

INQUIRY INTO 2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: Maurice Blackburn Lawyers

Date Received: 1 June 2020



31 May, 2020

The Secretary
Legislative Council Standing Committee on Law and Justice
Parliament of New South Wales

By email: law@parliament.nsw.gov.au

Maurice Blackburn Pty Limited
ABN 21 105 657 949
Level 21
380 Latrobe Street
Melbourne VIC 3000

DX 466 Melbourne
T (03) 9605 2700
F (03) 9258 9600

Dear Sir/Madam,

We welcome the opportunity to provide feedback in relation to the 2020 Review of the Workers Compensation Scheme.

Maurice Blackburn Pty Ltd is a plaintiff law firm with 33 permanent offices and 30 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial social justice practice.

Maurice Blackburn's practice in assisting injured workers with their Workers' Compensation claims extends to every mainland Australian jurisdiction. We ceased accepting new matters in NSW as at Sept 2019, due to the changes in the structure to the scheme. We retain, however, a good working knowledge of the NSW scheme and its provisions.

This gives us a unique perspective on the relative merits of the various Workers' Compensation schemes across the country, and a capacity to be able to observe which schemes achieve good outcomes for (a) the injured worker, (b) employers and (c) the 'public purse'. It is evident that, across these dimensions, some schemes are better than others.

Following the seismic shifts in the administration of Workers' Compensation in NSW in 2012, then further major changes in 2015, the 2016 review of the scheme by this Committee¹ produced a number of salient observations and recommendations. These clearly articulated issues with, amongst other things:

- A lack of clarity in how premiums were calculated
- Unclear data collection processes around return to work
- A lack of clarity in icare forms and documents
- Issues with dispute resolution processes

¹ <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2414/Report%20-%20First%20review%20of%20the%20workers%20compensation%20scheme.pdf>

- Inequities in the treatment of workers with highest needs
- A need for guidance on how surveillance should be conducted
- Issues with the training and expertise of case managers
- Issues with the relationship between agents and treating doctors.

The report painted a picture of an unduly complex, unfair system.

Further changes in 2018 focused on the issues associated with dispute resolution processes, through the *Workers Compensation Legislation Amendment Act 2018* which led to:

- The abolition of internal review, merit review and procedural review for work capacity decisions, with the Workers Compensation Commission given jurisdiction to determine these matters instead
- Changes to the calculation of the pre-injury average weekly earnings of a worker for the purpose of determining the worker's entitlement to weekly payments of compensation
- Enhanced information collection and sharing powers of SIRA and a scheme for mandatory notification of contraventions of the Workers Compensation Acts².

With these changes in place, Maurice Blackburn suggests it would be timely for the Committee to focus its attention on how the NSW scheme compares with others across the country, and what structural changes would need to be implemented in order for the current scheme to address any identified weaknesses.

Maurice Blackburn's observation is that the NSW scheme rates poorly in comparison to others in the fair provision of benefits to injured workers – and can be particularly harsh for those with long term injuries.

Our NSW colleagues report that the NSW scheme very much places the whole person impairment at the center of rights and settlements, which often has the effect of denying injured workers benefits for reason unrelated to the impact of their injury. The scheme's approach to legal costs is a barrier to access to justice, when compared to other regimes.

The NSW scheme also appears to be complex and expensive to administer, and is one of the more costly for employers in terms of premium rates.

Therefore, to our mind, the review should focus on a comparison of:

- The statutory benefits available to injured workers in each jurisdiction, including medical and related expenses and access to legal support
- The benefits and supports available to the injured workers' family
- The impairment thresholds imposed in each jurisdiction
- The use of narrative tests
- A comparison of the length of time support is provided
- Premium costs to employers in each jurisdiction
- 'Short tail' and 'long tail' schemes in operation and the associated benefits to injured workers
- Requirements of insurers in each scheme, including use of surveillance
- Satisfaction rates across schemes
- Comparative scheme costs to Government

²<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2488/2018%20review%20of%20the%20Workers%20Compensation%20Scheme%20report.pdf>; p.3

To this end, Maurice Blackburn would be pleased to make our most senior lawyers who work in other jurisdictions available to the Committee, to address questions related to the on-the-ground operation of the other schemes.

We would suggest that having access to those with expertise in the Victorian and Queensland systems may be particularly beneficial. Both schemes are well established, cover a similar population base, yet are quite different in structure. They are good examples of strong scheme design, ensuring fair outcomes for both injured workers and employees.

Please do not hesitate to contact me and my colleagues on _____ or at _____ if we can further assist with the Committee's important work.

Yours faithfully,

Janine Gregory
Principal Lawyer
Maurice Blackburn