

Submission
No 285

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: GIO
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17 May 2012

The Hon. Robert Borsak MLC
Chair
Joint Select Committee on the NSW Workers Compensation Scheme
Parliament House
Macquarie St
SYDNEY NSW 2000

By email workerscompinquiry@parliament.nsw.gov.au

Dear Mr Borsak

RE: Parliamentary Inquiry into the NSW Workers Compensation Scheme

I refer to the *Parliamentary Inquiry into the NSW Workers Compensation Scheme* (the Inquiry). GIO welcomes the opportunity to contribute to this Inquiry.

GIO General Limited

GIO General Ltd (GIO) is a wholly owned subsidiary of Suncorp-Metway Ltd, one of Australia's top 25 companies. The Suncorp Group (which includes its related bodies corporate and subsidiaries) offers a range of financial products and services in banking (Suncorp Bank), general insurance, life insurance and superannuation (Suncorp Life) across Australia and New Zealand. Suncorp has around 16,000 employees located across Australia and relationships with over nine million customers.

GIO is a leading provider of insurance products such as; car, home, boat, caravan, travel, commercial, public liability and statutory classes of insurance including CTP insurance in NSW and workers compensation. This submission is made on behalf of GIO workers compensation.

The Inquiry

The financial sustainability of the NSW Workers Compensation Scheme (the NSW Scheme) is deteriorating, with a deficit of over \$4 billion. It is described as a broken system that does not produce good outcomes for injured workers and is not financially sustainable, without significant improvements.

Increasing premiums is not seen as a solution, where premiums paid by employers in NSW are estimated to be 20-60% higher than in competitor States. This places a significant financial impost on employers at a time where employers need to protect their businesses from a challenging economic environment.

In response, the Minister for Finance & Services, the Hon. Greg Pearce MLC released an issues paper and announced a parliamentary committee to consider vital reform of NSW Scheme. The Parliamentary Inquiry was established on 2 May 2012.

GIO welcomes the review into the deteriorating financial situation of the NSW Scheme and supports the submission lodged on behalf of the insurance industry by the Insurance Council of Australia. As a participating scheme agent, GIO is well placed to play a positive role in the process of improving the NSW Scheme and is committed in doing so.

Hence, GIO lodges a separate submission, which is attached. The submission focuses on the Terms of Reference of:

- the performance of the scheme in relation to better health outcomes and improved return to work rates;
- the financial sustainability of the scheme; and the state competitiveness; and
- the functions and operations of the WorkCover Authority.

GIO is keen to work collaboratively with all relevant parties to discuss the matters raised in this submission. If you wish to do so, please contact me on [redacted]. Alternatively, please contact Manager, Government and Stakeholder Relations on [redacted].

Yours faithfully

Chris McHugh
Executive General Manager
Statutory Portfolio & Underwriting Management
Commercial Insurance



GIO Response

Parliamentary Inquiry into the NSW Workers
Compensation Scheme

17 May 2012

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About GIO

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GIO is a leading provider of insurance products such as; car, home, boat, caravan, travel, commercial, public liability and statutory classes of insurance including CTP insurance in NSW and workers compensation. This submission is made on behalf of GIO Workers Compensation.

Executive Summary

The NSW Workers Compensation Scheme (the NSW Scheme) deficit has been actuarially valued at over \$4 billion by PricewaterhouseCoopers (PwC) and the Auditor General, a position further validated by an external peer review by Ernst & Young.

On 23 April 2012, the Minister for Finance & Services, the Hon Greg Pearce MLC released an issues paper and announced a parliamentary committee to consider vital reform of NSW WorkCover. The issues paper outlines the schemes failings compared to its key aims of supporting injured workers through rehabilitation, getting them back to work whilst remaining financially sustainable and price competitive with the other Australian jurisdictions.

As a participating Scheme Agent, GIO is well placed to play a positive role in the process of improving the NSW scheme. The scheme is not currently delivering optimal outcomes for many injured workers and employers and there is an immediate need and scope for reform of the scheme to ensure that it is fully funded and delivers better outcomes for injured workers and employers.

Whilst GIO continues to drive strong claims management performance results in a challenging economic environment, the situation for the scheme as a whole is that:

- injured workers are remaining on workers compensation benefits for longer than ever before;
- investment returns are affecting the financial solvency of the NSW Scheme;
- stakeholder incentives are not tightly aligned with NSW Scheme objectives;
- the prescriptive operating environment stifles innovation and harmonisation; and
- a culture of recovery and health outcomes are not effectively fostered.

We support the options for change outlined in the issues paper and wider terms of reference, that are intended to improve benefits for the more severely injured workers within the scheme, whilst providing a more defined benefit framework to limit certain entitlements and promote earlier return to work. We believe there should be prioritisation of the changes that will drive the highest impact – namely step downs, work capacity testing and independent whole person impairment (WPI) assessments.

GIO also support the ICA submission, and is pleased to submit additional insights to this opportunity for positive change.

We believe that close monitoring of scheme liabilities is required with greater responsiveness to emerging trends. The lack of independent prudential regulation commensurate with that applied to insurers operating in privately underwritten schemes increases the risk of transferring the cost of injuries occurring today onto the employers of tomorrow.

Risk management and prevention can have a significant impact on the occurrence and severity of claims, and therefore greater focus and collaboration from the industry and government is required to educate employers – particularly small businesses.

Lastly, the complexity and subjective nature of personal injury management should not be underestimated, especially when interacting with injured workers and their support network. We operate in an environment with multiple stakeholders, and whereas they all have the best intent, this activity creates excessive complexity and inefficiency. Therefore the operating and legislative framework needs to be robust and clearly defined to achieve outcomes for injured workers, meet the needs of stakeholders and ensure scheme sustainability.

Terms of Reference

The Parliamentary committee is tasked with inquiring into and reporting on:

- the performance of the scheme in relation to better health outcomes and improved return to work rates;
- the financial sustainability of the scheme; and the state competitiveness; and
- the functions and operations of the WorkCover Authority.

During the Inquiry, the committee membership is to take note and examine the:

- WorkCover NSW Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011; and
- external peer review of outstanding claims liabilities of the Nominal Insurer as at 31 December 2011.

Better Health Outcomes and Improved Return to Work Rates

To improve health outcomes for NSW employees, the NSW Scheme requires continuous improvement and investment with a consolidated approach incorporating risk prevention and management, establishment of a safety culture in employers, capability and capacity of claims staff and effective use of technology and efficiency. GIO considers these activities to be core to the role of a Scheme Agent and demonstrates our beliefs and approach in driving better health outcomes.

Fundamental to improving health outcomes for the NSW Scheme is preventing injuries in the first instance and minimising the severity of injuries as and when they occur. A strategic approach to risk management and injury prevention considers the dimensions of risk across probability, magnitude and trends. This approach establishes a sound basis for assessing risk of a client, across industries and scheme jurisdictions.

The market offers a range of occupational, health and safety (OHS) services and risk management tools, which provide information and advice to assist clients assess controls of work place hazards and meet their OHS legal obligations. Larger employers are usually targeted with these risk assessment strategies. There is an ongoing need to support small businesses to become aware, compliant and prioritising safety strategies. GIO recommends stronger collaboration between Scheme Agents and the WorkCover NSW Small Business Advisory Branch to help leverage the promotion of safety culture across small businesses.

Another crucial element, in GIO's view, to drive a safety culture is to compare results against established benchmarks. Benchmarking information is not readily available in the NSW Scheme.

In the WA scheme, insurers have access to scheme data and statistics by ANSZIC code. This allows our risk managers to identify poor performers, analyse issues, engage with stakeholders and support safety improvement. Employers with strong compliance to OHS legislation tend to reduce their exposure to common law claims driven by negligence.

Capability and capacity of claims staff is a fundamental element that requires ongoing development and investment. Whilst the workers compensation insurance industry is a mature industry; it is only in recent years that professional career paths have been recognised.

The creation of the Personal Injury Education Foundation (PIEF), the Certificate III & IV, Diploma and other post graduate personal injury courses, are significant steps forward in improving the standard of case management within the industry and offer reward and recognition for work in complex and high expectation roles. Establishing professional career paths within the industry encourages longer tenure, continuity of case management and transferrable skills across jurisdictions.

GIO strongly supports the professional development of the industry. Internally, GIO has a goal of 50% of our staff being accredited in Cert III or Cert IV or a Diploma in Personal Injury by 2014. We are well on our way to achieving this goal, with 140 staff currently completing these qualifications, and another 60 enrolled this year. This is complemented by internal career development and pathways.

Investment into systems such as our Claims Management System – ClaimCenter – has provided significant benefits in supporting our operations by enabling improved workflow, visibility of claims strategies, more detailed claims information and improved reporting capability. This improves case management by driving portfolio objectives and development of strategic claims plans, goals and actions. The ability to effectively measure the productivity of an individual and team on a daily and weekly basis drives accountability and performance, which in turn delivers better scheme outcomes.

Centralising non-core administrative type work to drive efficiency increases the capacity for case managers to focus on strategic case management, provide higher stakeholder engagement and improve return to work results. This also ensures consistent and responsive resources to make payments and maintain customer satisfaction.

Our panel service providers are an important part of GIO's continuous improvement and capability driving sustainable and cost effective return to work outcomes. GIO has worked closely with our providers to maximise their contribution to scheme outcomes with quality decision making and rigorous performance management controls. Our service providers participate in regular quality audits, to monitor the provider's adherence to the Service Level Agreement and achievement of claim outcomes on workers compensation claims. For services such as rehabilitation, where tighter controls are needed, GIO has implemented a set of reviews for claims where occupational rehabilitation surpasses particular milestones. This is to ensure that the service is both cost-effective and that it translates into return to work outcomes.

Financial Sustainability

The scheme deficit has been caused by a variety of problems; the most significant include the fall in interest rates over the past several years. Other factors include the premium reserve deficiency, and deterioration in claims experience. Investment returns, including the decline in interest rates, since 2008 has been responsible for about 50% of the swing from a surplus of \$625m to a deficit of \$4.1bn.

The claims experience deterioration is largely driven by the lack of legislative tools Scheme Agents have to manage claims and the legal framework and activity in the scheme. In particular, members of the Insurance Council of Australia consider the current legislation does not afford Scheme Agents with the tools required to contain benefits, scheme costs and maintain good return to work outcomes in economically challenging times.

In recent years, the global financial crises (GFC) saw a significant deterioration in return to work rates due to the relationship between return to work and employment opportunities. Consequently, deteriorating duration of claims compounded by the falling investment yields has seen an increasing

deficit develop. Falling investment yields reduce the discount rate, which in turn increases the outstanding claims liability. The combined impact of falling yields and increased claim durations has been a particular challenge for the NSW Scheme.

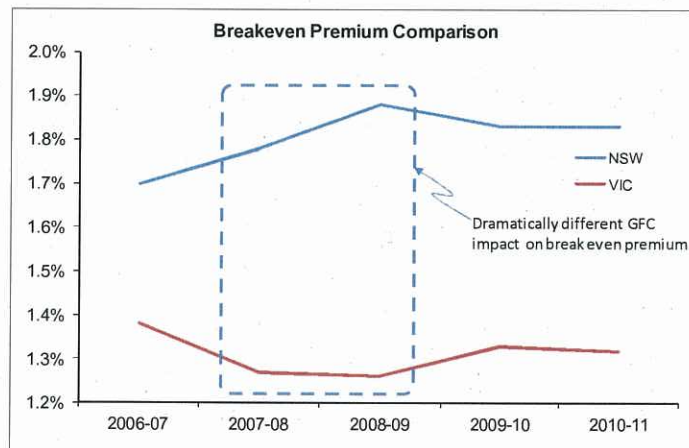
The challenge Scheme Agents face is the lack of the legislative tools required to get people off benefits once they have been restored to health, if no suitable jobs are available. Further, during the injured worker's recovery process the availability of suitable duties becomes more limited as employers are constraining their expenditure due to economic pressures in circumstances where their injured workers with work capacity remain on full benefits for longer.

Scheme Agents are essentially hamstrung by the lack of legislative tools required to continue delivering good claims outcomes in the situation where the economic environment deteriorates. The legislative tools required in economically difficult times to contain claims costs, improve return to work outcomes and reduce the cost of weekly benefits are:

- a strict work capacity test;
- benefits step downs; and
- independent and binding WPI assessments.

Schemes which have these legislative tools available develop the financial resilience to respond to economically challenging times. These and other legislative tools are discussed in greater detail in the *Proposed Changes to the NSW Scheme - Issues Paper* section of this submission.

The distinction is illustrated below in the comparison of the scheme break even premium for NSW and Victoria during the GFC.



While many factors obviously drive the break even premium, the above table demonstrates that the Victorian scheme was more financially resilient during this difficult economic period. This was, at least in part, due to the legislative tools available in Victoria not currently available in NSW, such as the work capacity test and benefit step downs.

In addition to the economic environment, there are also legal factors which contribute to the gradual deterioration in scheme performance, which Scheme Agents have limited ability to remediate. The increasing prevalence and earlier emergence of claims reaching the WPI threshold is an example of this 'bracket creep'.

The legislative response to this issue would be a single impartial and binding independent medical assessment that is not exposed to bracket creep over time. Providing Scheme Agents this type of

legislative tool is less likely to expose the liabilities of the scheme to legal tactics and the disparity of interpretation and judgements that contribute to bracket creep.

Certainty and Investment

A distinguishing feature of personal injury claims is that they are 'long tail' – they can last a lifetime. Dealing with people and their families who are coping with physical injuries and financial stress means these claims are very complex to manage.

This is a highly specialised industry and establishing the expertise, systems and processes required to manage these claims well, requires significant and ongoing investment. For a business to invest in such an undertaking requires a high degree of certainty.

Managed fund schemes typically offer Scheme Agents five year contracts to manage policies and claims. Regulators in managed scheme funds are able to allocate and remove market share, as is the case for NSW WorkCover. Over the years the NSW and Victorian Regulators have both increased and decreased the number of Scheme Agents. This creates reduced market share for existing Scheme Agents as the market increases, and Scheme Agents being removed from the scheme as the market decreases. This uncertainty can stifle commercial investment.

By way of illustration, insurers like GIO who operate in privately underwritten jurisdictions with relative security have made significant investments in the latest claims management technology systems. Compare that to other Australian jurisdictions where claims management is still paper-based. The fact that Scheme Agents operating in government underwritten schemes have less security of tenure is arguably a disincentive to invest.

The NSW Scheme needs to establish participation mechanisms with greater certainty to encourage investment in people and systems so as to build the quality and performance of their business, which in turn would improve scheme outcomes for all participants.

Remuneration Model

In managed fund schemes, the Scheme Agent remuneration model is a key lever held by the Regulator to direct and drive particular behaviours and outcomes. For the remuneration model to support the financial sustainability of the scheme it must provide incentives to drive long term performance. However it should also take into account shorter term aberrations. The remuneration model needs to be agile to allow the Regulator to the shift focus within the scheme if required.

GIO acknowledges and commends WorkCover in the open and collaborative approach taken in the recent remuneration review, which involved significant Scheme Agent consultation and discussion.

State Competitiveness

The NSW Government is committed to making the cost of doing business in NSW competitive with other jurisdictions. The State Plan 2021 indicates the Government's number one priority is to restore economic growth and establish NSW as the 'first place in Australia to do business'.

Current NSW workers compensation premiums are higher than most other jurisdictions, higher than the national average and well above those applying in the adjoining States of Victoria and

Queensland. The most recent publically available comparison from 2009-10 shows standardised average premium rates¹ as follows:

- NSW 1.82
- Victoria 1.39
- Queensland 1.12

This represents a substantial and significant difference in amounts paid by employers. For 2011-12 the total payroll for the NSW Scheme is projected by the scheme actuary to be \$1.48 billion.² Using the most recent available comparative premiums this means employers covered by the NSW Scheme will in the current year pay:

- \$640 million more premium than they would if based in Victoria; and
- \$1.05 billion more than they would if based in Queensland.

Having a premium competitive with these States would free up funds that could create tens of thousands of additional jobs. To make NSW competitive with other jurisdictions there needs to be a combination of legislative and regulatory reform to benefits and premium controls. The focus should be on changes which make the scheme stable, predictable, sustainable and encourages competition and innovation in premium setting.

Benefit Reforms

Benefit reforms should meet two aims, specifically:

- bring benefit levels into alignment with those in other jurisdictions. Without this competitive premiums cannot be achieved; and
- move from open ended to highly defined benefits, which will reduce transaction costs and superimposed inflation.

Benefit reforms needs to be informed by understanding the distribution of payments by different payment types and significant trends. The following extract from the 2011 valuation shows the distribution of outstanding claim liability by benefit type.³ A similar, although not exact, distribution is evident from looking at recent year payments by benefit type and looking at distribution of incurred liability in current year premium.

¹ Safe Work Australia – Comparative Monitoring Report -13th Edition. Indicator 15

² PWC Actuarial valuation of Workcover scheme 2011 - Summary of Results page 283

³ PWC Actuarial valuation of Workcover Scheme 2011 – Page 266

NSW Nominal Insurer**Estimate of Discounted Outstanding Liability as at 30 June 2011 (\$'m)**

Benefit Type	Outstanding	Impact of A v E	
	claims liability	experience and changed	actuarial assumptions
	\$m	\$m	%
Commutations	260	-55	-21%
Weekly	5,265	260	5%
Workplace Injury Damages	1,493	399	27%
Legal Costs	409	-5	-1%
Permanent Injury (Section 66)	538	29	5%
Pain and Suffering (Section 67)	216	19	9%
Medical	3,048	-69	-2%
Investigation	337	10	3%
Rehabilitation	229	-13	-6%
Death	77	-2	-3%
Other Payments	133	-4	-3%
Pre-WorkCover Liability	1	0	7%
Asbestos	129	7	5%
ULIS - Net	89	-5	-6%
Total Gross Outstanding Claims Liability	12,225	571	5%

Two areas to note are:

- scheme benefits are heavily dominated by weekly benefits, such as income replacement and medical costs; and
- workplace injury damages and section 66/67 payments are well in excess of expected, continuing a notable trend in recent years.

It is a very difficult exercise to compare benefit regimes between different Australian jurisdictions. Notably though, the areas where NSW has more generous benefits compared with other jurisdictions are:

- single step down with no time or monetary caps on statutory income replacement for total incapacity;
- easier access to payments for impairment, pain and suffering;
- easier access to common law benefits and a right to revert to statutory benefits if common law claim fails with the added bonus of no limits on common law economic loss payments; and
- higher prescribed benefits for medical and treatment costs.

These are the priority areas to address and, for GIO, are well covered in the proposed reforms in the issues paper.

Premium Reforms

In the last ten years, the NSW Scheme has experienced some major reforms in the form of introducing greater risk based premiums. These include the:

- adoption of ANZIC classifications from 2001;
- introduction of Industry Claim Cost Rates (ICCRs), which has the potential to reduce cross-subsidisation between employers by allowing a more appropriate link between employer performance and relevant industry performance; and
- introduction of retro paid loss premium arrangements for large employers from 30 June 2009.

Full risk based pricing should remain the goal of the scheme as it reflects appropriate allocation of cost to those creating the risk, which in turn provides incentives to improve safety. Innovation is stifled in a regulatory regime that does not employ full risk based pricing. Full risk based pricing encourages innovation in improved loss prevention programs, avoidance of unnecessary costs and programs that result in increased speed of recovery. Innovation would also increase speed and efficiency in the delivery of benefits.

Proposed Changes to the NSW Scheme – Issues Paper

Overall, GIO is supportive of the recommendations contained within the issues paper. The proposed recommendations can be grouped into four categories that address:

- front end claims;
- tail claims;
- claim cost size; and
- associated claims cost.

Over the last four years, three things have occurred. First, the duration of front end tail claims has increased, as return to work rates have declined.

Secondly, the number of tail claims has risen as injured workers stay on benefits for longer. Thirdly, the number of serious and common law claims has risen as WPI assessments have increased.

GIO supports the recommended changes that respond to increases in front end and tail liabilities and claims size cost, as a holistic response is required to reverse the deterioration in the NSW Scheme performance. Specifically, sixteen items need to be reviewed to tackle the deteriorating claims outcomes.

Front End Claims

Elements of the existing weekly benefit structures in NSW are inconsistent, and provide a financial incentive in some instances to remain off work. The existing benefit structure does not provide incentives for individuals to pro-actively participate in return to the work activities.

GIO endorses efforts to promote early and effective return to work driven by practical and consistent benefit support to injured workers. These efforts should be closely aligned to benefit structures in other jurisdictions.

Simplification of the Definition of Pre-Injury Earnings

The current application of pre-injury earnings is inconsistent within the NSW Scheme. It disadvantages individuals that are not covered under award fixing or enterprise arrangements by only paying an entitlement at 80% of actual pre-injury rate.

The proposal to recognise and not reduce the pre-injury earnings of individuals that are not covered under an award or work on a casual or temporary basis is fair and aligned to scheme objectives of providing sufficient income support post workplace injury. Additionally it will reduce the administrative burden on Scheme Agents.

Incapacity Payments – Total Incapacity

GIO supports the proposal in the issues paper to tighten the timeframes for full total incapacity payments from 26 weeks from date of injury to 13 weeks.

The existing model where an injured worker receives full pre-injury earnings for a period of 26 weeks post injury tends to work as a disincentive and can prevent active engagement in activities to return to the workforce post injury. Additionally, supplementing full pre-injury earnings for a period of six months post injury can create a reliance on income support early in the claim life cycle, which can have a negative social impact to the impacted individual and compounding financial impact to scheme.

GIO notes that this proposal would harmonise with other workers compensation jurisdictions where the step down on benefits occur at 13 weeks. GIO acknowledges that this proposal reduces the benefit entitlement of injured workers, however contends that by providing an incentive to return to work earlier, the 13 week step down would prevent longer term tail claims and dependency on income support.

Incapacity Payments – Partial Incapacity

GIO endorses the partial incapacity benefit structure as drafted in the issues paper. In effect the proposal is to financially reward injured workers who pro-actively increase their hours of work following work place injury. This is sound and will provide incentives for all stakeholders to actively participate in earlier return to work on transitional arrangements until fit for full pre-injury hours. This will have a positive impact upon the scheme.

Tail Claims

The existing legislative framework in NSW makes it extremely difficult for Scheme Agents to exit injured workers who have not reached full capacity post injury or become displaced as a result of the injury. By introducing work capacity testing and the capping of benefits, the scheme would promote earlier return to work.

Work Capacity Testing

In the NSW Scheme, the burgeoning long tail claims and liability is significantly impacted by the inability of Scheme Agents to exit claims where an injured worker is partially incapacitated but has not returned to employment. GIO supports the implementation of work capacity testing to mitigate the longevity of less significant claims, which in turn would reduce the significant burden upon the scheme. In comparison, work capacity testing undertaken in both Victoria and South Australia has been successful in reducing the long tail portfolio and hence future liabilities in these respective schemes.

GIO believes the effective introduction of the work capacity test would have the single biggest impact to scheme viability and financial sustainability.

Cap Weekly Payment Duration

The capping of benefits is wholly aligned to the work capacity testing and defines the time at which the incapacity of an injured worker should be tested.

GIO recommends the Victorian model be adopted where the initial work capacity test is applied at 130 weeks from date of injury and at least every two years thereafter. Any permanent incapacity would have stabilised at this point allowing permanent loss payments to be made.

Cap Medical Coverage Duration – Aligned to the Capping of Weekly Compensation Benefits

GIO supports the capping of medical and related treatments proposed in the issues paper. This would support proposed changes around strengthening health provider compliance and is aligned to the payment of treatment benefits in other jurisdictions.

Commutation

A significant legacy of the existing model is that there are limited exit provisions for injured workers that have qualified, sustainable and ongoing workplace injuries where incapacity remains.

The limited exit provisions have contributed to increased liability within the long tail business in NSW Managed Fund. The existing commutation provisions are very specific and have defined criteria for an applicant to reach to threshold for application. At scheme level, there are less than ten commutations approved on a monthly basis.

GIO is supportive of the commutations being relaxed to enable the release of low value medical claims and low value court award claims where there are currently limited options to reach the commutation threshold.

If the work capacity test and capping of weekly and medical benefits is introduced at the scheme level, GIO believes there would be no requirement to change the commutation provisions as they would effectively become redundant.

Claim Cost Size

GIO is very supportive of the changes that have been recommended in relation to providing a more defined benefit program of those individuals that have been severely injured as a result of workplace injury.

Additionally, GIO acknowledges that through legal precedent and the changes in the legal landscape, the framework around assessing permanent incapacity benefits requires streamlining. This would ensure that the benefits are assessed and paid appropriately. The opportunity for disputes in the scheme would be reduced.

Severely Injured Workers

It is imperative that the entitlements of severely injured workers are supported. The current injury definition of severe injury claims is somewhat problematic as severity of injury does not always align to actual incurred injuries but to injury type. The current application has the injury criteria of spinal cord injury, burns, head injuries, multiple amputations and blindness. The proposal to define severe injury type at 30% WPI would simplify the severe injury definition and provide clarity to Scheme Agents on the criteria to manage.

GIO recommends that the Victorian model be considered to ensure national consistency is applied to the management of severe injury claims. In Victoria the use of medical panels to assess

significant incapacity greater than 30% WPI has assisted in defining severe injury and aligning treatment and care requirements for severely injured workers.

The issues paper refers to improved entitlements for severely injured workers. GIO is of the view that any treatment and care entitlements would need to be reasonable and necessary and cost effective in line with scheme viability principles.

Remove "Pain & Suffering" as a Separate Category of Compensation

Under the current provisions of the NSW workers compensation legislation an injured worker is able to claim pain and suffering under s67, where an injury is assessed greater than 10% WPI. Arguably, this measure is somewhat subjective and creates significant disputation and legal costs within NSW Scheme.

It is GIO's view that the s67 payment should be 'rolled up' into the s66 WPI payment to reduce disputes and fairly allocate the benefit entitlement. Adopting this proposal is likely to further reduce disputes and legal costs and reduce the administrative burden on Scheme Agents, the Nominal Insurer (NI) and the Workers Compensation Commission (WCC).

One Single Claim for Whole Person Impairment

There is increasing evidence in the NSW Scheme that injured workers and their representatives are successfully lodging multiple claims for WPI claims. In principle whole person impairment claims were introduced to qualify the whole of person impacts to incapacity as a result of work place injury.

The practice has driven an increase in the volume of WPI claims and claims in work injury damages through what can be defined as 'WPI creep'. The principles of adopting a single assessment where the injured worker has been deemed to have reached maximum medical improvement is a practical and effective method in mitigating additional costs of WPI claims, as well as common law and legal costs. Additionally, it would reduce considerable administrative burden on Scheme Agents, the NI and the WCC.

One Assessment for Impairment Claim

GIO supports regulating and enforcing the use of medico-legal reports as part of a single qualified assessment to drive improved scheme outcomes and efficiencies. Establishing and using an accredited medical panel or similar where binding assessments are issued would reduce rates of disputes over the accuracy of medical assessments. GIO suggests the Medical Assessment Service (MAS) used by the NSW Compulsory Third Party (CTP) Scheme is a model that could be adopted.

Strengthen Work Injury Damages

GIO notes that the volume of work injury damages claims and the compounding value of the settlements have been increasing in the NSW scheme for many years. There is a real risk to the viability of the scheme by maintaining the existing model.

The recommended introduction of the *Civil Liability Act 2002* (NSW) dealing with negligence ensures that the determination of negligence is more aligned to the application of current legal precedent. GIO believes that by introducing these changes there will be an impact in regard to the volume and quantum of common law claims.

Associated Claims Costs

Four areas of associated claims costs are considered:

- *Removal of Journey Claims*
GIO supports the proposal to exclude journey claims from the NSW Scheme. Aligned to the principles of work place safety and managing and controlling the risk of injury, the employer has limited impact in their ability to prevent journey claims. From a harmonisation perspective there are no provisions for journey claims in most jurisdictions nationally.
- *Prevention of nervous shock claims from relatives or dependants of deceased or injured workers*

In 2008, amendments to the workers compensation legislation increased death benefits and enabled access to compensation benefits through the previously known *Family Provisions Act 1982* (NSW). The most significant impact of these changes was that they opened up entitlements under civil liability for nervous shock to family members of a deceased worker.

GIO agrees employers' liability for the psychological injuries to family members following the death of a worker should not fall within the framework of the legislation. By excluding this entitlement there would be a closer connection between work health and safety responsibilities and workers compensation premiums.

- *Exclusions of strokes/ heart attacks unless work a significant contributor*

GIO agrees that by excluding this entitlement there would be closer connection between work health and safety responsibilities and workers compensation premiums. The connection between heart attack/ stroke and relationship to work needs to be clear.

- *Strengthen regulatory framework for health providers*

GIO has a strong health provider engagement approach and supports any initiative that will increase the compliance of service providers in the NSW Scheme to provide reasonable and necessary medical treatment aligned to proven health and return to work outcomes.

WorkCover Authority

WorkCover has identified and proposed a number of reforms in the issues paper which, if implemented, would address legislative gaps and give Scheme Agents the tools required to improve scheme outcomes, particularly during challenging economic conditions.

WorkCover has maintained strong engagement, collaboration and ongoing performance monitoring with Scheme Agents over the course of each contract period. Peer comparisons, shared insights and remedial action where necessary are key tools used to ensure WorkCover are obtaining value from Scheme Agents.

Scheme Agent performance is closely regulated by WorkCover with improvement targets set on a relativity basis at the start of the contract with step down improvements required to reach an absolute scheme target for all Scheme Agents by the end of the contract period.

Deficits can quickly materialise if liabilities are not monitored closely and urgent remediation undertaken. There needs to be more effective mechanisms for identifying emerging trends and responding in a timely fashion, particularly during challenging economic times. When deficits are allowed to accumulate, this effectively pushes the cost of injuries that are occurring today onto the employers of tomorrow.

There is currently no APRA equivalent overseeing government underwritten schemes and placing the same conditions on governments that APRA places on private insurers. This lack of independent regulation allows government underwritten schemes to fall into deficit, with the end result being a significant impact on the state balance sheet and risk of a credit rating downgrade.

To a lesser degree, the limitations of the scheme have restricted the ability of Scheme Agents to achieve optimal claims outcomes. Operational instructions and guidelines are examples of these limitations where unnecessarily prescriptive directions tend to stifle innovation and creativity in claims management.

Whilst this is a second order issue for the NSW Scheme, WorkCover has commenced a project involving all Scheme Agents aimed at responding to this issue. Scheme Agents are now participating in the project. The project promises to address the lack of flexibility in achieving scheme outcomes.

Conclusion

Performance of the scheme with respect to health outcomes and improved return to work rates has been variable. This is an area that WorkCover has identified and is driving improvements in the scheme.

GIO is fully supportive of the proposed reforms. Personal injury schemes should be based on legislation which allows Scheme Agents to invest and continue to generate strong performance over time.

Historically, the functions and operations of the WorkCover Authority have had some potential to improve. GIO places a high value on and commends the work currently underway by WorkCover in the effort to simplify the regulation of the scheme.

We appreciate the challenge of managing the various drivers of scheme volatility, however the legislative framework is the foundation from which this volatility can be stabilised. Scheme Agent operations, provider services, employer accountability and injured worker outcomes are limited by the barriers and ambiguity in the current legislation. GIO supports efforts to remove these barriers and ambiguity in order to create an environment that achieves improved health outcomes and scheme sustainability.