SUBMISSION

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WORKERS COMPENSATION AMENDMENTS

A submission by the New South Wales Bar Association to the Statutory Review of the 2012 Workers Compensation Legislative Amendments

NEW SOUTH WALES
BAR ASSOCIATION

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1. Background

1.1 In June 2012, the NSW workers compensation scheme was substantially altered by the *Workers Compensation Legislation Amendment Act 2012* ('the 2012 amendments'), together with associated regulations and administrative actions.

1.2 Schedule 6 Part 19H Clause 27 *Workers Compensation Act 1987* ('WCA') provides that the Minister is to conduct a review of the 2012 Amendments after 2 years have passed from the date of assent to the 2012 Amendments.

1.3 It is understood the Minister is in the process of undertaking that review.

1.4 These submissions are made to assist the Minister conduct that review.

2.0 The situation in 2012

2.1 It is understood the then Minister had received advice through the WorkCover Authority of NSW ('WorkCover') that the scheme had a large projected deficit, which required legislative attention.

2.2 Before a Parliamentary Inquiry was commenced, WorkCover issued a discussion paper which was primarily concerned with the large numbers of workers who were receiving long term weekly compensation benefits and to a lesser extent the amounts being expended on lump sum compensation entitlements for permanent impairment.

2.3 The inference was that WorkCover thought the appropriate course towards the desirable outcome of a projected modest surplus, was to reduce the number of long term recipients of weekly compensation and to reduce the amounts being expended on lump sums for permanent impairment.

2.4 The subsequent Parliamentary Inquiry then understandably tended to concentrate on these two particular avenues of returning the scheme to a projected surplus.

2.5 It is noteworthy that WorkCover's discussion paper did *not:*

(a) Suggest medical expenses were a cause for concern;

(b) Suggest its scheme agents should be able to make (in practical effect) binding decisions about whether a worker should continue to be entitled to weekly compensation benefits;

(c) Suggest the independent Workers Compensation Commission should be deprived of its jurisdiction to make decisions about the extent of a worker's entitlement to weekly compensation benefits; or

(d) Suggest that workers should be deprived of the ability to retain solicitors to act for them.

2.6 In the absence of such suggestions the Parliamentary Inquiry did not canvass these issues.

3.0 The 2012 Amendments

3.1 The 2012 amendments were passed through both Houses in a particularly short period of less than 48 hours. The Bill was not circulated in advance. The WCA and the *Workplace Injury and Workers Compensation Act 1998* ('WIM') were already complex statutes. Proposed Acts, which substantially revise complex statutes, are not easy to understand. Frankly it was not prudent to rush such revisions. The potential for unintended errors and oversights is obvious.

3.2 To the surprise of all stakeholders many of the more significant amendments had never previously been canvassed in WorkCover's discussion paper or during the parliamentary enquiry.

3.3 It is the New South Wales Bar Association's view that many of the 2012 amendments were unnecessarily harsh. It is suspected that much of this harshness may have been unintended and overlooked in the complex detail of the provisions.

3.4 Workers Compensation schemes and their like involve a suitable balance being found between the costs of the schemes and the benefits afforded. It is understood the NSW WorkCover Scheme has already returned to a projected surplus. The swiftness and size of this turnaround suggests to the Bar Association that the 2012 amendments have failed to strike the correct balance.

4.0 The harsh provisions which were not canvassed in advance

4.1 Medical Expenses

4.1.1 Section 3 WIM outlines the 'System objectives'. These provide that:

> 3. The purpose of this Act is to establish a workplace injury management and workers compensation system with the following objectives:
>
> (a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,
>
> (b) to provide:
>
> - prompt treatment of injuries, and
> - effective and proactive management of injuries, and
> - necessary medical and vocational rehabilitation following injuries,
> - in order to assist injured workers and to promote their return to work as soon as possible,
>
> (c) *to provide* injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and *payment for reasonable treatment and other related expenses,*
>
> (d) to be fair, affordable, and financially viable,
>
> (emphasis added)

4.1.2 For some unexplained reason the proponents of the 2012 amendments thought it was appropriate to prevent injured workers from receiving payment for reasonable treatment expenses if:

(a) 12 months have passed since they were last entitled to weekly compensation benefits (s 59A(2) WCA);

(b) 12 months have passed since they attained the Commonwealth pension age (s 52 and s 59A(2) WCA);

(c) The treatment has been provided without the prior approval of the insurer (except for an initial 48 hour post injury period) (s 60(2A)(a)).

4.1.3 The exemption from (b) and (c) above for 'seriously injured' workers saves very few injured workers from losing any entitlement to medical expenses. Seriously injured is defined as having a degree of permanent impairment ('WPI') of 'more than 30 per cent' (which means 31 per cent as the assessments are rounded up and down to the nearest whole figure). It is understood that fewer than 1,000 workers in NSW have ever been assessed as being more than 31 per cent. As the ABC television news has recently reported, even a two inch below the knee amputation only equates to a 27 per cent WPI.

4.1.4 To have legislative provisions which describe such amputees as not been seriously injured is absurd. This example is compelling but a multitude of other injured workers in desperate need for ongoing medical treatment also fail to attain the 31 per cent threshold. Spinal injuries are a common workplace occurrence. Spinal fusion procedures are a common form of treatment for more serious spinal injuries. They sometime fail. An individual with a failed spinal fusion is a picture of agony. They require lifelong pain relief treatments. They are usually assessed below 31 per cent WPI. Other examples abound.

A hip replacement is assessed at well under 30 per cent WPI. The hip replacement will last 12-15 years before the artificial hip (the prosthesis) wears out. It will need replacement. If the initial surgery arose because of employment and was paid for by the Workers Compensation scheme there is no logical reason for the scheme not to pay for the inevitable revisionary surgery 15 years later.

4.1.5. In the Bar Association's view it is also completely inappropriate to assume there is some sort of logical connection between needing medical treatment and being entitled to weekly compensation. It is a common situation that the provision of successful ongoing medical treatment is the very thing, which keeps an individual at work and earning a pre-injury level of wages.

Example 1

Andrew is a nurse whose work exposed him to an infectious disorder, which caused him to develop rheumatoid arthritis in his joints. This arthritis has been held at bay by the use of fairly expensive cortico steroid medications. The use of these medications has to be carefully monitored with biannual specialist consultations and pathology tests. The treatment has been so successful that he has been able to return to his usual nursing duties and he earns his pre injury income. As such he has had no entitlement to weekly compensation benefits for several years. He also has no assessable degree of WPI.

Because of the 2012 amendments Andrew no longer has any entitlement to claim reimbursement for his significant ongoing medical expenses. To save money he is resorting to sub-optimal treatment, which may lead to him becoming incapacitated to perform his usual duties.

4.1.6 The only sound solution to the current absurd and illogical situation is to remove the statutory provisions which bring it about.

4.1.7 The need for prior approval in practice also prevents the 'System Objective' for 'prompt treatment of injuries' being attained. It needs to be appreciated that in the real world WorkCover's scheme agents (who still tend to be called insurers) prevaricate over approvals.

Example 2

Marie works in a packing warehouse. She completely ruptured a tendon in her right shoulder when she was moving a heavy box. This diagnosis was made quickly by ultrasound examination. The ends of these tendons tend to move apart after such an injury. They eventually move so far apart that they cannot be surgically reconnected and the individual is left with a permanently weakened shoulder and arm.

WorkCover's scheme agent delayed approving the proposed surgery for several months. Marie could not afford to pay for it herself and was waiting on their approval. When it was finally approved the surgeon attempted a repair but was unable to do so as the tendon ends had retracted too far from each other. As a result of the scheme agent's delay, Marie has been left with a permanently weakened shoulder and arm and has been unable to return to her pre-injury work.

4.1.8 The sensible way to remove such unfortunate outcomes is to remove prior approval as a pre-condition for reasonable medical expenses being payable.

4.1.9 The above suggested variations to the scheme would:

(a) Assist the system objectives being attained;

(b) Assist injured workers return to work and stay at work; and

(c) Prevent the WorkCover scheme from presenting the Government with the political embarrassment of denying individuals the medical care and equipment they obviously need.

4.1.10 Another factor the government should consider is that the injured workers who require medical attention do not just suddenly disappear. A good proportion of the workers who have already lost their entitlement to medical expenses because of the 2012 amendments, would now be attending NSW public hospitals, which no doubt provide them with such care and treatment as they can. This of course is largely funded out of the consolidated revenue of the NSW government. The WorkCover Fund is not a fund which is accessible by the NSW government. As such the 2012 amendments have brought about the situation that consolidated revenue is now paying for medical expenses, which it previously did not have to pay for.

4.1.11 The suggested amendments outlined above would remove this drain on consolidated revenue.

4.2 Work Capacity Decisions

4.2.1 Workers compensation statutes in Australia have traditionally had an independent tribunal or court, which has the jurisdiction to hear and determine disputes that workers have with workers compensation insurers about the level of their entitlements.

4.2.2 For instance under the Commonwealth workers compensation system ('Comcare') disputes are dealt with in the Administrative Appeals Tribunal. In NSW the disputes have been dealt with in the Workers Compensation Commission of NSW.

4.2.3 One of the more common areas of dispute involves whether a worker is entitled to further weekly benefits or the level of those benefits. Weekly benefits are of real utility to injured workers. It is useful to appreciate that typical weekly compensation entitlements can amount to about $500 pw whereas an alternative Commonwealth government disability pension might only amount to $250 pw.

4.2.4 Because of the importance of this to their well being, workers and others readily appreciate the inherent fairness of an independent decision maker. Conversely having a decision maker who is not independent creates the perception of bias and carries with it the risk of real bias.

4.2.5 All workers compensation statutes have a degree of complexity and the two NSW acts are the most complex in Australia. When this is combined with the usual need for lay and expert evidence to be gathered and presented it is easy to appreciate why workers and insurers have invariably arranged to have legal representation in most significant disputes.

4.2.6 It should also be borne in mind that recent immigrants to Australia often end up having to work in manual pursuits which are intrinsically more likely to injure them. Such immigrants frequently have poor English language skills and limited educations. Their ability to represent themselves in workers compensation disputes is essentially non-existent.

4.2.7 Because it is fair and efficient, in the nearly 100 year history of a workers compensation system in NSW prior to June 2012, workers and employers have been able to obtain legal representation to assist them in disputes, which were dealt with by independent courts and tribunals.

4.2.8 There was no public suggestion or discussion prior to the 2012 amendments that this situation might be altered.

4.2.9 These two important requirements for a fair system were both changed by the 2012 Amendments. In their immediate aftermath this appeared to be a serious flaw. The practical experience of the subsequent 2 years has confirmed this.

4.2.10 The core source of the flaw is s 43 WCA. It provides that a WorkCover scheme agent (called an insurer in the section) can make an administrative decision, which brings a worker's entitlements to weekly compensation to an end. Given the effect of s 59A(2) WCA, that decision also brings a worker's entitlements to medical expenses to an end (after a further year has passed).

4.2.11 The administrative decision to terminate benefits is achieved by various forms of administrative reasoning. The usual one adopted is that WorkCover's scheme agent will decide that a partially incapacitated worker can actually earn more than his pre-injury income, in a sedentary pursuit such as an office clerk. Inconvenient facts like the workers poor education, a complete lack of clerical experience, geographic isolation and the previous inability

of professional rehabilitation providers to help the person find such positions - are completely ignored.

Workers are able to be cut off their benefits (endangering their home and family) because of a theoretical possibility, not a real job.

4.2.12 The dispute as to what the worker's real residual ability to earn is, can no longer be taken to the independent Workers Compensation Commission - because of s 43(3).

4.2.13 Instead s 43 provides an alternative process of 4 stages of appeal, which at first glance to a lay person, might look like a reasonable alternative. The process is:

(a) The worker asks WorkCover's scheme agent to 'review' its decision (s 44(1)(a)). The WCA calls this an 'internal review'.

(b) If dissatisfied with the result of this, the worker can then apply to have the matter considered by the WorkCover Authority 'as a merit review of the decision'. This is normally referred to as a 'merit review' and the WorkCover Authority talks about its 'Merit Review Service' which is a group of its officers who look at such applications.

(c) If dissatisfied with the result of the 'merit review' the worker can then apply to have the matter considered by the '(WorkCover) Independent Review Officer', who in practice will be a delegate of the Independent Review Officer. (The office of the '(WorkCover) Independent Review Officer' is normally abbreviated to 'WIRO'.)

(d) If dissatisfied with the decision of the 'Independent Review Officer' the worker can, if there is a basis for so doing, seek a 'judicial review by the Supreme Court' (s 43(1)). This is an administrative law remedy.

4.2.14 In practice '*internal reviews*' are a complete waste of time. WorkCover's scheme agents to our observation do not review their previous decisions in ways which produce a more favourable outcome for a worker. We do occasionally see matters where on review they substitute harsher decisions.

4.2.15 '*Merit reviews*' to WorkCover are beset with inherent unfairness and an undesirable conflict of interests.

4.2.16 The inherent unfairness comes from the new and extraordinary statutory provision which prevents an injured worker from retaining a legal practitioner to assist them with their merit review application. This arises from s 44(6) WCA which provides that:

> (6) A legal practitioner acting for a worker is not entitled to be paid or recover any amount for costs incurred in connection with a review under this section of a work capacity decision of an insurer.

4.2.17 This provision, which has no counterpart known to us in any other Australian jurisdiction, has had the result that most workers can obtain no assistance with trying to put a merit view application together. Hence most workers who have had their weekly compensation benefits cut off by an insurer for erroneous reasons do nothing about it - as the typical individual is unable to understand the complex legislation and does not know how to formulate an application or how to assemble the evidence required to accompany it.

4.2.18 The provision is particularly and absurdly unjust for vulnerable workers with poor education and little or no literacy in English.

4.2.19 Members of the NSW Bar have provided some pro-bono representation for workers in merit review applications and further appeals to the Independent Review Officer. Attached as annexure 1 to this paper is a copy of the written submissions drafted by one of our members for such an appeal. (The injured worker, Mr Molloy, has agreed to it being made public as he wishes to try to assist others who are unable to obtain free assistance.)

4.2.20 Mr Molloy left school early and became a strapper before eventually becoming a jockey. He mostly rode at rural race meetings and earned a modest living. Like many jockeys he experienced a number of falls and a range of injuries. These injuries eventually left him with mild brain damage, periodic epilepsy and a weakened arm. Their combined effect eventually meant he could no longer ride. He found alternative work as a part-time cleaner but has never been able to earn as much as he did as a jockey.

4.2.21 Not long after the 2012 amendments were made, he received communications from the relevant workers compensation insurer advising him that they had made a 'work capacity decision' and had concluded he actually could earn more than a jockey and that as a consequence his weekly compensation payments were being ceased.

4.2.22 Annexure 1 sets out the complex legal arguments advanced on behalf of Mr Molloy, which submit the insurer had erred in law in making its purported decision. The arguments were initially presented as part of a request for an

'internal review'. The insurer declined to change its decision. The arguments were then submitted to the WorkCover Authority for a 'merit review'. The WorkCover Authority concluded the original decision was appropriate. The arguments were then submitted to the Independent Review Officer, whose delegate concluded the decision maker had erred in law. The IRO then made a binding recommendation to the insurer and the WorkCover Authority that weekly payments be restored.

4.2.23 The reader of this paper is invited to peruse Annexure 1 and consider whether it is rational to believe workers can formulate and present such arguments without assistance from legal practitioners. The answer is self evident.

4.2.24 Section 44(6) should be repealed. This will permit injured workers to retain legal practitioners to act for them as they can with every other aspect of their personal affairs. The corresponding Regulation, which prevents insurers retaining external legal practitioners to act for them, should also be removed. (Workers Compensation Regulation 2010 Schedule 8 Clause 9). It might be noted that insurers can currently obtain legal representation with respect to work capacity disputes simply by employing solicitors on staff.

4.2.25 It is understood the Independent Review Officer may have submitted that the number of legal practitioners on his staff could be substantially increased, to enable it to provide legal representation for injured workers with respect to work capacity decisions. The Bar Association's position is that it would be preferable to simply permit workers to retain solicitors in private practice to act for them - as they were previously able to do so. One very practical reason for this is that the solicitors of New South Wales already service all of regional NSW. It would be an expensive and difficult undertaking for the Independent Review Officer to replicate this. To do so would also create an extra cost burden for the State by having to add additional employees to the NSW Public Service.

4.2.26 There would also be a degree of conflict if this task was carried out directly by delegates of the Independent Review Officer. This is because if their endeavours to persuade WorkCover's Merit Review Service are unsuccessful, the next avenue of appeal would be to ask themselves (bearing in mind they are delegates of the actual Independent Review Officer) to substitute an alternative decision for their client.

4.2.27 The Independent Review Officer currently performs the very important function of providing grants of legal aid to workers who have arguable claims (about matters other than work capacity decisions), which warrant the commencement of proceedings in the Workers Compensation Commission. It would be a logical step to simply extend this legal aid scheme (usually called 'ILARS') by instructing WIRO to provide suitable grants of legal aid to legal practitioners to assist injured workers submit applications to WorkCover's Merit Review Service.

4.2.28 This however then leads to the further significant issue of the role and position of WorkCover's Merit Review Service. In the Bar Association's view, the WorkCover's Merit Review Service has an inherent conflict of interest, which presents a significant perception of potential bias.

4.2.29 In the NSW workers compensation scheme (with the exception of self insurers and 'specialised insurers' such as Coal Mines Insurance), the actual insurer created by s 154A WCA is the 'Workers Compensation Nominal Insurer', which is usually referred to as 'the Nominal Insurer'. WorkCover 'acts for the Nominal Insurer' (s 154C WCA and s 23A WIM), manages the funds of the Nominal Insurer and arranges for 'scheme agents' to act for the Nominal Insurer. For all practical purposes and appearances the Nominal Insurer and WorkCover are one and the same.

4.2.30 The officers of WorkCover are actually not employees of WorkCover, as s 23 WIM prevents WorkCover from having 'any staff'. They are NSW Government employees engaged under the *Public Sector Employment and Management Act 2002*. However for all practical purposes and appearances they are perceived as WorkCover staff. For instance they sign letters under WorkCover's letterhead.

4.2.31 WorkCover's Merit Review Service is understood to be staffed by officers of WorkCover. Hence an injured worker submitting a merit review application is confronted with the following apparent situation:

(a) The worker wants money from an Insurance Fund which is managed by WorkCover.

(b) His right of appeal seems to him (understandably) to be a right of appeal to WorkCover.

(c) Hence to him, the insurer and the body that determines his appeal against the decision of the insurer, is the one organisation - WorkCover.

(d) The perception of a conflict of interest is clear.

4.2.32 It is also of assistance to recall that one of the principle reasons behind the initial establishment of the WorkCover Authority of NSW in the early 1980's was that the original Workers Compensation Commission of NSW performed both administrative and dispute resolution functions. This was regarded as undesirable because there was a perceived conflict of interests. As such the NSW Parliament divided the functions and allocated them to two separate organisations. The administrative functions were given to a new organisation called the State Compensation Board of NSW. Its name was subsequently changed to the WorkCover Authority of NSW. The dispute resolution functions were given to a new court called the Compensation Court of NSW. (This Court was replaced with the current Workers Compensation Commission of NSW in 2002.)

4.2.33 In-so-far as work capacity decisions are concerned the 2012 amendments reversed this separation of roles. For reasons never publically explained the previously undesirable combination of administrative and dispute resolution functions was thought to be desirable again. It isn't.

4.2.34 It should also be noted that the possibility of a further appeal to the Supreme Court, seeking an administrative law remedy, in practice, is no remedy at all. This is because typical workers cannot afford the filing fees and costs associated with bringing such applications. They also cannot risk the possibility of having to pay costs to WorkCover's scheme agent if the Supreme Court dismisses the application. In the nearly two years since 2012 amendments were made, there have been virtually no such 'appeals'.

4.2.35 In the Bar Association's view the unfairness and conflict of interests discussed above can be avoided by the repeal of Section 43. Scheme agents would still be able to make administrative decisions declining liability but injured workers would then be able to appeal from those decisions to the independent Workers Compensation Commission of NSW (which has no filing fees and where workers costs are dealt with through ILARS).

4.2.36 If, despite the conflict of interests, it was decided to maintain the WorkCover merit review process, it is the Bar Association's view that this should only be done in conjunction with the following further changes:

(a) The independent Workers Compensation Commission should be given jurisdiction to determine disputes, arising from work capacity decisions, after the merit review process has been completed.

(b) Workers and insurers should be able to obtain legal representation for the merit review process.

(c) ILARS should be able to provide grants of aid for the merit review process.

(d) The current short and strict time periods for bringing merit reviews should be extended somewhat, with an available discretion to lengthen the period in appropriate cases.

5. Other Amendments

5.1 The periods over which weekly benefits are now available

5.1.1 Most injured workers can now only receive weekly benefits for 130 weeks (2 ½ years).

5.1.2 Some workers can be entitled to weekly benefits for a further 130 weeks if they satisfy the requirements of the new s 38. However to have this entitlement the worker has to be:

> *assessed by the insurer* as being, and as likely to continue indefinitely to be, incapable of undertaking further additional employment or work that would increase the worker's current weekly earnings.' (s 38(3)(c)) (emphasis added)

5.1.3 As such all an insurer has to do, to stop an injured worker from having an entitlement to weekly benefits after 130 weeks have passed since they were injured, is to 'assess' that their current physical restrictions are not 'likely to continue indefinitely'. In practice this will mean that if an insurer decides that an injured worker's condition may improve at any point in the future, the injured worker is not entitled to any further weekly benefits.

5.1.4 At a practical level there is then nothing that an injured worker can do by way of an appeal from this decision. The Workers Compensation Commission would be unable to provide a remedy as the assessment is for the 'insurer' to make. It would have no power to substitute its own assessment even if the insurer's assessment was absurd. A worker's only remedy would be to bring an administrative law application in the Supreme Court. However in practice this is not available to injured workers for the reasons pointed out above.

5.1.5 Section 38 is substantially flawed. The requirements in it for the insurer to make what are effectively binding assessments should be removed.

5.1.6 Section 39 then provides that most workers cannot in any event receive more than 260 weeks (5 years) of any weekly benefits. The only exception to this is if the injured worker is assessed at being 'more than 20 per cent' WPI - which means (because of rounding) that they have to be 21 per cent or more.

5.1.7 However even these workers have to satisfy the requirements of s.38 which as noted above, they will fail to satisfy merely by the insurer deciding that they may improve a bit in the future.

5.1.8 Hence there is actually no practically enforceable way that any injured worker can be assured of receiving more than 260 weeks of weekly compensation benefits.

5.1.9 In the Bar Association's view this is unsatisfactory and harsh. With respect to potential entitlements between 130 weeks and 260 weeks post injury this situation can be ameliorated by the course set out in 5.1.5 above. With respect to permitting some injured workers to receive weekly benefits for more than 260 weeks the situation can be ameliorated by replacing the 21 per cent threshold requirement with a fairer threshold.

5.1.10. The basic problem with the 21 per cent threshold is that WPI percentage assessments are capricious. They are made in accordance with the 5th Edition of the American Medical Associations Guide for the Evaluation of Permanent Impairment (with some further modifications). The preface to this Guide actually warns that it should not be used to assess the rights of individuals. Some very badly impaired workers are assessed at less than 21 per cent and conversely some not so badly impaired workers can sometimes be assessed at more than 21 per cent. There is an odd kind of bias in the Guide, which produces higher percentages for multiple fractures. Hence a very badly incapacitated worker who has one badly fractured leg can end up being assessed at a lower figure than a less badly affected worker, who may have suffered a fractured leg, a fractured arm and a cracked vertebrae.

5.1.11 In the Bar Association's view it would be a fairer situation if the 'more the 20 per cent' threshold requirement was replaced with a threshold which required a worker to be totally incapacitated for work before they were entitled to benefits after 260 weeks. That would remove the capriciousness of the AMA assessment system but still reserve the more generous compensation for the more severely injured.

5.2 Definition of 'suitable employment'

5.2.1 When an insurer assesses an entitlement to a weekly benefit, the greater of an injured workers actual earnings or what is assessed to be his/her ability to generate income in suitable employment is deducted from his pre injury earnings. The definition in s 32A of suitable employment is:

> 'suitable employment' , in relation to a worker, means employment in work for which the worker is currently suited:
>
> (a) having regard to:
>
> (i) the nature of the worker's incapacity and the details provided in medical information including, but not limited to, any certificate of capacity supplied by the worker (under section 44B), and
>
> (ii) the worker's age, education, skills and work experience, and
>
> (iii) any plan or document prepared as part of the return to work planning process, including an injury management plan under Chapter 3 of the 1998 Act, and
>
> (iv) any occupational rehabilitation services that are being, or have been, provided to or for the worker, and
>
> (v) such other matters as the WorkCover Guidelines may specify, and
>
> (b) regardless of:
>
> (i) whether the work or the employment is available, and
>
> (ii) whether the work or the employment is of a type or nature that is generally available in the employment market, and
>
> (iii) the nature of the worker's pre-injury employment, and
>
> (iv) the worker's place of residence.

5.2.2 Accordingly, under this legislation *no* regard can be had to whether the particular job exists or the worker's geographical location. This creates a ridiculous impost particularly on regional and rural workers. One example that comes to mind in this regard is the injured worker living in Moree recently who received a work capacity assessment saying he could work as a call centre supervisor.

5.2.3 In the view of the Bar Association it is essential that this situation be rectified.

5 June 2014