

Workers Compensation Cuts: One Year On

A report by Unions NSW highlighting the real impacts the O'Farrell Government's changes to the workers compensation system are having on the people of NSW.

Unions **NSW**



Introduction

On June 19, 2012, the O'Farrell Government introduced changes to workers compensation that significantly cut the rights and entitlements of injured workers. The main elements of the changes were:

- Limited coverage for injuries while travelling to and from work;
- Cuts to weekly payments to injured workers from day one;
- Stopping weekly payments for most injured workers after two and a half years;
- Placing limits on medical payments for injured workers;
- Preventing partners of those killed at work being compensated for nervous shock;
- Eliminating access to lump sum payments for pain and suffering.

Twelve months after the introduction of these changes, injured workers and their families have felt the impact. For many this has caused severe economic hardship, pressure on family life, and feelings of despair and fear.

Unions NSW has compiled this report to highlight the real impacts that these changes to the workers compensation system are having on the people of NSW.

The Unions NSW Survey

Unions NSW conducted a survey to gauge the experiences of NSW workers and their families regarding the 2012 changes to the NSW workers compensation scheme.

The survey was completed by 2,340 people from across NSW. 1,392 workers (60%) had suffered an injury or illness at work, or while travelling to and from work. 130 respondents had a family member or co-worker either die at work, or while traveling to and from work, or from a work-related illness.

The Unions NSW survey also gauged the public's views on the workers compensation changes. The survey showed that 93% of people opposed the NSW Government's June 2012 changes. More than 92% of people opposed cuts to injured workers weekly payments after 2.5 years. Also, over 92% of people opposed the removal of medical payments from injured workers one year after their weekly payments stopped.

The findings from the survey clearly demonstrate a broad disdain for the NSW Government's June 2012 amendments.

Twelve months have elapsed since the introduction of changes to the NSW Workers Compensation scheme. This report will refer to research and the survey findings to highlight the harmful effects of cutting the rights and entitlements of injured workers.

The right approach to workers compensation savings

The workers compensation scheme is financially viable and is able to meet all of its current liabilities. This statement is true both before and after the recent reforms made to the scheme. The NSW Government has argued the scheme is running at a deficit. This is not a reflection of the scheme's financial viability or performance, but rather, is indicative of the impacts of the Global Financial Crisis. Evidence suggests that this deficit will decline significantly as the economic environment improves.

Savagely cutting the payments and entitlements of genuinely sick and injured workers does nothing to address the underlying cause of the problem, that of unsafe workplaces. Focusing on preventing injuries and illnesses in the first place, helping injured workers back to work and reducing the costs paid to insurers for administration is the most cost-effective and equitable solution for the NSW Government to pursue. Reducing workers compensation payments and entitlements simply shifts the burden to the taxpayer, as sick and injured workers are forced to rely on Medicare, social welfare payments, other public services and family support.

NSW Workplace Safety Record

Very little of the Government's reforms went towards preventing workplace accidents. The changes have overlooked the cost savings of addressing workplace safety issues before accidents occur. The Government has paid little attention to the numbers of workplace safety inspections that are undertaken by WorkCover each year, and have provided no assessment of how this relates to rates of workplace accidents.

According to the most recent *WorkCover Annual Report*, between 2001 and 2007 there were significant reductions in the number of workplace injuries in NSW. The last five years up to 2011 however, has seen injury rates plateau, with little or no reductions in workplace injuries. Claim rates have hovered between nine and ten per 1000 employees.¹

According to a 2010 SafeWork Australia report, between 2006 and 2008, NSW had the highest rate of serious workplace injury claims per capita when compared to Victoria,

¹ WorkCover Annual Report, 2011-2012, p. 13

Western Australia, ACT, Northern Territory and Australian Government employees covered by ComCare.²

The NSW track record on workplace safety raises serious concerns and leads to the question – what more can be done to reduce the rate of workplace accidents and illness? Unions NSW believes that WorkCover and their safety inspectors can play a key role in improving workplace safety levels.

Unions NSW recently made inquiries to WorkCover regarding the number of safety Inspectors that are currently employed. Correspondence between Unions NSW and WorkCover indicated that there are presently 315 Inspector positions. The correspondence does not specify how many of these positions are currently filled.³

In assessing the number of inspector positions, it is important to consider that there are approximately 680,200 private businesses operating in the State plus public sector workplaces that employ about 2,060,400 working people. This is the equivalent of one Inspector for every 6541 employees across the State. Considering that the role of an Inspector also includes office oriented tasks, it is difficult to imagine that only 315 Inspectors are able to adequately police and regulate safe workplaces across the State. That is of course assuming that the 315 positions are currently filled.

The workers of NSW deserve the highest workplace safety standards possible. This is not possible unless the NSW Government increases the number of Inspectors working for WorkCover.

Journey Claims

The Unions NSW survey showed that 92% of people believe that workers should be covered by workers compensation when travelling to and from work. 297 survey respondents had been injured travelling either to or from work. 42 of these workers were injured after 20 June 2012, and as a result of the changes, were not eligible for workers compensation. Survey respondents wrote of the injuries they sustained and the impact this had on their lives.

One respondent, Michael, a teacher in regional NSW had a serious car accident while driving home from an evening of parent teacher interviews. This occurred in June 2012, and he was ineligible for workers compensation. The injury required hospitalisation and 6 months

² Safe Work Australia, 2010, *Key Work Health and Safety Statistics Australia*, p.14

³ Correspondence dated 13 December, 2012 and 21, January, 2013

of physiotherapy. Michael describes the changes to workers compensation as a retrograde step in workers rights.⁴

Another respondent, Michelle, was injured in a car accident travelling to work in wet weather. This occurred after the June 2012 amendments and she was also not eligible for workers compensation. Michelle needed to take two weeks off work to recover. Because Michelle was not a permanent employee she did not have access to paid sick leave for this time.

Workers compensation for journey claims acknowledges the dangers that workers are exposed to when travelling to and from work each day. This is particularly an issue for workers who are required to work long or additional hours (like Michael), workers who travel long distances to work each day, shift workers and workers who are required to travel through dangerous road conditions (like Michelle).

Workers compensation journey claims played an important role in the NSW legislation prior to June 2012 and assisted thousands of workers return to work as quickly as possible with the support they needed. This is illustrated by the example of Mark, referred to in the Unions NSW submission to the NSW Government last year. Mark was a teacher, covered by workers compensation who had a serious car accident whilst driving home from work. He needed to take two months off work and spent three months on light duties. A contributing factor to Mark's accident was heavy rain and wet roads. Mark stated that if he was not required to drive to work he would not have driven in the bad weather as he felt it was not safe. Without the assistance of workers compensation, Mark would have seriously struggled to pay his medical costs while not receiving a wage. The gradual return to full duties that his workplace facilitated in compliance with workers compensation laws, also allowed him to return as quickly as possible to his job.

Caps to Weekly Payments

Of the injured workers who responded to the survey, 504 were still receiving weekly payments at the time of the O'Farrell changes. Since June 19, 2012, 92 workers had experienced a reduction in their weekly workers compensation payment as a direct result of the changes. Over half of these workers had their weekly payments stopped completely and 61% had their payments reduced by more than 25%.

It is expected that the number of workers who have their payments reduced or stopped will increase as insurers continue to conduct Work Capacity Assessments. Under the current workers compensation laws, injured workers still receiving weekly payments are required to

⁴ All case studies included in this report have had names and identifying elements changed in order to ensure the anonymity of the injured worker.

undergo a Work Capacity Assessment which determines their eligibility to continue to receive payments. According to the Unions NSW survey of the workers currently receiving weekly payments, 71% have not yet undergone a Work Capacity Assessment. As these workers have their capacity tested, it is expected the number of injured workers who have their payments reduced or stopped will increase dramatically.

In the Unions NSW survey, injured workers wrote of the frustration they felt when told their weekly payment would be stopped. Many of these workers are now experiencing severe financial hardship, high levels of stress and anger at a system they thought was designed to assist injured workers.

One respondent, Samantha, is a health worker who was assaulted by a patient in the course of her job. The injury occurred in 1998 and left Samantha with severe spinal injuries that required major surgery. She is still affected by this injury, experiencing the pain of bulging disks and is only able to work 4 days a week. Samantha receives top-up payments to match her previous salary. As a result of the workers compensation changes, these top-up payments will cease. As a single mum, the impact of this reduction in take-home pay will be drastic and Samantha has already made the decision to sell her home and move in with a relative.

Another respondent, Peter, had a fall at work and ruptured a disk in his lower back. Peter has experienced significant difficulty in finding new employment. Peter asks:

“Where has the duty of care gone? An injured worker, through no fault of their own is now severely disadvantaged financially and there is no real effort to help get these disadvantaged people another job that’s within their capabilities”.

Peter has been receiving payments at the statutory minimum and has recently been told his payments will soon stop. Like many other victims of workplace injuries, Peter has found it difficult to find a job. Many injured workers speak of the discrimination they face in the workplace when they declare that they have a workers compensation claim. While continuing to search for a new job, the cut in weekly payments means that Peter and his family will experience severe financial hardship.

Cap on Medical costs

Survey respondents wrote about the importance of medical costs being covered by the workers compensation scheme. For injured workers who have experienced the discontinuation of their weekly payments, the fact that their medical payments will also cease

in 12 months has caused significant anxiety and fear. These injured workers are left questioning how they will continue to receive the treatments and medications they need and how this will affect their health, wellbeing and future employment opportunities.

One survey respondent, John, wrote of the severe RSI he developed in his hands and elbow as a result of an intense workload caused by understaffing at his workplace. John required surgery on his right hand and is about to undergo similar surgery on his left hand. He recently received notice that his weekly payments will stop in three months time. This has left John in a difficult position as his specialist has told him that his injury will require him to have surgery on both his elbows in the future. Without access to medical costs in 12 months time, it is unlikely John will be able to undergo this surgery. This leaves an uncertain future for John's employment prospects and continued pain issues.

Whole Person Impairment and Lump Sum Claims

Of the injured workers who completed the survey, 240 (43%) had their Whole Person Impairment (WPI) assessed as being less than 10%. Of this group of workers, 26% were able to access a lump sum payment for their injuries because they were injured before the Government's amendments. 102 workers have been left with no access to a lump sum payment as they were injured after June 19, 2012.

A common theme from injured workers in the survey was that the Independent Medical Examination (IME) process is ambiguous and arbitrary. Sick and injured workers being assessed for WPI reported discrepancies between various medical practitioners.

Respondents also expressed how the June 2012 changes had exacerbated this problem by further empowering insurers and employers and removing the right of sick and injured workers to access legal advice in regard to weekly and lump sum payments.

The impacts of not receiving lump sum payments or payments for pain and suffering have had significant impacts on injured workers.

One respondent, Susie, spoke of the personal impact of not receiving a lump sum for pain and suffering:

"I received nothing for my pain and suffering which was absolutely devastating and contributed to the breakup of my partner and I."

Another respondent, Jacqueline, stated:

"Not receiving payment whilst recovering from injury has strained my family financially, therefore, the strain on relationships has increased the stress of people"

living with me due to my depression, anxiety, etc., that I have never suffered before the injury”.

Conclusion

This report has outlined some of the initial impacts of amendments to workers compensation that were introduced by the O’Farrell Government on June 19, 2012. The report has highlighted the financial strain the changes have placed on injured workers, and the negative impacts this has had on their families, relationships and employment prospects.

The strain that the current workers compensation scheme is placing on injured workers and their families will only continue to grow. Of the injured workers who completed the survey 71% are still awaiting a Work Capacity Assessment which will determine their eligibility to continue to receive weekly payments. 86% of the injured workers were injured prior to June 19, 2012 and are being affected by the changes because of their retrospectivity. As injuries continue to occur in workplaces around the State, and as currently injured workers have their Work Capacity Assessments, the number of people detrimentally affected by workers compensation changes will only increase significantly.