

# WORKSTREAMS NEWS

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## Inside this issue...

WorkCover guidelines keep hurting employers	1-2
NSW Government slams the Federal Government plans on self	2
Wear long pants or else	3
The lucky country gets smarter	3
Libs to dump safety charges	3-4
10% cut in WorkCover is a good step in the right direction	4

## WorkCover guidelines keep hurting employers.

In the last few months the Victorian WorkCover Authority has introduced a few guidelines that are going to hurt employers, cost millions of dollars in increased premiums and will restrict even further the number of independent medical examinations creating huge problems for employers and claims managers. Often Section 112 of the Victorian Accident Compensation Act 1985 is the only defense against fraudulent or malingerers injured workers. To restrict its access and to limit the authority to arrange these examinations to Injury Management Advisors and Technical Managers within the agents means that employers and claims managers will have to go cap in hand and cajole, beg and grovel to have the examination arranged on a regular basis. The role of independent medical examinations cannot be overemphasized. It is the only moment when a trained medical specialist unbeknown to the worker and therefore independent can ascertain the level of physical or mental capability of the injured worker so as to determine if and when the worker can return to work. WorkCover states that it cannot waste money. Alleluia. No one is interested in wasting the scheme money, especially those who pay for it, the employers. This is, the opposite way of going about restoring trust and faith within the system. What the new guideline does is limit the only check and balance mechanism that can assist in claim resolution.

### It will mean that:

- often conciliation cases will be lost because of the absence of fresh independent evidence
- Return to work will be delayed even further
- Unscrupulous general practitioners will have free reins
- Recalcitrant injured workers will be stuck on modified/alternative duties.

No wonder that according to the last survey conducted by the VWA, injured workers are reporting a much greater level of satisfaction with WorkCover. Employers and case managers are noticing the impact that this decision is having on the RTW rate.

Another development regards the agent's ability to terminate payments in cases where the worker is deemed to be non compliant. Under the sections S93A(4), S93B(4), S93CA(4), S93B(4), S93CC(5) the worker is not entitled to compensation.

"If a worker did not make every reasonable effort to return to work in suitable employment at the employer's workplace in co-operation with the employer and the VWA."

...Continued from Page 1

Now we understand that the VWA is diluting this section of the Act by demanding that agents do the following:

**“Prior to issuing a termination in these circumstances the agent must:**

- establish that the worker has not complied with the Act; and
- it is suggested that once the agent established an instance of non compliance/participation, the agent should issue a letter outlining the workers breach of obligations and inform the worker of their return to work obligations. This letter should also state that any further breaches may lead to the termination of the workers weekly payments; and
- where an agent believes they have enough information to issue a termination they must contact the worker and ask the worker to explain why they appear to be non-compliant. Upon receipt of an explanation from the worker the agent can determine whether to proceed with issuing the termination, taking the workers explanation into consideration. “

**This instruction will mean:**

- long delays before terminations can be issued
- uncooperative workers being “rewarded” for non complying
- higher claims costs due to longer periods off work
- greater production costs whilst injured workers are off work

Where are the employer groups and what are they doing for the annual fee paid by employers.

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## NSW Government slams the Federal Government plans on self insurance

Allowing large companies to self insure for workers compensation will be a disaster for workplace safety according to the NSW government. Federal, state and territory workplace ministers last week failed to agree on harmonising Australia’s Occupational Health and Safety (OH&S) regimes. After meeting in Sydney with federal Workplace Relations Minister Kevin Andrews, the ministers said they were not convinced the move would not lead to safety standards being lowered.

The Federal Government also signalled that larger companies using the federal workers compensation agency Comcare would no longer need to comply with state occupational health and safety laws.

“Their plan is a disaster for workplace safety and it’s backed by a woefully inadequate inspectorate,” NSW Minister for Industrial Relations John Della Bosca said today. “It signals a workplace free-for-all for

large employers.” Mr Della Bosca said NSW already had an effective system. While Comcare had only eight staff in NSW, he said Workcover NSW had an inspectorate of 301.

“The incidence of workplace injuries and fatalities in NSW is at an 18 year low, but that is no reason for the Commonwealth to allow large companies to effectively self-regulate when it comes to safety.” Mr Della Bosca maintained the state’s commitment to the NSW Industrial Relations Commission to hear and determine wage cases.

“The Federal Government’s Fair Pay Commission cannot be trusted to deliver adequate wage relief,” he said in a statement. Victoria’s WorkCover Minister, John Lenders, has joined other state and territory ministers in threatening to boycott further meetings with the Commonwealth on the future of workplace safety.

## Wear long pants or else

Work gangs on Queensland roads will be forced to ditch shorts by the end of the month and wear long trousers instead.

Despite complaints from some workers that it doesn't suit the Sunshine State's climate, Main Roads acting deputy director-general Ray Breust said the change was all about health and safety. He said it would be compulsory for Main Roads staff and contractors working outdoors to wear long pants from May 31. "Construction sites are hazardous places to work in. Main Roads' commercial arm RoadTek reported 50 injuries to the knee and lower leg between July 2002 and January, 2004," he said. "These included abrasions, bruising, burns, lacerations, snake bites and insect bites. "This does not include other injuries such as sprains, strains or injuries to ankles."

Mr Breust said Main Roads had been talking with its staff and with unions for the past two years over the change which he hoped would also cut down on skin cancers. "Queensland Cancer Council figures state that almost eight per cent of skin cancers appear on the lower leg," he said. "A skin check for the 128 employees at RoadTek Nerang showed 57 needed further testing or biopsies.

## The lucky country gets smarter

Australians are taking more opportunities to participate in work-related training courses, according to results released by the Australian Bureau of Statistics (ABS).

Between 1997 and 2005, the proportion of people aged 15 to 64 years who were in, or marginally attached to, the labour force and not attending school, who had completed a training course increased from 42% to 48%.

However the average training hours for those who were employees (excluding people in their own incorporated business) declined from 20.6 hours to 14.7 hours per course. The total training hours decreased from 148.6 million hours in 1997 to 139.0 million hours in 2005.

Thirty-seven percent of people aged 15 to 69 years had completed a total of 11.2 million work-related training courses in the 12 months to May 2005 (details were collected on up to four training courses).

Half of all work-related training courses completed were provided by the participant's employer, and 27% of participants had received some additional financial support including study leave, payment of fees or travel expenses. Financial support could be provided by employers, the government, family members or other sources such as union or professional organisations.

Some 2.7 million people in 2005 were studying at school level, or for a vocational or higher education qualification. A further 440,000 people were undertaking a course of study not leading to a qualification, including bridging, adult education and recreational courses.

The proportion of people aged 15 to 64 years with non-school qualifications who were in, or marginally attached to, the labour force and not attending school had increased over time, from 46% in 1993 to 62% in 2005. Over this period, the percentage with a Bachelor Degree or higher increased from 13% to 23%.

## Libs to dump safety charges

A COALITION government in NSW would freeze all workplace safety cases before the state's industrial court, The Australian has learned. In his first workplace policy announcement since becoming Opposition Leader nine months ago, Peter Debnam said yesterday that unions would lose their privileges under state occupational health and safety laws, including the right to prosecute businesses for safety breaches and retain a "moiety", or half, of any fine imposed.

"We're going to axe the union bounty," Mr Debnam said. "OHS legislation is being used to channel money through the unions to the Labor Party for their election campaigning. "I think it's a total betrayal of employees and it shows why we have one of the highest unemployment rates in Australia." Premier Morris lemma was "turning NSW into a union fortress for the comfort of the union hierarchy".



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*...Continued from Page 3*

The move to freeze prosecutions if the Coalition wins power next March follows the announcement by the Labor Government this month that the duty of care imposed on employers would be reduced to bring NSW into line with the other states.

The Coalition maintains it would be unjust to continue prosecutions of employers, which assume an absolute duty of care, when in future businesses will only need to do what is "reasonably practicable" to provide a safe workplace.

Given the NSW industrial court adjudicates on more than 100 workplace safety cases a year, many of which have taken years to process, the Coalition will inherit a significant case-load if it wins the state election.

Mr Debnam's OHS changes would go much further than Mr Lemma's. As well as abolishing the union prosecutions, he would remove the financial incentive for WorkCover - which also retains a moiety under current laws - to prosecute safety breaches. All fines would go into general revenue but would be earmarked for other workplace safety initiatives.

While Mr Lemma says he will abolish the right of WorkCover to appeal in cases where OHS prosecutions fail, Mr Debnam will for the first time allow businesses the right of appeal to the NSW Supreme Court after prosecutions succeed.

"WorkCover has an appalling history of stormtrooper enforcement," Mr Debnam said. "They have had a focus on kicking in the doors and prosecuting businesses in co-operation with the unions."

WorkCover's annual report shows it received more than \$5million in moieties in 2004-05.

## 10% cut in WorkCover is a good step in the right direction

Cuts to payroll tax and WorkCover premiums in today's Victorian budget will cut the cost of doing business in the state, business groups say.

Victorian Treasurer John Brumby announced a payroll tax cut from 5.25 to 5 per cent over two years, and a further 10 per cent cut in WorkCover premiums, with an estimated saving for businesses of \$680 million over the next four years.

Australian Industry Group (Ai Group) Victoria director Timothy Piper said the cuts would help place industry on a solid footing to compete. "Ai Group members have consistently raised concerns about the hefty workers' compensation premiums they faced in this state compared with NSW and Queensland," he said. "Today's decision to cut those premiums by 10 per cent will significantly reduce that pressure and

increase Victorian industry's competitiveness."

Heather Ridout, chief executive of the Australian Industry Group, a lobby organisation, welcomed the cuts and singled out the government's \$42 million promise to cull red tape over four years, as "raising the bar" for other states and the Commonwealth. "I don't think the Victorian Government can save manufacturing from global forces but it's giving it a good shot," she said.

Manufacturers employed 340,000 people in Victoria at the end of last year. The state accounted for about a third of the 30,000 factory jobs lost nationwide in 2005, with the pace of redundancies expected to accelerate this year in part because of relentless competition from China.