace, with the same employer, should sit with the employer,

rather than the injured worker. For this reason it is not acceptable for injured workers to be told that their only access to suitable duties at another worksite with the same employer is to participate in a merit selection process.

Recommendation 3:

the implementation of the requirements of the *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*, to provide both *effective and proactive management of injuries, and necessary medical and vocational rehabilitation following injuries,* is undermined and contradicted by the phrase *so far as reasonably practicable* in Section 49(2) of the *Workplace Injury Management and Workers Compensation Act 1998 (NSW),*. This phrase should be removed as it is used by employers and insurers to circumvent their responsibilities to provide suitable duties to their injured workers.

Work capacity certificates are based on medical evidence. The scheme allows for an injured worker's nominated treating doctor (NTD) to certify the workers current capacity for employment in terms of hours and abilities based on medical evidence.

The scheme implies that Work Capacity Certificates rightly inform an injury management plan. Sub-section 45 (5) of the *WIMWC Act 1998* (NSW) provides that *The worker must authorise the worker's nominated treating doctor to provide relevant information to the insurer or the employer for the purposes of an injury management plan for the worker.*

The decisions on the current capacity of the injured worker should be based solely on medical advice.

However, there is a continuing issue with Rehabilitation Providers, as funded by the insurer, inviting themselves to the injured worker's appointments with their nominated treating doctor (NTD). This creates an opportunity for the Rehabilitation Provider to apply an undue influence over the injured worker and their NTD in certificates on work capacity restrictions.

For workers with physical injuries this can be counterproductive, lead to longer periods of recovery and lead to either full or partial incapacity to work.

A typical example encountered by the Federation is that of a worker who suffered a back injury and consulted her NTD. With a combination of physiotherapy and pain management, the injured worker's work capacity gradually increased her hours from nil. Her current Work Capacity Certificate stated that she could work half days on each of three non-consecutive days and she had successfully followed this plan for four weeks.

In the case conference, under pressure from the rehabilitation provider to increase her hours for returning to work, the NTD agreed to lift restrictions from three non-consecutive half days to four half days a week. This meant that the worker did not have time to a full day's rest between each half day of attendance. The worker then exacerbated her back injury and had a further period away from the workplace. Interference of this kind frustrated system objective (b) under Section 3 of the *WIMWC Act 1998* (NSW): "to promote [the injured worker's] return to work as soon as possible".

A clear differentiation needs to be made between the appointment an injured worker makes with their NTD to discuss their current medical needs and the case conference or Return to Work meeting where the medical restrictions as stated on the Work Capacity Certificate are already decided and are then used as fact from which to discuss the possibility of suitable duties and how the injured worker can work towards a sustainable return to work.

Recommendation 4:

More specific guidance should be provided to workers and their nominated treating doctors that the information to be provided to the insurer or employer under Sub-section 45 (5) of the *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*, including medical information, should inform the injury management plan.

2. The implementation of Work Capacity Decisions

Work Capacity Decisions under Section 43 of the *WIMCA Act* should not be able to be implemented, as an alternative to declining liability under Section 74 of the same Act.

Section 74 of the *WIMCA Act* states that

(1) *If an insurer disputes liability in respect of a claim or any aspect of a claim, the insurer must give notice of the dispute to the claimant.*
(2) *The notice must contain the following:*
(a) *a concise and readily understandable statement of the reason the insurer disputes liability and of the issues relevant to the decision (indicating, in the case of a claim for compensation, any provision of the workers compensation legislation on which the insurer relies to dispute liability),*
(b) *such other information as the regulations may prescribe.*

The details of this section provide the injured worker will clear reasons as to why their claim has been declined and copies of relevant documents used to make this decision. This allows them to access funding through the Workers Compensation Independent Review Office (WIRO) to seek legal advice and support to pursue their claim. With the support of their legal representative the injured worker has access to the Workers Compensation Commission.

Such an option is not available to injured workers who are handed a Work Capacity Decision. Under Section 43 of the *Workers Compensation Act 1987 No 70*:

(1) The following decisions of an insurer (referred to in this Division as work capacity decisions) are final and binding on the parties and not subject to appeal or review except review under section 44BB or judicial review by the Supreme Court:
(a) a decision about a worker's current work capacity,
(b) a decision about what constitutes suitable employment for a worker,
(c) a decision about the amount an injured worker is able to earn in suitable employment,
(d) a decision about the amount of an injured worker's pre-injury average weekly earnings or current weekly earnings,
(e) a decision about whether a worker is, as a result of injury, unable without substantial risk of further injury to engage in employment of a certain kind because of the nature of that employment,
(f) any other decision of an insurer that affects a worker's entitlement to weekly payments of compensation, including a decision to suspend, discontinue or reduce the amount of the weekly payments of compensation payable to a worker on the basis of any decision referred to in paragraphs (a)–(e).

A stated objective of the *WIMCA Act* is: *(d) to be fair, affordable, and financially viable.*
There is no application of fairness in a system where an injured workers who has their claim declined and payments cease under one section of the act is afforded access to legal assistance and an injured worker who has payments cease under a different system has no such right to legal assistance.

A Work Capacity Decision can have the same practical and financial effect on a worker, in that their weekly payments cease; however they do not currently have the same right to assistance with the drafting of their review.
Work Capacity Decisions should not be used to reduce a member's PIAWE when suitable duties have been withdrawn by the employer. An example of this is a member with a psychological injury who had medical advice that he/she could be placed on a graduated return to work plan at another school (i.e. without the stress of being supervised by the alleged bully). The member was successful in completing a Return to Work plan at an alternate school and in the final stage was attending full weekly hours but on a reduced workload.

The employer only agreed to fund this position for a set number of weeks presuming that the member would then be well enough to return to his/her substantive position. To return to his/her substantive position would have meant that they would be supervised by the person he/she claimed had caused their injury. Medical advice continues to be that it is not safe for the member to return to their substantive school and suitable duties have been withdrawn.

On the basis that, for up to two weeks, the member had worked full hours but not full duties, the insurer made a Work Capacity Decision claiming that the member had capacity to work full time and so gave notice that the PIAWE would be reduced to zero.

By participating in a Return to Work (RTW) plan, the member has no suitable duties and no PIAWE payments.

With the assistance of a solicitor, the matter was returned to the Workers Compensation Commission and a Certificate of Determination given which stated that the Department was obliged to provide suitable duties. The Department has since complied with this determination and the teacher has been placed in a different school in an above establishment position and is teaching successfully. This begs the question as to why the Department has not implemented their legal obligations for other members in similar situations.

Recommendation 5:

Workers and insurers should be able to obtain legal advice and representation with respect to all disputes (including WCDs). Costs should reflect proper remuneration for all lawyers for both workers and insurers. If there is a maximum cost it must relate to the time and effort needed to draft and lodge the review.

A number of members have been sent similar Work Capacity Decisions based on largely non-existent possibilities of employment.

One of the difficulties with the legislation is contained in the definition of suitable employment as relied upon by the insurer.

The definition provided in Section 32A of the *Workers Compensation Act 1987 No 70* extends the concept of suitable employment to employment that may or may not actually exist.

An injured worker is to be matched to suitable employment by their skills and experience,
(b) regardless of: (i) whether the work or the employment is available, and (ii) whether the work or the employment is of a type or nature that is generally available in the employment market.

This allows insurers to make Work Capacity Decisions where workers are expected to search for and find jobs that simply do not exist.

The other impracticable aspect of the definition is that it fails to take into account the economic circumstances of the community where an injured worker lives and/or their ability to commute or even move to another area of the state.

Work Capacity Decisions can be based on the deemed ability of an injured worker to perform work which may simply not exist in their community and can result in negative PIAWE payments related to jobs that don't actually exist. Many rural communities experience high levels of unemployment while much of the available work is within small and family owned businesses. It is unrealistic to expect an injured teacher to find clerical or retail employment in these circumstances.

Work Capacity Decisions also fail to consider all aspects of a person's work related injury. One member had injured his/her shoulder and was following medical advice by attending a strengthening session funded by the insurer. At the session the member injured his/her groin resulting in a hernia. Shortly afterwards a Work Capacity Decision deemed the member as capable of working as a courier carrying boxes up to 20kg. This was overturned on internal review, but the member did not receive PIAWE while the review was taking place.

Two more recent examples were of teachers in rural communities who were deemed by the insurer to be capable of earning close to their Pre Injury Weekly Earnings by working as private tutors of high school students. It was true that this was within their training and abilities, but it was far from true that it was possible to earn a living wage from this part time employment. One of these teachers provided a detailed Request for Review for the insurer including evidence from their own enquiries with local small business providers of after school tutoring which showed that even if they tutored for all available out of school hours it was not viable or equivalent employment. They were successful in having the WCD overturned. At about the time one WCD was overturned a teacher in a similar situation was handed a similar decision and lodged a similarly detailed request for review. We are awaiting the insurer's decision on the second example.

Recommendation 6:

The definition of suitable employment in Section 32 of the *Workers Compensation Act 1987 No 70* **should be amended so that only work which actually exists and is within the details of the injured workers current Certificate of Capacity can be taken into account. The actual test for work must be linked to work that not only actually exists but is actually providing employment for the specific injured worker.**

3. Limitations to access to necessary medical treatment

The present scheme can lead to extended recovery periods due to the delays in the approval of necessary medical treatments.

Currently under Section 279(1) of the *WIMCA Act*, the insurer *Within 21 days after a claim for medical expenses compensation is made the person on whom the claim is made must determine the claim by accepting or disputing liability.*

This timeframe can extend the period of time an injured worker has to endure a high level of pain and in the case of joint injuries the extra days of day to use and living can further exacerbate the injury.

Delays for approval can also lead to workers falling outside of the timeframes covered in Section 41 and 59a. of the *WIMCA Act* as described below.

Arbitrary time limits which link weekly payments to access to medical expenses further reduce access for injured workers.

While acknowledging that the Benefits Package as implemented by SIRA from 1 August 2016 increased the access of injured workers to a number of treatment options within the initial three months following their injury, this is not long enough for many members to recover from their injuries.

An equally arbitrary timed cut off is that of medical expenses only being paid for up to two years after weekly payment cease. These time limits detrimentally affect injured workers who are diagnosed as in need of secondary or subsequent surgery. Members who have returned to the work place after the initial injury and have not received weekly payments for over two years but then need further surgery. Under Section 41 of the Workers Compensation Act, once the insurer has agreed to the need for secondary surgery the will funds the operation, necessary follow up treatments such as physiotherapy and weekly payments for up to 13 weeks.

However, under Section 59(a) (3) *If weekly payments of compensation become payable to a worker after compensation under this Division ceases to be payable to the worker, compensation under this Division is once again payable to the worker but only in respect of any treatment, service or assistance given or provided during a period in respect of which weekly payments are payable to the worker.*

The intersection of Sections 41 and 59(a) of the *WIMCA Act* do not allow for a worker who is recovering from secondary surgery to return to the workplace and at the same time continue to receive the necessary treatment to assist in their recovery and aid their sustained return to pre injury duties.

An example under the twelve month rule, which could just as easily occur under the two year cut off, was that of a member who applied in December for surgery to correct nerve damage in his/her foot. The surgery had still not been approved in February by which time they were no longer entitled to medical expenses.

Recommendation 7:

Sections 279(1) of the *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*, should be amended so that decisions as to when treatment or medication are no longer needed should be based on medical evidence, as provided by the NTD in the Certificate of Capacity rather than by arbitrary timed cut off points in the current legislation. Further, Federation suggests that the development of a standardised form for the NTD to send to insurer to use when they are requesting approval for medical treatments including surgery. Such a form would ensure that the relevant and necessary information is provided to the insurer and this should enable a shorter timeframe for decisions to be made.

Conclusion:

Federation continues to be concerned with the ongoing difficulties faced by our injured members following the implementation of the changes to the Workers Compensation Legislation in 2012.

While acknowledging that there have been some, gradual winding back of the worst of the provisions including access to medical expenses after weekly payments cease and the timeframe with which a NTD can approve some medical treatments, many aspects of the current legislation fail to support the medical needs of injured workers or provide processes to encourage employers to facilitate suitable and sustainable long term employment for workers who were injured while in their employment.

In 2012, one of the main arguments put forward by the State Government and Treasury was that the fund was in arrears and that changes were necessary for long term sustainability of Workers Compensation in NSW. This is no longer the case as the fund is currently in considerable surplus.

This surplus should be used to support injured workers in their recovery and, where medically advised, sustainable return to employment. As a starting point, the *Parkes Project Advisory Committee Statement Of Principles* should be implemented alongside the recommendations outlined in this submission.