LEGISLATIVE COUNCIL STANDING COMMITTEE ON LAW AND JUSTICE

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

ADDITIONAL SUPPLEMENTARY QUESTIONS ON NOTICE ARISING FROM PUBLIC HEARING 21 MARCH 2014

1. How many work capacity assessments have been undertaken for the periods:
a. 1 July 2012 to 30 June 2013?
b. 1 July 2013 to date?

2. What were the outcomes of those assessments?

A work capacity assessment is a review of a worker's functional, vocational and medical status and helps to inform decisions by the insurer about the worker's ability to return to work in his or her pre-injury employment or suitable employment with the pre-injury employer, or at another place of employment. Such assessments may or may not result in a work capacity decision. It is assumed these questions relate to work capacity assessments that have resulted in a work capacity decision.

Workers Compensation Nominal Insurer Scheme Agents

Injured workers in receipt of weekly payments of compensation prior to 1 October 2012 were transitioned by Scheme agents to the new legislative framework from 1 January 2013.

- Between 1 January 2013 and 30 June 2013, 7,338 work capacity decisions were made by Scheme agents. Of those decisions:
    - 4,227 were non-adverse (weekly payments remained the same or increased); and
    - 3,111 were adverse (weekly payments were reduced, or were nil).
- Between 1 July 2013 and 28 February 2014, Scheme agents made 9,371 work capacity decisions of which:
    - 4,974 were non-adverse; and
    - 4,397 were adverse.

For new claims made on or after 1 October 2012, insurers are required to undertake work capacity assessments after a worker has been in receipt of 78 weeks of cumulative weekly benefits, as a minimum. Work capacity decisions by Scheme agents for claims made on or after 1 October 2012 to 28 February 2014 have resulted in 210 adverse decisions.

Self and Specialised Insurers

Between 1 November 2012 and 30 June 2013, 1,645 adverse work capacity decisions were made by self and specialised insurers.

In the period 1 July 2013 to 28 February 2014, self and specialised insurers made 3,257 adverse work capacity decisions.

For new claims made on or after 1 October 2012 to 28 February 2014, 30 adverse work capacity decisions were made by self and specialised insurers.

3. What was the average time for the undertaking of the assessments?

Work capacity assessment is an ongoing process of assessment and reassessment that commences on notification of a workplace injury and continues, as needed, during the life of the claim.

WorkCover does not require the reporting of data on the time taken for work capacity assessments or decisions as this will vary on a case by case basis.

4. What was the longest time taken (or still being taken) for any assessment?

See response to Question 3.

5. How many work capacity assessments were subject to internal review during the periods:
a. 1 July 2012 to 30 June 2013?
b. 1 July 2013 to date?

Workers Compensation Nominal Insurer Scheme Agents

In the period 1 December 2012 to 30 June 2013, Scheme agents received 447 applications for internal review of a work capacity decision.

Between 1 July 2013 and 28 February 2014, Scheme agents received 1,332 applications for internal review of a work capacity decision.

Self and Specialised Insurers

In the period 1 December 2012 to 30 June 2013, self and specialised insurers received 216 applications for internal review of a work capacity decision.

Between 1 July 2013 and 28 February 2014, 671 applications for internal review of a work capacity decision were received by self and specialised insurers.

6. What were the outcomes of those internal reviews?

Workers Compensation Nominal Insurer Scheme Agents

Of the 1,580 internal review applications determined by Scheme agents:

- 1,084 resulted in no change to the decision;
- 298 resulted in a more beneficial outcome for the worker;
- 37 resulted in a less beneficial outcome for the worker; and
- 161 were declined.

Self and Specialised Insurers

Of the 673 internal review applications determined by self and specialised insurers:

- 491 resulted in no change to the decision;
- 143 resulted in a more beneficial outcome for the worker;
- 11 resulted in a less beneficial outcome for the worker; and
- 28 were declined.

7. What was the average time for the undertaking of the reviews?

Section 44 (1)(a) of the *Workers Compensation Act 1987* requires that an insurer must complete its internal review within 30 calendar days after an application for internal review is made by the worker. Scheme agents aim to ensure that workers will receive the written advice of the internal review decision within 30 days. The average time for the decision to be completed and posted by the Scheme agent, currently ranges from 19 to 27 calendar days.

WorkCover does not hold any data from self and specialised insurers regarding time taken to complete internal review applications.

8. What was the longest time taken (or still being taken) for any review?

The longest time taken for an internal review by a Scheme agent was 40 calendar days.

WorkCover does not hold any data from self and specialised insurers regarding time taken to complete internal review applications.

9. How many work capacity assessments were subject to WorkCover merit reviews during the periods:
a. 1 July 2012 to 30 June 2013?
b. 1 July 2013 to date?

There were 68 applications for merit review finalised in the period from 1 July 2012 to 30 June 2013.

There were 615 applications for merit review finalised in the period 1 July 2013 to 10 April 2014.

10. What were the outcomes of those merit reviews?

Of the 683 merit reviews completed to 10 April 2014:

- 331 resulted in the same outcome as the insurer's work capacity decision;
- 192 resulted in a more beneficial outcome for the worker than the insurer's work capacity decision;
- 13 resulted in a less beneficial outcome for the worker than the insurers work capacity decision;
- 147 applications were finalised without a merit review being conducted, for reasons including:
    - applications for merit review being lodged before an application for internal review had been made;
    - decisions were not 'work capacity decisions';
    - the insurer had either subsequently determined not to rely on the original work capacity decision that was the subject of the application, or had in fact made a subsequent and different work capacity decision on the same issue;
    - the worker withdrew their merit review application;

- applications were lodged outside the 30 day time limit for lodging a merit review application under the Act.

11. What was the average time for the undertaking of the reviews?

In total, as at 10 April 2014, 683 merit review applications have been finalised in an average timeframe of 61.9 days.

12. What was the longest time taken (or still being taken) for any review?

The longest time taken (or still being taken) for any review as at 10 April 2014, is 199 days for a current application, which is yet to be finalised.

13. How many work capacity assessments were subject to WorkCover Independent Review Office review during the periods:
a. 1 July 2012 to 30 June 2013?
b. 1 July 2013 to date?

WorkCover would not necessarily hold all the information sought in questions 13 to 16 and, more importantly, as the WorkCover Independent Review Office (WIRO) is independent of WorkCover it is more appropriate for the Committee to refer the questions to the WIRO. WorkCover advised the Committee of this on 10 March 2014, following consultation with the WIRO.

14. What were the outcomes of those reviews?

See response to Question 13 above.

15. What was the average time for the undertaking of the reviews?

See response to Question 13 above.

16. What was the longest time taken (or still being taken) for any review?

See response to Question 13 above.

17. How many workers have had their weekly benefits reduced as a result of work capacity assessments for the periods:
a. 1 July 2012 to 30 June 2013?
b. 1 July 2013 to date?

<u>Workers Compensation Nominal Insurer Scheme Agents</u>

Between 1 July 2012 to 30 June 2013, 3,111 work capacity decisions were issued by Scheme agents that may have resulted in a worker's weekly benefits reduced or ceased.

Between 1 July 2013 and 28 February 2014, 4,397 work capacity decisions were issued by Scheme agents that may have resulted in a worker's weekly benefits being reduced or ceased.

For claims made on or after 1 October 2012, 210 work capacity decisions were issued by Scheme agents between 1 October 2012 to 28 February 2014 that may have resulted in a worker's weekly benefits being reduced or ceased.

Self and Specialised Insurers

In the period 1 November 2012 to 30 June 2013, 1,645 work capacity decisions were issued by self and specialised insurers that may have resulted in a worker's weekly benefits being reduced or ceased.

Between 1 July 2013 and 28 February 2014, 3,257 work capacity decisions were issued by self and specialised insurers that may have resulted in a worker's weekly benefits being reduced or ceased.

For claims made on or after 1 October 2012, 30 work capacity decisions were issued by self and specialised insurers between 1 October 2012 to 28 February 2014,that may have resulted in a worker's weekly benefits being reduced or ceased.

18. How many workers have lost their weekly benefits as a result of work capacity assessments for the periods:
a. 1 July 2012 to 30 June 2013?
b. 1 July 2013 to date?

Refer to response to question 17, above.

19. How many workers have lost their entitlements to medical expenses as a result of work capacity assessments for the periods:
a. 1 July 2012 to 30 June 2013?
b. 1 July 2013 to date?

A work capacity decision does not examine an injured worker's entitlement to medical expenses.

Workers whose weekly payments of compensation have ceased, will retain their entitlement to reasonably necessary medical and related expenses for 12 months from the date those weekly payments ceased.

20. What are the implications to the scheme of the matters raised in the case of Goudappel including:

Amendments made to section 66 of the *Workers Compensation Act 1987* under the 2012 reforms sought to limit the payment of lump sum compensation to workers with injuries causing greater than 10 per cent whole person impairment. The transitional provisions state that the amendments apply to "a claim for compensation made on or after 19 June 2012", irrespective of the date of injury.

In the case of *Goudappel vs ADCO Constructions P/L*, Mr Goudappel was injured in 2010 and made a claim for compensation shortly after. A claim for lump sum compensation was made after 19 June 2012, once his injury had stabilised. The claim was for six per cent whole person impairment and therefore did not meet the required post reform threshold.

At first instance, Mr Goudappel's claim under the amended section 66 of the Act was denied. On the worker's appeal, the Court of Appeal unanimously overturned the decision. The Court determined that the phrase "a claim for compensation" means any claim for compensation under the Act. As Mr Goudappel had made a claim for benefits, other than lump sum compensation, at the time of his injury in 2010, his entitlement to lump sum compensation "crystallised" in 2010, making him eligible for lump sum compensation.

The Court of Appeal decision opens up the possibility of additional claims, with a date of injury prior to 19 June 2012 and with whole person impairment assessments of less than or equal to 10 per cent, now able to be made on the Scheme.

Special leave to appeal the decision of the Court of Appeal was granted by the High Court of Australia. A condition of the leave was that Mr Goudappel's award of lump compensation would not be disturbed and WorkCover was liable for all parties' legal costs.

The appeal to the High Court was heard in Canberra on 1 April 2014. It is understood that a judgment will most likely be available towards the end of June 2014.

a. How many claims are estimated to be impacted by it?

The most recent estimated number of claims that may be eligible for a Section 66 payment is 13,262 with 16,008 potentially eligible for a Section 67 payment.

b. What are the potential costs to the scheme?

Using the best estimate of liability, the decision in *Goudappel* could potentially impact the Scheme in the following ways:

- Section 66 (permanent impairment) lump sum liability by $161 million.
- Section 67 (pain and suffering) liability by $201 million.
- Legal costs associated with section 66/67 by $87 million.

The implication of the decision in *Goudappel* means workers can apply for further assessments of their whole person impairment to access section 66 "top-ups". This may also have an impact on the ability of workers to reach the required threshold to access work injury damages.

It is noted however that there is a limitation to the accuracy of any estimates because of the inherent uncertainty of any estimation of claims liabilities in a post reform environment.

c. Why was the matter not disclosed to the committee in the evidence of WorkCover?

No conscious decision was made to omit the current status of the *Goudappel* appeal in WorkCover's evidence to the Committee. As with any major legislative reform, there can be considerable uncertainty as to interpretation and this is what is currently under consideration by the High Court.

While WorkCover is happy to answer questions about *Goudappel*, until a decision is handed down by the High Court, there remains no definitive answer on the substantive issues raised by the appeal.