

**INQUIRY INTO 2018 REVIEW OF THE WORKERS
COMPENSATION SCHEME**

Organisation: Australian Education Union New South Wales Teachers
Federation Branch

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**AUSTRALIAN EDUCATION UNION
NEW SOUTH WALES TEACHERS FEDERATION BRANCH**

SUBMISSION TO

STANDING COMMITTEE ON LAW AND JUSTICE

ON

2018 REVIEW OF THE WORKERS COMPENSATION SCHEME

Authorised by,

JD John Dixon
General Secretary
AEU NSW Teachers Federation Branch

14 June 2018

SUBMISSION

Introduction

The Australian Education Union NSW Teachers Federation Branch (Federation) represents school 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 Federation. The current financial membership totals over 60,000 practicing teachers and student teacher members.

Federation has previously responded to the Standing Committee on Law and Justice, First Review of The Workers Compensation Scheme in October 2016 and more recently to the NSW Government Department of Finance, Services and Innovation on Improving Workers Compensation Dispute Resolution in NSW in February 2018.

In neither of our responses did we agree with recommendation 16 of the Standing Committee's First Review of the Workers Compensation Scheme or with the present proposal to create a consolidated personal injury tribunal for Compulsory Third Party Insurance and the Workers Compensation Scheme.

The main reasons for our concerns with this proposal are:

1. The difference in objects of the acts would create a body with two different aims and objects.
2. Federation has concerns that a single injury tribunal attempting to implement two very different schemes may lead to less favourable outcomes for injured workers.

1. The difference in objects of the acts would create a body with two different aims and objects.

These points were clearly explained in our submission to the NSW Government Department of Finance, Services and Innovation on Improving Workers Compensation Dispute Resolution in NSW – February 2018:

The systems are different in their legislative objects:

The Workers Compensation scheme and the Compulsory Third Party (CTP) scheme have very different objects. It is acknowledged that both schemes have statutory objects relating to system efficiency rather than individual outcomes. The workers compensation scheme aims to keep the scheme 'affordable and financially viable' under section 3 (f) *Workplace Injury Management and Workers Compensation Act, 1998*. Similarly, the CTP scheme aims to promote competitive premiums, compulsory insurance for motor vehicle owners and limiting compensation payable for non-economic loss under sub-sections 5 (c) – 5 (f), *Motor Accidents Compensation Act, 1999*. However, beyond this point, the two schemes have very different objects.

However, the objects of the workers compensation scheme go further than the objects of the CTP scheme. For individuals, the CTP is concerned only with early and appropriate treatment and rehabilitation from injuries arising from motor vehicle accidents, under sub-section 5 (a) of the *Motor Accidents Compensation Act, 1999*. This contrasts with the workers compensation scheme, which aims to promote prompt treatment and rehabilitation “in order to assist injured workers and to promote their return to work as soon as possible” (sub-section 3 (b) *Workplace Injury Management and Workers Compensation Act 1998*). As such, disputes between parties to a workers compensation claim involve ongoing relationships that may need to be restored to facilitate return to work as soon as possible. CTP disputes tend to involve parties who are strangers to each other, relationships that are not expected to be ongoing, and relationships that do not require restoration to facilitate scheme objects.

Further, a system object of the workers compensation scheme is “to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury” (sub-section 3 (a), *Workplace Injury Management and Workers Compensation Act 1998*). As such, the workers compensation scheme is specifically concerned with deterring injuries in the workplace. The CTP scheme, however, is not required by statute to promote prevention of motor vehicle accidents that cause injury. The CTP scheme’s only concern with deterrence is “to deter fraud in connection with CTP insurance” (sub-section 5 (g), *Motor Accidents Compensation Act, 1999*). The worker’s compensation scheme’s focus on deterrence is to protect workers from future injury or re-injury. The CTP scheme’s focus on deterrence is to protect the interests of insurers, not to protect third parties from injury or re-injury.

2. Federation has concerns that a single injury tribunal attempting to implement two very different schemes may lead to less favourable outcomes for injured workers.

In expressing our concerns with Option Three as outlined in the NSW Government Department of Finance, Services and Innovation on Improving Workers Compensation Dispute Resolution in NSW – February 2018 we expressed our concerns that:

Federation is not convinced of any advantage to injured workers of merging dispute resolution processes under the workers compensation scheme with the injured road users’ (CTP) scheme. There may be cost efficiencies but this is not in the interest of injured workers. Further reductions in scheme costs alone, is not reason to make this change.

3. Suggested alternatives

Rather than merging dispute resolution processes for workers compensation disputes with processes for CTP disputes, the Federation supports a single notice system and single system for resolving all Workers Compensations disputes. The present dispute resolution processes for workers compensation creates two, non-uniform dispute resolution processes. These processes should be unified.

A similar proposal has been suggested by the State Government in a press release from the State Insurance Regulatory Authority dated 4 May 2018. Federation awaits the legislative amendments necessary to implement these scheme improvements.