LEGISLATIVE COUNCIL STANDING COMMITTEE ON LAW AND JUSTICE

FIRST REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE WORKCOVER AUTHORITY

RESPONSES TO SUPPLEMENTARY QUESTIONS ON NOTICE

1. Please provide the Committee with a brief overview of the 2012 reforms to workers compensation legislation. What has been the progress of the Authority in implementing these reforms?

RESPONSE:

The Government implemented reforms to the workers compensation system in June 2012. The reforms were designed to improve financial support for the most seriously injured workers and provide more assistance and incentives for injured workers to return to work while restoring the financial sustainability of the Scheme.

The changes were implemented in stages. A number of the reforms commenced on 19 June 2012, including changes in respect of removing journey claims where there is no real or substantial connection to work, limiting lump sum payments for permanent impairment and removing nervous shock claims.

On 17 September 2012, the weekly benefits for many seriously injured workers, with an assessed whole person impairment of more than 30 per cent, increased to a minimum of $736 per week. Under these reforms, 940 of the most seriously injured workers in the New South Wales system received approximately 70 per cent more in benefits than what was available under the previous statutory rate.

Eligible workers making a claim on or after 1 October 2012 are now receiving benefits based on their pre-injury earnings under the new legislation. Overtime and shift allowances are now included in the calculation of weekly payments for the initial 52 weeks of the claim.

Under the reforms, the entitlement to weekly benefits is capped to an aggregate of 260 weeks. Medical and related payments are capped at 12 months after a claim is made or, where weekly payments of compensation are made, for 12 months after the worker ceases to be entitled to those weekly payments. Eligible seriously injured workers are exempt from the time limits.

The reforms include work capacity assessments involving a review of an injured worker's medical, functional and vocational status to help inform decisions about their capacity to return to work in suitable employment and entitlement to weekly payments. A work capacity assessment can occur at any point in the life of a claim, and a decision must be made on an injured worker's capacity by 130 weeks of entitlement to weekly payments and reviewed at least every two years thereafter if the injured worker has not returned to work.

Workers can access a three-tiered review of decisions made by insurers in respect of work capacity, consisting of an internal review by the insurer, a merit review by WorkCover, and an independent procedural review of work capacity decisions by the WorkCover Independent Review Office (WIRO).

Under the reforms, WorkCover inspectors have the ability to issue improvement notices to any employers who fail to provide injured workers with suitable work where suitable work is available.

In addition, a worker who is fit for work also has an obligation to work cooperatively with their employer or insurer and make reasonable attempts to return to suitable employment as quickly as possible where available.

Claims made prior to 1 October 2012 were transitioned to the new legislation throughout 2013. The original existing weekly payment rate on claims made prior to 1 October 2012 continued until the injured worker was transitioned to the new benefits following a work capacity assessment and decision. Injured workers received three months' notice before any change was made to their benefits.

For those claims made prior to 1 October 2012 that were not in receipt of weekly benefits, the time limit on entitlement to medical and related expenses commenced from 1 January 2013 and ceased on 31 December 2013. These workers, whose medical benefits ceased on 31 December 2013, can make a subsequent claim if there is a further deterioration in their condition related to their original injury.

The last Scheme valuation showed a 10 per cent reduction in active claims (those claims receiving weekly benefits). This reflects the stronger focus on capacity and return to work across all claims driving better outcomes on claims and Scheme performance. Safe Work Australia has reported that in 2012/13, the New South Wales return to work rate improved by three per cent to 88 per cent, making it higher than the national average of 86 per cent.

Since the implementation of the reforms, the following observations can also been made:

- average weekly and medical benefit payments have increased on claims despite a reduction in the numbers of reported claims, showing that more benefits are being accessed by more seriously injured workers and those that have little or no capacity for work;
- significantly higher weekly benefit payments on those claims prior to 1 October 2012 that were transitioned to the changes through a work capacity assessment, particularly for those injured workers that have been assessed with little or no work capacity;
- average payments for rehabilitation on each claim have increased providing more assistance to help rehabilitate injured workers across the Scheme and ensure they have adequate support to assist them to return to work where they have capacity for work; and
- most seriously injured workers with whole person impairment of more than 30 per cent are receiving up to 70 per cent more in benefits.

The independent actuarial valuation as at June 2013 shows the Nominal Insurer Scheme is becoming more financially sustainable.

2. A number of submissions to this Inquiry have discussed the potential conflicts of interest inherent in the WorkCover Authority's many functions, such as the Authority's role as both the regulator and nominal insurer.[1] What is your response to these concerns?

RESPONSE:

Individual provisions and parts of the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* make the discrete roles of the Nominal Insurer and WorkCover Authority as regulator clear.

[1] See for example, Submission 22, The Law Society of NSW, pp 3-6.

WorkCover's responsibilities for work health and safety and workers compensation are administered by separate divisions of WorkCover. The current arrangement allows for synergies to be developed between ensuring work health and safety on the one hand and reducing work injuries and improving return to work rates on the other.

WorkCover agrees it could communicate more clearly with the workers compensation community about the legislation and whether it is acting in its capacity as a regulator or insurer.

WorkCover will continue to identify ways in which it can improve its operating model to better distinguish the regulatory and insurer functions.

3. In their submission to the Inquiry, Unions NSW suggested that workers' compensation claims in New South Wales have plateaued.[2] What are the current trends and changes in workers' compensation payments?

RESPONSE:

Please see Attachment E detailing the current trends and payments in the Workers Compensation Nominal Insurer Scheme.

4. During their evidence to the Committee on 21 March 2014 representatives from the Injured Workers Support Network alleged that employees of the WorkCover Authority of NSW have bullied, harassed and intimidated injured workers.

a. **Can you provide details of any contact you have had with the Injured Workers Support Network regarding these allegations?**

b. **What is your response to these concerns?**

RESPONSE:

WorkCover has no record of any contact from Injured Workers Support Network, concerning allegations that employees of WorkCover NSW have bullied, harassed and intimidated injured workers.

5. Are your inspectors still undertaking investigations into the death of a 22 year old Canadian National Matthew Lopez-Linaires, who was killed last April by a falling steel beam while working on a demolition site in Camperdown? When do you expect these will be finalised?

RESPONSE:

The investigation into the death of Mr Lopez-Linaires is complete, with findings currently under consideration. A report for the Coroner has also been prepared, which is expected to be forwarded to the Coroner for consideration within the next two weeks.

6. Were your inspectors in discussions regarding fire risks and emergency evacuation at the Barangaroo construction site prior to the recent major incident? With whom?

[2] Submission 31, Unions NSW, p 6

RESPONSE:

WorkCover officers visit the Barangaroo site regularly to provide advice and assistance. While on site, inspectors have attended safety committee meetings and liaised with health and safety representatives (HSRs). The inspectors also have an ongoing role in assisting the development of and monitoring the work health and safety site management plan that includes the emergency evacuation procedures.

It is in this context that in approximately May 2013, WorkCover inspectors had discussions with the then site Manager of Barangaroo South, and the Construction Manager for Tower 2, in relation to evacuation procedures. This discussion took place in the early stages of the build and reflected the changing configuration of the site at the time, as the building was coming out of the ground and formwork was being constructed. The advice provided at that and on subsequent occasions has been of both technical and general in nature and directed at the planning for the various future stages of the build program. WorkCover advice is informed by the incidents that occur across the whole industry as well as informing good work health and safety practice.

7. What is the source of the information that you supplied to PWC to prepare their actuarial assessment? Is it collated by a particular section of WorkCover or another agency? If so, what is the name of the section or agency?

RESPONSE:

PwC receives monthly data files from WorkCover's Strategy and Governance Group in Information Services and receives support from the System Performance Branch in Workers Compensation Insurance Division. The source of the information is from data submissions provided by Scheme agents to WorkCover's Corporate Data Repository.

8. Are you able to identify what percentage of claimants have returned to actual work at 52 and 104 weeks, as opposed to those who gained "suitable employment" under Section 32A?

RESPONSE:

Of injured workers who returned to work at 52 weeks, 80 per cent returned to pre-injury employment and 20 per cent returned to other duties.

Of injured workers who returned to work at 104 weeks, 85 per cent returned to pre-injury employment and 15 per cent returned to other duties.

9. Is it the case that work capacity assessments and Section 32 A of the WorkCover Act allows insurers to claim that someone is "returned to work" when they are deemed to be in "suitable employment", regardless of whether that work is actually available?

RESPONSE:

The workers compensation legislation requires insurers to determine an injured worker's current work capacity. For the purpose of work capacity assessments under the *Workers Compensation Act 1987*, a worker may be deemed to have current work capacity and is able to return to work in suitable employment, even though that suitable employment may not exist or be available.

"Suitable employment" is defined as being employment in work for which the worker is currently suited, having regard to a number of factors, but regardless of whether the work or the employment is available, whether it is of a type or nature that is generally available in the employment market, and regardless of the nature of the worker's pre-injury employment and the worker's place of residence.

When looking at suitable employment options for a worker, the insurer is required by the legislation to make sure the worker is able to undertake the suitable employment, by being required to take into account the worker's incapacity, their age, skills, education and work experience, the return to work plan and the rehabilitation services that have been provided to the worker.

10. Can the Independent Actuary provide an estimate of the Scheme's performance if there had been no Legislation in 2012, using the historical external factors (Discount rate, yields etc).

RESPONSE:

Please see Attachment F.