

REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE WORKCOVER AUTHORITY

Organisation: Australian Federation of Employers & Industries

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31 January 2014

The Honourable David Clarke, MLC
Chair
Legislative Council Standing Committee on Law and Justice
Review of the Exercise of the Functions of the WorkCover Authority
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir,

AFEI Submission to the Review of the Exercise of the Functions of the WorkCover Authority

With the phased implementation of the *Workers Compensation Legislation Amendment Act 2012*, the NSW Workers Compensation Scheme has been in a process of transition since June 2012. Claims made on or after 1 October 2012 have been subject to the new legislation from that date. Ministerial media announcements regarding the reforms and the 2012-13 WorkCover Annual Report indicate that at the aggregate level the reforms are working well and overall the performance of the scheme has improved as a consequence. Announcements such as those made by the Premier on 30 October 2013 that "NSW businesses will receive an average 12.5 per cent reduction in the 2013 premium cycle" are positive endorsements of the apparent effects of the reforms. Further, the definition of a small employer has been broadened to include 95 per cent of all NSW employers in the scheme.¹

The NSW Government has described the rate reductions as affordable due to the ongoing successful implementation of its reforms to the scheme. We have proceeded on the assumption that the announced rate reductions have flowed through to reductions in actual premiums paid.

The Australian Federation of Employers and Industries (AFEI) considered it would be timely, in the light of the Legislative Council Review, to assess how the proclaimed benefits of the changes to the scheme have materialised for employers. In November 2013 AFEI surveyed 230 of its NSW members to obtain their views on the operation of the NSW Workers Compensation Scheme following the changes introduced throughout 2012-13. Just over half of these employers are experience rated premium payers and 73% reported

¹ WorkCover Annual Report 2012-13;
Andrew Constance MP, Minister for Finance and Services, MEDIA RELEASE: Tuesday, 31 December 2013;
WORKCOVER Fact Sheet:
<http://www.workcover.nsw.gov.au/formspublications/publications/Documents/premium-rate-reduction-factsheet-1177.pdf>

an increase or no change in their 2012-13 premiums (62% increased premiums) with 40% reporting this increase was due to increased claims costs. Given the Inquiry's Terms of Reference which include *"to monitor and review the exercise by the authorities of their functions"* we consider that views provided directly by these employers would be of interest to the Inquiry.

Prior to announcing the 2012-13 reforms the NSW Government released an Issues Paper and invited submissions on the need for scheme reform. AFEI responded at that time with an extensive submission on employer views.² At that time the main problem areas for members arose from the:

- costs to their organisations
- performance of their agent (insurer)
- role of the nominated treating doctor
- shortcomings of the heavily regulated (for employers) return to work and rehabilitation process in which the actual outcome is driven primarily by the insurer
- limited ability for employers to challenge decisions of the agent, WorkCover and the Workers Compensation Commission.

These problems appear to persist, with members who had claims made against them reporting in the November 2013 survey as follows:

- 36% reported their insurer had accepted provisional liability without contacting them.
- 40% did not consider that their insurer had adequately consulted with them or had undertaken a thorough review of all information prior to final acceptance of the claim.
- 60% said that they had to chase up the insurer for information on the progress and costs of the claim.
- In cases where employers notified the insurer that workers were not compliant with their injury management plan, in nearly half of cases the response provided to employers by the insurer was *"I'll talk to the worker"* with the second most common response (one third) from the insurer being *"nothing"*.
- 65% had not been invited to attend a case conference.
- Over half were dissatisfied with their insurer's response when dealing with issues raised regarding the performance of doctors and rehabilitation providers.
- Less than half were satisfied with their insurer in terms of reducing workers compensation costs.
- Nearly 20% said that workers compensation premium costs were a reason for reducing their employee numbers.
- 35% reported that workers compensation costs hindered their organisation from hiring new staff.
- The most common action taken by employers as a consequence of workers compensation costs was to undertake more rigorous employee screening (33%).

² AFEI Submission to the Joint Select Committee on the NSW Workers Compensation Scheme NSW Workers Compensation Scheme Inquiry 17 May 2012

In terms of the outcomes for employers arising from the 2012-13 changes to legislation, members held the following views:

- Nearly two thirds of respondents did not consider that the 2012-13 changes to NSW workers compensation have helped reduce their workers compensation costs.
- 67% felt that the changes have not improved claims handling and management by insurers.
- 77% felt that the changes have not helped workers get back to work any earlier.
- 89% did not believe that higher payments while on compensation assisted workers to return to work earlier.
- Over two thirds considered that higher weekly payments to workers have increased their claims cost.
- 87% believe the 130 week time limit on payments will not assist earlier return to work for employees.
- 58% consider that doctors don't provide sufficient information to determine suitable duties for the injured employee.
- 71% find doctors are not explaining why the injury was work related.
- 30% reported that doctors provided incorrect and unsubstantiated information on the medical certificate "most of the time" and a further 25% reported this occurred "half the time".
- 36% have encountered doctors using non-medical terminology (eg "workplace dispute") to describe the cause of the injury on a medical certificate.
- Over 40% have found it difficult to get workers to return to work where suitable duties are provided.
- Over half (55.42%) consider the insurer's return to work capacity assessment have not assisted the worker to return to work.

On the basis of these responses there appears to be a disconnect between the management of claims and claims costs experience for these employers, and the improved scheme performance which has already translated into reductions in average rates. The NSW Workers Compensation Scheme is funded by NSW employers and is a major cost for most medium to large employers. Yet for many employers there appears to be limited ability to reduce the incidence of claims, manage claims or control claims costs. We raise this matter as it is clear that the long term effective and efficient performance of the scheme rests with rigorous claims management. It also requires testing of the scheme reforms and, in particular, work capacity.

The continued strong performance in investment returns as experienced in 2012-13 should not be relied upon as the panacea for shortcomings in the actual operation of claims management within the scheme. We note from the 2012-13 WorkCover NSW Scheme Report the actuarial assessment that future claim development is likely to deviate, perhaps materially, from their estimates (pages 49-50).

To achieve sustained lower premiums, emphasis should be placed on the full implementation of the new work capacity reforms and effective measurement of these to ensure that claims management is properly undertaken. If shortcomings in these processes remain, then further change and reform will be necessary.


Further, there is a paucity of readily understood financial data which explains how the reforms have specifically generated the cost savings which are said to have resulted in lower average premium rates. The Authority should make available the data relied upon when making changes to premium levels and the reasons for changes. As AFET has argued previously, scheme financial information should be published in a timely and accessible manner, capable of showing premium revenue and scheme expenditure details in an easily comprehended format.

While it may be argued that this data is available in WorkCover's annual reports and its actuarial statements, this is only "high level" information on overall scheme performance and, importantly, gives little detail on scheme expenditure, particularly on the effect of the higher benefit levels, agent and provider performance and payment. NSW employers have to rely on the actuarial assumptions and costing estimates and hope that apparent shortcomings in claims management as reflected in our survey will not jeopardise continuing improvement in scheme performance and lower premium rates.

Importantly also, the raw data on which the independent actuary to WorkCover calculates its assessments and projections should be available on request and without charge.

We urge the Review in reviewing the functions of the WorkCover Authority and in particular in examining the trends and changes in compensation governed by the Authority to pay close attention to the effects of higher weekly payments, the focus on work capacity and work capacity assessments as it appears that these reforms are not, as yet, having the intended positive effect on claims management and costs for all NSW employers.

Yours sincerely

 **Harry Brack**
Chief Executive

cc The Hon Andrew Constance MP
Minister for Finance and Services