

**Submission to the Legislative Council
Standing Committee on Law and Justice**

First review of the workers' compensation scheme

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Submission - Fire Brigade Employees' Union of New South Wales
To the Standing Committee on Law and Justice

First review of the workers' compensation scheme

1. *That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:*
 - (a) *Workers' Compensation Scheme*
 - (b) *Workers' Compensation (Dust Diseases) Scheme*
 - (c) *Motor Accidents Scheme*
 - (d) *Motor Accidents (Lifetime Care and Support) Scheme.*

2. *In exercising the supervisory function outlined in paragraph 1, the committee:*
 - (a) *does not have the authority to investigate a particular compensation claim, and*
 - (b) *must report to the House at least once every two years in relation to each scheme.*

1. The Fire Brigade Employees' Union (FBEU) represents approximately 40% of the Australian professional firefighting workforce. We represent both public and private sector firefighters in full time/permanent and part time/retained employment. The FBEU is Australia's oldest firefighting Union, and represents members in the largest fire and rescue service in Australia in both metropolitan and regional areas. We welcome the invitation to make this submission to the Standing Committee on Law and Justice regarding workers' compensation. The Union's members are 'exempt claimants' as set out by icare¹.
2. The Union assists its members with workers' compensation claims and monitors member experiences with all aspects of workers' compensation claims, including their interactions with insurers, doctors, lawyers, the Workers Compensation Commission (WCC), and various employees acting in a workers' compensation role for the employer.
3. Our submissions should be read as providing an overview of our member's experiences in the workers compensation system. There are a number of common themes that emerge.
4. In general, our members report (consistent with Roberts-Yates' findings):

...a range of impediments experienced in the return to work process that created considerable stress and concern. These included the erratic payment of economic benefits, indifferent case managers, ... disrespectful communication from service providers, and a suspicious response to their injury by the employer²
5. Our members experience significant distress whenever there is a delay in the claim process. This is particularly true of the period after the insurer has rejected liability and they await the outcome of proceedings before the Workers Compensation Commission (WCC). During this time, members are required to access their own entitlements and may not be paid when they are unable to attend work because of their illness or injury. It is during this period that secondary psychological injuries can (and often do) arise. It is our understanding that the majority of member claims are subsequently upheld or settled in our member's favour, which appears from Unions NSW's submissions to be common occurrence. There is a perception, not unreasonable in the circumstances, that the insurer rejects claims it knows it is

¹ <https://www.workersinsurance.icare.nsw.gov.au/workers-insurance-claims/payments-and-expenses/weekly-payments/payments-when-not-able-to-work>

² The concerns and issues of injured workers in relation to claims/injury management and rehabilitation: the need for new operational frameworks [CHRISTINE ROBERTS-YATES Disability and Rehabilitation](#)
Volume 25, 2003 - [Issue 16](#)

liable for on a commercial basis, in the hope the distress of the rejection and a prolonged dispute will discourage claimants.

6. The Union's view is, consistent with the Victorian Ombudsman's findings following its investigation into the management of complex workers compensation claims and WorkSafe oversight, that cases are being mishandled, deliberately delayed, or cancelled with minimum medical reasoning³. This is consistent with the finding that there is an undue focus on profits by insurers, at the expense of the rights and well-being of individuals⁴. The Ombudsman summarised this approach as 'unreasonable decision-making by agents' and summarised the insurer (agent) behaviours as follows:

- unreasonably used evidence in decision-making
- maintained unreasonable decisions at conciliation
- made decisions contrary to binding Medical Panel opinions
- allowed employers to improperly
- influence their decision-making
- provided inadequate internal review processes⁵.

Member feedback suggests all these factors play a part in delays throughout the workers compensation process.

7. Similarly, delays in approving payment for treatment or approving treatment are significant causes of distress. As the Parkes Project Advisory Committee Statements of Principles note, delays in treatment can lead to undesirable outcomes⁶.

8. Members indicate delays at any stage of the process discourages their return to work and causes distress. It seems prudent in these circumstances that insurers be required to notify workers of decisions within specified time frames. Penalties should be applicable, and enforceable, when insurers fail to meet these deadlines, perhaps penalties of a default finding in favour of the worker. Similarly, appeals to the WCC should be heard within specified time after they are notified of a dispute. Additional resources should be allocated accordingly.

9. The Union questions the necessity for surveillance as part of a workers compensation claim process. It is the Union's view that unless there is some evidence someone is engaged in fraud, workers should not be subject to surveillance, given how damaging the process is.⁷ While media reports have rightly

³ <http://www.abc.net.au/news/2016-09-12/worksafe-system-needs-fixing-ombudsman-says/7835714>

⁴ <https://www.ombudsman.vic.gov.au/getattachment/0eb3f52a-6488-46f5-beb0-5cf051db359d>

⁵ <https://www.ombudsman.vic.gov.au/getattachment/0eb3f52a-6488-46f5-beb0-5cf051db359d>

⁶ <http://wiro.nsw.gov.au/sites/default/files/Statement%20of%20Principles.pdf>

⁷ Workers describe the effect of the workers' compensation process on their health: A Québec study
Katherine Lippel *

focused on the suicides attributable to such practices,⁸ the damage extends well beyond those cases. As Lippel has noted, it can also be an impediment to returning to work⁹.

10. As a matter of principle, the Union is of the view employers should bear the costs of compensating injured workers and returning them to employment. Employers are responsible for workplace injuries and illnesses, and the insurance premiums paid are the price employers must pay for failing to resolve health and safety issues and practices.

Fire Brigade Employees' Union of NSW
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⁸ <http://www.abc.net.au/news/2016-08-01/mentally-ill-former-police-placed-under-surveillance-by-insurers/7675772>

⁹ Lippel The private policing of injured workers in Canada: legitimate management practices or human rights violations?*