

**Submission
No 330**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: CGU Workers Compensation (NSW) Limited
Date received: 17/05/2012



CGU Workers Compensation

17/05/2012

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

NSW Workers Compensation Scheme

CGU Insurance (CGU) welcomes the opportunity to provide the following submission to the Inquiry by the Joint Select Committee on the NSW Workers Compensation Scheme. This submission supplements the submission from the Insurance Council of Australia.

CGU is a subsidiary of Insurance Australia Group (IAG), an international general insurance group, with operations in Australia, New Zealand, the UK and Asia.

In Australia CGU is a leading provider of safety, claims and injury management services. It operates as a workers compensation insurer, claims agent, safety consultancy and/or claims administrator in every State, Territory and Federal jurisdiction. Our workers compensation division employs 850 people nationally.

CGU has a keen interest in the long-term viability of insurance as a product valued by the Australian community. The combination of our insights from operating as an underwriter in Western Australia, Tasmania, ACT and Northern Territory and as an agent in New South Wales and Victoria, coupled with our experience with the Comcare scheme places us in a unique position to provide comment on workers compensation scheme reform.

In this submission we will focus on the *Terms of Reference* provided. However, CGU would welcome the opportunity to work with all levels of Government to address the broader issue of a national workers compensation and occupational health and safety framework that meets the needs of a broader group of employers and employees.

Terms of reference

CGU supports the terms of reference of this Inquiry. More specifically, CGU views early return to work (RTW) as providing the most beneficial health outcome for the majority of injured workers. We also agree that the reforms proposed will be beneficial to the NSW economy and will redirect benefits to injured workers within the NSW Workers Compensation Scheme who have the greatest need.

Overview of Submission

CGU agrees with the 16 options as outlined in the *Issues Paper*.

CGU supports the strengthening of compensation entitlements to workers who are severely injured in the workplace. Entitlements should give consideration to the severity of their injury and ensure workers receive compensation to support them in their RTW and recovery.

CGU also believes that it is important that the Scheme offers stable, predictable, affordable and fair premiums to NSW employers. The proposed removal of journey claims, heart attack and stroke from the Scheme is consistent with the achievement of this objective, by more closely linking Workers Compensation with work related injuries.

CGU considers that many of the options in the *Issues Paper* lend themselves to the introduction of a binding assessment process. The process could be employed to review a claim at any one of several time or event driven points. We would see this effectively used to assess claims for:

- Whole Person Impairment;
- classification of a Severe Injury;
- determination of (and therefore compensation for) ongoing incapacity for work and
- determination of ongoing medical benefit entitlement.

In addition to the Options raised within the *Issues Paper*, CGU also sees benefit in placing controls around the reopening and reactivation of claims.

2012 Issues Paper

1. Severely injured workers

CGU agrees with the proposal to improve benefits to severely injured workers within the Scheme. Improved income support and lump sum benefits would lead to better RTW and health outcomes for this cohort of injured workers.

Our preference would be that the 'step down' or 'cap' reforms noted by the *Issues Paper* for Options 5, 8, and 13 below might be relaxed or altered for this specific claims type. The classification of a claim into the severely injured cohort is one such instance where a binding assessment could be utilised.

2. Removal of coverage for journey claims

CGU's view is that employers should not be subjected to the costs arising out of situations over which they have limited control, such as journey claims. There are other types of insurance coverage better suited to compensate for these types of claims.

Further to this, there is a burden to the Scheme in terms of the administration (case management, legal and investigation) costs of these claims, and the loss of potential recovery opportunities as long tail claims become statute barred or liability is disputed by the CTP insurer.

3. Prevention of nervous shock claims from relatives or dependants of deceased or injured workers

CGU supports the prevention of nervous shock claims from relatives or dependants of deceased or injured workers.

4. Simplification of the definition of pre-injury earnings and adjustment of pre-injury earnings

CGU sees this as an immediate benefit. Aligning weekly benefit entitlements more closely to pre-injury earnings would reduce complexity and improve alignment between injured workers covered by an Award and those who are not. This alignment would be best served by a scheduled percentage of average weekly earnings (that is, taking into account overtime and allowances) being payable from the onset of incapacity.

A clear understanding of what benefit will be paid, and the ability for an employer to communicate this to a level of certainty, will financially support injured workers at a time when they may be uncertain about their recovery and RTW options. This will lessen confusion and disputes over weekly benefit entitlement.

5. Incapacity payments-total incapacity

Applying a step down that better reflects clinical recovery patterns sets clearer recovery expectations for all stakeholders. CGU agrees with the example of a potential 13 week step down as per the *Issues Paper*.

We propose that this step down timeframe would not apply for injured workers classified as severely injured (as defined in Option 1, Whole Person Impairment over 30%).

6. Incapacity payments - partial incapacity

Financial incentives for injured workers as they return to pre-injury levels of employment would promote more effective and sustainable rates of return to work. CGU agrees that this reform will set clear expectations around rehabilitation and return to work for all stakeholders.

This is one such instance where a binding assessment could be utilised as a time based mechanism for ongoing review.

7. Work Capacity Testing

CGU welcomes the proposal for a binding assessment which could be implemented to review a claim at either a specific time or in response to a particular event. The assessment process could consider the use of any combination of:

- general practitioners;
- independent assessors;
- a single assessor;
- multidisciplinary assessments, or
- a panel arrangement.

The binding assessment could be used to consider claims for:

- Whole Person Impairment (WPI - Options 10 and 11);
- classification of a severe injury (Option 1);
- determination of (and therefore compensation for) ongoing incapacity for work (including Options 5, 6 and 8) and
- determination of ongoing medical benefit entitlement (Option 13).

8. Cap weekly payment duration

A cap on weekly benefit entitlement would help set a clear expectation around RTW. Options 5 and 6 could provide a precursor to the final cessation of benefits. This could also be linked to the use of injury recovery duration data or a set timeframe across the Scheme. Exclusion of severely injured workers from this cap should also be considered.

A similar process for medical compensation (as per Option 13 below) could also be implemented.

9. Remove “pain and suffering” as a separate category of compensation

CGU supports a review of current lump sum WPI entitlement tables to incorporate pain and suffering into an objective compensable sum for physical impairment. This is also related to Option 10 below.

10. Only one claim can be made for whole person impairment

Making subsequent claims for all forms of lump sum compensation negates the principle of injured workers with stabilised injuries being eligible for these benefits.

CGU sees subsequent lump sum claims as a key driver in claims reactivations, increased legal costs and increasing numbers of Work Injury Damages intimations, as multiple lump sum claims are used to reach current thresholds. CGU supports the application of binding assessments to determine loss.

11. One assessment of impairment for statutory lump sum, commutations and work injury damages

Multiple assessments of lump sum entitlement are costly to the Scheme in terms of time and effort, and impact on the injured worker by becoming a focus of their claim. In CGU's opinion, a single binding assessment of loss would also help mitigate against the rising legal and investigation costs that have been noted in recent years.

12. Strengthen work injury damages

CGU welcomes the proposal that the principles of the law of negligence applied to damages claims outside of the workplace via the Civil Liability Act should also be applied to workplace injuries.

13. Cap medical coverage duration

CGU agrees that setting a time-based endpoint to medical benefits following a sustainable RTW would drive medical services to focus on a RTW outcome. A binding assessment could be used if the timeframe is challenged.

In some circumstances, severely injured workers might require ongoing medical services even if a sustainable RTW is achieved.

14. Strengthen regulatory framework for health providers

Stronger evidence based testing around the rationale for ongoing allied health treatments would be welcomed by CGU. The focus for these treatment modalities should be linked to RTW and improved health outcomes for injured workers.

15. Targeted commutation

CGU agrees with the direction of the proposed Option but believes that it should not be limited to a specific injury class.

In our view commutations can be used within the Scheme in two ways:

- firstly, under existing legislation, commutation should be used for a finite period of time to address the true non-exitable tail within the Scheme. This would mean relaxing current thresholds to allow commutation of both ongoing weekly benefit and medical expenses claims that fit within agreed criteria;
- secondly, if the proposals raised in the *Issues Paper* were all or partly adopted, several of the circumstances that now lead to the Scheme's tail would be addressed, but there would still be an element of genuine defined tail within the Scheme. Current commutation thresholds require review and application to selected claims where exit from the Scheme is of genuine benefit to the injured worker.

Whilst CGU acknowledges the Scheme actuary concerns in regards to the potential development of a lump sum culture in relation to the relaxation of access to commutation, we believe that there are sufficient controls within the current framework to mitigate this risk.

16. Exclusion of strokes/ heart attack unless work a significant contributor

As noted in Option 2, CGU supports employers not being subjected to the potential costs of situations over which they have limited control. There are other types of insurance coverage that are better suited to compensate for these types of injuries.

Additional Proposed Option: Reopening Old Claims

Whilst the 16 Options noted within the paper address many of the problems in the current Scheme, CGU believes that it is also important to provide an effective control around the re-opening of previously closed claims.

This can be regulated by providing a form of statute of limitations on the time available to re-open a claim, with some exceptions available for certain injury classes (where delayed re-opening of claims relates directly to the behaviour of that injury as a class). Any exceptions that are required would then pass through the same binding assessment process as detailed in our response to Options 7 and 11.

Conclusion

CGU supports the effort of WorkCover NSW to return the Scheme to a fully-funded position as soon as possible by adoption of the Options outlined in the NSW Workers Compensation *Issues Paper* and further considerations as noted above.

CGU remains committed to working collaboratively with WorkCover NSW to enhance the Scheme's performance and ensuring the long term sustainability of the Scheme in NSW.

CGU would be happy to discuss this submission and to assist in any way we can.

Yours sincerely,

Kent Sunderland
Agent Principal
CGU Workers Compensation (NSW) Limited