

**Submission
No 131**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

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**Submission to the Joint Select Committee
on the NSW Workers Compensation Scheme reform**

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Impact on the Treasury Managed Fund of the Proposed Reforms to Workers Compensation

Thank you for inviting the NSW Self Insurance Corporation (SICorp) to make a submission to the Joint Select Committee on the NSW Workers Compensation Scheme (the Committee) in regards to the inquiry into the NSW Workers Compensation Scheme (the Inquiry).

Summary

The key points of our submission are;

1. Workers compensation premiums are paid by NSW State Government agencies out of their budget allocation from NSW Treasury. Any reforms that increase costs to the TMF are likely to lead to higher State budget expenses. Given the State's commitment to expense control and retaining its AAA credit rating, these increased expenses could give rise to pressure for higher taxes or a change in the composition of services delivered by state agencies.
2. There are a number of inherent differences between the characteristics of claimants covered by the Treasury Managed Fund (TMF) (public sector) and the NSW WorkCover Nominal Insurer Scheme (private sector) and the options for change as outlined in the Issues Paper are likely to result in significantly different outcomes for the two schemes.
3. The impact of any proposed reforms should be scenario tested and actuarially costed for both the TMF and the NSW WorkCover Nominal Insurer Scheme to understand the aggregate effect on the State budget before deciding on the package of reforms to be implemented.

Background to Treasury Managed Fund

The NSW Self Insurance Corporation's function is to operate the Treasury Managed Fund.

In 1989, the NSW Government implemented a self-insurance scheme to be known as the Treasury Managed Fund (TMF) to curb escalating insurance costs, guarantee certainty of cover and create transparency of risk.

The TMF provides broad protection for all asset and liability exposures (except Compulsory Third Party motor vehicle insurance) to all budget sector agencies such as Health, Education, RMS, Sydney Water, NSW Police and a number of non-budget agencies.

The number of agencies in the TMF will increase as Treasury Circular 12/12 issued 3 May 2012 requires all agencies other than electricity generators and suppliers, to consult with SICorp with a view to joining the TMF.

The TMF protects the State budget and provides the Government with confidence that unforeseen losses can be managed with minimal impact to the State budget.

Introduction

The main purpose of SICorp's submission is to alert the Committee to the fact that there are a number of inherent differences between the characteristics of claimants covered by the Treasury Managed Fund (TMF) (public sector) and NSW WorkCover (private sector) and that the options for reform as outlined in the Issues Paper are likely to result in significantly different outcomes for the two schemes.

These differences should be taken into consideration when making decisions about the reforms, as the outcome for the public sector will also have a significant impact on the NSW economy, workforce and the State's competitiveness.

Our main recommendation is that the Committee seek to have the impact of any proposed reforms scenario tested and actuarially costed to understand the implications on the TMF before deciding on the package of reforms to be implemented.

As at December 2011, the outstanding claims liability for the TMF was \$2,857m and the premium for the 2012/13 financial year is \$669m (before GST).

Differences between the TMF and WorkCover

The financial position and trends in experience for the TMF are quite different to the NSW WorkCover scheme:

- NSW WorkCover has deteriorated significantly with a growing deficit, with particular deteriorations in weekly, medical and common law benefits.
- The main driver to reform the workers compensation scheme is to ensure its long term sustainability to provide injured workers with the support they deserve while remaining affordable, fair and competitive. It is noted that if no changes are made to the workers compensation scheme, an eventual increase of up to 28% in premium rates will be required to make the scheme financially sustainable.
- Sustainability is not an issue for the TMF as it is fully funded with no deficit. If no changes are made to the workers compensation scheme the increase in cost to the TMF will be in line with inflation. Should a package of reforms be implemented which reduce the cost of workers compensation, any benefits to the TMF would be passed on to its public sector clients and thus there would be a budget benefit.
- The TMF has also experienced deterioration in weekly, medical and lump sum benefits but not to the same extent as NSW WorkCover. The TMF has the extra complexity of the flow on effect of the Police D&D scheme which has been a major source of cost deterioration and uncertainty.
- The TMF is in a better position financially than WorkCover and therefore the need for reform is not as great. Reforms bring a considerable amount of risk to TMF in terms of whether they will reduce scheme costs. At times, even if the intention of the reform is to reduce scheme costs, this may not actually be borne out for the TMF. Therefore, the design and implementation of the reforms need to be carefully considered and an assessment needs to be made as to whether the benefits outweigh the risks.
- The TMF workers compensation experience is impacted by the existence of Death and Disability (D&D) Schemes for the emergency services (Police, Fire and Ambulance). These schemes provide income top-ups as well as lump sum benefits to emergency services workers who are unable to return to work following a workplace injury. Following the introduction of the D&D scheme for Police, weekly benefits levels increased significantly, with significant adverse financial consequences for the TMF. Whilst the Police D&D scheme has recently been reformed, the existence of the emergency services schemes remain a significant point of difference for workers compensation experience between the public and private sector in NSW.

There are also some inherent differences in the characteristics of the workers covered in each scheme, which will have a significant impact on the effectiveness or otherwise of any reforms. The main differences are:

- Weekly benefits make up around 60% of scheme costs for the TMF and around 40% for WorkCover. Therefore, any reforms that impact on weekly benefits will have a greater impact on the TMF than on WorkCover.
- The average wage of TMF claimants is higher than that of NSW WorkCover claimants as there are a greater number of high wage professionals in the public sector such as teachers, nurses, emergency services. Therefore, reforms that link benefits to claimant wages will have a different impact on the TMF compared to WorkCover.
- There is a higher proportion of claimants on award wages in the TMF compared to WorkCover. Therefore, reforms that change the relationship between benefits and award versus non-award wages will have a different impact on the TMF compared to WorkCover.
- There is a greater proportion of psychological injuries (stress claims) in the TMF than WorkCover. Psychological injuries are more difficult to medically assess accurately than physical injuries. Also, psychologically injured claimants typically have poorer return to work outcomes and, on average, receive three times more in weekly benefits than physically injured claimants. Therefore, reforms that have specific allowances for stress claims will impact TMF differently to WorkCover. Also, reforms that rely on the assessment of impairment may also impact the TMF differently to WorkCover.
- The TMF has a higher proportion of claimants who are totally incapacitated compared to WorkCover. Therefore, reforms that affect claimants with different levels of incapacity will have a different impact on the TMF compared to WorkCover. Also, reforms that rely on work capacity testing may not be as effective for TMF as they are for WorkCover.
- The proportion of claimants who are on medical benefits as well as weekly benefits is higher for the TMF than for WorkCover. Therefore, reforms that link medical benefits to weekly benefits will have a different impact on the TMF compared to WorkCover.

Opinions/Recommendations for the Options for Change

The Issues Paper contains 16 items as options for change to help keep the costs for the workers compensation system sustainable. SICorp's opinion/recommendation in relation to each item is detailed below.

1. Severely injured workers

- ✓ Whilst we support the channelling of benefits from less severely injured claimants to the more severely injured, there is a risk that differences in the Whole Person Impairment (WPI) distribution between TMF and WorkCover could create an increase in cost for the TMF. This is particularly impacted by the higher proportion of psychological injuries in the TMF, where medical assessments are more uncertain and there could be a significant number of claimants who are close to or above the 30% threshold. The availability of more generous compensation for this group could result in a greater cost to the TMF compared to WorkCover.

2. Removal of coverage for journey claims

- ✓ We support this option.

3. Prevention of nervous shock claims

- ✓ We support this option.

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

- ✓ We generally support this option. However, consideration needs to be given to the higher proportion of TMF claimants on award wages and the impact the simplification of the wage definition would have on TMF compared to WorkCover.
- ✓ It is also suggested that weekly benefits should be changed to more closely align to a worker's pre-injury earnings. In Victoria and South Australia, weekly benefits are calculated as 80% to 90% of pre-injury average weekly earnings from week 14 and onwards. We note that claimants in the TMF have a significantly higher wage distribution than claimants in WorkCover. A change in the weekly benefit definition to be based on some percentage of pre-injury earnings in place of the existing statutory rate could result in a significant increase in costs for the TMF.
- ✓ We have estimated that weekly benefits set at a level higher than 70% of pre-injury earnings would result in a cost to the TMF.
- ✓ If weekly benefits were set to 80% of pre-injury earnings from week 14 and onwards, this would result in a 10% (\$280m) increase in the TMF liability, which would need to be funded from the NSW Government's budget.
- ✓ If this option is to be considered, the Committee is urged to consider levels below 70% of pre-injury earnings, unless other reforms are also introduced (such as the work capacity test and a cap on the duration of weekly benefits) that more than offset the increase in costs.

5. Total incapacity payments

- ✓ We support this option.

6. Partial incapacity payments

- ✓ We generally support this option, although there may be differences between the number of hours worked by TMF claimants compared to WorkCover claimants that may result in different impacts on the two schemes. This needs to be considered in costing the impact on the TMF of any reforms adopted.

7. Work Capacity Testing

- ✓ We support this option, as we believe that it will promote return to work for claimants and possibly help offset any increase in costs that could potentially arise if weekly benefits are set to a higher level of pre-injury earnings than at present.
- ✓ However, we note the potential for the savings from this option to be significantly less for TMF than for WorkCover. As mentioned previously, the impact of the D&D scheme for Police has resulted in a significant deterioration in workers compensation costs for the TMF. Police constituted 35% of the TMF liability at December 2011 and 28% of the TMF premium for the 2012/13 accident year, and so represents a significant portion of the TMF. The top-up of weekly benefits to 100% of pre-injury earnings for injured Police officers and the availability of a lump sum after medical discharge has provided a significant disincentive for officers to return to work. With most of the injured officers suffering from psychological injuries which are difficult to medically assess, it is highly unlikely that they would pass the work capacity test.
- ✓ Therefore, any savings from a work capacity test can be expected to be lower for the TMF than for WorkCover.

8. Cap weekly payment duration

- ✓ We support this option, as we believe that it will promote return to work for claimants.
- ✓ We note that other Australian jurisdictions generally have a duration cap or a total cumulative benefit cap which may or may not depend on injury severity. Again we note the potential for the impact of introducing caps on weekly benefits to be different for TMF and WorkCover due to the differing WPI distributions and the proportion of long term claimants in each scheme.

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

- ✓ We support this option.

10. Only one claim for whole person impairment assessment

- ✓ We support this option.

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

- ✓ We support this option.

12. Strengthen work injury damages

- ✓ We support this option.

13. Cap medical coverage duration

- ✓ We note that the Victorian scheme restricts medical payments to one year after the cessation of weekly benefit payments. Other states impose other caps. We would like the Committee to note that the TMF has a higher proportion of claimants who receive both weekly and medical benefits.
- ✓ Therefore, this option is likely to result in a lower saving to the TMF compared to WorkCover.

14. Strengthen regulatory framework for health providers

- ✓ We support this option.

15. Targeted commutation

- ✓ We would only support this option if it is genuinely beneficial to the claimant and does not increase the costs for the scheme.

16. Exclusion of strokes/heart attack claims

- ✓ We support this option.

Functions and operations of the WorkCover Authority

The functions and operations of the WorkCover Authority must be sufficiently robust to ensure that the Government's intention in introducing the reforms is maintained and there is no slippage in the years following the implementation of the reforms.

The package of reforms must deliver a comprehensive integrated scheme design that is enforceable, and applicable to all parties (including the Workers Compensation Commission (WCC) and

consistently applied to ensure that decision making based on appropriate application of the legislation is supported and upheld.

Reforms as a package

Some particular options noted in the Issues Paper are likely to have less impact on the TMF and therefore result in lower savings than may occur for WorkCover.

As an example, weekly benefits constitutes 60% of the TMF liability compared to 40% for WorkCover. Therefore, individual reforms on weekly benefits will have a much greater impact on the total liabilities of the TMF.

Savings from reforms related to other benefit types will have a smaller impact on the liabilities of the TMF. In addition to this, it is important to bear in mind the interaction of the various reforms rather than the impact of each reform in isolation. Adopting a selection of the individual reforms proposed may have the undesirable impact of increasing costs to the TMF with no offsetting benefit.

Our main recommendation is for the Committee to consider the reforms as a package and to support the need for the cost of the impact of the reforms on the TMF as well as on WorkCover before being adopted by the Government. In addition to assessing the package of reforms with respect to comparability to other jurisdictions, the costing will provide details on the cost impacts on business that will affect the competitiveness of businesses in NSW as well as the impact on the State budget.