

Safe Work Month 2008



Workplace safety is in your hands

Introducing...

**The Office of the
WorkCover Ombudsman**

Presented by

Wayne Lines

Acting WorkCover Ombudsman

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
- Effective from 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

- 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

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

Functions

- Review decisions to discontinue weekly payments and suspend those decisions where it appears to the WorkCover Ombudsman that the decision is not reasonably open.
 - “...to provide a significant countervailing force to the prospect that such a change may provide an opportunity for unmeritorious claims determination, decisions and practices...” Clayton Walsh Report at p141

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

- Administrative acts under the Act.
 - Examples:
 - Frequent changes of case manager
 - 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

- 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

- 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

- 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

- 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

Assist with Complaint-handling Process

- WorkCover Ombudsman will provide assistance by:
 - Reviewing established processes and recommending improvements (if necessary)
 - Advising on how to establish a process where none exists

Assist with Complaint-handling Process

- The role covers WorkCoverSA and “employers”
- The office will focus on Self Insured Employers in the first 12 months

Review Decisions to Discontinue Weekly Payments

- Preconditions:
 - Worker has received a notice of discontinuance under Section 36
 - Worker has lodged notice of dispute

Review Decisions to Discontinue Weekly Payments

- The WorkCover Ombudsman may suspend a decision if it appears to not be “reasonably open” having regard to the circumstances of the case:
 - “reasonably open” means arguable, having a valid basis - a case to be answered
 - “reasonably open” does not mean having a reasonable prospect of success, likely to be upheld by the Tribunal after a trial

Review Decisions to Discontinue Weekly Payments

- The WorkCover Ombudsman will require the decision maker to provide within 7 days:
 - copies of documents on which decision is based
 - and any additional submission in writing

Review Decisions to Discontinue Weekly Payments

- The WorkCover Ombudsman's decision
 - will be made as “expeditiously as is reasonably practicable” – ie. asap
 - will be advised to the parties in writing
 - is not subject to review or appeal

Review Decisions to Discontinue Weekly Payments

- If the WorkCover Ombudsman's suspends the operation of the discontinuance, weekly payments must be reinstated and they continue until -
 - the notice of dispute is withdrawn
 - the matter is resolved by reconsideration or settlement between the parties, or
 - the Tribunal otherwise orders

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

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

Contact Details

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

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