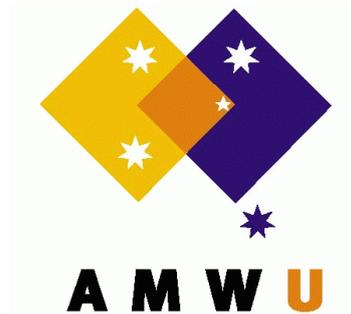


AUSTRALIAN MANUFACTURING WORKERS' UNION



Regulatory Impact Statement and Better Regulation Statement – Draft Workers Compensation
Regulation 2016 – May 2016 -- AMWU Response

June 2016

Consultation – 2016 Regulation

Policy & Design

Workers and Home Building Compensation Regulation

State Insurance Regulation Authority

Locked Bag 2906

Lisarow NSW 2252

wcreg2016@sira.nsw.gov.au

The AMWU welcomes publication of this submission as submitted.

Enquiries to the AMWU:

David Henry, AMWU NSW Work Health & Safety Officer – [REDACTED]

Alan Mansfield, AMWU NSW Workers Compensation & Rehabilitation Officer – [REDACTED]

Postal Address – PO Box 167 Granville NSW 2142

Street Address – 133 Parramatta Road Granville NSW 2142

Table of Contents

1. Introduction
2. Deemed Diseases Schedule 1 of Workers Compensation Regulation
3. Information to be provided to injured workers to enable Chapter Three, Injury Management, Workplace Injury and Workers Compensation Act 1998 (WIMWC1998)
4. Summary

1. INTRODUCTION

- 1.1 The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” is known as the Australian Manufacturing Workers’ Union (AMWU). The AMWU workers across major sectors of the NSW economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations in engineering and across broader industry. The AMWU has members at all skills/ classification from entry level to degree.
- 1.2 It is noted that manufacturing in NSW injures more workers than any other industry, is the most expensive industry for the scheme with respect to payments (20% of total scheme costs) and has an incident rate at double the States average.
- 1.3 The AMWU welcomes this State Insurance Regulatory Authority statutory review of the NSW Workers Compensation Regulation 2010. The AMWU will address two areas of concern for workers – updating of the Deemed Diseases Schedule and provision of injury management information to injured workers.

2. Deemed Diseases

- a. The AMWU recommends the replacement of the current Schedule 1 Diseases **taken to be work-related** with the Deemed Diseases Schedule as adopted by the Safe Work Australia Deemed Diseases in Australia report of August 2015¹.
- b. The AMWU notes, that on the record the NSW government supported this reports adoption at the SWA Technical Advisory Group, SWA Workers Compensation Significant Issues Group and finally at a Safe Work Australia meeting in 2015. It is a quality peer reviewed report that should be adopted without amendment. The current Schedule 1 of the regulation creates an injustice as it is 40 years out of date creating unnecessary barriers to legitimate claims which adds cost to the scheme as a result of delays and disputation. This is contrary to the objectives of the legislation.
- c. It is a peer reviewed scientific report prepared by Dr Tim Driscoll (MBBS BSc (Med) MOHS PhD FAFOEMFAPHM). Dr Driscoll is an independent consultant in epidemiology, occupational health and public health, and a specialist in occupational medicine and public health medicine and a Fellow of the Australasian Faculties of Occupational and Environmental Medicine and Public Health Medicine and peer reviewed by Professor Malcolm Sim from Monash University.
- d. Adoption of the reports schedule would ensure “... an up-to-date Australian List of Deemed Diseases based upon the most recent scientific evidence on the causal link between diseases and occupational exposure...” and “...streamline access to workers compensation, improve fairness and clarity and to reduce the likelihood of disputation.”²
- e. Adoption of the Deemed Diseases would ensure that injured/ill workers who have
a;
 - i. Strong causal link between the disease and the occupation exposure, and
 - ii. Clear diagnostic criteria, and
 - iii. The disease comprises a considerable proportion of the cases of that disease in the overall population or in an identifiable subset of the population.³Would be compensated for a workplace injury having met the criteria expressed in the schedule.
- f. We recommend that schedule 1 be updated to include “Table 6.1 Recommended content of Deemed Disease List” without exclusion⁴
- g. We draw SIRA’s attention to the Northern Territory of Australia adoption of the deemed diseases list in its, Return to Work Amendment Regulations of 2016 – Schedule 2 – *Prescribed diseases and kinds of employment*. (as attached)
- h. We provide as an attachment, the working notes provided by the Northern Territory for the ease of use by other jurisdictions, at the Safe Work Australia Workers Compensation Significant Issues Group on 3 June 2016.

¹ <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/931/deemed-diseases.pdf>

² 1.2 Project Objective and Aims, page 2, Safe Work Australia Deemed Diseases report of August 2015 in Australia.

³ 2.1 Criteria used to develop list of deemed diseases, Page 6, Safe Work Australia Deemed Diseases report of August 2015 in Australia.

⁴ Table 6.1 Recommended content of Deemed Disease List, page 38, Safe Work Australia Deemed Diseases report of August 2015 in Australia.

3. Information to be provided to injured workers to enable Chapter Three, Injury Management, Workplace Injury and Workers Compensation Act 1998 (WIMWC1998)^{5 6}

- a. The AMWU seeks the regulation to address the omission in the current regulation to ensure that workers receive injury management information in a timely and safe manner so that they may be properly informed and therefore able to participate fully in their injury management. The omission can be addressed by introducing an additional subclause (7) to draft clause 39.
- b. The AMWU proposes that clause 39(7) reflect the intent of provisions as provided under section 73 of the WIMWC 1998⁷
- c. We recommend clause 39 be retitled to “Access to certain medical reports and other reports obtained by insurer: sections 73, 126 and Chapter 3 of 98 Act.
- d. This addition is required to ensure that information relevant to a workers injury management is not withheld from the worker, and is provided in a timely manner.
- e. That the information must be provided as soon as possible and no later than ten calendar days prior to the report or information being used in a decision subject to Chapter 3 of the 98 Act.
- f. It must be provided in its full and complete form without edit.
- g. The purpose of this recommendation is to ensure that injured workers are informed and educated about their injury and therefore empowered to participate in their injury management.
- h. The withholding and or delayed release of information, and or selective release of information ensures that injured workers are pushed to the periphery of injury management decisions having an adverse effect on their return to work.
- i. The AMWU routinely comes across the following practices –
 - i. Withholding of injury management information such as a Functional Capacity Evaluation (FCE), Vocational Assessment, Workplace Assessment or other rehabilitation information until the worker is a case conferecne with others such as employer representatives and ‘insurer representatives’. All but the workers have been in possession of injury management information prior to the case conference. At times the NTD may be provided with injury management information only at the time of the case conference. The injured worker is then expected to comply with the employer and insurers expectations whilst been uninformed and not afforded the opportunity to provide informed consent;
 - ii. Injury Management Consultant reports i.e. injury management information being withheld, deliberately or never provided to the injured worker in contravention of the SIRA Injury Management Consultants Guide;
 - iii. The injured worker being expected to cooperate as they are obliged to by the WIMWC1998 without being in receipt of injury management information when a Return To Work and or Injury Management Plan is being prepared; extraordinarily some employers representatives withhold a copy of Return To Work Plans whilst expecting the worker to sign and comply with the Return To Work Plan
 - iv. Variations of the above practices including the extraordinary action of one government self- insurer advising an injured worker that if they want to see the Functional capacity evaluation and Voc. Assessment carried out upon them and spoken to a NTD Case Conference by the employer/insurer representative they will have to make GIPA application to see the information.

⁵ Section 41 Workplace Injury Management and Workers Compensation Act 1998 NSW

⁶ “The objectives of SIRA are set out in the SICG Act. The principle objectives...” page 8 and 9, Regulatory Impact Statement and Better Regulation Statement – Draft Workers Compensation Regulation 2016 – May 2016

⁷ Section 73 Insurer to provide copies of reports to workers “(1) the regulation may make provision for or with respect to requiring an insurer to provide a worker...” WIMWC1998 -

- j. The withholding of injury management information is about power, it is not about returning injured workers to work in a safe, timely and durable manner and as such is contrary to the objectives of the legislation.
- k. It seems that by withholding this information employers and insurers are selectively exercising a legal privilege created by section 73 WIMWC1998 and yet without due action and notice expecting an injured worker to become spontaneously informed and therefore cooperative. This predatory behaviour needs to stop as it harms workers.

4. Summary/Conclusion

The AMWU recommends these two amendments to ensure injured workers are;

- a. suitably compensated for injury and illnesses arising from disease having suffered a workplace injury, and
- b. when returning to work and participating in injury management will be provided relevant reports and information in a timely manner so that they may participate in their timely, safe and durable return to work as the authors of the legislation envisaged.

END