



## Workers Compensation Amendment (Insurance Reform)

### Bill.

#### Second Reading

**The Hon. HENRY TSANG** [Parliamentary Secretary] [8.20 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

This Bill continues the process of reform of the workers compensation system in NSW which I announced in this place in June 2000 and which is aimed at building a system that is fair, affordable and efficient.

Honourable members will recall my statement to the Legislative Council on 8 June 2000 in which I outlined the principles which underpin the Government's strategy for the reform of the NSW workers compensation scheme.

The key focus of these reform principles was to develop reforms that delivered sustainable Scheme costs, and provided appropriate treatment and better return to work outcomes for injured workers.

During the last three years some very significant reforms have been implemented and the success of these reforms is demonstrated in the improvement in the performance of the WorkCover Scheme.

- Disputes have reduced by 75%, from 8,000 per quarter to 2,000 per quarter;
- 67 and a half million dollars in premium discounts have been awarded to safer employers;
- the average delay in reporting injuries has reduced substantially from a median 21 days in June 2001 to 11 days (in the quarter ending September 2003); and
- there have been savings to the Scheme of over \$1.5 billion, largely through reduction of disputes, with the majority of these savings being in legal and investigation costs.

At the same time the most recent actuarial report on the Scheme states that payments made to injured workers have increased by \$47 million.

Clearly, these improvements have not been at the expense of benefits paid to injured workers.

In addition recent initiatives to improve premium compliance has identified additional premium of \$47 million.

Further activity in compliance enforcement activity is expected to reduce the deficit in the Scheme by approximately \$100 million over the next six years.

Stronger fraud provisions have been introduced which, among other things, extend the coverage of the Act to also include all persons who play any part in a fraudulent act against the WorkCover scheme.

This Government will continue its tough line on compliance and fraud to ensure that the system is fair to workers and employers alike.

While the impact of these reforms has been positive it was clear that the structural and operational arrangements of the Scheme also required review to ensure they were properly aligned with desired Scheme outcomes. I foreshadowed such a review in my statement to Parliament in June 2000.

In accordance with this commitment, McKinsey & Company was engaged to conduct an independent review of the Scheme.

The purpose of the review was to recommend improvements to the operation of the Scheme to improve services for injured workers and employers while securing the financial viability of the Scheme.

The review was overseen by a steering committee with membership drawn from Government agencies such as the Independent Pricing and Regulatory Tribunal, The Cabinet Office and NSW Treasury as well as the WorkCover Scheme actuary PricewaterhouseCoopers and WorkCover executives.

During the course of the review McKinsey & Company undertook discussions and consultation with many of the key players within the workers compensation system, including workers, employers, insurers and other service providers as well as with other interested parties such as the Board of WorkCover and the Workers Compensation and Workplace Occupational Health and Safety Council.

### **The Report**

The report of the review *Partnerships for Recovery: Caring for injured workers and restoring financial stability to workers compensation in NSW* was released on 8 September 2003.

I provided copies of the report to a range of interested parties, including Honourable members of this House. The report was also made available on the WorkCover website.

The report builds on the earlier reforms and focuses on changes to improve the management of claims that will lead to better outcomes for injured workers while increasing competition and performance transparency in the Scheme to assist employers make informed choices.

While the report looked at ways to achieve a fully funded scheme it is important to note that it does not recommend any changes to workers' benefits or increases to employer premiums. Instead, it focuses on finding ways to improve the current operation of the Scheme through the more effective delivery of services to injured workers and employers and, by doing so, to ultimately restore financial stability to the Scheme.

The report also recommends that private underwriting of the Scheme should not be considered at least until the Scheme is fully funded.

In order to improve the operation of the Scheme the report recommends changes to the role and functions of Scheme participants and WorkCover itself.

In particular the report recommends changes to the existing arrangements whereby licensed insurers perform the majority of functions required within the Scheme, such as funds investment, claims management, premium assessment and collection and related activities (including recoveries and fraud). It recommends instead allowing specialist businesses to tender for these specific roles and functions.

This approach will introduce greater competition into the Scheme by opening up the market to enable businesses other than insurance companies to participate.

The report recommends replacing the existing open-ended licensing system with fixed term contract arrangements to allow the appointment of the most efficient providers, which of course may include the current insurers that operate within the NSW scheme. The report suggests that contracts will also introduce greater accountability and contestability for Scheme services.

The report also recommends that WorkCover take a more active role in the management of the Scheme and its contracted agents. More active management will enable the setting of comprehensive performance criteria and benchmarks through contracts with agents. Contractual arrangements can promote the best performers through outcomes-based remuneration and contract renewals. It will also provide a Scheme wide focus on matters of significance, including performance measurement and reporting.

McKinsey anticipate that savings to the Scheme from the implementation of these reforms will be in the order of two billion dollars over the next five to ten years.

The majority of these savings come from the increased specialisation, particularly in the area of claims management, and the introduction of contract arrangements. Savings of this magnitude also require the adoption of a more active role by WorkCover in the management of the Scheme and its agents.

### **Consultation**

The Government has accepted that the report provides a model which will deliver better services and improved outcomes for both injured workers and employers.

However, it was also open to the views of the major Scheme stakeholders and instigated a program of consultation with employers, unions, insurers and service providers. WorkCover also conducted a series of briefings for stakeholders.

These briefings provided an opportunity for stakeholders to clarify issues relating to either the report or its implementation and they were also invited to provide written comment on matters of concern.

I am pleased to report to the House that there was significant interest in the report and that stakeholders were broadly accepting of the recommendations of the report and the rationale for reform.

At this stage it is intended that the new arrangements will be fully implemented in late 2005, although a phased approach will be adopted to ensure continuity of business functions throughout the transitional period.

## The Bill

I turn now to the substance of the Bill before the House.

The Bill provides for new administrative arrangements for the framework of workers compensation insurance to support the implementation of the Report's recommended reforms.

The Bill retains the current insurance arrangements of the Scheme but replaces the six current managed fund insurers and their separate trust funds with a single Nominal Insurer, which will hold a single Workers Compensation Insurance Fund and contract with Scheme agents to conduct insurance business on its behalf.

Like the existing statutory funds the new Insurance Fund is a purpose trust.

The Nominal Insurer will be a legal entity, which will be able to act as an insurer and hold the funds of the Scheme in the Workers Compensation Insurance Fund.

The Nominal Insurer will issue policies of insurance and handle claims under policies as the insurer for the Scheme.

The Nominal Insurer will not represent the State and its liabilities will only be able to be satisfied from the Insurance Fund.

It will be able to contract with agents, to issue policies of insurance and/or to handle claims on its behalf and to provide funds management advice and services.

By and large, employers will have a choice in selecting the best agents to manage their claims. However, the Nominal Insurer will have a power to assign claims to specific agents to ensure that policies and claims are allocated to appropriate agents, for example, a specialist agent that deals with catastrophic injuries.

The power to assign claims will also assist with the management of the insurance market and the overall stability of the Scheme during the transition to the new arrangements.

The WorkCover Authority of New South Wales will act for the Nominal Insurer and exercise the powers of the Nominal Insurer.

In this way, WorkCover will be able to oversee the management of the Scheme. However, WorkCover will not act as insurer and will not manage individual claims.

The new framework will allow for more efficient use of Scheme resources by centralising Scheme funds into a single Fund allowing more effective investment of funds by firms that specialize in asset management.

The Bill therefore establishes the Workers Compensation Insurance Fund with the assets of the Insurance Fund to be held on trust for the purposes set out in the Act, for the benefit of workers and employers.

The Fund will comprise premiums, investment income and other money related to the Scheme and will be used to meet claims costs and the expenses of the Scheme.

Employers will be entitled to participate in the distribution of assets of the Fund and will be liable to contribute to any deficit in the Fund. The Fund will not be part of the assets of the Government.

Similarly, the assets of the Fund cannot be used to pay dividends to the Consolidated Fund. Neither the State, the Nominal Insurer, WorkCover or any authority of the State will have any interest in the fund and are neither liable to meet any deficit in the Fund nor entitled to any surplus in the Fund.

This is consistent with the long standing position of Government that the workers compensation funds are the responsibility of the employers of NSW.

The Bill also amends the *Public Finance and Audit Act 1983* to provide that the Insurance Fund is not part of the Total State Sector or the General Government Sector for the purposes of the preparation of the Total State Sector Accounts under the *Public Finance and Audit Act*.

This means that the accounts of the Fund will not be included in the Total State Sector Accounts which are prepared by the Treasurer.

However, the Auditor General will be required to inspect and audit the accounts and records of financial transactions relating to the Fund at least once every financial year.

The Auditor General is also required to include references to audits in his annual report to Parliament and may make a special report to Parliament following the audit.

These measures will ensure transparency in the performance of the Fund and its management by WorkCover, acting on behalf of the Nominal Insurer.

The Bill provides for the Nominal Insurer to contract with Scheme agents. Scheme agents will be able to exercise the powers of the Nominal Insurer on its behalf, subject to the terms of any contract.

In practice, Scheme agents will collect premiums, issue policies, and manage claims on behalf of the Nominal Insurer. Agents will be appointed under contracts, instead of the existing open-ended licences.

Contracts will allow for more flexibility to enable WorkCover to specify services, monitor performance and take appropriate action.

Scheme agents will be selected following an open tender process and their skills and expertise will be closely scrutinised before they are appointed.

An agent will also be used to invest the money in the Fund on behalf of the Nominal Insurer.

To ensure claims and other records are retained and stored, Scheme records will be owned by the Nominal Insurer, which will be able to direct agents about their custody and control.

The Bill contains detailed provisions dealing with the records of the Nominal Insurer to ensure that its records are adequately protected and maintained.

The Nominal Insurer will also be able to give directions to agents about claims procedures, and to ensure continuity of records management.

The Bill provides for Scheme agents to have generally similar rights to the current licensed insurers and to be subject to the same liabilities, and regulatory control by WorkCover, to ensure that Scheme agents deal efficiently with policies, claims and Scheme funds.

WorkCover's regulatory functions will include a new power to conduct performance audits of Scheme agents and of specialised and self insurers. This power clarifies WorkCover's existing regulatory role and can be used to ensure, for example, that agents comply with provisional liability, injury management and return to work obligations.

#### **Uninsured claims**

The Bill improves the arrangements for workers whose employers are uninsured. Instead of uninsured claims being met by the Workers Compensation Authority Fund, it is proposed that these claims will now be met by the Nominal Insurer, drawing on the Insurance Fund.

The Nominal Insurer will recover the costs of uninsured claims from employers.

The intention is to simplify the arrangements governing uninsured liability and place workers whose employers are uninsured on a similar footing to other workers making claims.

Workers whose employers are uninsured will have access to benefits and the dispute resolution procedures of the Workers Compensation Commission as soon as their claim is verified.

Uninsured employers will continue to have the right to participate in dispute resolution concerning uninsured claims and will be a party to any matters dealt with in the Workers Compensation Commission.

These arrangements will ensure that claims made by injured workers whose employers are uninsured are dealt with in a similar way to other claims, allowing these injured workers to receive benefits more quickly.

This Bill establishes the structural framework that will enable the new arrangements to be implemented.

Questions around the role and functions of individual claims agents, their period of appointment and the like will be addressed through the implementation period.

Consultation on all these matters will be detailed and timely.

Honourable Members, this The Bill is vital to the implementation of the recommendations of the Report.

It will set the groundwork for reforms that are designed to provide improved services to injured workers and employers and restore the financial stability of the workers compensation scheme in New South Wales.

I commend the Bill.

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