

# The WorkCover Ombudsman and Investigation of Complaints about Rehabilitation

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*WorkCover Ombudsman*

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# Office of the WorkCover

## OMBUDSMAN

- **Established under Part 6D of the *Workers Rehabilitation and Compensation Act 1986* in response to recommendations in the Clayton Walsh report.**
- **Commenced 1 July 2008.**

# Functions

**The WorkCover Ombudsman's role is to:**

- **Identify and review issues arising from the operation of the Act and make recommendations for improvement**



# Functions

*(continued)*

- **Receive and investigate complaints about administrative acts under the Act and to seek to resolve those complaints expeditiously**
  - Complaints may be received from workers, employers, health providers, individuals, organizations, public and private sectors



# Functions

*(continued)*

- **Encourage and assist WorkCoverSA and employers to establish their own complaint-handling processes**
  - Effective management of complaints is essential if the Scheme is to function properly



# Functions

*(continued)*

- **Review decisions to discontinue weekly payments and suspend those decisions where it appears to the WorkCover Ombudsman that the decision is not reasonably open**

# Independence

- **The WorkCover Ombudsman must act independently, impartially and in the public interest**
- **The Minister cannot control how the WorkCover Ombudsman is to exercise his statutory functions and powers**
- **The WorkCover Ombudsman must, prior to 30 September, provide a report to the Minister on the work of the Office during the preceding financial year**



# Powers

- **To request provision of relevant information or documents within a reasonable period of time**
- **To examine a person on oath or affirmation**
- **To require a person to verify by statutory declaration any information or document produced**



# Receive and Investigate COMPLAINTS

**The WorkCover Ombudsman may receive complaints about:**

- **“Administrative acts” under the Act**
- **Failures to comply with Sections 58B or 58C**
- **Other matters relating to rehabilitation and return to work**
- **[Breaches of the Code of Claimants’ Rights]**

# Receive and Investigate

## COMPLAINTS *(continued)*

### ■ **Administrative acts under the Act**

- **Examples:**

- Failure to reply to enquiries
- Unauthorised disclosure of confidential information
- Refusal to pay interim benefits
- Delay in complying with S107B request
- Refusal to allow worker to have a support person at meetings with employer
- Refusal to provide suitable duties to the worker

# Receive and Investigate

## COMPLAINTS *(continued)*

### ■ Other matters relating to RRTW

- Examples:

- Employer failed to ensure injured worker performed duties in accordance with RRTW Plan
- Employer made RTW difficult – changing work hours, shifting worker to different worksite
- Worker's requests for retraining ignored
- Worker not consulted with preparation of RRTW Plan
- No real help given with job searching
- Failing to establish RRTW Plan

# Receive and Investigate

## COMPLAINTS *(continued)*

- **In the 2008/2009 year, the Office received 100 formal complaints:**
  - 87% were lodged by or on behalf of injured workers
  - 32% involved self-insured employers
  - 53% related to claims case management
  - 34% related to RRTW issues

# Receive and Investigate

## COMPLAINTS *(continued)*

- **Currently, the Office receives around 100 enquiries per month**
  - Around 20% of enquiries relate to RRTW issues



# Receive and Investigate

## COMPLAINTS *(continued)*

- **The WorkCover Ombudsman cannot investigate reviewable decisions under:**
  - Part 5 – Registration of employers and imposition of levies
  - Part 6 – Appeals, enforcement of judgments and contempts of the Tribunal
  - Part 6A – Reviewable decisions
  - Part 6B – Applications to expedite decisions
  - Part 6C – Medical Panels



# Receive and Investigate

## COMPLAINTS *(continued)*

- **However, the WorkCover Ombudsman can and does investigate complaints about:**
  - A decision to establish or not establish a RRTW Plan
  - The reasonableness of terms of a RRTW Plan
  - The process by which a RRTW Plan is developed
  
- **Until either the worker or employer apply to the Tribunal for a review under section 28B of the Act (Part 3)**



# Receive and Investigate

## COMPLAINTS *(continued)*

- **The WorkCover Ombudsman cannot investigate matters that are:**
  - The subject of legal proceedings
    - Examples: defamation, victims of crime compensation, equal opportunity application
  - In the nature of an industrial dispute under the *Fair Work Act 1994*

# Receive and Investigate

## COMPLAINTS *(continued)*

- **The WorkCover Ombudsman has a discretion to refuse to investigate if:**
  - Complaint is trivial, frivolous or vexatious
  - Complainant has insufficient personal interest
  - Complainant has failed to take reasonable steps to resolve the matter
  - Investigation is unnecessary
  - Complaint should be dealt with under another Act or by another person or body

# Receive and Investigate

## COMPLAINTS *(continued)*

### ■ **Complaints may be resolved by:**

- Investigation - leading to conclusions and recommendation to parties
- Mediation - leading to one or both parties agreeing to compromise
- Conciliation involving personal attendance of interested parties - leading to settlement or recommendation

# Contact Details

- **Office: Level 6, 91-97 Grenfell Street, Adelaide**
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Questions?

*The End*