NSW GOVERNMENT | WorkCover

WORKCOVER AUTHORITY RESPONSE TO QUESTIONS ON NOTICE AND SUPPLEMENTARY QUESTIONS

(NSW Parliamentary Inquiry into the NSW Workers Compensation Scheme)

WORK SAFE HOME SAFE

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Section A - Questions taken on notice

QUESTION ONE

Mr MICHAEL DALEY: I was using journey claims as an example. My point is that replete through several of these marquee documents is the claim that premiums will have to rise by 28 per cent to bring the scheme back into balance within five years. We have been asked to fixate on that. However, there is no information before this Committee about the cost of adopting any one of the 16 recommendations in the discussion paper. I would like you to take the following question on notice: Can you put before the Committee the consequence in dollar terms, based however you like, of the adoption of each one of these 16 recommendations?

Ms APLIN: We would be able to take that on notice and provide the Committee with some costings, if that would be of benefit to its deliberations.

ANSWER:

WorkCover has commissioned the independent Scheme Actuary, Mr Michael Playford of Pricewaterhouse Coopers (PwC) to provide costings of options described in the Issues Paper to assist the Inquiry.

The PwC costings are provided at Attachment A and its addendum.

The Peer Review Actuary, Mr Peter McCarthy has advised WorkCover that he does not have additional comment to provide on this question.

QUESTION TWO

The Hon. ADAM SEARLE: Would you be able to provide to the Committee the net cost of journey claims to the scheme, by year?

Mr PLAYFORD: I would have to take that question on notice.

The Hon. ADAM SEARLE: If you could take it on notice; and if you could give us the information for last five or six years, that would be instructive.

ANSWER:

PwC's response to this question is provided at Attachment B.

The Peer Review Actuary, Mr Peter McCarthy has advised WorkCover that he does not have additional comment to provide on this question.

QUESTION THREE

The Hon. ADAM SEARLE: Further to that: throughout the issues paper, and even the WorkCover paper, there is a presumption that return-to-work rates seem to be driven by workers' lack of willingness to return to work. I am just wondering what empirical data WorkCover has collected that might provide a full range of issues about the drivers in return-to-work rates. For example, what research has WorkCover done about the duties that employers are able to provide to workers who have been injured? Just for example, in a previous existence I had some passing acquaintance with the system, and it was often the case that employers, particularly smaller employers, found it difficult to reintegrate workers back into the workforce because of the nature of the workforce and the small nature of the enterprise; and it was not anyone's fault, for example, that in many cases they could not provide meaningful duties. This is not a new issue. In a policy sense, what approaches is WorkCover considering to address that situation? Is it still, for example, contemplated that it is fair to cut benefits for workers in those situations, even though their employers are not able to provide return-to-work duties?

Ms APLIN: If I can take that question in a few parts. In relation to the pattern that we are seeing in the scheme, workers are staying off work longer; so their duration is extending.

The Hon. ADAM SEARLE: I am sorry to interrupt but, just on that, you might need to take this on notice. In relation to that cohort, what research or hard data is WorkCover able to provide us that actually drills into the reasons for the prolonged absence? Is it because the employer, for example, is not able to provide duties for them to return to?

Ms APLIN: I would have to take the data question on notice to see what we could provide back to the Committee.

ANSWER:

Return to work is a complex multi-factoral issue with wide ranging medical, psychological, socio-economic, labour market and industrial relations aspects.

In 2008, WorkCover commissioned PricewaterhouseCoopers (PwC) to undertake a literature review of the evidence on barriers to return to work and successful return to work initiatives and to develop a supporting intervention program and longitudinal research project proposal.

The initiative was aimed at providing assistance to long-term claimants (greater than three years) by helping them overcome barriers to re-entry into the workforce and ultimately achieve durable employment.

The report from PwC also included a remuneration and cost benefit analysis, which indicated a net benefit to the nominal insurer.

The literature review findings revealed long term injured workers face multiple barriers to employment and thus require an approach with the necessary level of flexibility and range interventions to meet these needs.[1]

For example,

- Individual factors including poor health; disability; mental illness; psychological distress; and lack of relevant education and qualifications.
- Societal factors including responsibilities for caring for children; and lack of access to or poorly developed social networks.
- System factors including limited labour demand; age discrimination; transport limitations; and inadequate social service and income support and security.[2]

PwC found that this range of barriers often leads to a lack of expectation and hence motivation among long term injured workers to attempt a return-to-work.[3]

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[1]PricewaterhouseCoopers, *Intensive Return to Work Initiative :NSW WorkCover: Executive Summary*. (June 2008), ii.
[2] Ibid, *Executive Summary*, ii.
[3] Ibid, *Executive Summary*, ii.

The PwC report and proposal was provided to WorkCover in 2008 but the suggested program was not implemented. PwC alerted WorkCover to the proposal again in 2010, and once more it was not implemented.

The WorkCover Executive is currently re-examining the merits of the proposal, or a similar program given it would need to be updated to reflect contemporary international evidence of successful programs.

WorkCover also undertook a literature review in 2011/12. The review identified the following factors as barriers that may impair return to work outcomes:

Drivers		RTW Barriers
Legislative design	Worker benefits	(K) Benefit design – step down points and top up payments that do not incentivise return to work.
	Employer premiums	(K) after 3 years impact of premium is removed (A) Large employers may pressure agents not to service after 1 year
	Industrial relations	(K) Employers may dismiss workers 6 months after injury. However the worker must be reinstated if the worker becomes fit for pre-injury duties within 2 years.
Employer Characteristics [4]	Size	(K) Small businesses are at greatest risk of not having effective return to work strategies – less capacity and resources to provide suitable duties (A) Medium sized employers have less resources than larger employers and may have less propensity than smaller employers to design appropriate RTW strategies
	Return to work (black flags)	(K) Negative attitude to the injured worker's return to work by employer/treatment provider. (K) Employer does not have required return to work systems in place – eg no return to work program, untrained or inexperienced return to work coordinator.
Worker Characteristics[5]	Family	(K) Overly protective partner/significant other who emphasises fear of harm or encourages the perception of injury as a catastrophe (usually well intentioned). (K) Overly solicitous behaviour from partner/significant other (may inadvertently reinforce disability by taking over tasks and doing too much for the injured worker).
	Attitudes and beliefs	(K) Belief that pain is harmful or indicates ongoing physical damage (resulting in fear of anything that leads to more pain and avoidance of activities expected to be painful). (K) Belief that the injury must be diagnosed and treated first.

[4] Refer to FACTORWEB table – appendix 8
[5] Refer to FACTORWEB table – appendix 8

	Older workers/ other injuries	(K) Previous injury with extended time off work. (K) Previous compensable injury (multi-claimants).
	Work	(K) History of manual work – notable NSW occupations include builders, carpenters, labourers, truck drivers and nurses. (K) Work history includes job dissatisfaction, pattern of frequent job changes, or poor vocational direction.
	Emotions (Yellow flags)	(K) Fear of increased pain from activity or work. (K) Depression (especially long term low mood), loss of sense of enjoyment.
	Behaviours	(K) Use of extended rest, disproportionate "downtime". (K) Reduced activity level with significant withdrawal from activities of daily living, particularly work.
Economy	Employment rates (black flags)	(A) In situations of high unemployment injured workers are more likely to stay on benefits longer
Health and rehabilitation Service providers	GP availability	(K) Rural communities have limited access to medical services & wait prolonged periods before being certified
	GP performance (black flags)	(A)Medical provider performance is varied. The longer an injured worker has been visiting a GP the more likely they are to question injury / illness.
	GP	(K) Nominated treating doctor fails to respond to communication by insurer/providers.
	Health providers (black flags)	(K) Health professional sanctioning disability – eg issuing ongoing total incapacity medical certificates, not providing interventions that will improve function.
Claims agents/insurer characteristics	Performance (black flags)	(K) processing of weekly and/or medical compensation benefits, rehabilitation referral practices, case management practices may not be aligned to optimal RTW in some cases

A number of return to work studies have also been undertaken as part of the WorkCover Assist Grants Program. These include:

Barriers in Returning to Work – WCAssist Grant 2004 undertaken by Unions NSW with a cohort of 5 other unions and Essential Media Communications

Report on a quantitative study of 1000 seriously injured workers and their Return to Work

The purpose of the study was to examine the experience of workers in the workers compensation system and identify issues and barriers to workers' successful rehabilitation and return to work (RTW).

The study was undertaken in two stages. Stage 1 was a quantitative survey of 1000 seriously injured workers to determine key barriers and issues in their return to work. The purpose of stage 2 was to more deeply explore the barriers directly with injured workers and their employers.

Some of the key findings of the stage 1 research include:

- Many workers reported that their experience in workers compensation was not problematic.
- Those that did report problems tended to have soft tissue or psychological injuries and they generally reported difficulty in the way they were treated post injury.
- The experience of returning to work was one that was largely shouldered by the individual.
- There tended to be a positive relationship between large organisations and the RTW experiences of respondents.

A comprehensive review of research undertaken in the UK in 2005 supports these findings. Waddell and Aylward reported in 2005 that:

> *"There is a tension between the traditional sick role which is about the right **not** to work and the modern disability role which is about the **right to work.** Sickness and disability benefits are based on citizenship – a social contract between individuals, employers and Government, with a balance of rights and responsibilities on all sides. There is a pressing need for a new and more explicit welfare contract, more appropriate to today's problems, in which rights and responsibilities are clearly defined. " p8*

> *"Many factors influence whether or not a health condition leads to incapacity for work. Health usually comes high on the list. But incapacity associated with common health problems is not a direct consequence of the health condition alone: it depends on interactions between health-related, personal and social factors. The less severe and more subjective the health condition, the more important the role of personal factors (motivation and effort, attitudes and beliefs, behaviour, functioning and participation)".*[6]

WorkCover has also been informed by research findings of a significant body of work undertaken and published by the Organisation for Economic Co-operation and Development (OECD).

The OECD has found that :

> *"Working-age disability policy today is one of the biggest social and labour market challenges for policy* makers".[7]

An OECD report on a series of studies in a large range of OECD countries, including Australia, provides insights into relevant global research and puts forward suggested actions for OECD countries.

The OECD reported that:

> *"The best way to fight benefit dependence and exclusion among people with disability is to promote their re-integration into employment if they can and wish to work. Higher employment promotes social inclusion and reduces poverty risks; it can contribute to improved mental health or faster recovery; it lowers public spending on disability benefits; and it helps to secure labour supply and thereby raise the prospect of higher longer-term economic output. The latter is also important in consideration of rapid population ageing and the likely stagnation or fall in labour supply in most OECD countries in the coming decades.*

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[6] G. Waddell and M. Aylward, *The Scientific and Conceptual Basis of Incapacity Benefits*. (Norwich: The Stationery Office Limited, 2005), 8.
[7] OECD. *Sickness, Disability and Work: Breaking the Barriers-A Synthesis of findings across OECD Countries*. (2010), 9.

People with disability will be among the groups of the population that need to be mobilised for the workforce, in addition to women and older workers.

This is why policy objectives are shifting in most OECD countries in the search for a new balance between the two potentially conflicting goals of disability policy: i) to provide an adequate and secure income for those who cannot work and their families; while ii) providing good incentives and supports to work for those who can. Until the mid 1990s, but still in many cases today, policies were biased towards generous and easily accessible disability benefits with little or no emphasis on the latter goal. This is neither in the interest of the worker nor of the society at large".[8]

The OECD recommends a multifaceted design solution to the multifaceted social policy issues of how to best support people with sickness, injury and disability.

In the WorkCover Scheme this would require financial incentives, management action, Government policy and the legislative framework to be aligned.

The OECD concluded:

"What remains to be done: policy conclusions
The single most important element for a far-reaching change in disability policy and the key to success is to strengthen the financial incentives of all actors involved to promote the same objective: increase employment opportunities for individuals with disability.

- *For sick workers and disability beneficiaries, it must pay to remain in work, seek work or increase work effort;*
- *For employers, it must pay to retain sick workers and help them back quickly into their job or to find another job, and there may need to be subsidies for hiring workers with health problems;*
- *For benefit authorities, it must pay to assess people's work capacity rigorously and avoid the granting of a benefit just because this seems easiest;*

[8] Ibid, *Sickness, Disability and Work,* 11.

● For service providers, it must pay to reintegrate their clients into the regular labour market at a sustainable level.

Better financial incentives for each stakeholder will have to be matched by, first, stronger employment expectations on the part of both workers with health problems and those helping them into work; secondly, corresponding mutual responsibilities especially for workers and employers; and thirdly, better supports so that every stakeholder can fulfil the strengthened requirements. Stronger employment expectations and corresponding responsibilities and supports are equally important for two other stakeholders: Doctors, who have to make more efforts to keep sickness absence periods as short as possible and refocus sick workers on re-employment early on, and employment service caseworkers, who have to profile the client carefully and make every effort to bring the person closer to the labour market".[9]

WorkCover is undertaking a significant suite of operational programs and changes to align its services to best practice.

WorkCover is also developing options for further return to work advisory, support and grants programs to support the operational programs already underway.

[9] Ibid, S*ickness, Disability and Work,* 12-13.

QUESTION FOUR

Ms APLIN: Very true, because it needs to be a balance. The scheme has a significant deficit and, if I come back to the fact that really the two and a half years that it was in surplus was driven by investment returns, not the underlying performance of the scheme, looking at benefits alone will not be sufficient, neither looking at premium or just management action. In relation to providing incentives to employers or programs or focus from WorkCover around people returning to work, ultimately WorkCover has the complexity from a policy position that there are varying sizes of employers and obviously different levels of interest and understanding about the scheme and what to do when there is an injury, let alone return someone to work. WorkCover has been working with the small business commissioner in particular in relation to small business and historically, in this scheme and others, the challenge is that it is a grudge purchase and the interaction with those employers does not typically happen until there is an injury.

From a policy perspective, investing significant amounts in trying to engage a small business owner at the time of an injury is necessary rather than trying to educate and make contact with all small business when it is not an immediate concern. Looking at programs like JobCover—I could take that on notice and provide the Committee with more information about that particular program and how much has been taken up—we have had the experience that small business actually has been taking on injured workers with some subsidy, so continually looking across education and intervention with small business because it is such a rare occurrence and the problems in terms of returning to work are often quite individual.

ANSWER:

To encourage employers to employ workers with a work related injury or illness, WorkCover established a JobCover Placement Program.

The Program offers three benefits, a wage subsidy for up to 12 months (maximum $27,400), exemption of the injured worker's wages from workers compensation premium calculation for two years, and protection against further costs associated with the existing injury for up to two years.

From 1 July 2011, WorkCover significantly upgraded the JobCover Placement Program to make it easier to hire an injured worker seeking new employment. The major changes included:

- increasing the wage subsidy with a new employer from $3,600 over 12 weeks to $27,400 over the first year;
- increasing from one to two years the period that an injured worker's wages are exempt from being included in the employer's workers compensation premium calculation;
- increasing the protection period against further costs associated with an existing injury from one to two years; and
- reducing red tape by enabling the agent managing the worker's claim to manage the program, pay the wage subsidy to the JobCover employer retrospectively and certify eligibility for premium protection.

In the first quarter of 2012 there were 118 JobCover Placement Programs commenced within the Scheme.

Since the amendments were made to the JobCover Placement Program in July 2011, which increased the wage subsidy available to employers, $856 000 has been paid to employers.

Of the 156 current participants, 47 per cent are for claims over three years old and 34 per cent are for claims 18 – 36 months old.

QUESTION FIVE

Mr MARK SPEAKMAN: For how long as a scheme actuary have you been using the labour price index as the measure of inflation?

Mr PLAYFORD: The labour price index, or its equivalent, going back throughout my involvement in the scheme back to 1997, the legislation did change the index that was used a number of years ago. I would have to take it on notice to get the exact date on which it was changed but it would have been the equivalent of the labour price index prior to that time.

ANSWER:

PwC's response to question is provided in the content of its covering letter.

The Peer Review Actuary, Mr Peter McCarthy has advised WorkCover that he does not have additional comment to provide on this question.

QUESTION SIX

Mr MARK SPEAKMAN: Towards the bottom of page 145 of the actuarial report you point out that inflation forecasts do not extend beyond three or four years. So what you have done is, going to the top of page 246, you have used a fixed long-term gap between interest and inflation. You say that that is an approach used by other accident compensation schemes in Australia and New Zealand. Which other accident compensation schemes use that approach?

Mr McCARTHY: Yes.

Mr PLAYFORD: The Victorian WorkSafe scheme, the New Zealand ACC scheme, a roughly similar approach is also used by the Dust Diseases Board. They are three schemes that spring to mind.

Mr MARK SPEAKMAN: You do not know offhand whether other schemes do or do not?

Mr PLAYFORD: Certainly those schemes do. I would have to take it on notice and go back to look at other publicly underwritten accident compensation schemes, but it is generally accepted across a range of these schemes that that is the approach adopted.

ANSWER:

PwC's response to question is provided in the content of its covering letter.

The Peer Review Actuary, Mr Peter McCarthy has advised WorkCover that he does not have additional comment to provide on this question.

CHAIR: Yes, it does, I think, thank you. Just getting back to the overall valuation deficit, I know we talk a lot here about the risk-free yield and the reason for using it in the calculation of the gap. Referring to the letter that you have just tabled, where you are doing basically a monthly reassessment of that gap and seeing of course how volatile it is—for example, in February it seems to have been a positive adjustment of $207 million and in May it is a negative adjustment of $275million—in my experience over time, investment strategies start to stabilise according to the environment that they are in. Is it your expectation going into the future that investment strategies would remain pretty much the same as they are now, given that 50 per cent of the loss or the projected loss is coming out of the investment side of the portfolio, or the income of the fund?

Ms APLIN: I might have to take that on notice, if the Committee requires further information on the investment strategy. We have an investment board. Naturally being a government agency, it is particularly conservative in terms of that investment. I think when you look at this scheme and other schemes and private insurers, the underlying performance of the scheme and the outstanding liabilities, that it is never a good strategy to rely upon investment income to fund outstanding claims costs. So even with improvement in investment income, which all reports that we have about the economy—and perhaps Treasury could comment on that—while there is volatility, we are unlikely in the short term to see a significant improvement in investment returns, based on our current investment portfolio.

CHAIR: I would be happy if you could take that on notice because, as we know, a large part of the deficit relates to a projected shortfall in investment income, for want of better terminology. There is a lot to do and a lot to be done in relation to investment strategies into the future. The majority of our discussion relates to increase in the premiums or reduction in benefits and maybe improving the claims management processes, and that is the way it should be.

Ms APLIN: Yes.

CHAIR: But what I would like to try to understand and better from your investment board is how and what they will be changing in terms of their strategies into the foreseeable future, rather than just irrational and excellent assumptions made by Mr Playford. Are things going to change in terms of what they are actually doing? As we can see from that letter of yours I have just mentioned a few minutes ago that you tabled, the actual investment returns can be quite volatile from month to month and probably from quarter to quarter as well. I understand the underlying assumption is that risk-free rate is falling because of the Reserve Bank reducing rates, but at some stage that will stabilise and you do need to understand then what is going to happen with the long-term return on the funds that the scheme holds. As I say, there is an awful lot of work to be done in the other areas, but there does not seem to be a lot of light shed into that part of the report. I am sure you got a lot of it in there, Mr Playford, but some of those figures and graphs are a little opaque to me.

Mr PLAYFORD: If I could comment a bit further, and if you go to page three of my executive summary, on page three I do some projections of the solvency position of the scheme over the next 10 years. In those projections I assume a long-term expected investment return of approximately 6.6 per cent, which has been provided or is based on advice from WorkCover's investment division and from their consultants about, given their asset mix, what they might expect as a long-term investment return over many years.

Mr MICHAEL DALEY: How many years, 20?

Mr PLAYFORD: You would have to get clarification of that, certainly over an economic cycle of 10 years perhaps. So in these projections of the balance sheet into the future, I have assumed that WorkCover will achieve an actual long-term expected investment return on its assets, not just the risk-free rate of return that is assumed in the liability calculation. What those projections show on page three is that, even if WorkCover achieved its long-term expected investment returns, that alone would not be sufficient to move the scheme back into a surplus position over the next 10 years.

CHAIR: No, and it would not be prudent to assume that anyway.

Ms APLIN: Perhaps, if it would assist the Committee, we can take on notice provision of some past performance of the investment board—there is a new investment board chair—and detail of their future investment plans.

CHAIR: If you could, please, that would be very good.

ANSWER

In March 2012, a new Chairperson, Deputy Chairperson and three directors were appointed to the Workers Compensation Insurance Fund Investment Board.

The Board met for the first time on 30 April 2012.

At that meeting it reviewed PriceWaterhouseCoopers Scheme Valuation, the Fund's appointed asset consultant, Mercer, presented an Investment Asset Allocation Review, and the Board reviewed the Strategic Asset Allocation.

The Board resolved to only slightly change the Fund's Strategic Asset Allocation.

The Board will formally review the Strategic Asset Allocation on a six-monthly basis.

The New South Wales Auditor-General’s Report, Volume Five, refers to an investment benchmark. This benchmark is the weighted return by Investment Asset Class based on the Strategic Asset Allocation, which is set by the Workers Compensation Insurance Fund Investment Board.

The investment benchmark return is generated by the Insurance Fund’s Master Custodian (State Street Australia Limited) on a monthly basis. The Workers Compensation Insurance Fund Investment Board receives a copy of this report.

Performance of the Fund by financial year

Financial Year	Benchmark	WCIF Actual	Excess
July 2005 - June 2006	11.70%	12.10%	0.40%
July 2006 - June 2007	12.80%	13.50%	0.70%
July 2007 - June 2008	-1.50%	-0.45%	1.05%
July 2008 - June 2009	-9.45%	-7.90%	1.55%
July 2009 - June 2010	11.28%	11.03%	-0.25%
July 2010 - June 2011	7.57%	8.02%	0.45%
July 2011 - March 2012	7.11%	6.82%	-0.29%
Since Inception - 31 March 2012	5.17%	5.63%	0.46%

Mr MARK SPEAKMAN: At the bottom of page 15 the WorkCover submission 144 states:

> Some commentators have suggested that New South Wales agent remuneration costs are unreasonably high. Scheme insurance costs in New South Wales are not high by Australian standards.

Then it refers to a report that shows that New South Wales's insurance operation costs, as a proportion of total scheme expenditure, are less than Victoria, Western Australia and Tasmania. However, that report shows New South Wales at 18.6 per cent, Queensland at 8.2 per cent and South Australia at 13 per cent. Is there any reason why New South Wales's insurance operation costs are higher as a percentage than Queensland and South Australia? What, if anything, could be done about bringing New South Wales's costs down towards that level?

Ms APLIN: I might have to take that on notice in terms of the particular page or what it is referring to because the costs are agent remuneration plus WorkCover's costs and the commission. Are you looking at insurance operations across?

Mr MARK SPEAKMAN: I am looking at the first sentence at the top of page 16 of your submission.

Ms APLIN: Yes.

Mr MARK SPEAKMAN: You point out that New South Wales's costs are proportionally lower than Victoria, Western Australia and Tasmania, but I am drawing to your attention that they are proportionally higher than Queensland and South Australia. My question is: Why is that so? If it is so, can anything be done to bring New South Wales down towards Queensland and South Australia's relative costs?

Ms APLIN: But the 8.2 per cent of Queensland is a different scheme with it being centrally managed by the agency. Ultimately, our costs also under insurance operations include the Workers Compensation Commission. I would note that the 18.6 per cent that is recorded in this but then the 17 per cent on a go-forward basis is lower than Victoria, Western Australia and Tasmania.

Mr MARK SPEAKMAN: Why is it higher than Queensland and South Australia?

Mr McCARTHY: The system in Queensland, Michael can correct me about this, if you are just looking at WorkCover, is not a lot by comparison to New South Wales. There is also a regulator in Queensland, which in New South Wales is part of WorkCover. And also the occupational and health system is separate. So you are not comparing apples with apples.

Mr PLAYFORD: I would also note that Queensland has a very different benefit structure to New South Wales in that it does not continue to have tail claimants where there is a lot of administrative expense around continuing the management of tail claims. That would also contribute to it. They have a centralised IT system as well. So there are a number of differences between the two schemes. It means that it is not necessarily a like-with-like comparison.

Mr MARK SPEAKMAN: You do not need to have the document in front of you, but Slater and Gordon on page 21 of its submission points out a lot of things about cost increases—for example, the administrative costs of running WorkCover have increased from $70 million in 1999 to more than $600 million recently, payments to insurance companies between 2001 and 2009 increased from $134 million to $446 million, and there is a $209 million increase in claims handling expenses as at 31 December 2011. Could you be doing more in cutting claims handling expenses? If so, what?

Ms APLIN: I have not had the opportunity to review that particular submission. I would note though that the average total remuneration that has been paid since 2006 to agents is $366 million. There has been some recent analysis, which has been taken, I understand, from the annual reports, which looks at what amount is paid in that particular year but actually relates to payments made to insurers for past years, including when they were licensed insurers before they were scheme agents. If it would be helpful to the Committee, I could take that question on notice and provide the payments to insurers over the period of time referred to in the Slater and Gordon submission. Also from the WorkCover perspective, I have not had the opportunity to review that.

We could also provide that around the expenses, making sure that we provide the break-up between the occupational health and safety division and the workers compensation insurance division. I would say that the workers compensation insurance division is a smaller scale operation than Victoria and Queensland and ultimately the percentage of claims handling expenses is in line with other schemes and private insurers. But we are always looking at ways that we can be far more efficient. Also with scheme agent remuneration, remuneration has reduced by $48 million per year since the scheme was in surplus in 2008. But we will take that on notice and provide the Committee with a detailed breakdown.

ANSWER:

1. COMPARATIVE PERFORMANCE MONITORING REPORT:

The document referred to in WorkCover's submission is the Safe Work Australia Comparative Performance Monitoring Report 13th Edition.

The Report shows that New South Wales insurance operation costs, as a proportion of total Scheme expenditure, are less than in Victoria, Western Australia and Tasmania.

As workers compensation schemes across Australia function under different arrangements, comparisons betweens states is problematic. Queensland has a short tail monopoly insurer scheme. The length of claims under the scheme is much shorter than in New South Wales and subsequently, it does not cost as much to administer them. In addition, the insurer providing claim and policy services is a single government agency and as such, has lower operating costs than New South Wales and Victoria, who run hybrid schemes.

It would be misleading to assume the cost of insurance in NSW is much higher than in South Australia based on the SafeWork Report.

The measure in question describes insurance cost as a proportion of total expenditure. This means the results are impacted by both the amount spent on services/ benefits as well as on insurance operations.

During the period in question, South Australia had an expensive benefits regime (long tail, high levels of income replacement) and as such, the relative proportion spent on insurance operations is reduced.

If the New South Wales and South Australia insurance operation costs were compared based on the cost per claim or cost per employer serviced, the results would be more similar.

Reducing the proportion of total expenditure allocated to insurance costs in New South Wales to levels similar to Queensland would require fundamental changes to either the benefits structure, the underwriting model or both.

Notwithstanding this, WorkCover is committed to increasing its operational efficiency and reducing administrative costs wherever possible.

2. REMUNERATION AND COST OF MANAGING THE SCHEME:

Payments to insurance companies are not an appropriate measure of the services they provide in a particular year.

Neither has cost of managing the Scheme increased from $70 million to $600 million and that is the cause of the deficit.

Slater and Gordon's submission does not accurately reflect how much Scheme agents earn in providing claim and policy services for the Scheme or the cost of running WorkCover.

In no year of service have Scheme agents, or former licensed insurers, earned anywhere near the amount quoted by Slater and Gordon.

The maximum expense shown in the WorkCover Scheme accounts, which was $683 million in the year to June 2006, arose because of expenses relating to prior year services, going back to 2001, which had not previously been recognised in the accounts.

For services provided in the 2011 calendar year, Scheme agents earned remuneration of $332 million. The most agents have earned in single calendar remuneration year over the last six years was $362 million for 2008.

Scheme performance was positive at this time and the remuneration paid to Agents includes a performance based component.

Australian Prudential Regulation Authority statistics indicate public insurers average underwriting expenses accounted for around 18 per cent of net payments in the 2010/11 financial year.

The New South Wales Scheme figure in 2011 was 17 per cent of net payments, which is certainly not out of alignment with other public insurers.

In addition, the SafeWork Australia Comparative Performance Monitoring Report shows that New South Wales insurance operation costs, as a proportion of total Scheme expenditure, are less than in Victoria, Western Australia and Tasmania.

The total of the costs of running Workcover and agent remuneration in 1999 on the same basis as that applying in 2010/11 is $319 million. In 2010/11, these costs have increased to $584 million, which given cost increases over this period, represents a modest increase.

Statements made by Slater and Gordon that the cost of managing the Scheme in 1999 was $70 million are incorrect.

Actual Agent Remuneration payments

The table below is derived from the Scheme valuation as at 31 December 2011, by the independent Scheme Actuary shows that Agent remuneration has actually fallen since 2006 on an inflated basis.

Insurer/Agent remuneration 2002-2012

Year	Original values ($m)	Inflated values ($m)	Inflated net payments ($m)	Insurer remuneration as a percentage of net payments
2001-02	$166	$241	3,673	6.6%
2002-03	$255	$358	3,197	11.2%
2003-04	$278	$375	2,455	15.3%
2004-05	$281	$367	1,859	19.7%
2005-05#	$203	$254	903	28.1%
2006	$337	$411	1,770	23.2%
2007	$339	$398	1,695	23.5%
2008	$362	$410	1,757	23.3%
2009	$300	$328	1,966	16.7%
2010	$303	$318	1,969	16.1%
2011*	$332	$338	1,989	17.0%
2012*	$368	$362		

a six month payment period due to change to calendar year remuneration under the Agent contracts from 1/1/06
*Assuming no improvement post June 2012

A higher proportion of incentives fees were paid during the period 2006 to 2008 as a result of Scheme performance generally being positive during that period. A portion of the total remuneration paid in this period relates to incentive based fees payable out of Scheme savings delivered.

Data obtained from Scheme Actuarial Valuation Reports

QUESTION NINE

Mr PLAYFORD: One that springs to mind—and Geniere knows my views—is that WorkCover has been under-invested in ever since it was established in 1987. One of the key differences between the New South Wales and the Victorian WorkCover scheme is that the Victorian scheme was set up with a centralised information technology system. One of the key differences in WorkCover's ability to be agile and manage the scheme well is that it has to negotiate seven system changes with seven scheme agents every time it wants to change the way claims management occurs in this scheme. It is also inefficient in that it has to pay for maintenance of seven information technology systems, compared to the cost of maintaining a single information technology system. That is one area I suggest that operational efficiencies could be improved.

Mr MARK SPEAKMAN: Are the savings from those operational efficiencies presently capable of being quantified?

Ms APLIN: WorkCover has conducted a review over time about the particular issue that Michael raises in terms of centralised system. We would be able to quantify a range of management savings but they are not going to significantly contribute to a reduction of the deficit. Ultimately, working with the agents presently to align remuneration to outcome I could provide the Committee with detail on that and also of the costing that we have of a centralised information technology system, but they are somewhat outdated. It is expenditure of about $100 million. We have details of what we pay under the contract to agents for system upgrades or changes that we make across the seven systems. The operational efficiencies in relation to that could be quantified but they are minimal in comparison to the deficit.

Mr MARK SPEAKMAN: Do you mean less than $10 million?

Ms APLIN: Yes.

The Hon. TREVOR KHAN: On a $600 million spend?

Ms APLIN: I would have to take the $600 million reference on notice because the WorkCover insurance division, in terms of its operational budget and then ultimately the payments to agents, are not up to $600 million that I am aware of.

ANSWER:

1. IT SYSTEM

A single claims and policy IT system may have the potential to reduce annual IT costs in the Scheme.

A single claims and policy IT system also may have the potential to encourage competition by:

- making it easier for new agents to be attracted to the market
- making it easier for existing agents to be exited if they do not perform, or from the agent's perspective, if the contractual arrangements are not commercially viable
- allowing the existing agent role to be more readily re-defined or segmented, allowing innovation in model, new entrants and specialisation
- increasing the portability of claims and policies.

However, it may also contribute to decreasing competition by reducing agent innovation.

A feasibility study is required to quantify the cost/benefit of a single claims and policy IT system including estimated costs, but has not yet been undertaken.

2. $600 MILLION

The total of the costs of running Workcover and agent remuneration in 1999 on the same basis as that applying in 2010/11 is $319 million. In 2010/11, these costs have increased to $584 million, which given cost increases over this period, represents a modest increase.

Statements made by Slater and Gordon that the cost of managing the Scheme in 1999 was $70 million are incorrect.

QUESTION TEN

Mr MARK SPEAKMAN: Are you going to take on notice a request to cost each of the seven proposals in the Bar Association's seven-point plan, which you will find in submission 77 and the Law Society's submission as well? Can you provide costings on those?

Mr PLAYFORD: I would have to look at what is in those in detail. I suspect that there is not enough detail in the Bar Association's submission, although I have not read it in detail to form a view on that at this point in time. But it is difficult, unless you actually have the detail of an actual package, to cost. The hardest part of any benefit reform to cost is how the behavioural changes will change the cost of the scheme rather than the direct impact of changing benefit levels per se, but I refer you back to what the cost of the scheme was pre the 2001 reforms where the cost of the scheme at that point was estimated to be in excess of 3 per cent of covered wages compared to the level that we currently have.

Mr MARK SPEAKMAN: You will have a go at providing those costings?

Ms APLIN: We will. We will take that on notice to review the content.

Mr McCARTHY: Can I just clarify the comment about our recommendation about commutation? It goes with a very clear warning that the past experience in using commutations in this scheme has not been successful, but we think there is a very strategic, targeted, implemented, effectively and tightly controlled role for commutations.

Mr MARK SPEAKMAN: Unions NSW, submission No. 135, at page 10, says that the workers compensation frequency rate for serious work injuries and diseases has been consistently higher in New South Wales than in Victoria. They say that in the five years to June 2009 the New South Wales annual rate was between 27 and 42 per cent higher than in Victoria. Is there any reason of structure of the economies or structure of legislation why one would expect the New South Wales frequency rate to be that much higher than Victoria? Can you give any explanation for it?

Ms APLIN: I might have to take that question on notice in terms of providing a full response to the committee.

ANSWER:

1. LAW SOCIETY COSTINGS

WorkCover has commissioned the independent Scheme Actuary, Mr Michael Playford of Pricewaterhouse Coopers (PwC), to provide costings of options described in the Issues Paper to assist the Inquiry.

The PwC costings are provided at Attachment A and its addendum.

The Peer Review Actuary, Mr Peter McCarthy has advised WorkCover that he does not have additional comment to provide on this question.

2. UNIONS NSW SUBMISSION

The Unions NSW submission references the SafeWork Australia publication *Comparison of work health and safety and workers compensation schemes in Australia and New Zealand (12th edition).*

The publication compares the number of claims (resulting in more than one week of incapacity to work, or a permanent impairment) per million hours worked in each jurisdiction.

The Report shows Victoria has a consistently lower frequency of claim than New South Wales.

The Unions NSW submission goes on to suggest that this demonstrates Victoria has a lower risk of injury than New South Wales.

Rather than indicating a significantly different level of work safety performance, this result is an anomaly due to different Scheme designs, which result in a number of low severity claims going unrecorded in Victorian workers compensation data.

Given these structural differences, the best indicator available in the Report is on page 8 and focuses on the number of claims resulting in 12 or more weeks of compensation.

This is the best measure because, although differences in claim excess and benefit design may prevent relatively minor claims being reported, a claim resulting in long term work absence is highly likely to be recorded in any jurisdiction.

That indicator has the Victorian and New South Wales frequencies at identical rates (of 1.8 per million hours worked).

There is no compelling evidence that indicates Victorian workplaces are more or less hazardous than equivalent New South Wales workplaces. There are however a range of Scheme design differences that influence the number of claims that are incurred by each and which have nothing to do with work safety.

For example:

- Victoria does not cover journey and recess claims
    - the risk of an injury continues to exist, however journey claims cannot be made on the Victorian Scheme
    - in New South Wales, journey claims account for around 6,500 claims per year
- Victoria has a higher claims excess
    - in effect, a claim is not recorded in Victoria until it has resulted in more than ten days of incapacity plus $610 in medical payments

- in New South Wales, the excess is only five days incapacity and it is waived completely when the employer reports the claim within five days of being made aware of it
- consequently a large number of claims made in New South Wales would not appear on the record if they occurred in Victoria.

- Different industry mix
  - A scheme's average premium is influenced by the mix of high and low risk industries (e.g schemes with a high proportion of low risk industries will have a lower average rate)
  - in Victoria, public sector agencies form part of the Scheme, whereas in New South Wales, public agencies are insured with the Treasury Managed Fund and not included in the Scheme results.
- Different benefits regimes
  - there are numerous differences, described elsewhere – one for example is the Victorian permanent impairment lump sum threshold, which generally prevents payment where the level of impairment is below 10 per cent.
  - In New South Wales, the threshold is 1 per cent for most injuries, thus a stronger incentive for workers with less serious injuries to make a claim.

Section B – Supplementary Questions

Supplementary questions - Mr Michael Playford Consulting Actuarial & Analytics Leader, PricewaterhouseCoopers

From the Hon Adam Searle MLC

1. There are two graphs on page 17 of the PWC Executive Summary showing intimation and finalisation of WID claims. They suggest that finalisations since December 2010 and for some periods beforehand were higher than intimations for the same period. How can that be the case?

2. Were actual figures available for WID finalisations in June and December 2011? If so, what were they?

3. Are there any figures to prove the no of intimations and finalisations for any of these periods?

a. If so what are they?

4. Is a WID claim intimated at the time an insurer is first given particulars of a claim for WID?

5. When you prepared your report did you understand that a Statement of Claim is not filed until after all of the pre-litigation procedures of the legislation had been complied with, including giving notice of the claim, service of a pre-filing statement and a mediation so that a claim must be intimated at an early stage, and may not result in a claim for WID being brought at all? (quote from EY Peer review – WID may be underestimated)

6. Has any modelling been done to assess the effect of implementing the suggested changes on page 16 in relation to WID claims?

7. Do you agree that it would be necessary to assess the effect of those changes before considering legislative change?

8. What would be the effect on the scheme valuation and peer review if the WorkCover scheme was approached/assessed in the same way as the motor accident long-term care model?

9. What would be the effect on the scheme valuation and peer review if the WorkCover scheme used the NSW Treasury Bond rate rather than the Commonwealth in connection with Scheme liabilities?

Mr Mark Speakman MP

10. Looking at the table on page 174 of the full actuarial valuation at 31 December 2011 by PWC dated 12 March 2012:

(a) What is the conceptual difference between “Modelled Ultimate Intimations” and “Current Ultimate Intimations”?

(b) How have each been calculated?

(c) What is the explanation for the increases in “Modelled Ultimate Intimations” from June 2009 to December 2009, June 2010 and June 2011 (the “spike”)?

(d) Why did "Modelled Ultimate Intimations" increase in that period but "Current Ultimate Intimations" were fairly stable?

(e) How, if at all, have the figures in the "Modelled Ultimate Intimations" column in that table been used in arriving at the "estimate of discounted outstanding liability" at 31 December 2011 for workplace injury damages?

(f) How, if at all, have other figures in that table been used in arriving at the "estimate of discounted outstanding liability" at 31 December 2011 for workplace injury damages?

(g) By what amount and how (if at all) does the "spike" affect the "estimate of discounted outstanding liability" at 31 December 2011 for workplace injury damages?

(h) What is your response to the critique of work injury damages calculations given orally to the committee by Law Society witnesses on 21 May 2012?

ANSWER:

PwC's response to these supplementary questions is provided at Attachment D and its addendum.

The Peer Review Actuary, Mr Peter McCarthy has advised WorkCover that he does not have additional comment to provide in relation to these questions.

Supplementary questions - Ms Geniere Aplin, General Manager – Workers Compensation Insurance Division, WorkCover

3. Can WorkCover produce to the Committee all Guidelines issued to Scheme Agents and Self Insurers for the management of claims over the past 10 years?

ANSWER:

To provide these documents for the last ten years would amount to tens of thousands of documents and a significant diversion of resources.

WorkCover has provided the current documents on the enclosed compact disc. Should the Committee require further documents, WorkCover would be pleased to supply them.

WorkCover has established a Workers Compensation Regulatory Guidelines and Instructions Review Task Force to conduct a review of its Guidelines and Instructions to help reduce red tape and administrative burdens, as well as lower costs and liabilities and provide increased efficiencies across the Scheme.

The Taskforce includes representatives from WorkCover, the seven Scheme agents, and self and specialised insurers.