

Legislative Council

Wednesday, 14 November 2007, Page 1298

WORKCOVER CORPORATION

The Hon. A. BRESSINGTON (16:38): I move:

That this council condemns—

1. The practices of the WorkCover Corporation in both the administration of the fund and in the treatment of injured workers and the lack of support and rehabilitation for those workers;
2. The Premier for backing down from his call for a royal commission or similar wide-ranging inquiry into allegations of corruption by WorkCover in May 1997, whilst leader of the opposition; and
3. Other parties for allowing WorkCover to languish in dysfunction since that time.

This is going to be quite a lengthy motion. I wholeheartedly support the motion of the Hon. David Ridgway on WorkCover, but I wish to also knowledge that this motion does not go far enough to address the range of issues and concerns which affect injured workers in their everyday dealings with WorkCover as they live on or below the breadline and between sparse employment opportunities and the welfare system. Ordinary injured workers do not care about the cost blowouts, unfunded liabilities and deteriorating financial positions, tender processes, claims management and sourcing arrangements or actuarial reports.

They do not care about organisational charts, agent resources, commercial arrangements, agent performance evaluation programs, clauses 4.6, 7.1 or 9.3 of WorkCover's claims management agreements, transition in plans, or certificates of readiness. They want to know how to cope with falsified witness statements, perjury by the WorkCover corporation's lawyers in the courtroom, and questionable judgments by what appears to be incompetent officers of the court. They want to know what to do when their rehabilitation is prematurely terminated or their payments stopped for no reason. They want to know what to do when their treating medical officer is threatened, when they are unlawfully put under surveillance, and their confidential information is leaked to third parties such as the Family Court, banks or ex-employers.

To clarify this motion, I will briefly recap the history of the WorkCover scheme. Under the Bannan Labor government, on 12 February 1986 the Workers Rehabilitation and Compensation Bill 1986 was introduced in the House of Assembly by Labor minister Frank Blevins (Parliamentary Debates, 12 February 1986). The purpose of this bill was to revamp the workers compensation scheme such that it became a no-fault compensation scheme which emphasised rehabilitation and return to work. It did not abolish the right of common law for injured workers.

The resultant WorkCover model was the culmination of findings arising from the 1978 Byrne inquiry, with a Workers Rehabilitation and Compensation Board for South Australia, the key to rapid rehabilitation and equitable compensation for those injured at work, which took place in the Dunstan era. The Byrne report was handed down in 1980 under the Tonkin government, but lay dormant for a few years until the Bannon government turned its attention to the report's findings. By 1982 the New Directions conference re-ignited the push for a better and fairer system for workers' rehabilitation and compensation to ensure that injured workers would not have to spend years fighting it out against lawyers and insurance companies in the courts whilst their claims for compensation were being stalled and thwarted.

It was envisaged that the new model would deliver fair and proper access to rehabilitation and, ultimately, enable injured workers to promptly continue on with their work life. I am advised that the difficulties in getting a new scheme up and running largely surrounded the ALP being lobbied by unions which were concerned about injured workers' rights to common law being undermined, whilst publicly there were problems within the business sector on the issues of the levies, which would be owing to be paid, and the impact this would have on businesses. At the time, Victoria also had a similar system with cost blowouts.

In 1986 the Hon. Ian Gilfillan, Australian Democrats member of the Legislative Council, played a pivotal role in what was a marathon debate on the WorkCover scheme, having brokered a deal that would be acceptable to all parties for an improved and safer model than previously tabled. However, that may as well have been a lifetime ago, because since then Labor, Liberal and even the Democrats have appeared to turn a blind eye to the real cause of the monumental dysfunction within the WorkCover Corporation organisation, so much so that prior to 1992 section 54(1)(a) of the Workers Rehabilitation and Compensation Act 1986 allowed limited damages to be claimed under common law for non-economic loss or solatium; that is, compensation where a sum of money is awarded to make up for loss or inconvenience. However, damages for any other liability, such as medical costs or loss of wages associated with workplace injury, were provided for under the Workers Rehabilitation and Compensation Act 1986.

After 1992, common law for non-economic loss or solatium was eventually abolished. Now injured workers have no redress for punitive damages caused by workplace bullying or harassment, wrongful legal tactics or courtroom manoeuvres used by employers to obstruct the workers' claims. Meanwhile, the no-fault clause has been interpreted as applying only to the employer, who can never be found to be at fault no matter what, whilst the injured workers are always suspected of being at fault. I will demonstrate this particular situation later in my speech.

Only three days after the ALP state executive in May 1997 had endorsed calls by a WorkCover Whistleblowers Support Action Group motion for a full investigation into allegations of corruption by the WorkCover board and its executives, the then opposition leader—now our Premier, Mike Rann—backed down, with the ALP state secretary—now Minister for Health, John Hill—quoted as saying:

The executive has been contacted by an officer of the corporation expressing concern that the resolution carried by the ALP state executive reflects adversely upon its officers' reputation and conduct.

At that time, Mike Rann's office issued a press release supporting the calls for a royal commission-style inquiry into WorkCover. We can only wonder why there was a backflip on that particular decision made, and we can also assume that the call for a royal commission-style inquiry into WorkCover could not possibly have gone ahead and been publicly announced unless there was enough evidence to support the fact that there may be corrupt behaviour and conduct occurring. The *Blacks Law Dictionary* definition of 'corruption' is as follows:

The act done with an intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully or wrongfully uses his station or character to procure some benefit for himself or another person contrary to duty and the rights of others .

If something before us looks like a duck, walks like a duck, quacks and smells like a duck, it is a pretty safe bet that it is a duck. How many horror stories do we really need to hear about injured workers being abused by the system before we all sit up, take notice and correct and remedy the circumstances? Injured workers tell me that until around 1997 the then journalist for *The Advertiser*, Mr Michael Foster, a highly skilled, hard-working and dedicated young man courageously wrote countless WorkCover horror stories and regularly exposed the maltreatment of injured workers caught up in the WorkCover system.

Unfortunately, since his appointment as a Liberal Party media adviser soon thereafter, no stories of that calibre on the plight of injured workers have emerged or been reported in *The Advertiser*. Injured workers suspect that there is some level of collusion with the major parties to ensure that nothing will be done to make corporate executives and the WorkCover board accountable.

Since 1997, media stories have only reported on WorkCover's ever-growing unfunded liability and little more; human interest or personal stories have been lost and now only stories of injured workers convicted of fraud, contempt or other charges are what we see. However, these stories (such as in the case of Mr Jeff Thompson and Mr Markham Moore-McQuillan, for example) warrant much closer public scrutiny if we are to truly understand why WorkCover is now in the horrific financial position that is being reported.

Indeed, high-profile Australian whistleblower and associate professor of the Department of Finance at the University of Melbourne, Dr Kim Sawyer, has long advocated for the introduction of false claims legislation similar to that used in the United States. Dr Sawyer has spoken extensively on the correlation between dishonest or corrupt organisational cultures and the invariably adverse impact that these cultures have on the fiscal bottom line.

A recent case at hand was highlighted on Monday 29 October in *The Australian* which reported that Victoria's Police Union had spent more than \$4 million in legal fees in the previous 12 months defending corrupt officers. In fact, it reported an

operating loss of \$1.19 million in 2006-07 after spending \$4.18 million funding the legal battles of officers facing corruption and misconduct charges. It further reports that the amount spent on legal fees was more than double the \$1.9 million spent in the previous 12 months and four times what the union spent in 2004-05. The financial loss, compared with the \$720,000 profit in the previous year, is expected to re-ignite debate within the association about the way decisions are made about which officers facing criminal charges will have their legal fees paid.

I suspect that clear and direct links can be drawn from this example of an organisation struggling to stay afloat financially with the manner in which the WorkCover Corporation has been conducting its business for more than two decades. In my address on the independent commission against crime and corruption bill in this place on 27 September 2007, I made cursory reference to a matter involving Angela Morgan and her right to uncover corruption by senior executive officers of WorkCover Corporation, who she alleges had set out to silence her public interest disclosures by assisting a private defamation suit against her. To recap, Ms Angela Morgan is an injured worker who was successfully sued for defamation by a senior WorkCover auditor, after she had revealed WorkCover fraud by the senior auditor's wife.

As events unfolded, Ms Morgan came to believe that the senior auditor was aware of his wife's fraudulent activities, and not merely as a bystander. It did not take long for the corporation's executive to rapidly become aware of what the implications of Ms Morgan's allegations would be to the reputation of the WorkCover Corporation. That is when Ms Morgan claims the corporation closed ranks to protect its own and to persecute and destroy her and her son in the process. Her son (Sean) later committed suicide for reasons, she suggests, that were closely linked to her own persecution.

The corporation breached its obligations and Ms Morgan's rights to confidentiality and protection. Amongst other laws, the corporation breached section 26 of the Freedom of Information Act, section 110 and section 112 of the Workers Rehabilitation and Compensation Act, and the entire Whistleblowers Protection Act 1993. These breaches by the corporation, however, are the tip of the iceberg. Once the executives became acutely aware of their unlawful conduct, rather than set out to make it right they redoubled their efforts to conceal their illegal activity.

What makes this case so scandalous is proven through written correspondence by WorkCover executives showing their acute awareness of their own grossly unlawful conduct. However, this did not deter them from knowingly continuing to conceal their wrongdoing from Ms Morgan, the state Ombudsman and the courts, with the clear intention of obstructing justice for Ms Morgan, concealing evidence of corporate negligence, malfeasance and corruption, and actively misleading the courts, often with judicial complicity in this conduct by the corporation.

To date, Ms Morgan has paid out in excess of \$55,000, plus interest, to the senior auditor for the privilege of helping South Australians detect fraudulent WorkCover claims. She has spent her life savings defending herself against defamatory and malicious allegations by the corporation and its officers ever since. Make no mistake, the correspondence that I have seen is the smoking gun that vindicates Ms Morgan's allegations.

In the summation of one of these memos, the corporation confesses that it will have a problem on its hands if Ms Morgan complains to the Ombudsman. The corporation's handling of her matters were clumsy and compounded at each step. Lew Owens did release Ms Morgan's letter, which was a statement to the person that she accused of corrupt behaviour. Fraud had never investigated or reported on Ms Morgan's allegations as stated to the Ombudsman's office.

Assurances to Ms Morgan about her confidentiality had been breached. Ms Morgan's personal and confidential details were leaked on multiple occasions to and by various parties, and the corporation's failure to discover all documents relevant to the defamation matter were crucial to the corporation's victory in court and Ms Morgan's subsequent finding of guilt.

I stress that these are notes taken from an internal memo of WorkCover which were obtained through FOI requests. It is quite damning to know that it is not only in Ms Morgan's case that there have been breaches of confidentiality and documents passed on to employers who were having claims made against them, but there is a pattern of this occurring. There is ample proof in a number of other cases (which I will cite) that this is quite a common practice in order to continue the litigious nature of the WorkCover Corporation.

On 13 December 1996 Fred Morris, Chief Adviser Legislation, wrote to the chairman of WorkCover Corporation effectively to confess that the corporation was deeply concerned that Ms Morgan would seek to contact her local member, Ms Robyn Geraghty MP, who would raise these issues. The corporation was concerned that injured worker advocate groups were asking questions about why the suspected fraud by the spouse of a senior WorkCover auditor was not being investigated. There was a reluctance on the part of the fraud department to allow for a proper investigation of Ms Mallard's claim.

The corporation believed the Ombudsman's investigation of the release by Lew Owens of Ms Morgan's letter would vindicate Mr Owens's actions, and Mr Mallard's response to the allegations by Ms Morgan required further investigation by the corporation, but not until after the Ombudsman's investigation was concluded.

This correspondence raises many questions, not the least of which are: why was the corporation so sure Lew Owens would be vindicated by the Ombudsman before any findings were handed down? Why would the corporation investigate Mr Mallard only after the Ombudsman had cleared Lew Owens if Lew Owens had acted illegally? Why would the Ombudsman not make known such findings but choose to turn a blind eye, given that he has royal commission powers? Why, if Ms Morgan suspected that documents had been forged, did the Ombudsman not address this concern when it was before him, and why did the Ombudsman fail to pursue Ms Morgan's FOI request vigorously at the time?

By 1997 the corporation breathed a sigh of relief, knowing that Ms Morgan's ability to expose and sue the corporation had not been realised much sooner, but this would not stop it from incapacitating her attempts to expose it over the next decade. In 1997 it may not have had the benefit of hindsight, but since then its malfeasance has been

evident, even to itself. If this conduct does not constitute corruption then we have to ask ourselves what does.

It is abundantly clear that over and over again the corporation saw the Morgan matter as one needing not resolution but, rather, management, presumably until it could wear her down, for her scandalous allegations. Indeed, these comments were made by Judge Olsson in the Supreme Court before striking the matter out. What is scandalous is that corruption of this kind cannot be exposed.

In 2000, when Ms Morgan set out to sue the WorkCover corporation for disclosing her confidential personal details to the senior auditor and his wife for their personal defamation suit, it was aided and abetted by two of the most senior executives of the corporation. Once becoming aware of the gravity of their indiscretions and appalling mishandling of the entire case, the corporation did not sit down to negotiate a quiet way out of its humiliating mess. It did not set out to apologise or settle the dispute with Ms Morgan as amicably as possible but instead became ever more determined to use the courts to crush her financially and morally, at taxpayers' expense.

In total, Ms Morgan spent over 134 days in court in just one action alone, *Morgan v WorkCover Corporation*, in the District Court of South Australia for almost seven years, with more than another seven actions, only to have her affidavit struck out by Master Norman on the grounds that the allegations contained in the affidavit would scandalise the corporation. That was the finding. They could not let this go forward, because it would scandalise the corporation. It was not that she was proven to be lying or that the information contained in the affidavit was false, but that she would simply scandalise the corporation.

She was seeking, among other things, that the CEO be imprisoned for tampering with documents and concealing evidence after waiting five years for discovery of documents. Of course, her allegations do and should create a scandal surrounding the manner in which the corporation behaves in all the South Australian courtrooms and jurisdictions, let alone with injured workers who rely upon the corporation's good faith to conduct its business legally, ethically and with a conscience.

The following is another fairly typical example of the treatment meted out to injured workers. In March 1993 an employee was dismissed by a prominent non-government church agency following disclosure of her employers' misappropriation of \$90,000 of public funds and a consistent failure to address serious shortcomings in service and safety standards.

A short time following the worker's dismissal a client had died after being burnt in hot bath water. The agency had previously been warned of the difficult and dangerous situation which existed for staff when supervising residents of this facility, but nothing was done. Meanwhile, minutes of staff meetings at which these issues had been discussed would never come to light. During a coronial inquiry, a lack of funds was blamed for the inaction.

Prior to her suspension the worker had endured 18 months of persistent harassment by her employer related to these disclosures and had sought the assistance of the WorkCover Corporation through her lodgement of a work related stress claim.

WorkCover's response was to enter into a process of effective collusion with the employer by systematically avoiding the investigation and management of the case, despite an assessment of the corporation's own resident psychiatrist affirming the work related nature of the stress condition.

The worker would many years later discover the true extent of that collusion after the WorkCover Corporation and the employer entered into an arrangement whereby the corporation would unlawfully supply the employer with the transcript of proceedings and the worker's evidence under oath at no cost, in exchange for the employer's legal representative, Ward and Partners, conducting the workplace investigations and providing the corporation with written witnesses' testimony of the workplace colleagues.

In practice, the employer's lawyers approached the manager for a witness statement, but not before first supplying him with the worker's transcript of evidence detailing her account of events central to the dispute and, accordingly, enabling the manager to construct his evidence around hers. Then, in a blatant move to verbal workplace witnesses using the manager's signed statement, the lawyers proceeded to interview key personnel by first showing them in writing what their manager would be stating under oath and effectively informing the workers, 'This is what your boss is going to say; what are you going to say?'

In a clear case of witness tampering, if ever there was one, WorkCover unlawfully delegated to the employer its own statutory powers of investigation, thus denying the worker access to any independent workplace investigation and evaluation of her claim. Concurrently to this, employees at the workplace were threatened with legal action and instant dismissal if they were discovered communicating with the injured worker. This was accompanied by the wide dissemination by the church-based employer of two highly defamatory pieces of correspondence against the worker.

When the matter of fraudulent witness statements being used to stitch up a case against the injured worker was raised with MMI Insurance's claims manager, Mr Steve Park, he initially undertook to sack the legal firm, Piper Alderman, in question. Instead, he later wrote on 3 July 1997 to the worker to assert that verballing of witnesses is a 'common and accepted practice in the industry' and that 'it is not a practice confined to just legal providers'. What possible truth, much less justice, could have emerged in any courtroom for this worker who maintains that this not only happened in her case but goes on in all other cases where WorkCover is involved? This is not just hearsay, because there are court transcripts and there are documents that prove that all of this actually occurred.

The corporation had conveniently allowed the employer's lawyers to taint and contaminate the nature of the evidence that would otherwise have been available to corroborate the worker's allegations by verballing workplace staff and most likely justified the acceptance of a legitimate claim. Unlike the employer, however, the worker was denied the opportunity of having her own witnesses present at any proceedings before they had given their evidence.

During evidence given under oath in 1993, and despite the fabrication of witness statements (which even the witnesses would later say they had not given to the

employer's lawyers, Ward and Partners), the employer had falsely maintained that reasonable attempts were made by the managers to discipline, counsel and warn the worker of alleged poor performance throughout her period of employment, but by 1994 the worker won on an appeal, which questioned the truthfulness of the employer's evidence and which was deemed to be 'circumstantial and largely based on hearsay'.

However, in 1995 under cross-examination the responsible manager conceded that in fact there had never been any disciplinary counselling or warning proceedings issued against the worker during her employment. In spite of this critical confession, the worker lost the second round of the appeal before the Workers Compensation Appeal Tribunal. It would be later discovered that the judge had been made aware of the scheme critical nature of the worker's claim prior to the worker appearing before her.

Throughout years of litigation, contact between the worker and WorkCover concerning the case largely had been restricted to review forums where strategies of demoralisation and marginalisation effectively were used against the worker, including the practice of delaying and protracting her legal case through endless postponements, cancellations and adjournments of review hearings to delay any favourable outcome for the employee. Meanwhile, vital legal precedents were emerging within the system to retrospectively help scuttle her claims against the employer and the corporation.

Amongst other things, during the worker's second round of appeals before a review officer and the WorkCover Appeal Tribunal the worker had been refused the right to call her witnesses, including a witness who had falsely been implicated as an informant against the worker. On discovering the worker's predicament, the witness agreed to substantiate the worker's allegations of perjury by key WorkCover witnesses, but was ambushed on the day of her review and presented with affidavits minutes before being forced to cross-examine surprise witnesses.

The worker had been refused the right to have the matter properly resolved at review, which was fraudulently and prematurely terminated, had the legal burden of proof shifted away from the corporation and the employer, and was forced to prove her eligibility and entitlements that were self evident, as neither the corporation nor the employer kept nor disclosed crucial written documents relating to the workplace dispute, such as duty statements, supervision notes, review files, meeting minutes and newsletters. All these records were conveniently lost or destroyed.

She had been forced to appeal a decision, which resulted in a large quantity of original documents mysteriously vanishing off the review file—documents that were crucial to corroborating the worker's own evidence under oath, and a review and appeal, which the worker had to win outright for this reason alone. She was advised that her claim had been rejected in 1993 using precedents created in 1994—one year after her case was actually heard. How can you set a precedent in 1994 and make a determination on a case tried in 1993?

It was informed that perjury by the corporation was in fact an 'inaccuracy stated without malice and therefore was not unreasonable'. She was referred to as a 'nutter' by the Workers Compensation Tribunal arbitration officer after having challenged his

jurisdiction to hear her claim, as the tribunal had ruled in another case, that WorkCover officials are immune from any civil or criminal liability under section 122(4) of the Workers Rehabilitation and Compensation Act. It could therefore not hear matters in which it was alleged that the corporation had acted illegally, improperly or maliciously, as it could bring down only one finding—against the worker.

Most alarming was the fact that the worker discovered many years into her claim that the tribunal judge was advised that her stress claim had been deemed Scheme Critical as it held a 'significant financial or legislative impact', and that her case could never have succeeded on merit. WorkCover and the worker's employer took full advantage of their access to publicly funded legal representation in order to wear down the resolve of this whistleblower through the misuse of the WorkCover legislation and their power over the judicial process.

The practice behind the Scheme Critical list was exposed on the SBS *Insight* program of 15 June 2000 entitled 'Bullies at Work'. Like something straight out of John Grisham's *The Rainmaker*, the scheme critical list is a hit list, issued by WorkCover and widely circulated to the judiciary across all courts, including the Supreme Court and the High Court and tribunals, as well as agents and legal representatives for the corporation. The cases that appear on the list are those deemed to hold significant financial or legislative impact for the WorkCover Corporation. In other words, they are cases which uniquely represent all other claims on which the corporation does not want to have to pay out.

So this Scheme Critical List contains names, the type of injury and the classification, and they do not want to set precedents for settling those kinds of cases: that is what the Scheme Critical List is all about. So, any claimants who come under that scheme critical list classification have absolutely no way of getting their pay-out or any sort of resolution of the problem.

No-one in this place needs the benefit of hindsight, as I expect the corporation would use to defend itself, that the compilation of such a list is illegal because it clearly identifies individuals by name and claim type as being tagged for obstruction. Moreover, the notion that a claim can ever be rejected or obstructed on the grounds that it holds a 'significant financial or legislative impact' is contrary to any notion of social justice or statutory duty and obligation as it attaches to any claim two additional, secret criteria, which:

- are not made known to the worker;
- cannot be challenged, as the Workers Rehabilitation Compensation Act does not provide for any appeal on such criteria or grounds; and
- cannot be independently evaluated, as such criteria are not governed by any publicly-known guidelines; that is, how might one demonstrate that a claim does not hold significant financial or legislative impact?

Imagine going to Centrelink and applying for a pension only to be told that, although you meet all their legislative criteria, you will not be receiving your entitlements—and then be unable to challenge the decision or even know how such a decision was

ever reached. It is unconscionable to think that that could occur and it is unconscionable to think that, because a particular worker in Centrelink may not like 55 or 65 year olds, they could actually refuse your rightful claim to a pension. That is exactly how this Scheme Critical List is applied.

Workers on this hit list, and their legal representatives, are never informed of the scheme critical nature of their claims and are often left to flounder in a justice system which is not permitted to rule according to the merits of their claim. Instead, for the most part judges are forced to rule in WorkCover's favour. If that does not happen, then the corporation usually appeals the decision (as its own memos show and as I stated earlier) and uses the indemnity issue as leverage with which to win. This is because courts and tribunals have routinely sought to have workers indemnified from wearing the costs of an appeal (supposedly to protect workers from legal costs).

However, WorkCover has seized on this practice to ensure that only appeals advantageous to its objectives proceed by refusing all others indemnity from legal costs. Thus, merit-worthy appeals are stopped dead in their tracks—especially those where the corporation's interpretation of legislation is the matter being challenged. This practice also ensures that the corporation can set its own legal precedents in an absolute win-win for the corporation and in a forum that it has already stitched to its advantage.

My information is that hundreds of injured workers' names have been deemed scheme critical over the years—and I have actually seen this list and its title for myself, so there is absolutely no doubt that the scheme critical list exists—and the claimants are being forced to unwittingly play out their workplace issues in courtrooms that never had any intention of delivering them a fair hearing, much less an outcome.

In 1999 the worker referred to earlier won leave to appeal to the Full Supreme Court on many other outstanding matters, which suggests that the worker had a legitimate and live claim against the corporation and employers all along. However, despite many years of futile and expensive litigation, leave to appeal was not pursued by the worker due to the existence of the Scheme Critical List and the likely adverse impact that would have had on a claim ever succeeding before any South Australian court.

This injured worker was told by WorkCover that hers was an isolated case. I expect the board and its executives would also claim that their practices have significantly improved over time, but we can see that this probably has not occurred, that the misconduct and dysfunction continues unabated and unchecked, because of the ever-flourishing unfunded liability—as was the case with the example of the Victorian police.

The WorkCover blog website has countless stories from injured workers, and I will read just a few of those which highlight the desperation of those trapped within this despicable and degrading system. Under the title 'Medical Certificates' the blog says:

Has anybody experienced case managers or rehabilitation consultants who ignore what your medical certificates state? Or try and entice your doctors to even change them to suit their needs?—Abused.

Under 'Duty of care' it says:

It is not simply that one has been on the system for an amount of time, it's what happens to that worker when they are on the system. Some of the information I have in my 107 file does suggest they have no intention to rehabilitate me. These providers are employed because they are well aware of their duties and therefore have taken on the responsibility.—Had enough.

A posting by 'When Enough is not Enough' under '107B' says:

If you think you got all of your documents under 107B...try again...carry out an FOI application simply asking for 'all records relating to me'. Then carry out an internal review. After that's done check all of your documents and if you suspect some are missing or some are withheld ask for an external review with the Ombudsman...just to be thorough. If there are any external service providers involved like rehab providers, private investigators, lawyers for WorkCover you should also get all of their documents. Then you get a real picture of what's going on...

If your rehab consultant acts a bit funny towards you, your case manager is being an asshole [excuse the language] and your weekly income cheques are irregular or do not arrive on time and you find something like this in your file that is addressed to a supervisor or someone in WorkCover then you know that they are now on your back... This worker does not want a redemption. What do you suggest? Intensive rehabilitation? Surveillance? What else?

You were wondering about the what else...well all those rumours you read about verballing the witnesses and investigators showing doctors video evidence and asking them to comment without verifying whether any of the information is true...the rumours obviously are not made up.

Under 'How many more reviews', 'Anonymous' asked:

How many more reviews do they need? While reviews are being undertaken they keep up the 'same old same old' ripping off the workers which was NOT the intention of the original legislation or intent of parliament.

Forum:

I am willing to attend any forum to have my file made public.

I am willing to sit with the review panel and have my file scrutinised.

I am willing to starve myself in protest until such action is done.

For the people that know me well, these comments will not surprise them. For people who would like to dare, be prepared.

That means people who would dare to get caught up in this WorkCover system. This is probably the most heart wrenching of all. It is entitled 'A prayer for WorkCover staff and EML employees,' and it states:

I pray for all workers at WorkCover and all the case managers at EML.

I pray that what goes around comes around.

I pray that your children and family be blessed with the same suffering and trauma I have experienced while on WorkCover.

I pray that when you take the cup to drink that you think of the blood that has been spilled of injured workers .

And when you eat the bread, you think of the bodies and injuries that have been suffered of the injured workers.

And when you sit in silence think again of how you have failed to help the injured who are oppressed and unable to fight , for they are the ones who are needy in this world and who the system is failing.

I pray that those you treat unfairly in your daily work will forgive you some day , because sure as day is day and night is night there are many that know not how to forgive after being so unfairly treated for such a long time , I being one of them.

I pray that you and your children end up on WorkCover and be traumatised by poor claims management year in year out.

May they never receive their due entitlements. And when your children want to end their suffering and redeem their entitlements I hope that their claims are settled unfairly with not a care for their injury and suffering.

I pray for Bruce and the board for they know not what they do .

I pray that they may have more understanding and insight into the lives and suffering of injured workers trapped on a system that cares little for the human lives it consumes.

I pray that the board fix the system without regard to their own interests but in the interests of the employers and the injured workers.

Amen.

PS : I am not praying for a miracle, that's why I did not pray that the minister will do anything.

Posted by The Vicar.

As tragic as they are for the parties involved, these stories do not compare with that of another injured worker, Mr Markham Moore-McQuillan, whose case I wish to highlight. He is another claimant on the scheme critical list whose case demonstrates just how very special the treatment is for those whose names have appeared on the list over the years.

Mr Moore-McQuillan was a highly skilled, highly employable and well-paid shop manager and master instructor working for the Dive Shop. He worked in both roles concurrently. Mr Moore-McQuillan first lodged his WorkCover claim in 1990 for what the corporation claimed was a simple knee strain in the left knee after a fall. However, specialist reports showed that both knees had ligament damage; cartilage; cruciate ligament tears, both kneecaps had been dislocated; muscle splits; dislocated toes; damaged hips; chips in the femur and tibia; and associated injuries.

This one action would result in no fewer than 95 separate court actions over 17 years involving the dispute between Mr Moore-McQuillan, the agents, WorkCover Corporation, the police and other authorities in almost every jurisdiction in the state. He would even serve gaol time, and he is still facing a significant gaol sentence for contempt of court as we speak. After 17 years of being in this system and not getting any outcome, I am surprised that it is only contempt of court that he has been charged with.

Mr Moore-McQuillan calculates that no fewer than 1,000 court appearances, not including his appearance before eight High Court matters, with an average of 3.5 days per week, have been spent in a South Australian court or tribunal since it all started back in 1990. Most of this court time has been spent blocking or challenging Mr Moore-McQuillan's entitlement to discovery and FOI access to documents that would corroborate his account of events and defend him from malicious restraining orders and charges of fraud—convictions which still stand against him to this day and which were acquired by WorkCover through deception.

Once his claim was deemed scheme critical, the corporation appears to have taken extreme measures to avoid its liabilities to Mr Moore-McQuillan and deny him his claim. This started when WorkCover began by underpaying Mr Moore-McQuillan in August 1991. When he protested, it began to stitch him up for fraud, including levelling outrageous restraining orders and having him under constant surveillance. Mr Moore-McQuillan would like to know, as I would, whether anyone from WorkCover can produce figures for his wage calculations and explain why he has been continually underpaid since 1990 from his lawful entitlement pursuant to section 4(7) of the Worker's Compensation Act 1986, which provides:

4— Average weekly earnings

(7) Notwithstanding the foregoing provisions of this section—

- (a) where a disabled worker's remuneration was, at the relevant date, covered by an award or industrial agreement, the worker's average weekly earnings shall not be less than the weekly wage to which the worker was then entitled under the award or industrial agreement;
- (b) if, but for this paragraph, the average weekly earnings of a worker (not being a self-employed worker) would be less than the prescribed amount, the average weekly earnings shall be fixed at the prescribed amount;

(c) the average weekly earnings of a worker shall in no case be fixed at more than twice stage average weekly earnings.

This would have entitled Mr Moore-McQuillan to \$1,800 per week (as it was back in 1990). However, WorkCover only ever paid him \$625 per week. It is easy to see why the corporation would have set out knowingly to deny Mr Moore-McQuillan the remaining balance of \$1,100 per week from the outset and why his claim would have become so scheme critical. However, in trying to save itself \$2,200 a fortnight, it has cost taxpayers many times more and all but destroyed Mr Moore-McQuillan's professional career and personal standing and reputation in the community. It has forced him into bankruptcy and denied him an otherwise fruitful existence. However, he still has to live with his injuries, having had no genuine rehabilitation or return to work.

WorkCover should show clearly where it has complied with section 4 and section 4(7), but it has consistently failed to do so, and no judge in this state has ever compelled the corporation to do exactly that. Why would any judge require the corporation to be called to account when the case is scheme critical and the judges hearing his matters have known it to be so all along? It was stated in 2001 at the Adelaide Magistrates Court that Mr Moore McQuillan's case alone has represented 10 per cent of the Lawson and Downs (now Lawson and Smith) legal firm's annual turnover, so it would be conservative to say that Mr Moore McQuillan's case has cost the taxpayer at least \$1 million annually.

To highlight the monumental stupidity of WorkCover's conduct of this case, in September 1995 at the Workers Compensation Tribunal, Stan Coulter for the WorkCover Corporation admitted that he had not been honest with Mr Moore McQuillan that he would review and investigate all his outstanding legal matters and grievances. Mr Coulter was subsequently commended in a memo from Lew Owens (then CEO), congratulating him on a good job well done in stonewalling the resolution of Mr Moore McQuillan's claims for his lawful entitlements.

Mr Moore McQuillan states that the WorkCover lawyer for Gunn and Davey confessed to him in front of Judge McCusker at the tribunal, 'You're innocent in the workers compensation tribunal but you are guilty in the Adelaide Magistrates Court.' And no wonder, when the courts have given the corporation absolute immunity from any wrongful, corrupt or illegal activity by ruling that section 122(4) gives it absolute indemnity. The subsection reads:

122—Offences

(4) Subsection (1) does not render the Corporation, a member of the staff of the Corporation, or any person acting on behalf of the Corporation, liable to prosecution for any acts or omission related to the administration or enforcement of this Act.

Another injured worker, Mr Phil Moir, has undertaken considerable research scrutinising WorkCover's figures and expenditure. He has had many letters to the editor published questioning the truthfulness of WorkCover's reporting and, indeed, the minimisation of its unfunded liability. When his initial claim was lodged,

WorkCover summarily rejected it, forcing him to appeal. WorkCover then sent him to a WorkCover specialist who fully supported the claim, yet WorkCover again rejected it.

In the chambers conciliation conference the Deputy President asked WorkCover representatives whether they had even read the report from their own specialist and, if so, what they were doing there. The Deputy President apologetically advised Mr Moir to do everything he could to not go on WorkCover because, in his experience, the system tends to do more harm than good to those trapped in it. WorkCover ignored the Deputy President's instruction and proceeded to court. It lost on every point yet, after costs were paid, Mr Moir was still \$25,000 out of pocket.

Despite section 26 of the act mandating that it must enter into a rehabilitation program, it has refused to do so for 11 months, with an unfounded demand that, unless Mr Moir's GP changes her diagnosis about his capacity for work, it would not support any request for his rehabilitation. Mr Moir has requested the right to enter into a rehabilitation program on 22 occasions since December 2006 but on each occasion his request has been rejected. He has asked his rehabilitation provider, DePoi Consulting (whose principal sits as a member on the WorkCover board) to allow him to obtain a blank copy of the proposal so that he could prepare his own program to submit, but EML has instructed her not to support his request.

Mr Moir also proposed numerous rehabilitation and retraining activities, including skills training, academic courses, volunteer work in the office of a member of the upper house (not my office, by the way, I will clarify that) and to participate in workers compensation conferences. Because they do not like his attempts at rehabilitating himself, the corporation has simply ignored him and refused to respond.

On three occasions in the past three months EML case management staff have been objectively caught out misleading investigations conducted by the so-called independent complaints resolution unit yet, despite the evidence proving they have lied, there is no right of redress for Mr Moir. Mr Moir writes:

WorkCover has complete contempt for injured workers and, due to poor management decisions, the scheme in South Australia is facing near billion dollar debt whilst charging the highest levies in Australia. Their management and agents are getting more desperate and workers are now being treated in a manner that borders on inhumane.

Highly regarded psychologist Dr Darryl Cross has recently spoken on FiveAA and slammed the system as being intimidatory, neurosis-inducing and one that treats workers with suspicion and contempt. Of more concern, he stated that there are an increasing number of medical specialists that simply refuse to deal with a patient if they are on WorkCover. A former investigator also said on FiveAA that he was told to use compromising evidence of a woman's infidelity to coerce her to drop her injured shoulder claim.

The real tragedy, however, lies in the suicide rate of injured workers trapped on benefits. In society at large the incidence of suicide is 14 per 100,000. Approximately 3,700 workers go onto benefits annually, and in the past five years 20 have suicided.

That represents an accepted rate of 80 per 100,000, tragically, eight times greater than societal averages.

In 2000 the average redemption payment offered to permanently incapacitated workers was 3.5 years average weekly earnings. In 2006-07 that payment averaged 11 months average weekly earnings. Despite Michael Wright saying on radio that redemption payments should be fair, it is obvious they have become manifestly inadequate. This in turn leaves injured workers with no choice but to remain on benefits, in turn pushing the future liability past the \$2 billion level. All we ask is that WorkCover comply with the written intent of the legislation and stop treating injured workers like criminals.

In another letter Mr Moir wrote:

You may be interested to know that I have capitulated to the pressure and bullying tactics of WorkCover and have accepted a token redemption that goes against the best advice of my lawyers, professional financial planners and of course the stated intent of the legislation.

Sadly, as a victim of this callous scheme, one is so very alone and when people in positions of authority are so willing to accept the tactics and lies perpetrated by WorkCover rather than look at the objective facts and hold them accountable, I felt I had little choice but to walk away, else risk becoming just another sad statistic hidden in the spin.

In a touch of irony, the lying sods at EML had the audacity to tender a rehabilitation plan that I submitted for its consideration in May—the one it refused to sign—as evidence that it actually had me on a rehabilitation plan. Besides contemptuously misleading the tribunal, it was this final act of cowardice that made me realise that the truth has no bearing on the outcome and those charged with managing the scheme have no conscience.

The Workers Compensation Tribunal conciliator, and even the lawyer for WorkCover, were genuinely apologetic and accepting that the scheme was being managed in an illogical, callous and unfair manner, and they suggested that the only people in South Australia who are not aware of the impact that the policies are having on those genuinely injured workers are the board and the management of WorkCover.

In the end, I felt I had no option but to give up before their actions completely destroyed me. I only pray that I can return to some semblance of health before the money runs out. Mr Clayton, this is not a good outcome for my family. This is not a good outcome for WorkCover or EML. It is simply a travesty that the scheme has become so bereft of conscience that its agent destroys people's lives in its attempts to save money, regardless of the consequence. I do wish you well with your review—

he says—

and sincerely hope that you do not forget that behind the numbers are real people with real problems being managed by people of questionable motives and ethic.

The WorkCover Corporation operates like a cartel, defended by most of South Australia's legal fraternity which sits somewhere on its payroll and on whose business they depend, so much so that the true WorkCover model has been captured by vested business and other interest groups. South Australia had been set back to the litigation processes which it faced pre-1986, fighting rogue employers, multinational insurance companies and corporations. The only difference now is that it has no protection under common law and no independent sources of representation to whom it can complain.

What we need now is some serious bloodletting, very much as Sir Robert Torrens was able to achieve in the mid-1800s. At the time the process of property transfers was overseen by a greedy legal profession and corrupt judges whose conduct caused many people to lose their property by the time the sale or transfer was completed. Often, this was a futile endeavour as documents of title could not be traced, and it is believed that over 5,000 existing claims to land were actually of doubtful validity.

Although Sir Robert Torrens gave us the Torrens title system, which is used across the world today, this was not before he took on the legal profession in relation to real property transfers. That cartel was not broken until Torrens was able to ensure the removal of a particular judge. Today, it is a greedy corporation that oversees the process of rehabilitation and compensation to injured workers, with many of its greatest stakeholders sitting on the board. The only difference today, as compared to pre-1986, is that there is a greater order and structure to how lawful entitlements of injured workers can be ripped off.

It is the small business sector and injured workers who are paying for our inaction. Every member in this place, and in the other place, should be working to seek a solution that brings back justice for injured workers, as was intended by the original bill in 1986. If we are not committed, we should explain why it cannot be done to allow people the choice of whether they would ever access WorkCover at all because, inevitably, so many are far worse off for the experience.

Debate adjourned on motion of the Hon. J. Gazzola.