Injured Workers Association

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Ref: iwa submission fed

Attention: Committee Secretary
Standing Committee on Employment and Workplace Relations
House of Representatives
Parliament House
CANBERRA ACT 2600
AUSTRALIA

August 8, 2002

Dear Sir/Madam,

Re: Inquiry into Aspects of Workers Compensation

Please accept this document as our submission to the above Committee.

After outsourcing by WorkCover, the management of the SA Workers Rehabilitation and Compensation system to private insurance companies, the scheme changed from being relatively fair for the workers and employers to an unfair scheme for both of the above listed groups.

The parliamentary debates preceding the SA Workers Rehabilitation and Compensation Act 1986 indicate clearly that the Parliament's intention was to create a no-fault scheme that will be founded and judged more on the merit of the claims than on the technical legalities and costly and time consuming litigation before the courts. It seems to us that in the area of Workers Rehabilitation and Compensation, the Parliament intended to replace a specified **legal system** with a **justice system** fair for both sides: the workers and the employers at the possible minimal social cost and with a system rather restricted to only the inevitable representation of both sides by legal professionals.

To minimalise the employers' expenses and the social cost of the scheme and to relieve the court system from compensation litigation, the WorkCover Corporation was appointed as the **non-profit administrator and manager of the scheme.** At the same time the Workers Compensation Appeals Tribunal was established, **to replace,** as we understand, **judgements based on weighting the value of legal arguments presented by both sides, with justice based on humanity and common sense.**

The cornerstone of the scheme was that the employers' contribution was calculated on the expected payouts to the workers in the form of rehabilitation expenses including all medical costs, maintenance payments and compensations, plus the cost of the administration of the scheme by WorkCover (including the cost of maintaining the Workers Compensation Appeals Tribunal).

We strongly believe that at the beginning, there was a common acceptation that the rule is that merit should prevail upon legal technicalities and that in this way the direct and social cost of the litigation has been reduced significantly.

It seems to us however, that in the course of applying the above rule, a part of the local legal fraternity certainly noted a drop in their income because workers and WorkCover tried to solve problems without the involvement of legal professionals.

We are strongly convinced that those legal professionals who were not too happy with the new situation, started to work against the principles of merit prevailing over legal technicalities. It is possible that they were able to convince at least a part of the judiciary that the merit scheme does not work properly within the Australian legal system.

Therefore after a few years a formal legal representation of the parties by legal professionals became a normal practice, more and more often just from the beginning stage of litigation, ie from the stage of conciliation.

We are convinced that this practice blew up the direct and the social cost of the scheme.

Therefore there is no wonder that the weight of the litigation shifted from arbitration to judicial determination and that the number of cases before the Workers Compensation Tribunal has increased, causing now a considerable wait to access the WCT.

However we are strongly convinced that the most significant blow-out in the cost of the scheme, especially the social cost aspect of the scheme is related to outsourcing the management of the rehabilitation and compensation process to private and **profit orientated** insurance companies by WorkCover.

Commonsense indicates that putting profit hungry middleman into the scheme will in result effect the total cost of administering the scheme. We have no doubt that the **always money-hungry and maximum profit orientated** mainly multinational insurance organisation on top of the cost of maintaining the reduced but still costly WorkCover Corporation must be in the end result, much higher than maintaining the scheme without middlemen.

In the initial years the outsourcing of the services was hailed in South Australia as a great success because initially there was a reduction of the direct costs of the scheme, but now there is much less publicity about the "success".

In our belief, the initial positive results have been achieved not through the reduction of the costs of administering the scheme, ie through reductions in the total cost of maintaining the WorkCover Corporation together with its agents with their profits, but through reducing the worker's entitlements through introducing restricting changes to the Workers Rehabilitation and Compensation Act and through **pushing out the workers from the scheme to mainly federal founded social security and welfare schemes and/or reducing their medical entitlements on the expenses of Medicare.**

Please note some discrepancies: The Advertiser October 18, 1997 page 18 shows that WorkCover in the previous financial year cut its unfunded liability by 97 million dollars. An earlier article in the same paper dated July 29, 1997 talks about 48% blow out in legal costs incurred by WorkCover in the first 11 months of the just ended financial year. Some may argue that putting the above information together shows there should be concern for how the system is really operated.

Our members are strongly convinced that in social, Australia wide terms, the deviation from the original principles of the original workers rehabilitation and compensation scheme has brought harm to workers and significantly increased the true total social cost of consequences of work related injuries and illnesses of South Australian workers at the expense of the tax-payers of Australia.

2. Another problem which jeopardises a large number of rehabilitation attempts and significantly adds to the deterioration of health for the bulk of injured workers is the hostile culture towards those workers at the workplace. Our members frequently reported incidents of isolation and hostilities of management and/or co-workers in the moment an injured worker feels not fit to do his/her normal duties because of the consequence of his/her injury.

The atmosphere at the workplace became often so depressing for those workers that psychological and also psychiatric assistance became necessary. Several of our members reported that they felt to be treated at the workplace as parasites because the management create direct or indirect beliefs that when an injured worker is not able to fulfil all his/her previous duties, other workers have to work more intensively to fill the gap.

This negative impression is aggravated by efforts agents with or without WorkCover's acceptance try to create with the assistance of some of the mass media. Most of the mass media publications on workers rehabilitation and compensation issues show a worker as a fraudulent person that tries to "milk the system". In the last years there was only an insignificant number of articles and/or eg TV reports showing the overwhelming number of injured workers the system deprived directly or indirectly of their rights by the administrators of the scheme.

In general there was little publicity about the fact that WorkCover agents misuse their position of power and treat the injured worker as a lower being, often intimidating him/her psychologically and "pushing" to a state of depression with the aim to make the worker willing to accept any, even the most ridiculous proposition to get him/her off of the system.

An additional problem is the fact that a large number of employers refuse to re-instate rehabilitated workers with subsequent restricted work-abilities to a suitable position. In general, injured workers with more sustainable disabilities feel rejected and not wanted at their workplace.

Please note that workers with restricted work abilities resulting from say a motor accident are generally treated without any hostility at the workplace, and/or in opposition to workers previously injured at work, have no problems in obtaining their old or new employment. Information brought forward by our members and/or documents obtained by our members through the "freedom of information scheme indicates that in some cases

Agents seemingly wilfully and knowingly breach the Act in a effort to maximise profit for their companies, at the expense of proper rehabilitation and/or compensation for the injured workers in their portfolios.

This is certainly unlawful and possibly criminal conduct of WorkCover's agents works for them perfectly and now became the unwritten rule. It works because in any workers compensation case one party is the single injured worker, weakened physically and mentally by his/her injury, and in general unaware about his rights, whereas the other party is a powerful and influential organisation represented by the best possible lawyers.

Theoretically, the worker has free and fair access to argue his/her case at the Tribunal. But we all know that if the worker has not the necessary legal knowledge to present the case strictly on the basis of the legalities, not on merit, than he/she needs legal representation. This representation is usually, for the restricted budget of the worker, very expensive irrespectively of the outcome of the dispute and always bears the risk of breaking the worker financially if the other party wins.
This means that the combined psychological pressure of the agents and some media, the open and unpunished disregard of the agents for the law and the fear to be financially broke by the legal expenses, makes most of the injured workers

fearful and unable to fight for their rights.

Therefore the overwhelming part of the injured workers, in our estimate 80% give up any fight for their rights and accept any, even the most ridiculous compensation offer of WorkCover's agents or of the exempt employers. This estimate is rather conservative if we compare that from the overall number of 50,000 injured workers in South Australia in 1998/1999 there were lodged only about 7,500 "notices of dispute" with the Workers Compensation Tribunal in that year.

There is an additional issue worth noting. This is the practice of WorkCover and/or its Agents to shift the financial burden of the system to the usually federal founded schemes. It is very convenient for WorkCover to get rid of a permanently disabled worker from its pay list and medical liabilities to a disability pension or unemployment benefit scheme and to the previous mentioned Medicare safety scheme. It saves artificially WorkCover (and exempt employers) huge amounts by shifting their responsibilities to the purse of an average taxpayer.

In the opinion of our members the disadvantages of the current workers rehabilitation and compensation system revolve around three areas:

1The disadvantage of the worker in disputes because of the uneven power resources and influence of the parties in the dispute (insufficient support of the worker).

2The accelerating decline in value for money the employer receives for his premiums due to the increasing costs (including middlemen profits) of administration of the cases.

3The increasing burden on the average Australian taxpayer because of artificially "pushing out" workers from the workers rehabilitation and compensation scheme to other publicly founded schemes (social security schemes, welfare support, medical schemes etc)

If any further information or clarification will be needed we are always ready to collaborate as well as we can.

For and on behalf of the Injured Workers Association, South Australia.

Yours truly,

Ian Trinne

President, Injured Workers Association Inc.