



How section 39 affects you

Over the last month, a number of clients – both old and new – have been coming through my doors in a panic. Many have received letters from their workers compensation insurer's advising their weekly benefits will be cut off. Many of these people have received terrible injuries and are permanently unfit for work. So – what can you or someone you know do if you find yourself in this frightening situation?

Section 39 of the *Workers Compensation Act 1987* states that an injured worker's weekly benefits will cease after a period of five years if the degree of permanent impairment resulting from their injury is 20% or less. Under changes to the workers compensation scheme in 2012, this five year cut off is fast approaching for an estimated 7,000 injured workers in NSW – with many scheduled to lose their entitlements just prior to Christmas this year. Some of these people have been found by the Compensation Court or Workers Compensation Commission to be permanently unfit but the Parliament has seen fit to introduce legislation overruling these findings. Understand as well, this is all in the content of the WorkCover fund sitting on a massive operating surplus. The whole thing stinks.

What the insurer's often fail to disclose however, is that the 20% permanent impairment figure must have been assessed by an independent Approved Medical Specialist appointed by the Workers Compensation Commission. It is not enough for an insurer to rely on their own doctors to reach a figure relating to the worker's injury. Of course, the insurer's doctor will provide an opinion favourable to the insurer.

The Workers Compensation Independent Review Office (WIRO) is now taking applications from solicitors acting for injured workers relating to the assessment of section 39 claims. If you, or someone you know, may be affected by this legislation, I encourage you to make an appointment to come and see me. Workers who have been severely injured in the course of their employment – especially those who are now unfit to work at all – should not be left to fend for themselves.