

Workers compensation inquiry  
Submission No. 72

Ms Cheryl Scarlett  
Inquiry Secretary  
House of Representatives  
Standing Committee on Employment and  
Workplace Relations  
Parliament House  
CANBERRA ACT 2600

Dear Ms Scarlett

I refer to the transcript of the public hearings by the Committee into aspects of workers' compensation held in Perth and the oral submission made by Mr Paul O'Halloran.

I request that you advise the Committee that having read the comments by Mr O'Halloran, I believe they should not be published as they are inaccurate, misleading and defamatory.

In support of this I consider the Committee should be made aware that firstly as a public servant, I cannot amend legislation or regulation, this is the sole prerogative of Executive Council and the Parliament. Further, the matters referred to by Mr O'Halloran relate to regulations which came into effect on December 14, 1999. These regulations were considered by the Joint Standing Committee on Delegated Legislation of the Western Australian Parliament in its Fifty Second Report. The following extract at paragraphs 5.5 and 5.6 relate to the insinuation by Mr O'Halloran.

- 5.5 "The Committee is of the opinion that the effect of new regulation 19M does not offend any of its terms of reference. The current decided case law indicates that it is not *ultra vires* the Act. The operation of the Amendment Regulation on the day of its publication in the Gazette did not adversely affect existing substantive rights by including elections sought to be made that day. These rights were altered by the operation of section 32 of Workers' Compensation & Rehabilitation Amendment Act 1999, which added section 93E to the Workers' Compensation & Rehabilitation Act 1981. Section 93E became operative on October 5 1999.
- 5.6 The Committee accepts that the requirement that a worker must first obtain an agreement or determination of a significant disability before proceeding with an election can result in unfairness. However, any unfairness arises from the primary legislation rather than new regulation 19M as it has been interpreted by the Court. This is a matter for Parliament and not for this Committee.

In view of the above, I request the Committee publish this response to the oral submission by Mr O'Halloran.

Yours sincerely



H T NEESHAM  
EXECUTIVE DIRECTOR

10 February 2003