

Appendix 10

Answers to questions on notice

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Reverend Nile asked Ms Kate McKenzie, General Manager, WorkCover NSW on 8 February 2002–

Specialised Insurers

- 1) The Committee notes that the specialised insurer State Cover Mutual Limited commenced the insurance of participating local area councils on 30 June 2001.
 - a) Are there any other specialised insurers?
 - b) If 'yes' please list and give the numbers and names of organisations covered by each specialised insurer; and
 - c) The number of employees covered by each specialised insurer.
 - d) What was the percentage of total employees in the Workers Compensation scheme covered by specialised insurers at 1 July 2001 (it is noted that the committee has received the % as at 1 July 200 in response to question on notice 33)?

Answer:

- a) Yes.
- b) As at 1 July 2001 specialised insurers were:
 - Catholic Church Insurances Limited
 - Guild Insurance Limited
 - Joint Coal Board
 - New South Wales Thoroughbred Racing Board
 - North Insurances Pty Ltd
 - StateCover Mutual Limited
- c) & d) As at 1 July 2001 specialised insurers covered approximately 10% of employees covered by the NSW Scheme. It is respectively suggested that the Committee ask the above specialised insurers for data concerning their current number of employees.

Insurers

- 2) Please provide:
 - a) A copy of "Form 6" on statutory returns which is provided to insurers for completion periodically.
 - b) A copy of the "Insurance Mandate" which will apply from 1 February 2002 as provided to Insurers

- c) All internal WorkCover policies regarding the management of Insurers and WorkCover's requirements of Insurers.
- d) The new (2001/2002) insurer remuneration guidelines and agreements.
- e) A written detailed summary of how the reporting requirements of insurers will change under the new remuneration structure.
- f) A copy of Insurer Guideline No 00/31, dated 28 November 2000, as well as any updates of this Guideline published and or provided to insurers since November 2000. (previously requested on 12/10/01)

Answer:

These documents are currently being compiled and will be provided directly to the Secretariat as soon as possible.³⁰³

Data

- 3) Find following a list of specific and unrelated data requests. Please provide this information, where possible, in both written and electronic format. Please not, to ensure confidentiality it is appropriate for all insurers to be allocated a letter and for this letter to be applied consistently throughout.
 - a) Number of claims by severity for the calendar year 2001. Please classify into the following groups – 0-15%, 16-25%, 26-50%, 51-80% and 81%+ according to the table of injuries.
 - i) How would these figures change under the work cover impairment guidelines based on the w.p.i.? Please provide details.
 - b) Number of claims processed per month (in 2001) per each insurer.
 - c) Number of claims lodged per month (in 2001) per each insurer.
 - d) Total number of commutation payments made in 2000 and 2001 per insurer (please provide the 2000 and 2001 figures separately – not combined).
 - e) Total dollar value of commutation payments in 2001 by insurer.
 - f) Average dollar value of commutation in 2001 by severity (please use the same severity groups as outlined in b)
 - g) Commutations per 1000 closed claims by insurer (please only use recent years ie. 1999, 2000 and 2001 when calculating).
 - h) Number of employees covered by each insurer and the percentage of employees.
 - i) Number of active weekly claimants by insurer at 30 June – 1998, 1999, 2000, 2001 and 31 December 2001. Please specify the definition of “active” upon which the figures were based.
 - j) Number of open claims per insurer at 30 June; 1998, 1999, 2000, 2001 and December 2001.

³⁰³ These documents have been provided and are held with the Secretariat.

- k) Number of claims finalised per insurer in 1997/98, 1998/99, 1999/00 and 2000/01.
- l) Number of new writs issued by insurer in 1997/98, 1998/99, 1999/00 and 2000/01.

Answer:

WorkCover has requested PricewaterhouseCoopers to conduct some preliminary analysis of the Committee's questions. PricewaterhouseCoopers has responded that clarification is required concerning a number of questions, and that preparing answers will be (a) very time consuming, (b) resource intensive, and (c) expensive (estimated to be approximately \$10,000).

Under the circumstances, the Committee is requested to indicate whether on balance, this information is essential for the Committee's current inquiry, and whether WorkCover's key statistical analysis personnel should be diverted from core activities including the effective implementation of the 2001 legislative reforms.

Insurance Compliance

- 4) Please provide the Committee with the following submissions responding to WorkCover's Green paper entitled Workers Compensation Insurance Compliance September 2001:

Stephen Loomes	Zurich Australian Workers Comp Ltd
AC Whalen	Small Business
Kevin Cosgriff	NSW Treasury
Robert Smith	NRMA Workers Comp (NSW) Pty Ltd
Miryana Vasic	NRMA Workers Comp (NSW) Pty Ltd
John Robertson	Labor Council of NSW
Paul Bastian	AMWU
Dick Grozier	Australian Business Limited
Elizabeth Crouch	Housing Industry Association

Answer:

To comply with the privacy requirements of the *Privacy and Personal Information Act 1998* and the *Workplace Injury Management and Workers Compensation Act 1998*, WorkCover is required to obtain the written consent of the authors of submissions before they can be provided to the Committee.

WorkCover has therefore written to the authors of submissions in order to obtain their written consent. To date, 6 authors have provided consent and these submissions will be provided directly to the Committee Secretariat. The remaining submissions will be provided once the requisite consent has been obtained.

These arrangements have been discussed with the Committee Secretariat, and WorkCover will continue to liaise with the Committee Secretariat in order to provide these papers in an efficient and helpful manner.

- 5) On page 9 of the Workers Compensation Insurance Compliance Green Paper at point 3.3, it states that "WorkCover is currently collecting data that will enable the better estimation of the cost of under insurance. It is anticipated that estimates of premium loss should be available by early 2002." Please provide:
- the details of the data collected by WorkCover over the past 6 months which will/has enabled the estimation of the cost of under insurance.
 - The estimates of premium loss as a result of under insurance.

Answer:

- a) Under-insurance arises from 3 types of non-compliance: underdeclaration of wages; avoidance of claims experiences impact on premiums and misclassification of employer business activity. A range of data sources is required to develop a model of expected annual premium losses from this behaviour. During 2002 WorkCover will continue to develop models to assess premium loss from under-declaration of wages via a new consolidated wage audit database. Data is also being collected to enable modelling for the avoidance of claims experience and misclassification of employer business activity.

Further work is also progressing on these issues via consideration of compliance issues canvassed in the Workers Compensation Insurance Compliance Green Paper. The options do not represent

- b) As previously indicated to the Committee in response to questions on notice (please see page 56 of the Committee's 1st interim report and page 235 of Committee's 2nd interim report) there is currently no recognised, accurate methodology to assess the cost of under-insurance. As such, it is not possible to quantify levels of non-compliance per se. It is only possible to quantify levels of non-compliance detected. In 2000/01 additional premiums of \$15 million have been billed as a result of compliance audits (this represents less than 1% of total premiums collected).
- 6) Please provide details of any "750 Penalty Notice" issued and any prosecutions (including penalties imposed) under the new fraud provisions. (Refer to p50 of the Annual Report).

Answer:

These figures are currently being compiled and will be provided separately.

Occupational Health and Safety

- 7) On page 29 of WorkCover's 2001 Annual Report reference is made to "over 100 industry initiatives... where WorkCover collaborates to develop industry specific OH&S and injury management strategies". Please provide:
- a) Details about what these initiatives includes, their current status of implementation and evaluations (if any) of their success to date in improving injury rates.
- b) Details of any further initiatives that have been instigated since June 2001 with regards to WorkCover aiding industries to develop OH&S/injury management strategies please provide details of these also.

Answer:

- a) WorkCover is committed to a strategic industry specific approach to improving OH&S and injury management performance. This strategic approach recognises that no one knows the unique features of a workplace better than those directly involved, and that employers and employees are in the best position to work cooperatively to improve safety in their particular industry and what strategies are needed to get injured workers back to sustainable employment as quickly and safely as possible.

WorkCover has therefore established 13 Industry Reference Groups (IRGs) to provide the opportunity for industry representatives to improve workplace safety and injury management. For workers, this can mean a healthier, safer working environment and better return to work outcomes if an injury occurs. For employers, it can mean lower work compensation premiums and improved business performance. The 13 IRGs are:

- Rural
- Construction

- Mining
- Industrial manufacturing
- Consumer manufacturing
- Wholesale
- Retail
- Transport and storage
- Consumer Services
- Government administration and education
- Health and community services
- Business services
- Utilities

WorkCover's operational services of the OHS Division are structured on an industry teams basis covering the industry groupings of the IRG's. The teams are delivering targeted programs to assist industry in systematically managing workplace safety.

Early signs indicate that the industry specific programs are contributing to improved OHS/injury management. An example is the CouncilSafe Program, the success of which, has been highlighted (at page 45 of the 2001 CouncilSafe Final Report) by one Council's facilitator in the following terms:

"CouncilSafe has played a significant role in raising awareness of OHS issues throughout the Council. New consultation processes are proving to be effective and are impacting at all levels of the organisation. CouncilSafe coupled with linked training strategies are certainly having an impact on our performance. Our records indicate that manual handling claims have reduced from 41 to 23 in the nominated pre/post program periods and (that) total claims numbers reduced from 127 to 101".

The Committee may wish to consider hearing evidence from key participants in the CouncilSafe Program.

b) Further initiatives that have been instigated since June 2001 include:

- Establishment of the Claims assistance Service
- Establishment of the Workers Compensation Commission
- Assessment of Injury management Pilots
- Implementation of Provisional Liability
- Implementation of Medical Management Pilots
- Communication and Education
- WorkCover Assistance Program
- Premium Discount Scheme and Small Business Strategy

Precise details of the activities, timing and performance measures for these projects have been previously provided to the Committee and are published at page 190 of the Committee's 2nd interim report. WorkCover will provide the Committee with regular updates concerning the progress of these initiatives.

- 8) Please provide a summary of the convictions to date under the *OH&S Act 2000*, including the information regarding the offence committed, the total value of the penalty imposed and any pertinent examples.

Answer:

The *Occupational Health & Safety Act 2000* (the Act) commenced on 1 September 2001 and applies to offences committed under the Act from that date. There have been no convictions to date under the new Act. This is primarily due to the fact that proceedings under the new Act have not had enough time to run the course of due process.

Proceedings under the Act are subject to the criminal standard of proof, which requires that each element of a particular offence must be proven to that standard.

Proceedings instituted for offences under the Act are generally commenced by the laying of information in the Local Court or by filing an application for summons with the Industrial Relations Commission in Court Session.

The procedures of the respective tribunals generally dictate the passage of a matter, except for where the OHS Act makes specific provision. There are specific provisions under the Act dealing with the commencement of proceedings (eg. the Act provides that proceedings must generally be commenced within 2 years of the date of the offending act/omission).

Prosecution figures under the *Occupational Health and Safety Act 1983* (the 1983 Act) may give an indication of the level of prosecuting activity that may be expected under the new Act.

In 2000/01, 444 summonses were laid by WorkCover. In the same period there were a total of 404 convictions for breaches of the 1983 Act. Forty summonses were dismissed by the court, and 23 summonses were withdrawn. This represents a 91% success rate. Total fines awarded by the courts were \$5.4 million.

Some examples of matters brought before the courts were:

- A landmark judgment by the Full Bench of the NSW Industrial Relations Commission, which overturned the acquittal of a woodchip machine manufacturer, achieved a major development in occupational health and safety law. The Full Bench upheld WorkCover's appeal against the acquittal and entered a conviction against the defendant, Arbor Products International (Australia) Pty Ltd. It was the first time the Full Bench of the Commission had been asked to determine the law in relation to Section 18 of the *Occupational Health and Safety Act 1983*. The Shire Council employee had both arms amputated while feeding privet branches into a wood chipping machine at the council's waste transfer station. Arbor had supplied the machine knowing that its use was inappropriate at a waste transfer site, where contaminated green waste would cause regular blockages.
- Capral Aluminium Ltd was fined \$200,000 as a result of a worker at its Kurri Kurri furnace aluminium smelter being sprayed with chlorine gas from a blast furnace. The court heard that WorkCover had issued Capral with an Improvement Notice requiring it to routinely replace couplings on equipment used in furnace procedures, but the company had failed to regularly and reliably test these corrosive components – leading to the accident in which the furnace man was injured.
- Seating construction firm, Walders Goodtime Pty Ltd was fine \$40,000 on 10th May 2001, under section 18(2) of the *OH&S Act 1983*, by Justice Boland in the NSW Industrial Relations Commission. The offence related to the collapse of a temporary stand at Newtown in 1997 in which 14 people were injured.

About 50 people were seated in the stand when it collapsed shortly before a performance of the play, 'Black Mary' by Company B at the Wilson St Carriage Works. WorkCover presented evidence that the stand had both been certified by an engineer and was not designed to withstand loads prescribed in relevant safety regulations and standards.

The court heard that Walders Goodtime had been employed to supply a stand but had subcontracted the job to another firm Showtime Staging.

In imposing the penalty, Justice Boland said despite the fact the subcontractor had dealt directly with the theatre company, Walders Goodtime had a responsibility to ensure an appropriately qualified engineer certified the seating was safe.

On 8th March 2001 construction supply firm, Ridge Consolidated Pty Ltd was fined \$110,000 after pleading guilty in the NSW Industrial Relations Commission to a breach of section 16(1) of the *Occupational Health and Safety Act 1983*. A construction worker died on the M4 Motorway project in 1997 after he was struck and killed by a motorist who drove off the road and into the worksite through a gap in the protecting barrier. The worker was performing concrete patching work beside one of the known gaps in the concrete barrier fence.

The state Government, through RTA called for tenders to complete an extension of the M4 motorway by way of an additional motor lane. State Wide Roads (SWR) was the successful tenderer. SWR could not be prosecuted for the current offence as on a previously judgement it was proved that SWR had no employees. SWR sub contracted to Ridge Consolidated Pty Ltd, who in turn sub contracted out the concrete work to a company called Hitex, a day labour placement company. The worker was employed as a day labourer by Hitex (in liquidation) on the site under the direction of Ridge Consolidated.

Justice Kavanagh found that Ridge Consolidated had failed to ensure that the worker, a contract labourer, had been trained in site safety, inducted into safety procedures, properly supervised or satisfactorily protected.

In this case the modern industrial trends of complex arrangement of sub contractors and the avoidance of responsibility for site safety notwithstanding the absolute obligation that the Act places on each of these employers were highlighted. Justice Kavanagh in her judgement said that, "the most serious consequences of subcontracting out work and using day labour placements have been revealed through this prosecution.

Investment

- 9) Page 38 of the WorkCover Annual Report indicates that a new investment (developed in conjunction with Tillinghast Towers Perrin) was sent to the Board for approval in July 2001. Please provide:
- a) The strategy as approved by the Board.
 - b) All details of the performance monitoring undertaken by WorkCover of investment management by insurers. For example: Copies of requests for information/data from WorkCover to Insurers managing investments, for the year 2000/01 and under the new investment strategy since July 2001.

Answer:

These documents are currently being compiled and will be provided directly to the Secretariat as soon as possible.

ANZSIC

10) Please provide:

- 10.1) The number of employers whose premiums have increased under ANZSIC?
 - a) What was the average increase?
 - b) What was the maximum increase?

- 10.2) The number of employers whose premiums have decreased under ANZSIC.
 - a) What was the average decrease?
 - b) What was the maximum decrease?

- 10.3) In which industries have the increases and decreases in premium rates been most obvious?

- 10.4) Please give the premium rates for each industry in 2000 and 20001 and their % change.

Answer:

On 15 October 2001 the Special Minister of State wrote to the Committee and provided a copy of the "Outline of the NSW Workers Compensation Scheme" for 2000/01 and 2001/02 containing details of the previous and the new ANZSIC-based industry classification systems.

The outline indicates that all employers are allocated to an industry class or classes for premium rating purposes. On 30 June 2001, the previous industry classification system of 110 classes was replaced with an improved system based on the Australian and New Zealand Standard Industrial Classification (ANZSIC) system.

The new system, known as the WorkCover Industrial Classification (WIC) System, comprises 529 industry classes arranged into 17 broad industry divisions. Each industry class has its own workers compensation premium rate and dust diseases levy rate.

The new system has been implemented to reduce the significant levels of cross-subsidisation and premium avoidance under the old system. The adoption of the new classification system means that premium rates more accurately reflect the safety record of an industry and that appropriate incentives and rewards for improved occupational health and safety management are in place.

Due to the larger number of industry classes in the WIC System, there will be a closer relationship between an industry class's premium rate and its claims cost experience.

Because the WIC System includes more detailed and precise definitions of industry classes, there will be reduced scope for employers to avoid premiums through being allocated to an incorrect class with a lower premium rate.

Whilst the NSW average premium rate for 2001/02 has maintained at 2.8% of wages (or 3.15% inclusive of GST and related costs), the change in industry classification systems will result in premium rate decreases for about half of NSW employers, and premium rate increases for the other half.

Increases between the 2001/02 premium rate for each WIC System class and lower of the applicable 2000/01 industry rates for each class have been capped. Generally, premium rate increases will not exceed 15%.

Transitional measures have been adopted to ensure that employers are not adversely affected by significant increases in their industry premium rate due to the adoption of the WIC System. If any employer has a large increase solely due to the move to ANZSIC they may appeal to WorkCover for a reduction in their premium.

WorkCover has undertaken some preliminary analysis in relation to the Committee's other requests for data, which indicates that preparing this data will be very time consuming and resource intensive.

Under the circumstances, the Committee is requested to indicate whether on balance, this information is essential for the Committee's current inquiry, and whether WorkCover's key statistical analysis personnel should be diverted from core activities including the effective implementation of the 2001 legislative reforms.

Consultant Fees

- 11) a) What was the total yearly fee paid to Tillinghast in 2000/01. (Also include the fees paid to Tillinghast from July 2001 to December 2001).
- b) Please include a breakdown of how the total fee is constituted.
- c) Where does this fee appear in the financial statements accompanying the 2000/01 WorkCover Annual Report?

Answer:

WorkCover engaged Tillinghast-Towers Perrin (TTP) in 2000 following a competitive public tender process in accordance with the procurement requirements of the *Public Sector Management (Goods and Services) Regulation*. This process involved the NSW Department of Public Works and Services and approval by the State Contracts Control Board.

TTP were appointed for the period I February 2000 to 31 October 2003. TTP is not a consultant. TTP is appointed on a long-term basis as the Scheme's actuary.

- a) Payments to TTP have been:

	1 July 2000 to 30 June 2001 \$	1 July 2001 to 31 Dec 2001 \$
Contractor- Actuarial Services	2,247,604	1,028,161
Consultant - Investment Advice	<u>143,783</u>	<u>41,987</u>
TOTAL	2,391,387	1,070,148

- b) TTP's fees are constituted on the following basis:

- \$548 per hour for a principal actuary;
- \$411 per hour for senior actuaries, and
- \$274 to \$318 per hour for consulting actuaries.

- c) All payments to TTP appear in the annual report under "Other Operating Expenses" and note 8.

Mr Gallacher asked Ms Kate McKenzie, General Manager, WorkCover on 14 February 2002 –

- 1) What will the annual saving be on making that relocation to Gosford, with regards to rents and those sorts of costs?

Answer:

The annual saving in rent and related costs will be \$1.6m.

Mr Pearce asked Ms Kate McKenzie, General Manager, WorkCover –

- 2) Tillinghast talks a lot about the targets. I want to know what the targets were? (Please give the stated targets as given to Tillinghast Towers Perrin for the 26 November Financial Evaluations and 14 January Financial Evaluation).

Answer:

The targets in the relevant scenarios refer to:

Statutory Claims

The targets set out in relation to statutory claims are as follows:

- Reducing the number of disputes over statutory claims by half to approximately 15,000 year.
- Resolving approximately 80% of the disputes through conciliation, assessment and medical assessment.
- No more than 2,000 statutory benefit matters per year proceeding to determination.

Common Law

The target performance for the Common Law system was set so as to be consistent with that of the Motor Accidents Scheme:

- 90% of Common Law matters should be resolved through assessment, with only 10% of matters proceeding to Court.

Mr Gallacher asked Mr Rod McInnes, Assistant General Manager, Insurance Division, WorkCover –

- 3) Please provide all correspondence between yourself and Tillinghast from 21 November last year to 14 January this year? (Correspondence to include emails, letters, briefings, memos, notes of phone conversations and any other form of written correspondence).

Answer:

Copies of these documents will be provided directly to the Committee Secretariat.

Mr Pearce asked Mr Rod McInnes, Assistant General Manager, Insurance Division, WorkCover –

- 4) In relation to the \$809 million and \$1-plus billion, what is the breakdown of those totals against the headings that they have used in other parts of the 14 January Report, where they have broken it down into annual scheme savings, restructure of disputes resolution, common law and commutations?

Answer:

Both the \$809M and \$1.33bn relate to the estimated one-off impact on the Scheme deficit, neither contain any annual scheme savings component. A breakdown of the totals appears in the below table:

Estimated Reform Deficit Savings (Rounded)		
Initiative	TMA/High (\$M)	Moderate/Low (\$M)
Restructure of the dispute resolution system	690	300
Restructure common law claim processing	160	140
Common law	160	140
Commutations	280	190
Return-to-work	40	40
TOTAL	1,330	810

Reverend Nile (Chairman) asked Mr Rod McInnes, Assistant General Manager, Insurance Division, WorkCover –

- 5) Does the current figure for the unfunded liability include the prudential margin?
 5.1) If 'no' what would the deficit be if – a) the 50% margin was considered and b) the 75% margin (as recommended by APRA) was considered?

Answer:

The WorkCover Scheme financial statements have been compiled based on a central estimate of outstanding claims liabilities. A central estimate is equivalent to a 50% probability of sufficiency. The WorkCover Scheme financial statements are compiled in accordance with the relevant accounting standard and certified by the Auditor-General. The WorkCover Scheme is not subject to regulation by APRA and is not required to meet its prudential regulatory requirements.

- a) Presumably this means a 50% probability of sufficiency – which is the current basis. Therefore the deficit would be unchanged.
- b) The WorkCover Scheme is not subject to regulation by APRA and is not required to meet its prudential regulatory requirements. This scenario will therefore not arise under the current regulatory arrangements.
- 6) The 14 January financial evaluation report provided by Tillinghast, outlines 5 scenarios. Can you explain each of the 5 scenarios?

Answer:

A description of the scenarios is included in the 14 January report at Appendix A.

- 7) The scenarios in the 14 January financial evaluation provided by Tillinghast have difference headings depending on whether they are for the settlement year or accident year. The Committee is confused as to which ones are comparable. Can you please explain what the differences are between Targets Mainly Achieved and Moderate Position scenarios as provided for under the settlement year approach and the Targets Mainly Achieved/High and the Moderate/Low scenarios as provided under the accident year approach? (Reference page 5 of the 14 January 2002 Report)

Answer:

It is understood that the 'targets mainly achieved' and the 'targets mainly achieved/high' scenarios are effectively equivalent. Similarly the 'moderate' and 'moderate/low' scenarios are effectively the same.

For the 'Moderate' and 'Moderate/Low' scenarios Tillinghast have used their 'best estimate' of the intended Scheme valuation basis at the time of developing each scenario.

- 8) How likely is it that the savings from the 'targets mainly achieved' scenario will be achieved? What needs to be done to ensure this level of savings? (Please provide details).

Answer:

At this early stage it is not possible to quantify the likelihood of the 'targets mainly achieved' scenario being achieved. It is WorkCover's view that achieving the targets is not only possible but highly achievable. To ensure the maximum savings possible are achieved all stakeholders and service providers in the system (ie. employers, injured workers, insurers, WorkCover, Government, Parliament, solicitors, doctors, rehabilitation and other providers, the Workers Compensation Commission and the courts) need to work effectively towards the objective of making the reforms work both to the letter of the legislation and its intent.

To the extent that any party works actively against this objective (as opposed to working for or being neutral) and/or diverts others from this objective this will begin to undermine the savings. If enough parties work against the reforms the 'targets mainly achieved' will not be met. WorkCover is therefore working closely with all stakeholders and service providers to ensure that the legislation is implemented efficiently and effectively.

- 9) Has WorkCover ever (at any stage during their contract with Tillinghast) instructed Tillinghast to adopt assumptions, an approach or actuarial basis in the work that they have undertaken (for WorkCover) to date?

Answer:

No.

- 10) Please provide the Committee with all the quarterly WorkCover Board briefings from Tillinghast.

Answer:

Copies of these documents will be provided directly to the Committee Secretariat.