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SUBMISSION
TO
PRODUCTIVITY COMMISSION:

NATIONAL WORKERS' COMPENSATION AND OCCUPATIONAL HEALTH & SAFETY FRAMEWORKS

Submission from:

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SUBMISSION TO PRODUCTIVITY COMMISSION FOR NATIONAL WORKERS COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY

"The Dilemma of Injured Workers trying to obtain Justice in the Workers' Compensation System, Medical Tribunals, and from Employers or their Officers"

Introduction

Founder of the Workers Compensation Support Network (WCSN) is Muriel V. Dekker. The WCSN counsels injured workers, lobbies parliamentarians and makes submissions to parliament about anomalies in Worker's Compensation (Workcover). Approximately three hundred injured workers have contacted the WCSN.

1. Pattern of Complaints

A letter to the editor of the Courier Mail about anomalies in Worker's Compensation elicited about forty responses of other injured workers. From letters and discussions with injured workers and their families over many years, the pattern of complaints which emerged includes the following;

- That safety recommendations are not implemented quickly enough.
- That some injuries of workers are being vilified and criminalised by doctors
- and professionals paid by Workcover. Suicide is alleged to result, as said by another injured workers group.
- Lack of Natural Justice by Workcover not following their "Statutory Claims Procedures" by failure to inform injured workers when others contradict them.
- Lack of Natural Justice by medical tribunals system of Workcover and misrepresentation of genuine injury with prejudice.
- Some employers not applying the law.
- That some employers fail to record work accidents, injuries or reports about adverse work efforts then claim to Workcover that the employer has no knowledge of the injury.
- Breach of Law by the employer not informing Workcover about report of work injury.
- Hostile work witnesses who are afraid of loss of jobs, so withhold the truth about work injury or reports about adverse work efforts.
- Rough examinations by some doctors on medical tribunals, hurting the injured workers.
- Some rehabilitations officers identifying with employers to the detriment of injured workers, so ex-resource officer says.
- Compensation is inadequate.
- Some doctors do not want to treat injured workers.

2. <u>Injured Workers Stories</u>

Late Compensation affects Families

Shoes could not be bought for a little boy with webbed feet because his father's workers compensation was late. The boy had to go to school without shoes. Other children laughed at his webbed feet. The boy also was being treatment for a speech defect and was being cured, but when his webbed feet were laughed at his speech defect worsened.

Twenty-four Worker's Suicide: Vilified by Doctors

An injured workers group calls for an enquiry; 24 of its members suicide a group alleges, because of vilification by psychiatrists. (Suicide Enquiry Urged. Sunday Times, 1994 - attached.)

Doctor refuses to treat work injury: Man Dies
A doctor refuses to treat an injured worker when told it was a work injury. The specialist who finally operated told the widow, "Your husband could have lived another ten years if the first doctor had not delayed," the widow says.

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Overview

Employers do not always perform their duties for Workers. Complaints from injured workers include:

- Safety is often inadequate, yet the employer has been seen to mislead an Ombudsman and incorrectly assert safety was good, but records show lack of safety.
- Employers failure to record their accidents, work injuries or report complaints about adverse work ethics.
- Employers telling Workcover that they have no knowledge of an accident or injury. (This can prejudice genuine injured workers cases)
- Employers do not always implement safety standards as recommended by Workforce Health and Safety. WH&S often give the employer too long to implement, ie Ten years is too long because other workers can suffer the same kind of injury, an injured worker says.
- Workcover does not always follow its "Statutory Claims Procedures"
- Some Doctors paid by Workcover unfairly discredit genuine injured workers.
- Some Doctors and rehabilitators of people identify with employers.

In response to the Productivity Commission Enquiry into National Workers Compensation and Occupational Health & Safety Frameworks Issues, paper issued April 2003. The **"Workers Compensation Support Network"** would like to present this submission.

The submission will address the following issues:

Paragraph 3	Scope of Enquiry,
Paragraph 4	Inadequacy of Compensation,
Paragraph 5	Common law, the Medical Tribunals and Employer Negligence,
Paragraph 6	Workplace based injury management and incentives and anomalies,
Paragraph 7	Effective mechanisms to resolve and manage disputes,
Paragraph 8	Medical tribunals bury mistakes,
Paragraph 9	Medicare to care for injured workers,
Paragraph 10	Rehabilitation, and
Paragraph 11	Cost sharing and Cost shifting. Two hats dilemma.

3. Scope of Enquiry.

In terms of a national definition of work injury it is submitted that all work related injuries should be included.
Pre-existing injury aggravated or accelerated by work factors should be included.
Psychological injury should be included, whether it is pre-existing or not. Work damages work maims, work kills workers.
Compensation is legitimate and valid for work damage, mental or physical.

4. <u>Inadequate Compensation.</u>

In respect to whether compensation levels are adequate including income replacement and medical related costs for injured workers and their families:

(l.) **Lack** of **Overtime a Problem.** Workers' Compensation does not pay workers their overtime component. Many injured workers rely on overtime to pay for essential family needs. Injured workers ask where they can get help to feed their families and pay the mortgage. Some injured workers said they lost their homes when injured at work due to inadequacy of compensation. It is hoped that the enquiry will consider this problem.

(2.) **Compensation too** low. Complaints from other injured workers are that for lifetime injuries compensation is too low. Compensation granted outside of courts does not include real loss of wages for life. Nor does it include pain and suffering or punitive damages. Some injured workers in this category complain about being given by Workcover $2,000 for a lifetime injury. The Workers Compensation Office would argue that the injured worker had received many months of compensation, so only $2,000 remained to be granted under the schedule for the workers kind of injury.

But the months of compensation were only the base salary he would have received if not injured and not necessarily that which he would have earned.

In this light $2,000 for a lifetime injury that may preclude working again seems inadequate and unfair.

Case examples

The 1995 Actuaries Report shows most injured workers are only given $2,000.

An injured worker is currently fighting against his inadequate compensation. He is fighting from Germany though injured in Queensland under COMCARE (Federal). He became so distraught by the way he was being treated by the Compensation Officers and system that he had to leave Australia. He said he felt like murdering them.

Such is the anger and distress caused by inadequate amounts of compensation.

Payments are made on the value of the work being performed at the time of the accident. It overlooks the fact that the member may be highly qualified and working in a fill in job or as a volunteer.

Example: A University Graduate at 21 years old has completed a degree in their chosen field and has been offered a position starting in two months time. The member takes on a fill in job and is injured and can not work again.

Fill in job:	$25,000 per year	approx $ 500 per week.
Job about to start:	$75,000 per year	approx $1500 per week

This would be an unfair loss to an injured worker.

(3.) **Degree of injury.**

Fair workers compensation has also been destroyed by degree. Earlier, compensation was paid in full when it was substantiated that work caused, aggravated or accelerated the injury. Approximately ten or so years ago the injury was divided up on the bases of assumed degree that work factors contributed. Solicitors on the then "Workers Rights Coalition" observed this degree getting lower and lower over time. It began with about 20% being the usual work component of degree alleged but over the years dropped to about 5% and then 2% some solicitors say. Only this degree of compensation is then paid. But social security Judges the person is 80% injured.

Being ignored is the fact that before the work injury the worker could work even though his spine, his heart etc were deteriorating. He only had to stop working when some work factor aggravated or accelerated or caused the work injury.
Given that the worker could work before the work injury even though his heart/spinal cord is wearing out but cannot work when work aggravated or accelerated this, indicates that it seems fairer to pay compensation without using degree to minimise payment.

(4.) **Costs to Society, Injured Workers and Families.**

The cost to society is not lessened by using degree work contributed, because families break up and homes are lost, therefore pensions must be paid.
Injured workers and their families' complaints include that injured workers become suicidal, families break up and homes are lost because a young man is so seriously injured that he cannot work again. Yet the employer is never called to account for poor safety which could lead to manslaughter or maiming of workers.

5. **Common Law, Medical Tribunals and Employer Negligence.**

Only when the employer is negligent can an injured worker's case go to court under common law. Common Law and access to courts should be retained.
Common Law is law for the people, yet it is undemocratic to remove or limit this equity but costs of court are a hardship on injured workers. Legal protection built up over centuries of law, is not always practised outside of Common Law, even though some degree of natural justice is supposed to be applied, in practice natural justice is often denied to injured workers.
For example: Medical Tribunals have usurped injured workers rights of access even to go before magistrates and other courts for a hearing. Or injured workers are told they can not appeal from Medical Tribunals to courts. This is lack of a Basic Human Right. A point that is asserted to be in favour of having Medical Tribunals hearing injured workers' claims is that all the evidence does not have to be there, as would be required by courts.
But who does it help if evidence is missing? Who does it help when hostile witnesses are not expertly cross-examined?
It does not help injured workers substantiate their compensation right when evidence is limited, missing or incorrect and there is no mechanism in place to discover who is telling the truth.
Although in Queensland there are "Statutory Claims Procedures" that Workcover (Workers Compensation Office) is supposed to apply to all cases in order to give natural justice, there are records showing that this office does not always apply these "Statutory Claims Procedures."
These procedures, a parliamentarian has stated, are supposed to be applied by Workcover when others contradict what the injured worker says about the work he performed or his report of the work injury for an example. The procedure is necessary to give natural justice to injured workers.
However Workcover has been seen not to have applied their procedures on occasions. Workcover does not always follow these "Statutory Claims Procedures" as records reveal.
Considering that the Medical Tribunals lack independence because Workcover, both pay for their Medical Tribunals and Workcover's job is to get the evidence to put before the Medical Tribunal. It is plain to see that should Workcover fail to follow the correct procedure, the wrong evidence could be put before the Medical Tribunals. The gross unfairness of the Medical Tribunals System now becomes clear.

The lack of basic human rights of appeal from Workcover's Medical Tribunals to courts was supposed to be overcome by Q-Comp in Queensland. It is said that Q-Comp's decision is final. But an injured worker's complaint was that though Q-Comp ruled that the weight of the evidence is with his doctors, not Workcover doctors, because his doctor treated the injury, Workcover sent him, again to their Medical Tribunal who changed Q-Comp's determination.
These examples show Workcover ignoring the act and the procedures.
Therefore the Commonwealth Federally ought to be an avenue of appeal, like Administrative Appeals Tribunals. Common Law can be overcome by Statutes.
Statutes can be overcome by Commonwealth Law. We need Courts of Fact. So when the facts have not been obtained or evidence is incorrect, this can be readdressed.

Solutions

(1) Limits on common law access should be lifted.

(2) Their must be monitorin to assess whether Workcover has applied their "STATUTORY CLAIMS PROCURES" and informed the injured worker when others contradict what s/he says.

(3) Injured workers must be informed about what Workcover alleges is wrong or missing from their claim for compensation that puts them in danger of loss of compensation. It is only fair to be informed, before any hearing or rejection.

(4) Workcover's Application Forms for injured workers should include sections as follows:

- What happened to cause the injury?
- How the injury happened?
- When it happened?
- Did the injury happen cumulatively at work or instantly?
- Where it happened?
- Why it happened? (if known)

Adequate space should be provided to reply to these questions or attachments should be allowed.

(5) Expert solicitors are needed when possible hostile witnesses contradict the injured worker about work performed or reports of injury or adverse work of effects.
Doctors on medical tribunals even with the best of good will are not experts in cross examining hostile witnesses.
Hostile witnesses or incorrect contradictions made by other witnesses regarding what the injured worker may have said, is prejudicial to genuine injured workers and their rights. The Workcover option in practice is not dealing adequately with these issues.
A more comprehensive system of obtaining and monitoring the evidence would be helpful to both employers and injured workers because someone not injured at work would be more likely to be exposed and the true facts would be recorded from the start for genuine work injured persons

(6) Problems with Common Law Courts.

- Access to Courts for common Law cases is now severely limited to about 20% injuries.
- Costs of such Courts are prohibitive for many injured workers.
- This Court is only available when the employer is negligent.

Solution: Therefore the Commonwealth could be Federally involved at this level, giving an avenue like Administrative Appeals Tribunal for injured workers.
Access to common law courts is necessary because injured workers are not all receiving fair and just hearings. Access to all courts for all injured workers would be fairer. If Mistakes were corrected at mediation, less people would have to go to court.
This is fairer than removing working people's right to the courts of the land. But Workcover officers are not trained in conciliation or in the laws of evidence.

6. Workplace Based Injury, Management and Incentives.

Referring now to the item under the section Scope of enquiry.
This section is about workplace based injury management, approaches for incentives to achieve early intervention, return to work and for the care of long-term and permanently incapacitated by providing incentives for employment of workers who have suffered commensurable injury.

The problems: Workplace injury management.
The problems for injured workers "they complain" is that often there are no light duties available. Some are put on light duties, but this is often prematurely stopped when the employer wants the injured worker to return to the work that injured them in the first instance. Some injured workers said that they have sustained further injuries when they were made to go back to work too soon after the injury or when removed prematurely from light duties.
Workcover rushes to get workers back to work. This cuts out compensation. Return to work is what injured workers want also. It is a good concept. But it needs to be done only when it is certain light duties will be available for the full length of time required. Otherwise further injury may occur.
Penalties should apply to employers who harm injured workers by removing light duties prematurely. Workcover should not be allowed to force people back to work prematurely when no light duties exist.

Solution.
One solution to accident prevention is to ask the injured worker what caused the work injury and what they think should be done to prevent further such work injuries. Workers Committees are used in other countries to achieve this goal.

Incentives for Employers.
Incentives for employers to employ workers who have been compensated for work injury or have still such an injury should be offered with caution because not all injured workers are being compensated and others not adequately compensated.
Employers are resisting employing those who have had or still have work injuries.
Employers (injured workers complain) breach the law and sack workers while they are on workers compensation. Perhaps, if incentives are not the answer, penalising employers with hefty fines may be necessary in certain situations.

Incentive money should not be paid to employers when many genuine injured workers are not given their workers compensation. Penalties should apply to employers who do not upgrade safety quickly enough.

Note: This submission is not intended to include all employers. There are maybe more good and fair employers than otherwise. Discussions with some employers reveal that they take great care with safety and fairness to their workers.

Strategies: Discriminatory.

One strategy employers are using is to demand that a person seeking employment must get from Workcover a "no claims from workers compensation form" This is open discrimination against persons injured at work. So the "no claims for workers compensation" should be legislated as unlawful, for the employer to ask for.

Another unfair strategy used by employers is their failure to record work injury accidents or complaints by workers about adverse work effects. Further, then the employer tells Workcover, on the Form3, that the employer has no knowledge aboutthe work injury, or that the worker made no complaints about the injury or adverse work effects. The wrong doing is obvious, but there is no protection for injured workers. It is hoped that the Commission will address these issues.

Other Incentives for Employers: Anomalies.

The WCSN is aware that incentives for employers to help upgrade safety so injuries won't occur have, with many good employers, has been effective, and safety has been upgraded. But there is a problem with other employers not recording work injuries, then claiming to work cover that there Were no injuries. Is this to obtain an incentive payment that the employer is not entitled to?

These unfair practices lead to loss of compensation and adversely effect injured workers and their families.

Therefore it is essential that the Worker's compensation office applies their statutes and informs injured worker applicants when the employer contradicts them about reports of work injuries or adverse work effects. Work cover should then perform their job of ensuring the correct evidence is obtained or mistakes corrected.

Is Peter Robbed to pay Paul?

It is claimed by then Parliamentarian Mr. Kev Hooper, that Workers Compensation is a milking cow for the Government. It has been claimed that a Million Dollars a year goes out of Workers Compensation to a chair at the University.

Community groups have said they have been given money out of Workers Compensation.

Rehabilitation has funds from Workers Compensation and information is many other groups are given funds out of Workers Compensation. When hundreds of injured workers are unfairly denied their deserved Workers' Compensation, it would be unethical for their compensation to be given to others. Tom Burns, when a Labour M.P. sent letters to Federal Governments about injustice to hundreds or thousands of injured workers.

Care for long term and permanently injured.
Care for long term and permanently injured seems inadequate. Complaints from injured workers show that as soon as Workcover knows it is a permanent injury, they appear to slow down the procedure which can subject the injured worker to years of additional stress trying to struggle for their deserved lump sum.

Example. An injured worker who had a 240 kilogram side of beef crush his spine was compensated at first, then told to try to work. He tried to work but the effects of the permanent injury made this impossible. At this point, Workcover, though having all the evidence and knowing it was a genuine work caused injury, began making up things to block the injured worker from receiving his lump sum payout. The injured worker said he was told he had pelvic disease and that he had been in a car accident. He said he was not in a car accident and that in fact he was taken by ambulance from work when injured.

Solution.
Workcover must be compelled by law to produce evidence, other than what doctors paid by Workcover provide. This evidence must prove Workcover's claim that something else, other than work caused the injury. It will need a court or Administrative Appeals Tribunal to monitor whether Workcover's evidence is correct or not.

Problem: Maligning Injured Workers
Another problem mitigating against permanently or long term work injured persons is the serious issue of certain Workcover paid doctors on the Medical Tribunals or the doctors Workcover send injured workers tow are willing to write false reports that its "all in the injured persons head' or that they are "mental" or "lying." I understand that one doctor had another doctor who was paid by Workcover disbarred for his unprofessional, unethical conduct.
Trusting that the present enquiry is about more than shifting costs, something should be done to give protection to people already suffering an injury.

Criminalisation: Unfair.
Injured workers are, in effect, criminalised when Workcover claims that there is no injury or something else caused it. This allegation is unfair when not tested in court.
Solution: Workcover should not be permitted to use such allegations to block compensation unless it is proven in a court.
Rehabilitation to the best quality of life possible should be made available to all injured workers.

7. **Effective Mechanism to Manage and Resolve Disputes**

(1.) The enquiry mentions using internal dispute resolution processes by employers.
Response.

- This is objectionable because it is a Caesar to Caesar situation.
- The problem of disproportion of power in favour of the employer mitigates against all injured workers trying to find a resolution via employer and internal reviews.

For example.

- Internal reviews have not worked well under freedom of information, where the employer merely backs up his FOI Officer when they refuse to correct records despite being given proof the record is incorrect or inaccurate and should be corrected. This only places hardship and stress on those already suffering.

Internal review processes in workers compensation claims would place additional stress on already injured persons. Trying to keep track of possibly many mistakes of Public Servants, and the dates through internal review is a heavy burden. It should go straight to external review or Tribunal.

(2.) The enquiry mentions use of alternative dispute resolution including mediation and reconciliation.

Response.

- A report by IPASA, (a West Australian Injured Workers Association) states that mediation is not working well.
- That a new Workcover form should include what happened, where it happened, why it happened, is it cumulative or instant work injury, when it happened and so on. Care and thoroughness is missing and is needed.
- Brochures should be given to injured workers by Workcover which clearly set out how Workcover under "Natural Justice" should follow the "Statutory Claims Procedures" by informing the injured worker where others have Contradicted information on the injured worker and what appears to be missing or incorrect that may put the applicant in danger of lose of compensation. The brochure should also include how the Workcover medical tribunal should also apply the rules which follow rules for "Natural Justice."
  But the Electoral and Administrative Review Commission (EARC) recommended disbanding Medical Tribunals of Workcover.

8. <u>Medical Tribunals Burv Mistakes</u>.

Medical Tribunals are used by work cover to decide some claims, or to make recommendations. Worker's Compensation Medical Tribunals are an unfair and unjust system. They usurp our rights to legal protection built up over centuries of law, as no appeal to a court is allowed from Medical Tribunals. Workcover can force injured workers before their Medical Tribunals for different reasons, namely:

- To assess degree of work injury.
- To assess whether the work injury still exists.
- To assess whether there is an injury, and in practice, whether work caused it.

(1.) The first anomaly that shows up is when the injury stops the injured worker being able to work again. At this stage the Federal Government would assess the injured to be 80% disabled for disability pensions, where as Workcover's Medical Tribunals give much lower degrees of injury. Reports from injured workers claim amounts as low as 10%. This discrepancy should be allowed to go to a court to find the truth.

(2) It could be questioned in response to item 2 above, why Medical Tribunals are needed as the injured worker's hospitals and doctors are competent to assess whether the injury still exists or not. Doctors judging doctors without any proof the injured worker's doctors are wrong or incompetent is an unnecessary anomaly.

(3) Perhaps the worst anomaly is when Workcover sends injured workers to their General Medical Tribunal to be assessed as to whether there is an injury or not and if so did the work cause it. Here I refer to an article published in the Medical Journal of Australia called "A Lawyers Nightmare" written by Barrister Paul Gerber. He stated that "Medical Tribunals are like a Kaffa-like nightmare, where injured workers have to try to prove them selves innocent of a crime they have not committed without either a prosecutor or court." Therefore it can be argued that Workers Compensation Medical Tribunals are similar to false hearings and mistreatment of people falsely arrested, and denied a proper court and denied an opportunity to clear their name.

(4) Doctors make twenty four thousand or more mistakes a year by misdiagnosis and surgeries, a recent report says. Doctors in Workcover medical tribunals would also be misdiagnosing work injuries.

(5) A general medical tribunal acted outside its powers under the act and labelled an injured worker "personality defective".

In South Africa, for example African Judge and activist, Albie Sacks who wrote the book "Soft Vengeance of a Freedom Fighter" stated:

- There is no charge.
- No indictable offence.
- No evidence proving guilt.

This is tantamount to what Brisbane Barrister Dr. Paul Gerber wrote about Medical Tribunal hearings of the Workers Compensation Office "no prosecutor, or court or charge." (Doctor Gerber's article is attached).

Lack of Independence of Medical Tribunals

It is argued by Workcover that their Medical Tribunals are independent of the Workers Compensation Office. How can Medical Tribunals be independent when Workcover pays for the Medical Tribunals and Workcover obtains the evidence that is presented to the Tribunal? Clearly this is a lack of independence.

Worse still is when Workcover fails to obtain evidence correctly and fails to apply its Statutory Procedures and submits false evidence before their Medical Tribunal which reaches an incorrect finding from which there is no right of appeal to courts, this allows The Medical Tribunal to bury the mistakes and omissions of Workcover. Is this a fair system?

The documentary evidence showing how Workcover has provided wrong evidence before the Medical Tribunal and how the Medical Tribunal buried or covered over Workcover's mistakes and the Medical Tribunals mistakes is available in Brisbane.

Further, the Unions' representative Mrs. Grace Graceand J. Thomson made a submission to a Queensland enquiry into Workers Compensation stated that many Unions were not in favour of Workcover's Medical Tribunals system of hearing injured workers claims. A copy of Mrs. Grace Grace's submission will be attached if available. Refer also to section. "Common Law and Medical Tribunals," in this submission.

Work Aggravation; Law not being Applied
The law is clear; work aggravation and acceleration of injuries is compensatable. The law is not always applied by Worker's Compensation office. Work aggravation is being ignored. Therefore, in Western Australia, injured workers protested that what happened at work could cause or aggravate injury was overlooked while things having nothing to do with what happened at work where used to say the person could not be compensated; for example; being an abused when a child. But wouldn't you think that a person unfortunate enough to be abused when a child and also injured by separate work factors would be compensated for work injury, not penalised?

Dispute Resolution.
But when dispute resolution by conciliation was tried in Western Australia anomalies occurred;

- The Worker's compensation officer had no training in rules of evidence.
- Questions of fact where still not being addressed because access to a magistrate was only on questions of law. So injured worker's cases remained prejudiced

Procedures not applied. Three main anomalies

- Failure of the Worker's Compensation office to apply their statutory procedures which is a denial of natural justice.
- Denial of natural justice by medical tribunals of Worker's Compensation and misrepresentation of injuries or degree of injures and by claiming work did not cause the injury.
- Facts about work and reports of work injury not being obtained or corrected because procedures have not been applied.

This submission already addressed this and suggests:

- An internal review by an employer is unsatisfactory due to the power differences and an example of what happens under Freedom of Information, as given herein.
- Access to Common Law could be reinstated fully.

An argument used by Workcover and their Medical Tribunals is to claim who can sit in judgement on Doctors and Specialists of the Medical Tribunals.

Witnesses: But a witness at work who sees the injury happen is more expert than doctors on Medical Tribunals, to say it happened. But when Workcover, or perhaps, the workers advocate, if he/she has one, fails to put this evidence before their Medical Tribunal prejudice occurs to the injured worker's case. Also witnesses at work may be hostile because they do not want to tell the truth about the injury for fear of losing their jobs.
Such prejudice and hostility can only be addressed by skilled cross-examination of witnesses. This does not happen before Medical Tribunals, or by Workcover officers.

Not only Medical. There appears to be over emphases on what Workcover's Doctors opinions are and what they assert about work not causing the injury.
Rather than ensuring that the facts and weight of evidence is obtained

9. Medicare to Care for Injured Workers.

Persons injured while working are not always near a hospital. A Doctor said that Workcover even told doctors at hospitals to stop as many injured workers from claiming compensation as they could.
Injured workers do not have $40.00 available to pay a doctor when injured. Some doctors refuse to treat work injuries without being given an up front payment.
This is because if Workcover fails to accept the work injury the doctor will not be paid by Workcover either.
Therefore injured workers should be allowed to come under Medicare.

10. Rehabilitation.

Problems.
(1.) When injured worker's cases are unfairly prejudiced or procedures not applied by Workcover resulting in lack of compensation, the injured worker then misses out on rehabilitation and the chance to return to work.

(2.) When injured workers are too damaged to return to work, rehabilitation is denied to them. Rehabilitation should be given to all persons injured at work. At a facility where Workcover sends injured workers for rehabilitation, the injured workers complain about the following:

- They are forced to walk about two kilometres, exercise and walk back.
- They are hit and abused as "not co-operating or being lazy" when the injured worker is unable to perform the long walk then the exercises.
- Note. These allegations have not been confirmed by (WCSN)

But the endemic mistreatment of some injured workers by employers, others at work, some doctors and Workcover and some rehabilitation officer's needs addressing.
Failure to do so does not help recovery from injuries and adds to medical costs.
Those injured workers who are not compensated also miss out on rehabilitation and an opportunity to retrain or return to work.

Solution.
That States have primary responsibility for Workers Compensation with the overall control being Federal.
That a Federal avenue like the Administrative Appeals Tribunal or Special Workers Compensation Courts like Small Claims Courts be initiated at the Federal level for disputed claims.

11. Cost Sharing and Cost Shifting: Two Hats Dilemma.

This submission has already suggested that injured workers should have Medicare pay for their work injuries and why.
In respect to Workers Compensation coming under two hats, namely Federal and State. There are reasons for concern. These are:
(1.) Confusion may result.
The Fitzgerald Enquiry in Queensland is indicative of the problem. The Fitzgerald Enquiry recommended against departments wearing two hats because of the confusion it creates.

(2.) A present example is that The Ombudsman is also the Freedom of Information Commission in Queensland.
The wearing of two hats by the Ombudsman interferes with Justice and people's trust.
For example: an injured worker asked his employer to correct the way the employer had misled Workcover about the actual work performed and the report about the work injury. Documents were given to the employer substantiating the employer's mistakes and showing the true facts. The employer's FOI Officer refused to correct this under The Freedom of Information Act. The worker then requested an internal review by the employer who also refused.
The worker then had to request an external review by the Freedom of Information Commission. He was informed that the Commissioner would not correct the mistakes on the employer's record about the injured worker because it was not affecting the worker's health, home life or relationships.
Because all three elements were being affected, this person then appealed to the Ombudsman who can tell the FOI Commissioner that there is an anomaly to be corrected.
But because the Ombudsman is the same person as the Freedom of Information Commissioner, The Ombudsman wrote back pointing this out and saying that as Ombudsman he could not sit in judgement on himself on his capacity as Freedom of Information Commissioner, so he could not help.
This is an example of how unhelpful and confusing things can get when two hats are worn by the same person.
Therefore if there is a mix of Workcover as both Federal and State, then their officers could tie up a worker's claim for compensation indefinitely by passing the buck.

Summary

This submission has revealed how

- Workcover does not always follow the Act or its statutory procedures.
- Some doctors, paid by Workcover, malign and denigrate some injured workers.
- Workcover, in effect unfairly criminalised some injured workers.

Overview: Seven Factors that cause injustice

(1) The facts are not correctly obtained by Workcover.

(2) The facts are not obtained because Workcover does not follow its "Statutory Claims Procedures" and denies Natural Justice. This is because Workcover Does not inform injured workers when the employer contradicts them about reports of injury or work performed.

(3) Some employers fail to record reports about work injuries then tell Workcover they have no knowledge about the injury.
(4) Some Medical Tribunals of workers compensation are misrepresenting injuries, degree of injury, injured workers, or fitness for work. The Tribunals too deny Natural Justice.

(5) The law that work aggravation of pre-existing injury is compensable is not being applied.

(6) Pre-existing injury, such as being abused when a child, is being illegally used to deny compensation. At the same time the correct work facts causing or aggravating the injury have not been obtained by Workcover. Prejudice to injured workers cases constantly occurs.

(7) The failure of Medical Tribunals and Workcover is because legal protectionbuilt up over centuries of law is denied injured workers when there is no accountability for Workcovers' omissions and the Medical Tribunals' misrepresentations, and problems with other doctors.

Therefore a system is needed that is fair and equitable. That has adequate monitoring and accountability in Place. That informs applicants about Natural Justice they are entitled to.

Costs: The system must not only be geared towards bean counting thus costing genuine persons injured at work loss of compensation, families and health. A system is needed that shows awareness of Social Capital, compassion, that Australia has a conscience.

Recommendations

1. Inadequate compensation does not help society.

- Remove degree that the work component allegedly contributed to the injury. Include real loss of wages, pain and suffering.

2. **Common law uses legal protection built up over centuries of law.**

- Re-instate full common law rights for all injured workers, as it was, before for negligence.

3. Medical Tribunals are an unfair system. They are above the law.

- Disband Workcover Medical Tribunals as EARC (Electoral and Administrative Review Commission) recommended in Queensland.

4. Employers' Negligence is not adequately addressed. This blocks injured workers being compensated as the work factors causing the injury do not come to light.

- Provide a system where Employers' negligence can be revealed thus providing the true factors that caused the injury.

5. Incentives for employers to limit injury are a problem as money goes to employers while not all genuine injured workers are compensated.

- Only give incentives if all injured workers are compensated.

6. Employers wanting workers to sign a form that states that they have never claimed for a work injury are discriminatory.

- Legislate to stop this discrimination.

7. **Care for the permanently injured is inadequate.•**
   - Rehabilitation. Ensure help is provided to an injured worker who is paying off a house or would have purchased one had he not been injured at work, so homes are not lost or families break up.
   -

8. Mechanism to shown in Western manage dispute resolution. Mediation is not working fairly as Australia.
   - Appeals from Workcover to go directly to a special Workers Compensation Court of Facts or to an avenue like the Administrative Appeals Tribunal. (Access to Common Law for negligence cases should be retained and expanded)

9. Workcover is not following its Procedures or Statutes. This prejudices injured workers claims.
   - Have accountability.
   - Publish a brochure informing injured workers that Workcover, by law, has to inform injured workers when other evidence contradicts what they have stated.
   - Create a more comprehensive application form which includes the following.

a Was injury instant or cumulative,
b. Where did injury occur,
c. The time the injury occurred,
d. What caused the injury,
e. How did the injury occur, and
f. Why did the injury occur (if known)

10. Vilification or Criminalisation of injured workers is abhorrent.
   - Provide a free avenue of appeal.

11 Employers who fail to record and report work injuries, accidents and adverse work effects to Workcover, is prejudicial to injured workers.
- Tighten the system so that employers become more accountable.

12 **Workers compensation officers are not accountable when procedures are not followed** and this prejudices injured workers claims:

   - All injured worker applicants to be informed about all steps of procedures that workers' compensation officers must apply to their claims.

     - This must include that the officers have statutory duty of care to inform applicants when others contradict about work, reports about adverse work effects and so on.

   - Have a form that workers compensation officers must sign and date to show each step has been performed. Give this to injured workers.

   - Give injured workers an avenue of appeal when workers compensation officers do not correctly follow procedures.

List of Documents and Data Attached

1. Parliamentary Committee for Electoral and Administrative Review Decision (25 May 1995) It shows anomalies in Medical Tribunals of Workcover.
2. Article. "Medical Tribunals - a Lawyers Nightmare" by Barrister Paul Gerber Nov 16 1969. The problems mentioned are still current. (Injured workers have to prove themselves innocent without prosecution or court)
3. Internet. "When work is killer."
4. Articles from Sunday Times, West Australia.
   - Suicide enquiry urged.
   - Doctors targeted as compo patients complain.
   - Tragic end for injured brick layer.
   - Family blames stress for "accidental suicide"
   - Other associated articles.
5. Union Officers Ms Grace Grace and John Thomson Submission to a Queensland Enquiry.

Muriel V Dekker 2003

Injustice to injured workers damages Society.

LEGISLATIVE ASSEMBLY OF QUEENSLAND

PARLIAMENTARY COMMITTEE FOR ELECTORAL AND ADMINISTRATIVE REVIEW

REPORT ON

Review of Appeals From Administrative Decisions

Laid on the Table and Ordered to be printed
Parliamentary Committee for Electoral and Administrative Review
Report No. 25, May 1995

33 Liquor licensing matters must be resolved as quickly as possible because the matters often have substantial commercial consequences. EARC, in Appendix 26 of its Report, acknowledges that the strict time limits specified in the Act are not readily transferable to a generalist appeals body. The Committee notes that, while that problem is not insurmountable, it is reasonable to retain the review of liquor licensing decisions with an efficient, accessible and experienced existing specialist tribunal rather than transfer it to the untested procedures of a new generalist body. The Committee further recommends that QARC monitor the operations of the Liquor Appeals Tribunal and the suitability of transferring its jurisdiction to QICAR at a later date.

Medical Assessment Tribunals Under the *Workers' Compensation Act*

34 There is one general and six specialty Medical Assessment Tribunals that are required to make two types of decisions of under Part 9 of the *Workers' Compensation Act 1990*. Cases referred under this part of the Act are generally difficult and complex cases. The General Medical Assessment Tribunal confirmed that these decisions are:

> *"1. Where the General Manager of the Workers' Compensation Board has not admitted that an injury has been suffered by a Worker to whom the claim relates, the Tribunal determines whether the matters alleged in the claim constitute an injury to the Worker and, if so, the nature thereof.*
>
> *It further determines whether any incapacity for work resulting from the injury is (a) total or partial and (b) temporary or permanent.*
>
> *2. Where the claim for injury has already been accepted, either by the General Manager or by a previous Tribunal's determination, then the Tribunal determines whether any incapacity for work resulting from the injury is (a) total or partial (b) temporary or permanent; and if the Worker has suffered a permanent partial disability resulting from the injury - the nature and extent of that disability.*
>
> *In both types of decision making the matter is referred to the Tribunal by the General Manager of the Workers' Compensation Board".*

35 In regard to these types of decisions, two criticisms were made of the Medical Tribunals in submissions to EARC. M Dekker submitted:

> *"... the Workers' Compensation Act states that there shall be no right [of] appeal from medical Boards ... it is discriminatory because those many injured workers not sent before W .C. [Workers' Compensation] Office medical Boards still retain rights of appeal to all the courts for appeal, whereas those sent before medical boards have no right of appeal".*

36 Dr Morely submitted to EARC that doctors on the Medical Tribunals applied the medical standard described as 'beyond all doubt' rather than the civil law standard of 'on the balance of probabilities'.

37 Dekker, in lengthy submissions to the Committee on behalf of the Equity for Injured

Workers' Advocacy, reiterated a concern regarding of the lack of a right to appeal, and claimed that the Medical Tribunals are making non-medical determinations under Part 9 of the Workers' Compensation Act, because it provides for doctors to decide questions of law, namely *"whether work factors caused the injury"*. That submission also claimed that the Tribunals were stressful for participants and that the Tribunals consistently give reports underestimating the extent of an injury.

38 The General Medical Assessment Tribunal submitted to the Committee that:

> *"In determining whether injury (including disease) is caused, aggravated or accelerated by work, knowledge of the pathogenesis (the development and progress) of disease is essential. In this respect Medical Tribunals are best equipped to assess any relationship between injury and work This is particularly so in complex situations. The test which is applied in an arguable case in based on the balance of probabilities ... The Tribunal does not apply a scientific standard of truth - "beyond all doubt" as Dr Morley implies (S57). "*

39 On the issue of appeals from Medical Tribunal decisions, the General Medical Assessment Tribunal acknowledged that judicial review is available although it is expensive. Dekker also submitted that judicial review was too costly for many people and that *"an administrative review avenue would ascertain whether proper procedures had been adhered to"*. The General Medical Assessment Tribunal informed that Committee that in view of the expensive process incurred by persons wishing to pursue judicial review:

> *"... it is in relation to this area only that the Tribunal would support a process by which a Claimant could be better helped to access a judicial review system ".*

40 In submissions to EARC, the Workers' Compensation Board, Queensland Confederation of Industry and the Trades and Labour Council opposed the provision of a further review of Medical Assessment Tribunal decisions.

41 EARC recommends that the role of the Medical Assessment Tribunals be incorporated into that of the medically informed primary decision making stage of the Workers' Compensation Board and that the Tribunals as such are to be disbanded. EARC further recommends that there then be a right of appeal from the decision of the Board to QICAR whose members would include medical specialists and individuals able to provide a legal opinion concerning matters alleged in the claim (Disband Medical Tribunals)

42 The Committee received a large number of submissions from specialist members of the Medical Assessment Tribunals, who maintained that the Tribunals were delivering timely cost effective results that were fair to the participants.

43 The General Medical Assessment Tribunal submitted to the Committee that:

> *'The current system is fair, cost effective and decisions are made within reasonable time frames. The system has the support of Employers (SS48) and the Unions (SS48). There is a very real danger that what is currently a very effective and fair system of Workers' Compensation could become ineffective and costly if brought within the general system of the new Administrative Appeals. There is also concern about the delays which might result. I understand this is a problem in other States where the cost of administering Workers' Compensation far exceeds those incurred in this State ".*

44 It seems to the Committee that EARC has ignored its own guidelines described in Chapter 6 of that Report regarding decisions which are appropriate for merits review. Application of EARC's guidelines 11 and 12 on an expert decision making test, and technical expert test, would seem to imply that further merits review is not appropriate when a decision has been arrived at by the most experienced expert(s) in their field. This is the case with the Medical Assessment Tribunals.

45 In the event that there are any problems with the process followed by the Tribunals, that denies natural justice or places doctors in the position of have to make non-medical decisions, then greater access to legal opinion is considered appropriate, either on the part of the doctors or the claimants.

46 In the light of the dissatisfaction expressed by Dekker, on behalf of the Equity for Injured Workers' Advocacy regarding the outcome for claimants, the Committee considers that QARC should investigate the processes used by the Tribunals to determine if they can be improved so as to ensure natural justice for the claimants.

47 In conclusion, the Committee has resolved to leave the Medical Assessment Tribunals outside of QICAR for the following reasons:

(a) Volume of appeals: Dr Gallagher, Chairperson of the Orthopaedic Assessment Tribunal presented the Committee with statistics regarding the annual determinations of the 14 tribunals: In 1990/91 2,511; in 1991/92 2,048; and in 1992/93 2,278. The Committee is mindful of the fact that EARC estimates that QICAR would receive only 1,000 cases for review annually from all provisions. Clearly, to expect QICAR to deal with in excess of 2,000 cases would cause unacceptable delays for participants or require considerably more resources.

(b) Independence and expertise of Tribunals: Contrary to perceptions, the Assessment Tribunals are independent of the Workers' Compensation Board. If, as EARC suggests, the Workers' Compensation Board seeks the advice of the current medical specialists of the Tribunals and then the case is heard again by QICAR with medical specialists, the same medical issues will be heard and determined twice with no greater level of expertise being brought to bear. While a hearing by QICAR would ensure legal expertise, the Tribunals currently seek Crown Law advice on difficult points of law and in any event judicial review is available.

Queensland Community Corrective Services Board, *Corrective Services Act 1988-92*

48 Formerly the Parole Board, the Queensland Community Corrections Board (QCCB) hears applications for review on decisions of parole. The QCCB's main role is as a primary decision maker. The QCCB's only administrative review role is under s 168 of the Act, where it may review decisions of regional Community Corrections Boards where a prisoner has had three or more applications for parole rejected.

49 While the Committee notes the Prisoner Legal Service, in its submission to EARC, suggests that the QCCB's proceedings are not always fair, the Committee believes that a review right vested in a generalist review body instead of the QCCB would likely to be *"disruptive and the cause for uncertainty, tension and delay"* (QCCB's submission to EARC, EARC 1993, Appendix 26). The Committee considers that the QCCB is the