



LEGISLATIVE COUNCIL

JOINT SELECT COMMITTEE ON THE NSW WORKERS COMPENSATION SCHEME

MEDIA RELEASE

REFORMS TO THE NSW WORKERS COMPENSATION SCHEME

FOR IMMEDIATE RELEASE

13 June 2012

A suite of reforms to the NSW Workers Compensation Scheme have been recommended by the Joint Select Committee on the NSW Workers Compensation, in an effort to address the Scheme's poor financial performance.

Committee Chair, the Hon Robert Borsak MLC, said, "The Committee has considered several hundred submissions and evidence from over 70 witnesses, which has highlighted the complexity and scale of the NSW Workers Compensation Scheme, and the problems it faces in terms of its financial sustainability and its performance in meeting its key objectives."

"Although the views of stakeholders were diverse, particularly with regard to the options proposed in the Issues Paper released by the Minister for Finance and Services, a strong message coming out of the Inquiry is that immediate reform is needed to respond to the dire financial position of the Scheme. The Committee has had regard to evidence that a benefit restructure will deliver cost savings, which are necessary to ensure that the Scheme is able to continue to meet its key objectives of promoting better health outcomes and return to work outcomes for injured workers. In particular, the recommendations include enhancements to the benefits available to severely injured workers" Mr Borsak said.

Mr Borsak also stated, "We believe that the complexity and size of the Workers Compensation Scheme, and the issues raised in respect of it, necessitates a considered and thorough review which, given the timeframe, has been beyond the scope of this inquiry. On that basis, the Committee has recommended that such a review be undertaken. The Committee is also of the view that the Scheme would benefit from regular review and oversight from an independent body."

"We have therefore also recommended that the NSW Government establish a joint standing committee of the Parliament of NSW to undertake an initial detailed review of the Scheme, and to continue to review and oversight the Scheme" Mr Borsak stated.

Mr Borsak also said, "This inquiry has not examined specialised workers compensation arrangements that apply to specific industries such as the coal industry, therefore the Committee's recommendations do not apply to those arrangements."

A list of the Committee's recommendations is attached. The report is on the Committee's website: <http://www.parliament.nsw.gov.au/workerscompinquiry>. Hard copies are available on request.

-ENDS-

For further information please contact Committee Chair Hon Robert Borsak MLC, on 0419977097

Summary of recommendations

- Recommendation 1** **51**
 That the NSW Government ensure that, under the Workers Compensation Scheme, a worker assessed as severely injured be subject to work capacity testing but with the Workers Compensation Commission able to suspend or to waive the requirement for the severely injured worker to undergo work capacity testing.
- Recommendation 2** **51**
 That the NSW Government ensure that, under the Workers Compensation Scheme, any time cap on payment of weekly income benefits and medical expenses (apart from the Commonwealth retirement age) not apply to appropriately defined severely injured workers.
- Recommendation 3** **58**
 That the NSW Government abolish journey claims under the Workers Compensation Scheme, except in relation to police officers.
- Recommendation 4** **58**
 That the NSW Government abolish the entitlement of dependents of deceased or injured workers to make nervous shock claims under the Workers Compensation Scheme.
- Recommendation 5** **68**
 That NSW Government ensure that, under the Workers Compensation Scheme, the weekly income benefits of both award and non-award workers be determined by reference to one measure of average actual pre-injury earnings.
- Recommendation 6** **68**
 That the NSW Government ensure that, under the Workers Compensation Scheme:
- in cases of total incapacity, workers receive weekly income benefits on the Victorian model, namely (broadly speaking) 95 per cent of their pre-injury average weekly earnings for the first 13 weeks of total incapacity, and then 80 per cent from week 14 onwards.
 - in cases of partial incapacity, workers receive weekly income benefits on the Victorian model, namely (broadly speaking) 95 per cent of their pre-injury average weekly earnings for the first 13 weeks of total incapacity and then 80 per cent from week 14 onwards (in each case less certain amounts).
- Recommendation 7** **69**
 That the NSW Government seek to amend the *Workers Compensation Act 1987* to impose a time cap on weekly income benefits of no less than five years for less seriously injured workers, with a more generous time cap for an intermediate category of injured worker and ultimately no time cap (except the Commonwealth retirement age) for the most seriously injured workers.
- Recommendation 8** **69**
 That the NSW Government ensure that, under the Workers Compensation Scheme, in addition to any other caps, the absolute end date for the payment of all weekly benefits be the Commonwealth retirement age.

- Recommendation 9** **70**
That the NSW Government seek to amend the *Workers Compensation Act 1987* to cap reasonable and necessary medical and related treatment expenses to those incurred whilst weekly benefits are paid and for one year after the cessation of those payments.
- Recommendation 10** **77**
That the NSW Government seek to amend the *Workers Compensation Act 1987* to require mandatory, independent, binding work capacity testing at defined intervals.
- Recommendation 11** **78**
That the NSW Government seek to amend the *Workers Compensation Act 1987* to incorporate payments under section 67 for pain and suffering into section 66 for lump sum payments for injuries.
- Recommendation 12** **79**
That the NSW Government ensure that, under the Workers Compensation Scheme, after the determination of a claim for whole person impairment, only up to two further claims be permitted and in each case only if there has been a deterioration of whole person impairment of at least 5 per cent since the last determination.
- Recommendation 13** **87**
That the NSW Government liberalise the availability of commutations, generally subject to the proviso that the injured worker has obtained independent legal and financial planning advice before agreeing to a commutation.
- Recommendation 14** **89**
That the NSW Government seek to amend the definition of ‘injury’ in section 4 of the *Workers Compensation Act 1987* so that a disease is only included if the employment was the main contributing factor to the contraction, aggravation, acceleration, exacerbation or deterioration of the disease.
- Recommendation 15** **95**
That the NSW Government seek to extend the *Civil Liability Act 2002* to work injury damages claims, but modified by inclusion of some additional sections dealing with the workplace, in particular inherently dangerous activities and obvious risks.
- Recommendation 16** **106**
That the NSW Government seek to establish a joint standing committee of the Parliament of New South Wales:
- to conduct ongoing oversight of the New South Wales Workers Compensation Scheme by undertaking annual reviews of its operation, management and performance,
 - to conduct an extensive review (see Recommendation 17) of the Workers Compensation Scheme, and
 - with the capacity to engage actuarial expertise to assist it to perform its functions.
- Recommendation 17** **107**
That the NSW Government commence an extensive, detailed review of the New South Wales Workers Compensation Scheme to develop a comprehensive strategy aimed at addressing the

long term viability of the Scheme and enhancing the management and administration of the Scheme. In conducting the review, consideration should be given to statutory and non-statutory reforms that reflect the breadth of the Scheme, including, although not limited to:

- improvements in WorkCover's management and administrative systems
- feasibility of permitting more specialised insurance for certain industries, particularly those industries considered 'high risk'
- establishing a centralised information and technology system within the Scheme
- feasibility of establishing an independent medical assessment service
- an examination of workers compensation schemes in other jurisdictions, particularly the Victorian model.

- Recommendation 18** **110**
That the NSW Government re-open the opportunity for specialised insurance arrangements, with appropriate prudential supervision and safeguards.
- Recommendation 19** **112**
That the NSW Government seek to amend the *Workers Compensation Act 1987* to remove the entitlement of the estate of a worker to receive a death benefit where the worker had no dependants.
- Recommendation 20** **112**
That the NSW Government seek to amend the *Workers Compensation Act 1987* to increase the thresholds for permanent impairment lump sums under section 66 of the Act from the current 1 per cent WPI (general) and 6 per cent WPI (binaural hearing loss) to 10 per cent, but on the basis that savings be 'redistributed' in the form of higher permanent impairment lump sums for those with at least 10 per cent WPI and particularly those workers defined as severely injured (with a 15 per cent WPI threshold to be retained for psychological injury).
- Recommendation 21** **114**
That the NSW Government ensure that the Workers Compensation Scheme's liability for injuries sustained by workers during 'recess' be limited to circumstances where the employment has been the significant contributing factor.
- Recommendation 22** **116**
That the NSW Government review the WorkCover premium system to extend the experience rating system to create incentives for employers both with respect to safety performance and return to work of injured workers.
- Recommendation 23** **120**
That the NSW Government seek to amend the *Workers Compensation Act 1987* to allow greater use of medical assessors to determine questions of causation.
- Recommendation 24** **120**
That the NSW Government seek to amend the *Workers Compensation Act 1987* to adopt a model of medical assessment for injured workers similar to that used within the Motor Accidents Scheme.

Recommendation 25**122**

That, given the financial and other impacts on workers of not returning to work, the NSW Government ensure that each of the ideas contained in paragraph 4.64 be fully explored by the joint standing committee proposed at Recommendation 16.

Recommendation 26**123**

That the NSW Government review the functions, behaviour and powers available to Scheme agents under the Workers Compensation Scheme, and the guidelines issued to them by WorkCover, to achieve better claims management outcomes.

Recommendation 27**127**

That the NSW Government and the joint standing committee proposed in Recommendation 16 make options to prevent and reduce workplace injury a priority.

Recommendation 28**128**

That the NSW Government consider a comprehensive examination of opportunities to harmonise compensation schemes in New South Wales.