



OmbudsmanSA

[www.ombudsman.sa.gov.au](http://www.ombudsman.sa.gov.au)



OmbudsmanSA

# The Ombudsman's new role under the Return to Work Act

Australian Institute of Administrative Law (SA Chapter)

Wayne Lines  
Ombudsman SA

16 June 2015



OmbudsmanSA

## What I will speak about ...

- The role of the Ombudsman pre 1 July 2015
  - Comparison with the WorkCover Ombudsman
- The role of the Ombudsman from 1 July 2015
  - Service Standards
  - Section 180 External Reviews
  - Administrative Acts



OmbudsmanSA

## The Role of the Ombudsman pre 1 July 2015

- Able to investigate administrative acts of state and local government, statutory authorities, and contracted organisations
  - Includes the WorkCover Corporation, Crown self-insured employers and claims agents
  - Excludes private self-insured employers
- Must not investigate any administrative act where the complainant has a 'right of appeal, reference or review to a court, tribunal, person or body' or has a remedy by way of legal proceedings
  - In practice, very few complaints about workers compensation received by the Ombudsman



OmbudsmanSA

## Comparison with WorkCover Ombudsman

- Since 1 July 2008, the WorkCover Ombudsman was established to investigate administrative acts under the *Workers Rehabilitation and Compensation Act 1986* and to review decisions by compensating authorities to cease workers' income maintenance
  - Includes acts of Crown and Private self-insured employers and WorkCover's claims agents
  - Excludes acts of the WorkCover Corporation under the *WorkCover Corporation Act 1994*
- The WorkCover Ombudsman is unable to investigate a complaint where the relevant matter is reviewable by a Tribunal or the complainant has commenced legal proceedings
- Each year the WorkCover Ombudsman received approximately 1800 enquiries of which about 250 resulted in investigations



OmbudsmanSA

## The Role of the Ombudsman from 1 July 2015

- As of 1 July 2015:
  - The *Workers Rehabilitation and Compensation Act 1986* is repealed
  - The WorkCover Ombudsman is abolished
  - The *Return to Work Act 2014* commences operation
  - The Ombudsman has new functions in relation to workers compensation
  - The Ombudsman's jurisdiction over administrative acts of the Return to Work Corporation (RTWSA) and Crown self-insured employers continues



OmbudsmanSA

## Service Standards

- Schedule 5 Statement of Service Standards
- Apply to RTWSA, Crown and Private self-insured employers, claims agents and providers of services engaged by RTWSA and self-insured employers
- Complaints may be
  - lodged by a worker or an employer
  - raised with either RTWSA, self-insured employer, claims agent, service provider (i.e. the source of the complaint) or the Ombudsman



OmbudsmanSA

## Service Standards

- If a complaint is dealt with by the Ombudsman
  - The respondent will comply with any recommendation of the Ombudsman in order to ensure compliance with these standards
  - The powers of the Ombudsman under the *Ombudsman Act 1972* will apply to self-insured employers and service providers engaged by self-insured employers as if they are agencies to which the Ombudsman Act applies
  - The Ombudsman must report to the RTWSA on the outcome of the investigation



OmbudsmanSA

## Service Standards

- Clause 7 Remedies
  - Provide a written or oral apology
  - Furnish a written explanation
  - Meet with the complainant
  - Furnish information in an appropriate form
  - Provide a worker with a copy of his or her file
  - Invite feedback, answer questions and respond to requests in an appropriate manner
  - Take any other reasonable steps to remedy the matter.



OmbudsmanSA

## Section 180 External Reviews

- Workers have the right to:
  - A copy of all documentary material relevant to their claims within 45 days after making the request
  - Inspect all non-documentary material relevant to their claim not more than 60 days after the request
- Subject to subsection (3) exceptions
- A worker aggrieved by a decision under subsection (3) is entitled to a review of the decision by the relevant compensating authority
- A worker aggrieved by the compensating authority's internal review may apply to the Ombudsman for a further review of the decision



OmbudsmanSA

## Section 180 External Reviews

- An application to the Ombudsman must be made within 30 days after notice of the compensating authority's decision was given to the worker 'or within such longer period as the Ombudsman may allow'
- The Ombudsman may exercise the powers of the Ombudsman Act as if conducting an investigation under that Act
- If the review by the Ombudsman involves a decision of a self-insured employer, the self-insured employer will be taken to be an agency to which the Ombudsman Act applies
  - Compliance with the Ombudsman's decision will be a condition of registration as a self-insured employer



OmbudsmanSA

## Administrative Acts

- From 1 July 2015, the Ombudsman's jurisdiction to investigate (non-reviewable) administrative acts of RTWSA, Crown self-insured employers and contracted claims agents will continue
- Examples under RTW Act:
  - Section 15(2): a compensating authority's response to a request by the worker to review the provision of any service to the worker under the Act
  - Section 27(c): a register of persons or organisations qualified to provide facilities and services to injured workers
  - Section 32: discretion to make interim payments
  - Section 182: provision of medical reports to workers
  - Sections 185 and 186: confidentiality obligations
  - Schedule 9, clause 34: decisions as to whether workers with an existing injury will be taken to be seriously injured for purpose of RTW Act
- Actions taken by RTWSA in exercise of functions under *Return to Work Corporation Act 1994* may also be subject to Ombudsman's jurisdiction



OmbudsmanSA

**Questions?**