

Allianz Australia Insurance Limited ACN 000 122 850
Worker's Compensation Head Office

05 June 2012

Joint Select Committee on the NSW Workers Compensation Scheme
Parliament House
Macquarie St
Sydney NSW 2000

Re: Inquiry into the NSW Workers Compensation Scheme

Dear Ms. Viaggio,

I am in receipt of your letter of the 30th May, together with attached transcript of evidence.
I now return our response together with the corrected transcript.

Clarification

I refer to the following evidence:

The Hon. ADAM SEARLE: How long have you been a scheme agent or participant in the NSW Workers Compensation Scheme?

Mr KRAWITZ: That is a very good question. I believe it is at least 10 years now; I would have to check for the exact date.

My understanding of this question at the time was how long Allianz had been an "Agent" in the NSW Workers Compensation Scheme.

I would like to take this opportunity to clarify Allianz's participation in the NSW Workers' Compensation Scheme, as follows:

- Allianz's involvement dates back to May 1914, when Allianz's predecessor in title "The Manufacturers' Mutual Accident Insurance Association Limited" (later known as Manufacturers Mutual Insurance Limited (MMI)) commenced its Workers' Compensation underwriting business.
- More recently, MMI was a licensed insurer on the commencement of the Workers Compensation Act 1987.
- There was a change in title from MMI to Allianz Australia in July 2000.
- The current Scheme Agent arrangements commenced on 1 January 2006.

Additional Comments

1. We note some discussions regarding extending the Specialised Insurer scheme program, and in particular we believe that one such new scheme (Club Employers Mutual) may have already been approved. Allianz is concerned that such schemes, if allowed to progress, will in fact substantially worsen the existing WorkCover NSW Scheme's problems. We make this statement based on the following:

- While not the case for all Specialised Insurer schemes, at least some of these schemes (using the Hotel Employers Mutual Scheme as an example) are not true "industry schemes" since entry to the scheme is not compulsory.
- For these schemes (using Hotel Employers Mutual as an example), not only can the insurer's risk selection process improve the performance of the respective scheme, but the insurer is actually given the right to refuse renewal to an employer. This could obviously be used to exit poor performing employers.
- This "refusal right" to the insurer means that 1) the specialised insurer can improve its own profit position by refusing to cover poor performers, and 2) the poor performers will be forced back into the general WorkCover NSW Scheme. Ultimately this means higher premiums for employers in the WorkCover NSW Scheme as it bears the burden of these underperforming employers.
- The more such schemes that are approved, the worse the performance of the WorkCover NSW Scheme will be as more and more "good" risks exit and "poor" risks get forced back.
- Allianz also notes that as currently structured these schemes are anti-competitive. There is presently no competition within the Specialised Insurers schemes and the incumbent insurer essentially has a perpetual monopoly. Likewise, as far as Allianz is aware, the process for creating a new program (using Club Employers Mutual as an example) has not been open to any insurers outside of Employers Mutual which is clearly anti-competitive.

Allianz is not opposed in principle to Specialised Insurers schemes, but we strongly argue that such schemes should only be permissible if the following conditions are met:

- Must be open to competition.
- Must not be allowed to refuse cover for either new business or renewals.

Finally, Allianz strongly suggests that the existing loophole which permits a Specialised Insurer to refuse cover on renewals should be closed to avoid further deterioration of performance in the WorkCover NSW Scheme.

2. We refer to page 48 of the uncorrected proof report of proceedings before the Joint Select Committee on the NSW Workers Compensation Scheme of the 28th May 2012, as follows:

The Hon. ADAM SEARLE: You refer to the performance of scheme agents in both the peer review report and the actuarial assessment and talk about the two largest agents in the scheme. Which two agents are you referring to as being the two largest?

Mr PLAYFORD: I am referring to QBE and Allianz. It is not as simple as just saying the two largest agents. Both those agents historically were two of the very best performing agents in the scheme. In more recent times their experience is merging back towards the scheme average so they have not suddenly become the worst performing agents in the scheme. I talked earlier about the difference in performance between the best and the worst performing being about 20 per cent. In more recent times that has been merging with everyone moving towards the scheme average. The worst performing agents are getting better and moving towards the scheme average and the better performers are moving back towards scheme average, in an environment where the overall scheme performance has been deteriorating. It is not as simple as pointing the finger at those two agents and saying that they have gone bad, because they are still performing as well as or better than many other agents in the scheme.

The Hon. TREVOR KHAN: If the two largest agents' performance deteriorates then the impact upon the scheme is potentially proportionately larger than the improvement of, for instance, the two smallest agents. That follows, does it not?

Mr PLAYFORD: Yes.

The Hon. TREVOR KHAN: Do we conclude therefore that the underperformance by the two largest agents is negatively impacting upon the outcome as far as the scheme is concerned?

Mr PLAYFORD: It is certainly a part of why the scheme performance is deteriorating but I do not believe it is the full reason, no.

We note that there continues to be discussion on the "underperformance by the two largest agents" in the Scheme. We believe that Michael Playford effectively addressed any outstanding question in this regard, by stating that both Allianz and QBE are still performing as well or better than many other agents in the scheme. Ongoing references to underperformance creates a misleading perception in respect of Allianz's performance and impacts negatively on Allianz.

Thank you for the opportunity to provide this feedback.

Please do not hesitate to contact me, should you require any further information.

Yours Sincerely,

David Krawitz
Chief General Manager
Workers' Compensation

JOINT SELECT COMMITTEE ON THE NSW WORKERS COMPENSATION
SCHEME

Allianz Supplementary Submission
Questions asked by Committee

1. What percentage of the claims have employers provided suitable duties so that injured employees could return to the workplace? (p39)

The Hon. ADAM SEARLE: I am happy for you to take this question on notice if you do not have the information to hand. In what percentage of the claims handled by you as a participant in this scheme have employers provided suitable duties so that injured employees could return to the workplace?

Mr SIOMIAK: We do not have the exact numbers. We can look at the numbers, but I would say the vast majority of our claims go back to the existing workplace. At least 70 per cent of our claims, probably more than that, go back in five days.

The Hon. ADAM SEARLE: People who go back in such a short time would not necessarily have a formal return-to-work plan, would they?

Mr SIOMIAK: Anything over five days is a formal claim.

The Hon. ADAM SEARLE: In terms of the claims that you handle outside that 70 per cent, in the five-days-plus area, I would like to know—

Mr SIOMIAK: We will take that on notice

Allianz Response

WorkCover NSW requires Scheme Agents to provide specific policy and claims data. WorkCover does not require Agents to provide data in respect of the percentage of employers who provide suitable duties and therefore Allianz does not capture this information.

2. What percentage of employers terminate the employment of injured workers at six months, nine months, 12 months and 18 months after injury (p39)

The Hon. ADAM SEARLE: Are you also able to provide to the Committee with figures on what percentage of employers terminate the employment of injured workers at six months, nine months, 12 months and 18 months after injury?

Mr SIOMIAK: I am not sure that we actually have that information but I will take the question on notice. I would suggest that WorkCover would be better placed to have the full scheme information.

The Hon. ADAM SEARLE: I understand they might have the full scheme but you would certainly have that information for your claims?

Allianz Response

WorkCover NSW requires Scheme Agents to provide specific policy and claims data. WorkCover does not require Agents to provide data in respect of the proportion of workers that have had their employment terminated and therefore Allianz does not capture this information.

3. Please respond to sections 5 to 7, 8 to 11 and 21 of the Civil Contractors Federation submission (p41)

Mr MARK SPEAKMAN: Have you read the Civil Contractors Federation submission?

Mr KRAWITZ: No, I have not read that one.

Mr MARK SPEAKMAN: Could you take on notice and respond to sections 5 to 7, 8 to 11 and 21 of that submission?

Allianz Response

Section 5 – Allianz agrees that a focus on early intervention and getting people back to work safely and quickly is important to achieving better health outcomes and return to work outcomes for injured workers.

Allianz applies significant effort to undertake early intervention on a claim, including referral to workplace rehabilitation providers where appropriate. Current guidelines require agents to make a 3 point contact with the employer and injured worker within 3 days of notification of the claim. Based on this contact, referral will be made to an external provider where appropriate. Rehabilitation providers are also utilised at a later point should return to work not be progressing using the employer's internal skills/resources available.

With respect to timing of referrals, Allianz's internal data from Q1 2012 demonstrates that where a rehabilitation referral was made on a new claim, the timeliness from date of notification to date of rehabilitation referral was on average 2 weeks.

Section 6 – Allianz is not in a position to comment regarding WorkCover's management of Agent performance and suggests such questions should be directed to WorkCover NSW.

Allianz does note however, that WorkCover has the power to manage Agent performance under the existing contractual arrangements. One such tool is the ability to move policies and claims between Agents based on performance, and we note that during the last contract renewal Allianz was awarded 4,000 extra policies and over 1,000 claims.

Section 7 – Allianz has no objection to WorkCover's release of Agent performance data, provided the information provided is accurate and sufficiently adjusts for differences in each Agent's policy and claims portfolios.

Section 8 – Allianz agrees in principle that the conduct of Work Capacity Assessment should be separated from Injury Treatment.

Section 9 – Allianz supports Independent Medical Examiners being given the power to make binding decisions over work capacity.

Section 10 – Allianz does not support the removal of the injured worker's right to select their Nominated Treating Doctor (NTD). Allianz submits that most injured workers will fare better if they can engage with an NTD of their choosing.

Section 11 – Allianz agrees that Work Capacity Assessments are a necessary tool to be utilised throughout the period of the claim.

Section 21 – We agree in principle that there should be sufficient power for WorkCover and Agents to investigate fraudulent claims, exaggerated claims and personal injury aggravation of claims.

Presently where objective data is available, we conduct appropriate investigations.

The two main barriers/issues in investigating claims are:

1. Limited timeframes to determine liability; and
2. Agents do not have the power to compel doctors to provide clinical notes, which can be critical in determining whether there are other factors contributing to the onset/development of a condition/injury..

4. Please respond to material contained in the Australian Medical Association's submission (p41)

Mr MARK SPEAKMAN:Have you read the Australian Medical Association's submission?

Mr KRAWITZ: I may have read that one. I have read about 20 of them so I cannot be sure if it was that one or not.

Mr MARK SPEAKMAN: Can you take on notice the material under the heading "causation" on pages 4 to 5 and the material under the heading "other uses of medical assessment panels" on page 5 of that submission and provide a response? Just going to that submission, there is one thing I want to raise with you. There is a complaint by the Australian Medical Association [AMA] of a tendency for scheme agents to issue form letters. Can you either respond to that or take that on notice?

Mr SIOMIAK: I will take that on notice.

Allianz Response

Causation

Allianz agrees in principle with the points raised by the Australian Medical Association (AMA) on causation. Currently there is the potential for conditions not caused by the workplace being covered by the Scheme. Further, Allianz agrees that decisions regarding causation are best established by an experienced Independent Medical Specialist with a strong understanding of rehabilitation and injury management.

Other Uses of Medical Assessment Panels

Allianz supports in principle the use of an Approved Medical Specialist or a panel of medical assessors extending beyond the area of assessment of Whole Person Impairment (WPI), including assessments for appropriate treatments on a claim.

Form Letters

In the initial stages of a claim, there are key questions that need to be asked of any claim, which may warrant the issue of "form letters". As a claim progresses, Allianz's practice is to issue letters where the questions are tailored to the specific circumstances of the worker.

5. Who has the obligation to notify of a claim under the Act (p42)

The Hon. TREVOR KHAN: Who has the obligation to notify of a claim under the Act?

Mr SIOMIAK: That is a good question. I will take it on notice. I am not sure but I believe—

The Hon. TREVOR KHAN: It is fairly fundamental to the initiation.

Mr SIOMIAK: I believe it is the employer but I will confirm that for you.

Allianz Response

The requirements for "Initial Notification of Injury" are outlined in the Workplace Injury Management and Workers Compensation Act 1998 section 266, as follows:

"In this Part, "initial notification" to an insurer of an injury to a worker means the first notification of the injury that is given to the insurer, in the manner and form required by the WorkCover Guidelines, by the worker or the employer or by some other person (for example, a medical practitioner) acting for or on behalf of the worker or the employer."

6. Please comment on criticism from other witnesses on the constant changes of case managers and inexperience of case managers(p44).

The Hon. NIALL BLAIR: Some of the criticism from other witnesses has been about the constant change of case managers and inexperience of case managers. Would you like to respond to some of that on behalf of your organisation?

Mr SIOMIAK: To do the question fairness and justice, we will probably take that on notice.

Allianz Response

Allianz is a major workers' compensation employer, with over 1,000 workers compensation employees nationally and over 400 in our NSW Workers Compensation business.

Workers Compensation case management is a demanding role, requiring employees to have a high level of skill across multiple areas. Allianz has an intensive induction and training program to develop Case Managers' skills. In addition, Allianz employs a multidisciplinary claims model based on collaborative case management strategies. This means that while there is always a designated Case Manager for each claim, the multidisciplinary team structure ensures that a number of claims staff are familiar with each claim, thereby ensuring both access to a wide base of experience and knowledge and a continuity of service even when there is a change of case manager.

To minimise the turnover of experienced Case Managers, Allianz has a number of retention policies including:

- An attractive case management career path and development program.
- A comprehensive training program, incorporating both technical and soft skills.
- A culture that recognises high performance.

7. Please provide details as to what claims estimate is put on a claim that is expected to last 5 days, 30 days and three months (p45)

The Hon. TREVOR KHAN: Are you able to give either now or later an indication as to what claims estimate you put on for a claim that is expected to last five days, 30 days and three months?

Mr SIOMIAK: In terms of what rules to use?

The Hon. TREVOR KHAN: For instance in terms of an experience-based policy, what loading is going to be put on the policy for a claim that is assumed to be for five days absence?

Mr SIOMIAK: Yes, we followed the standard rules and guidelines set by WorkCover.

The Hon. TREVOR KHAN: Are you able to indicate that to us in due course?

Mr SIOMIAK: Yes, no problem.

Allianz Response

Estimating on claims is applied in accordance with WorkCover NSW Claims Estimation Manual and the estimate on a given claim will depend upon a number of factors.

5 days incapacity

If it is anticipated that the worker will only have 5 days of work then the following estimate will apply:

- Wages - The estimate for the 5 days would be: Current Weekly Wage Rate ("CWWR") x 5 days.
- Medical - No indication that ongoing treatment is required = \$700

Indication that further treatment required: \$1250

If however there is information on file to suggest a specific medical estimate, that will

be applied and file noted.

- Rehabilitation: Usually NIL estimate is applied, however if a rehabilitation provider is engaged then estimate would be \$3000
- Investigation Costs: If independent medical or other investigation required, then minimum \$1000
- Other Expenses: aids and equipment, travel, home care, chemist reimbursements etc. Default amount otherwise as per evidence on file.

30 days of incapacity

Injuries with 7 + days expected incapacity estimate:

- Wages - 30 days x CWWR
- Medical - This will depend on the type of injury. Injuries involving soft tissue, musculo-ligamentous, simple fractures etc = \$3000. Operative treatment \$5000
- Hospital - If there was operative treatment then further \$5000 added for hospital unless specific amount known
- Rehabilitation - If rehabilitation provider engaged then estimate for \$3000
- Investigation - Minimum \$1000
- Other - Minimum \$250

3 months incapacity

- Same formula as 30 days of incapacity (as above) with applicable days off work times x CWWR
- If however the worker has not returned to work where it was initially expected that the worker would return in less than 12 weeks then estimate will need to be reviewed at that point.
- The estimate will need to be increased for further 40 weeks, that is CWWR x outstanding weeks and then applicable statutory rate x 26 weeks¹.

¹ This is because under section 36 of the Workers Compensation Act, the workers are only entitled to receive 26 weeks of their CWWR. After that their rate will drop to the applicable statutory rate. Meaning that they could receive a statutory rate applicable to a single person or with dependants. If the statutory rate is higher than their CWWR, then they will receive their CWWR.

HEM

Hotel Employers Mutual A specialist workers compensation insurer for the hospitality industry

Policy information

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How to start a new policy with HEM

If you would like information on starting a new policy with HEM, please contact a member of our Underwriting team on

Policy renewals

Completion of renewal documentation can be a complex process. Our experienced Underwriting staff will provide you with assistance to ensure that this process is as simple as possible.

Cover provided

What the Insurer is liable for

1. The Insurer will indemnify the Employer against all of the following sums for which the Employer becomes liable during or in respect of the period of insurance:
 - a. compensation that the Employer becomes liable to pay under the Act to or in respect of any person who is a worker of the Employer (including any person to whom the Employer is liable under section 20 of the Act);
 - b. any other amount that the Employer becomes liable to pay independently of the Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under law of another country) for any injury to any such person (not including liability in respect of an injury, suffered by a person other than such a worker, arising out of any rescue or attempted rescue);
 - c. costs and expenses incurred with the written consent of the Insurer in connection with the defence of any legal proceeding in which any such liability is alleged.

Businesses and industrial activities to which Policy applies

2. The Policy applies to a business or industrial activity described in the Schedule of Employer Particulars. The Employer can change the businesses or industrial activities to which the policy applies by giving notice of the change in writing to the Insurer. The Schedule of Employer Particulars is taken to have been changed to give effect to any such notice given by the Employer. The premium payable for the policy is to be adjusted in accordance with any change in the businesses or industrial activities to which the policy applies.

Insurer is directly liable to workers

3. The Insurer (as well as the Employer) is directly liable to any worker and (if the worker dies) to the worker's dependants or other persons to pay the compensation under the Act or other amount independently of the Act for which the Employer is liable and indemnified under the Policy. This means that a claim can be made and action taken directly against the Insurer.

Insurer is bound by judgments etc. against Employer

4. The Insurer is bound by and subject to any judgment, order, decision or award given or made against the Employer, in respect of any liability for which the Insurer is liable to indemnify the Employer under the Policy.

Premium

5. The policy premium is calculated taking into consideration the following:
 - o the value of wages paid to workers over the last three years and
 - o your claims history over the last three years
 - o your OH&S procedures and standards

Policy conditions

Employer must give Insurer notice of injury to worker

1. The Employer must give notice to the Insurer of any injury as soon as practicable after information comes to the knowledge of the Employer, or of the Employer's representative for the time being, as to the happening of the injury or of any incapacity resulting from the injury.

How notices are to be given

2. (1) Notices must be given to the Insurer by hand delivery, post or electronic transmission.
(2) Notices must be given to the Employer by hand delivery, post or electronic transmission.

Employer not to make admissions etc

3. The Employer must not, without the written authority of the Insurer, incur any expense of litigation, or make any payment, settlement or admission of liability in respect of any injury to or claim made by any worker.

Defence of proceedings

4. The Insurer can use the name of the Employer in respect of anything indemnified under the policy, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the Insurer. The Employer must comply with all reasonable requests by the Insurer for information, assistance and documents to enable the Insurer to settle or resist a claim.

Subrogation

5. The Insurer can use the name of the Employer in any proceedings to enforce, for the benefit of the Insurer, any order made for costs or otherwise. The Insurer has the right of subrogation in respect of all rights which the Employer may have against any person or persons who may be responsible to the Employer or otherwise in respect of any claim for any injury covered by the policy. The Employer must execute such documents as may be necessary for the purpose of vesting any of those rights in the Insurer, as and when required to do so by the Insurer.

Precautions to prevent injury

6. The Employer must take all reasonable precautions to prevent injury.

Alterations and repairs following injury

7. So far as is reasonably practicable, the Employer must not alter or repair any work, machinery, plant, way or appliance after an injury to a worker occurs in connection with it, until the Insurer has had an opportunity to examine it or has consented to the alteration or repair being made.

Insurer's right of inspection

8. The Insurer is entitled to inspect at any reasonable time any work, machinery, plant, way or appliance used in the Employer's business or industrial activity.

Assignment

9. An assignment of interest under the policy does not bind the Insurer unless the written consent of the Insurer to the assignment has been obtained.

Renewal of Policy

10. The policy is renewed on the expiration of the current period of insurance to which it applies, except where:
 - a. the Employer has given written notice to the Insurer (before the expiration of the current period of insurance) that renewal is not required; or
 - b. the Insurer has given the Employer notice in writing not less than 14 days before the expiration of the current period of insurance that the Insurer refuses to renew the Policy

The period of each renewal is 12 months, or such shorter period as the Insurer and the Employer agree to before renewal.

Cancellation of Policy

11. The Insurer may cancel the policy at any time if the Insurer has first obtained the written consent of the WorkCover Authority (and cannot cancel the policy in any circumstances without that consent). The Insurer cancels the policy by giving notice of cancellation in writing to the Employer. The cancellation takes effect on the cancellation day notified in the notice of cancellation but that day must not be less than 7 days after the notice of cancellation is given to the Employer. Section 184 of the Act applies as if the Policy had been cancelled under that section.

No waiver or alteration

12. A provision of the policy cannot be waived or altered unless the consent of the Insurer has been previously obtained and signified by endorsement on the policy.

Employer must tell the Insurer if unable to give suitable work requested by injured worker

13. If a worker employed by the Employer is partially incapacitated for work as a result of an injury and requests the Employer to provide suitable employment for him or her and the Employer does not immediately provide suitable employment, the Employer must promptly notify the Insurer of the following:
 - a. a. the fact of the worker's request and that the Employer has not provided suitable employment;
 - b. b. any proposal to provide or arrange for suitable employment for the worker, having regard to the medical certificate which the worker supplies and to the Employer's workplace rehabilitation program (if any) or otherwise.

Employer must advise change of business or industry

14. The Employer must notify the Insurer, as soon as practicable, of any change in the business or industrial activity carried on by the Employer.
15. Records to be kept of wages
16. The Employer agrees to allow the Insurer to inspect the records kept by the Employer under section 174 of the Act. Note: Section 174 of the Act requires the Employer to keep certain records (such as records of wages paid to workers) and requires the Employer to keep these records for at least seven years. The Insurer may inspect these records.

Cover conditional on Employer complying with Policy, Act and regulations

17. The indemnity provided by the policy is conditional on compliance by the Employer with the provisions of the policy, the Act and the regulations under the Act.

Act and regulations form part of Policy

18. The policy is subject to the provisions of the Act and the regulations under the Act and those provisions are taken to form part of the policy.

Definitions

In the policy:

19. "Employer" means the person insured under the policy, being the person named as the Employer in the Schedule of Employers Particulars;

"Insurer" means the insurer of the Employer under the policy, being the person named as the Insurer in the Schedule of Employer Particulars;

"period of insurance" means the period specified in the Schedule of Employer Particulars as the period during which the policy is in force, and any subsequent period in respect of which the policy is duly renewed;

"the Act" means the Workers Compensation Act 1987

"the Proposal" means the proposal for insurance in respect of which the policy is issued (made by the Employer to the Insurer);

"Schedule of Employer Particulars" means the Schedule most recently issued by the Insurer to the Employer as the Schedule of Employer Particulars in respect of the policy;

"worker" has the same meaning as in the Act (including the extended meaning it has because of Schedule 1 (Deemed employment of workers) to the Act).

Proposal and Schedule form part of Policy

20. The Proposal is the basis of this contract of insurance. Both the Proposal and the Schedule of Employer Particulars are considered to form part of the policy.

Notes

1. Recovery of excess from Employer. Under section 160 of the Act, the Employer is required to repay an excess of the first \$500 this needs to be amended refer Claims department (or if another amount is prescribed by regulations under the Act, that other amount) of weekly payments of compensation in respect of each claim paid by the Insurer. An Employer is not required to make the repayment to the extent that the Insurer either offsets the amount against compensation duly advanced by the Employer to the claimant

worker or makes an appropriate debit against any amount standing to the Employer's credit for premiums. No longer applicable.

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