



WORKERS COMPENSATION AND OH&S NEWSLETTER November 2000

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Editor's Note

In this issue the following terms are used:

Employment Injuries - all injuries which result in workers compensation claims of 5 days or more off work (includes injuries at work, on the journey, during recesses and occupational diseases).

Workplace Injuries - injuries which occur at the workplace or during a work break which result in workers compensation claims of 5 days or more off work. (do not include diseases)

All Injuries - refers to any injury regardless of whether a workers compensation claim is lodged.

We apologise for the confusion in the terms, but it was not of our making.

Basic Ministerial Skills:

- 1) Blurring issues
- 2) Delaying decisions
- 3) Dodging questions
- 4) Juggling figures
- 5) Bending facts
- 6) Concealing errors

*Sir Humphrey Appelby's diary - Saturday January 3rd
1987.*

Readers of previous editions of COMPAS will have followed our commentaries on the state of play in the NSW workers compensation scheme and may have formed a view that all was not well.

In this issue of COMPAS we have taken relevant extracts from Parliamentary proceedings as reported in Hansard to illustrate the practice of the basic Ministerial skills as they have been applied in some of the debate over workers compensation scheme reforms.

Extract from the 52nd Parliament, Legislative Council
Hansard 12.10.2000, Page: 9173

The Hon. R. D. DYER: "I ask the Special Minister of State whether he will advise the House of the latest trends in workers compensation statistics?"

The Hon. J. J. DELLA BOSCA: "The WorkCover Authority is about to release its annual statistics bulletin covering the period to 30 June 1999. I am pleased to report that on a number of major fronts the incidence of injuries has improved greatly. The good news for everyone is that the data indicates that some key areas of the scheme have improved. The total number of employment injuries in 1998-99 fell for the fourth successive year. The number of injuries in 1998-99 was 55,492, which is a 12 per cent fall since 1994-95. The incidence of employment injuries has also dropped from 28 per 1,000 workers in 1994-95 to 23 per 1,000 workers in 1998-99. During the same period the number of entries per million hours worked dropped from 16.1 to 12.9.

Although far too many workers continue to die as a result of work-related injuries, the number of fatalities has fallen in the last year: 163 deaths were reported in 1998-99, which is 18 fewer than the previous year.

Since the Government took office its commitment to occupational health and safety has paid dividends by saving the lives and health of the workers of New South Wales.

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Across a wide range of injury types, injury and illness rates have fallen.

The number of workplace injuries has fallen, with 766 fewer injuries reported during the period from 1994-1995 to 1998-1999. The number of occupational diseases has fallen by one-third from approximately 14,000 in 1994-95 to 9,000 in 1998-99.

The reported number of cases of mental disorders also declined in 1998-99. Some 1,682 cases were reported, which represents a reduction of 226 cases from the previous year. I am also pleased to note that the injury management and return-to-work rates in the scheme have increased. A national survey of return-to-work rates shows that New South Wales has a return-to-work rate of 81 per cent, compared to the national average of 76 per cent. We are definitely making some ground in improving the scheme. However, we must remember that the 3 per cent of claims that extends beyond one year makes up 75 per cent of the costs in the scheme.

The reform process we have started focuses on helping people to fully recovery from injury. Our priority is for injured workers to return to a full working life as quickly as possible. With a commitment to thoughtful reform, more workers and the scheme as a whole should be better off. Copies of the "The Statistical Bulletin 1998-1999" are available by ringing the WorkCover Information Centre on 131050, or honourable members are welcome to contact my office."

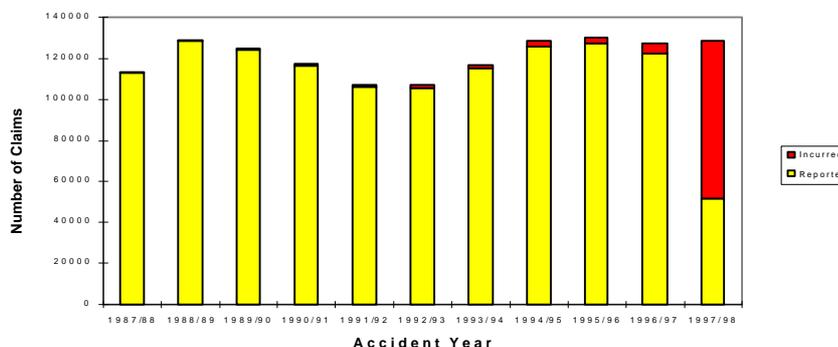
The Minister's reply to the question without notice from one of his own party's senior members^① seems to be very comprehensive and detailed (unkind observers might even say rehearsed).

COMPAS has obtained copies of the statistical bulletin referred to by the Minister. We have also obtained copies of similar statistical bulletins published by the WorkCover Authority going back to 1993-1994.

On the following pages we have set out various data extracted from the bulletins which explain the basis for some of the statistics given by the Minister in his reply.

(Continued on page 3)

NUMBERS OF CLAIMS REPORTED



Source: WorkCover Authority

NOTES

①
The Hon. (Ron)
Ronald David
DYER, M.L.C.
Dip.Law,
Dip.Crim.
M.L.C. since
1979 (casual
vacancy). Re-
elected 1984,
1995. Term
expires 52nd
Parliament (28
February 2003).
Chairman NSW
ALP Legal and
Administrative
Committee:
1976-1988.
Member NSW
ALP State
Executive: 1969-
71. President
NSW ALP Youth
Council: 1969-
70.

(Continued from page 2)

“The total number of employment injuries in 1998-99 fell for the fourth successive year.” JJ Della Bosca.

The number of employment injuries^① referred to by the Minister only includes those where **five or more** days were paid for total incapacity.

The actual number of injuries is much higher (likely to be double the number quoted) as can be seen from the trends shown in the graph on the previous page.

“The number of injuries in 1998-99 was 55,492, which is a 12 per cent fall since 1994-95.” JJ Della Bosca

On November 10 1995, the Carr Government introduced a provision to the Workers Compensation Act which imposed a threshold of 6% loss for industrial deafness claims. Over the next five years this has had a dramatic effect on the number of claims lodged. Of course, this is not the same as reducing the numbers of injuries sustained, these have remained relatively static. The only change has been that workers are no longer permitted to claim compensation for a large number of them.

On 25.6.98 a similar question about the decline in the number of work injuries was asked by the Hon B.H. Vaughan of the then Minister Shaw and elicited this response:

The Hon. J. W. SHAW: “Latest data available from WorkCover New South Wales indicate that employment injury claims received in 1996-97 were the lowest in five years. There were 173 workers compensation claims for fatalities and 15,605 for injuries in 1996-97, the lowest since 1992-93, when there were 156 claims for fatalities and 12,285 for injuries.

Employment injury claims include those resulting from workplace accidents, as well as non-workplace injuries while the worker is still on duty, and occupational diseases. **The reduction is attributed to a 44 per cent drop in industrial deafness claims, which have fallen from 10,684 in 1995-96 to 5,979 in 1996-97. This is due to loopholes being closed to ensure that a more genuine level of claims is received.** Industrial deafness claims soared in the early to mid 1990s with the growth of companies touting for business.”

The table below shows data extracted from WorkCover publications^②. It substantiates Minister Della Bosca’s claim that the number of employment injuries has fallen over the last four years by 12%, but for the reasons given by Minister J Shaw.

(Continued on page 4)

Year	Employment Injuries	Workplace Injuries	Diseases
1993/4	58,589	39,307	16,110
1994/5	62,840	42,504	16,811
1995/6	62,469	42,648	16,211
1996/7	60,109	44,654	11,394
1997/8	58,604	43,492	10,176
1998/9	55,492	41,739	9,567

NOTES

① See Workers Compensation Statistical Bulletin 1998/1999, Explanatory Notes

② Workers Compensation Statistical Bulletins, 1994/5 to 1998/9

(Continued from page 3)

It also shows that the number of injuries sustained in the workplace (as opposed to diseases, recess and journey injuries) has only fallen by 1.67% over an equivalent period.

“The number of occupational diseases has fallen by one-third from approximately 14,000 in 1994-95 to 9,000 in 1998-99.”

JJ Della Bosca.

The numbers of diseases reported in the latest bulletin are as set out in the table on the previous page. By claiming that 9,567 is approximately 9,000 is perhaps excusable, but to claim that 16,811 in 1994/5 is approximately 14,000 is certainly stretching the imagination.

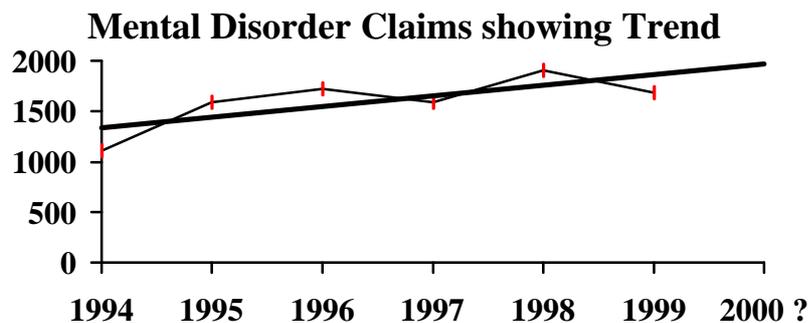
But then again, the data in the statistical bulletins is suspect. For example there is a computational error in the number of employment injuries in Table 1.2.5^① of the 1998/9 Bulletin. A quick summation of the numbers of injuries by geographical region does not make 55,492 as reported. It overstates the number of injuries by 251.

“The reported number of cases of mental disorders also declined in 1998-99. Some 1,682 cases were reported, which represents a reduction of 226 cases from the previous year” JJ Della Bosca.

In this the Minister is correct. What was missing in his answer is that despite changing the Workers Compensation Act in 1996 to impose restrictions on mental disorder claims, the trend in numbers reported is rising.

Year	Deafness Claims	Deafness Claims as % of all Claims	Mental Disorder Claims
1993/4	10,928	18.65	1,109
1994/5	11,211	17.84	1,588
1995/6	10,684	17.10	1,720
1996/7	5,979	9.94	1,587
1997/8	4,824	8.23	1,908
1998/9	4,741	8.54	1,682

The table below shows the trend in the numbers of mental disorder claims reported. The data is taken from the Statistical Bulletins as before.



NOTES

① See page 16, Statistical Bulletin 1998/9

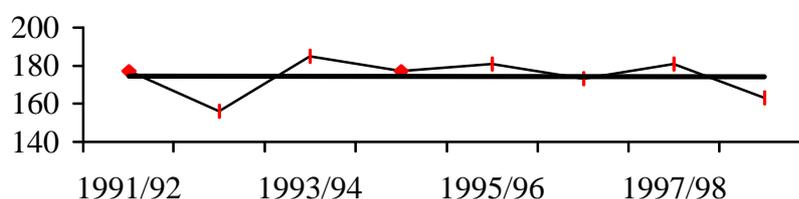
“Although far too many workers continue to die as a result of work-related injuries, the number of fatalities has fallen in the last year: 163 deaths were reported in 1998-99, which is 18 fewer than the previous year.” JJ Della Bosca

Yet again, the Minister is less than forthcoming in his answer. He fails to point out that the fatal injury incidence rate^① at 6.8 in NSW is among the highest in the world. As reported in previous issues of COMPAS, NSW has an appalling record of work related deaths, a record that does not appear to be improving.

NOTES

①
Fatal Injury
Incidence Rate is
the number of
fatalities in a
given period per
100,000 workers

Numbers of Fatalities showing Trend



“Since the Government took office its commitment to occupational health and safety has paid dividends by saving the lives and health of the workers of New South Wales.” JJ Della Bosca.

This bald assertion is probably correct if one is prepared to selectively compare the various data. The facts underlying the Minister’s answer to the question posed by his colleague suggest that the true picture is very different.

“A national survey of return-to-work rates shows that New South Wales has a return-to-work rate of 81 per cent, compared to the national average of 76 per cent.” JJ Della Bosca

The National Survey of return to work rates we found was referred to on the Victorian Government’s WorkCover web site.

During the 1999/2000 financial year a total of 3,221 interviews (1,623 in November 1999 and 1,598 in May 2000) were conducted nationally in New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria, ACT and Comcare.

The sample consisted of injured workers who:

- submitted a claim seven to eight months previously;
- had not been included in another workers' compensation survey in the previous 12 months; and
- had more than 10 days compensation (including any excess) paid.

In Victoria, during 1999/2000 about 85% of injured workers had returned to work for some period during the eight months period between submitting a claim and being interviewed. **This compares to a national average of 86%.**

Must it always be thus?

The incidence of work injuries is not markedly declining and limiting injured workers' access to compensation benefits is not the solution to safer workplaces.

The workers compensation system continues to fail in meeting its objectives. It is neither affordable nor equitable and too many grow fat on the suffering of injured workers.

The Carr Government has a five year history of failing to act decisively to reform the system and both of the Ministers responsible have taken inconsistent approaches to the problems of the scheme.

In the meantime NSW employers pay the second highest average workers compensation premium rates in Australia and are now responsible to repay by far the biggest workers compensation debt.

Workers Compensation Legislation Amendment Bill 2000.

The legislative package to be debated in the Parliament contains no changes to the term "injury" as defined in the Workplace Injury Management and Workers Compensation Act 1998 (the 1998 Act). Given the gazettal of the Workers Compensation (Workplace Injury Management) Amendment (Offences) Regulation 2000 on 20.10.2000 we must conclude that this is an oversight.

As we understand it, the new Regulation came into effect on 1.11.2000 and introduced on the spot penalties of up to \$500 for employers which do not report injuries to their insurers within the given time frames.

According to the 1998 Act "injury" means a personal injury arising out of or in the course of employment, and includes:

- (i) a disease contracted by a worker in the course of employment, where the employment was a contributing factor to the disease, or
- (ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration.

As all employers are aware (but seemingly not the Government) the incidence of injury is very much higher than the incidence of workers compensation claims. Most injuries are very minor in nature, requiring first aid or no treatments at all.

Section 44(3) of the 1998 Act states that if a workplace injury does not seem to be a significant injury, the employer must notify the insurer within 7 days after becoming aware that the worker has received the injury.

It is estimated that all injury numbers are up to 10 times greater than those of workers compensation claims made each year ie, over 1,000,000. We wondered just how the nine insurance companies are going to cope with 1,000,000 injury reports each year and what exactly they are intended to do with the reports once they are made?

Perhaps the introduction of this new Regulation is a cynical strategy to reduce the scheme's \$1.6 billion deficit?

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www.risknet.com.au

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