

INTRODUCING...

The Office of the 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.**
- **Effective from 1 July 2008.**

Functions

The WorkCover Ombudsman 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 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

(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.**
 - “...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 *(continued)*

■ **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

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)*

- **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

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 *(continued)*

- **The role covers WorkCover SA 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 (*continued*)

- **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 at hearing

Review Decisions to Discontinue WEEKLY PAYMENTS (*continued*)

- **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 (*continued*)

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

Review Decisions to Discontinue WEEKLY PAYMENTS (*continued*)

- **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.**

Questions?

The End