



## O'Farrell's Workers Comp – the bullet we just missed

The Union's strike action last week caused the Parliament to adopt a (literally) last minute amendment to exempt firefighters and paramedics from O'Farrell's new laws. What would have happened if we hadn't won this reprieve?

I this week spoke with one member who, because of the generally poor reporting by the media of the issue, mistakenly believed that the whole dispute was over so-called "journey claims" only. But journey cover, which made up less than 2% of total workers comp costs, was merely one small aspect of O'Farrell's extensive "reforms" which have landed the working people of NSW with the worst compensation laws in the country.

Here below are some examples to illustrate the bullet we just missed, comparing existing (and for us, ongoing) workers comp benefits with what would have happened to us – and did just happen to just about every other injured worker in NSW who will now suffer under the new laws.

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**Example 1** – a Retained Firefighter who is earning \$70,000 pa (\$1,346 pw) in their primary job (35 hours pw) and \$10,000 pa (\$192 pw) from FRNSW injures his shoulder on the fireground and as a result cannot work in either his retained or primary employment for 6 months.

Because firefighters are now exempt from O'Farrell's laws, this member will continue to receive full wages for both jobs (i.e. \$1,538 gross per week) for the full 6 months:

- Workers comp weekly payments (100% of earnings in both jobs) @ \$1,538 per week x 26 weeks = **\$39,998**

But under O'Farrell's new laws, this member would have instead received:

- Workers comp weekly payments (95% of earnings in primary job only) @ \$1,278 per week x 13 weeks (weeks 1 to 13) = \$16,614, and
  - Workers comp weekly payments (80% of earnings in primary job only) @ \$1,076 per week x 13 weeks (weeks 14 to 26) = \$13,988.
- Total benefit after 26 weeks = **\$30,602**

**This firefighter would have been \$9,396 worse off under O'Farrell's laws**

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**Example 2** – is a 46 year old Senior Firefighter with a dependant wife retired 52 weeks after suffering a spinal injury at work and who can work 10 hours or less per week but is unable to find a job.

Because firefighters are now exempt from O'Farrell's laws, this member will receive weekly payment through until age 68, compensation for pain and suffering and medical treatment for life:

- Workers comp weekly payments prior to medical retirement @ \$1,398 per week x 52 weeks = \$72,696
  - Workers comp weekly payments after medical retirement @ \$546.50 per week x 52 weeks x 21 years = \$596,778
  - Additional lump sum payment for 10% whole person impairment/pain & suffering = approx. \$30,000
  - Medical expenses for life - \$30 per week x 52 weeks x 39 years = \$60,840
- Total workers comp benefit = \$760,314**

But under O'Farrell's new laws, this member's benefits would cut out completely after 130 weeks:

- Workers comp weekly payments prior to medical retirement @ \$1,398 per week x 52 weeks = \$72,696
  - Workers comp weekly payments after medical retirement @ \$1,062 per week x 88 weeks = \$93,456
  - No compensation for 10% whole person impairment/pain & suffering = \$0
  - Medical expenses paid for 3.5 years only - \$30 x 52 weeks x 3.5 years = \$5,460
- Total workers comp benefit = \$171,612**

**This firefighter would have been \$588,702 worse off under O'Farrell's laws**

**Example 3** is a 30 year old Senior Firefighter who suffers a neck injury at work and is retired totally and permanently unfit after 52 weeks. By age 36, he requires neck surgery after which he will remain permanently unfit for work and will require medical treatment and medications costing \$50 per week for the rest of his life (50 years):

Because firefighters are now exempt from O'Farrell's laws, this member will receive weekly payment through until age 68:

- Workers comp weekly payments prior to medical retirement @ \$1,398 per week x 52 weeks = \$72,696
- Workers comp weekly payments after medical retirement @ \$432.50 per week x 52 weeks x 37 years = \$832,130
- Additional lump sum payment for 20% whole person impairment/pain & suffering = approx. \$55,000
- Plus medical expenses associated with neck surgery = \$25,000
- Plus ongoing medical expenses for life @ \$50 per week x 52 weeks x 50 years = \$130,000

**Total workers comp benefit = \$1,114,826**

But under O'Farrell's new laws, this member would have instead had his benefits cut out completely after 5 years with no pain and suffering compensation and no payment for the additional surgery (\$25,000) or ongoing medical treatment (\$50pw):

- Workers comp weekly payments prior to medical retirement @ \$1,398 per week x 52 weeks = \$72,696
- Workers comp weekly payments after medical retirement @ \$1,062 per week x 52 weeks x 4 years = \$220,896
- Lump sum for permanent impairment only (no additional payment for pain and suffering) = \$31,762.50;
- No medical expenses covered after 6 years.

**Total workers comp benefit = \$293,592**

**This firefighter would have been \$821,234 worse off under O'Farrell's laws**

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**Example 4** - a 50 year old Senior Firefighter suffers an amputated leg below the knee in a car accident on the way to work and can never work again, causing her to be medically retired after 3 months. Medical treatment will cost \$80 per week for the rest of her life (38 years) and she will require a new prosthetic leg at a replacement cost of \$30,000 every seven years.

Because firefighters are now exempt from O'Farrell's laws, this member will receive weekly payment through until age 68:

- Workers comp weekly payments prior to medical retirement @ \$1,398 per week x 13 weeks = \$18,174
- Workers comp weekly payments after medical retirement @ \$432.50 per week x 52 weeks x 18 years = \$404,820
- Additional lump sum payment for 28% whole person impairment/pain & suffering = approx. \$90,000
- Plus medical expenses @ \$80 per week x 52 weeks x 38 years = \$158,058
- Plus ongoing prosthetic expenses @ \$30,000 x 5 = \$150,000

**Total workers comp benefit = \$821,052**

But under O'Farrell's new laws, this member would have received no compensation.

**This firefighter would have been \$821,052 worse off under O'Farrell's laws**

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**Example 5** - a 40 year old Senior Firefighter who suffers a neck and shoulder fireground injury. He works on suitable duties for 6 months and has weekly physiotherapy, before returning to full duties. Twelve months later, the injury flares up and he requires an operation costing \$20,000 and requiring 3 months off work. After the surgery he will require intensive physiotherapy, pain killers and a revision surgery costing \$30,000 in 5 years.

Because firefighters are now exempt from O'Farrell's laws, this member will receive:

- Full wages for all time off work.
- All medical treatment, medications and procedures will be full paid for, for life.

But under O'Farrell's new laws, this member would have received physiotherapy treatment for 12 months only, after which he would have no further rights. He would then need to pay for all further medical treatment, medications and surgeries and would not be paid for any further time off work.

**This firefighter would have been \$50,000 worse off in the first 3 years alone under O'Farrell's laws**

## **Other key issues include:**

### **Workers Compensation Commission appeals abolished**

Workers comp insurers regularly cut off weekly payments for injured workers (including firefighters) who they claim are able to return to work, forcing them onto their own sick/annual/long service leave and if that runs out, social security. This will not change.

What has changed is the ability of injured workers to appeal to the Workers Compensation Commission over their ability to return to work. Put simply, there is none, with O'Farrell's laws allowing the insurers to ride roughshod over injured workers with immunity. Injured workers will now be forced to choose between ignoring the advice of their own treating doctors by returning to work, or poverty.

Firefighters will continue to have their weekly payments cut off by FRNSW's insurer over work capacity disputes, but because firefighters are now exempt from O'Farrell's laws we have retained the right to appeal against the insurer's decision to an independent Arbitrator in the Workers Compensation Commission. Firefighters who successfully appeal (which almost always occurs thanks to the Union's legal reps) receive weekly workers comp back-pay and the re-crediting of leave taken, which is often worth tens of thousands of dollars.

While the Workers Compensation Commission has lost the ability to determine an injured worker's capacity to work (other than for firefighters and other lucky minorities), it will continue to determine disputes as to whether a claim is work-related and other contestable matters such as lump sum payments for permanent impairment. This leads to O'Farrell's next atrocity – costs.

### **Injured workers to pay their own costs (even if they win!)**

Prior to O'Farrell's laws, an injured worker who won their claim in the Workers Compensation Commission was entitled to payment by the insurer of their legal expenses and medical report fees. The opposite did not, however, apply so if the injured worker was unsuccessful then the worker would not be responsible for any costs – not his/her own or the insurer's.

O'Farrell's new laws originally allowed for the unsuccessful party to pursue the other party for costs (ie, the insurers could go after the claimants who lost), but a last minute amendment saw this changed to instead provide that both parties must in future pay their own costs only, regardless of the result. This will simply encourage insurers to oppose claims, knowing that even if they lose they will no longer be liable for the claimant's legal expenses. Equally, it will also discourage many injured workers from contesting disputed workers comp matters because they will in many instances now run the risk of winning the matter only to be financially worse off. In cases involving disputes over smaller amounts – physiotherapy expenses, for example, workers simply won't be able to challenge the insurer's decision because they will have to pay more in legal costs out of their own pocket than their case is worth – even if they win! Obtaining medical reports for a compensation case can cost \$1,500 each which workers will have to pay out of their own pockets with no right of reimbursement.

Again, the Union's successful action last week means that firefighters are exempt from O'Farrell's new laws, including these new arrangements for costs. FBEU members who are injured at work should continue to contact the Union for advice and representation at no cost.

### **Permanent Impairment Compensation and Pain and Suffering**

Under O'Farrell's laws, no worker with less than 11% whole person impairment will be entitled to any lump sum compensation for his/her physical disability; and no worker with less than 15% whole person impairment will be entitled to lump sum compensation for a psychological disability. In addition, pain and suffering compensation has been abolished in all cases.

Because of the Union's successful action however, these changes do not apply to firefighters, who can continue to claim permanent impairment compensation for impairments of 1% or more for bodily injuries; 6% or more for industrial deafness; and 15% or more for psychological impairment.

Firefighters who are assessed with at least 10% whole person impairment also qualify for an additional pain and suffering lump sum of up to \$50,000.

Firefighters can also make an unlimited number of claims so that if their impairment increases in the future, they can claim again. Under O'Farrell's laws, a worker gets only one claim, which means that an injured worker who undergoes surgery and then suffers an increased impairment will go without any compensation at all for their deterioration.

### **Limited Medical Expenses**

Firefighters injured at work are entitled to claim their related medical costs for the rest of their lives, no matter what the injury. With the rising cost of medical treatments, these expenses can run into hundreds of thousands of dollars.

Under O'Farrell's laws, medical expenses are payable by the insurer for as little as 12 months following an accident, after which the worker will be responsible for his/her own treatment costs.

**Other draconian laws that would have applied to firefighters if O'Farrell had got his way include:**

- The removal of the right of family members of workers killed on the job through an employer's negligence to claim damages for the mental harm they have suffered;
- New rules making claims much harder for workers who suffer heart attacks or strokes on the job;
- New rules making claims much harder when work duties aggravate arthritis or other age-related wear and tear damage; and
- New restrictions on obtaining any medical treatment without the insurance company's prior approval.



**Jim Casey**  
State Secretary

**Friday 29 June 2012**

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## **An open letter from an injured firefighter**

I am writing this letter to thank every one involved in the recent industrial action. Words cannot honestly express my appreciation for your efforts.

If it was not for your dedication and efforts, I was looking at losing my home and pretty much would've have lost everything I own.

In 2003, I undertook a double disc replacement in my spine that left me unable to be operational. At the time, [FBEU official] Matt Murray, helped me as the insurance company was reluctant to accept the claim, due to the ongoing high costs of the operation and rehabilitation.

Unfortunately, I am about to have my discs removed and replaced or fused due to complications. My surgery is due next month. I will not be able to return to work for 4 months and then I will have to increase my hours as I can manage.

It is my understanding that I would not have been covered under the proposed changes as the claim was over 2 1/2 years old and even if it was I would have been on a reduced wage after 13 weeks. This is absolutely shameful.

Once again, thank you for your commitment and passion in defending our rights.

**7303 Steve Muscat**  
**Fire Safety Officer**  
**Structural Fire Safety Unit**  
**FRNSW, 26 June 2012**