Submission No 126

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Slater & Gordon

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"A fair system for injured workers in NSW"

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List of Sites in NSW

Sydney	Broken Hill	Dubbo	Gunnedah	Newcastle	Redfern	Cessnock
Albury	Campbelltown	Gilgandra	Liverpool	Nowra	Tweed Heads	Lithgow
Ashfield	Coffs Harbour	Gosford	Maitland	Parramatta	Wollongong	Moruya

List of Unions we act for:

Australian Federation of Air Pilots
Association of Professional Engineers, Scientists & Managers of Australia
Australian Services Union NSW & ACT Services Branch
Australian Services Union Taxation Officers Branch
Club Managers Association of Australia
Communications, Electrical & Plumbing Union Telecommunications & Services Branch
Communications, Electrical & Plumbing Union Postal & Telecommunications Branch
Construction, Forestry, Mining & Energy Union Mining & Energy Division, Northern District
Construction, Forestry, Mining & Energy Union Mining & Energy Division, South Western District
Community & Public Sector Union
Health Services Union East Branch
Maritime Union of Australia Sydney Branch
Maritime Union of Australia Northern NSW Branch
Maritime Union of Australia Southern NSW Branch
National Union of Workers NSW Branch
Rail, Tram and Bus Industry Union NSW Branch
Rail, Tram and Bus Industry Union Bus & Tram Division
Shop, Distributive & Allied Employee's Association
Town Employee's Union

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Summary:

- The workers for which Slater & Gordon represent have a shared interest in the continuing sustainability of a scheme which is of critical importance in the support of injured workers and their families.

- We believe society has a fundamental obligation to support the most vulnerable members of the community. Injured workers and their families can unexpectedly find themselves among the most vulnerable in sudden and unexpected circumstances.

- Slater & Gordon agree that a Parliamentary Inquiry into workers compensation arrangements in NSW is timely and warranted. The fundamental issue is what the review priorities should be. These priorities cannot be reliably taken from the Issues Paper released by the Government in April which focuses on cutting benefits to injured workers and their families and appears to ignore key recommendations of the scheme's own actuaries relating to administration;[1]

- A separate non-legislative review commissioned last month into the operations of WorkCover NSW should serve as a positive step in addressing deficiencies in the scheme and areas of poor performance. It would be wrong to pursue legislative change designed to reduce benefits in advance that operational review;

- An unholy trinity exists for NSW workers in that they are more likely to be injured, that injury is more likely to be serious, and the compensation received for that serious injury is likely to be less than the expected experience of workers in other key states[2]. The suggested reform options will only exacerbate this disadvantage;

- The number of major injuries to workers has halved since 1996 (62,000 to 30,000), the number of disputed claims is now one third of the 1996 rate[3], and total payments to workers have decreased by almost 20% between 2002 and 2010;

- This has contributed to premium rates in NSW, both in absolute and in relative competitive terms, being at historic lows. Premiums have decreased 33% since 2005 alone, with resulting savings for employers of around $1 billion per annum;

- There has been a significant deterioration in the financial experience of the scheme in the 6 months to 31 December 2011. The bulk of this deterioration is attributable to items unrelated to benefit levels;

- Funds management under performance for the most recent reporting period cost the NSW Scheme $429m. This figure approximates the increase in assessed insurance liabilities that precipitated this Inquiry;

1 The PwC Report makes key recommendations into the performance of scheme agents that are not addressed to any extent by the reform options proposed in the Issues Paper.
2 For comparative standardised claim rates and serious claim classification see the e-Brief: Workers Compensation – An Update, May 2012, p.13.
3 WorkCover NSW Annual Report 2010/11

- The administrative cost of running WorkCover has increased significantly from $70m in 1999 to more than $600m recently[4];

- Consistent with these observations, the scheme actuaries have identified deteriorating performance in some scheme agents. This appears to be compounding problems within the scheme;

- In circumstances where agent performance is deteriorating and administration costs are increasing exponentially, there is a clear need to review the adequacy of the agent remuneration model;

- Reform options must target the root causes of instability in the scheme. There is strong evidence that the causes are related to the cost of the delivery of benefits, not the cost of the benefits themselves. The options for reform posited in the Issues Paper not only fail to target the root causes of deterioration in financial experience of the scheme, they actively ignore them;

- The scheme approach to returning injured workers to meaningful employment needs comprehensive review. Successful return to work outcomes provide the quintessential win-win-win; they are good for employers, good for workers, and good for the bottom line;

- As a matter of both principle and good practice, benefit reduction to injured workers must always be the intervention of last resort. Improvements in scheme administration must always be the intervention of first call;

- Any further erosion of common law is wrong as a matter of justice and policy. Access to the common law has always been central to Australia's civil justice system.

[4] Desk top analysis of WorkCover NSW and related agencies annual reports

Introduction:

For over 75 years Slater & Gordon has acted for injured workers and their families. We have a long and proud history of assisting injured workers in the area of workers compensation.

We currently have 21 sites across suburban and regional NSW providing services to injured workers. We have the largest workers compensation practice in the State, representing workers across all major industries. We take our corporate and social responsibilities very seriously, and because of the vulnerability of many of our clients we provide broad support including social work services at no charge to our clients. As Australia's largest Plaintiff law firm, we are also able to provide the Committee with an instructive and comparative interstate perspective on the problems facing the NSW scheme.

We trust that this combination of local presence and national experience will be of some value to the Committee. We hope to be of assistance both in terms of giving voice to the actual experience of injured workers and their families, and in understanding the practical mechanics of compensation schemes.

The workers for which Slater & Gordon represent have a shared interest in the ongoing sustainability of the scheme. Society has a fundamental obligation to support the most vulnerable members of the community. Injured workers and their families are amongst this vulnerable population. The vehicle by which the community's support is provided is the workers compensation scheme. It is integral to the delivery of this support that the scheme remains viable.

In its reasons for establishing this Inquiry, we are told by the Government that the ongoing viability of the scheme may be compromised. The scheme is facing complex issues in large part as a result of the Global Financial Crisis. However, there should be no quick fix at the expense of injured workers.

There are three things to note at the outset. Firstly, that any steps taken to address the current situation must target the causes of instability in the scheme. There is strong evidence that the causes are related to the cost of the delivery of benefits, not the cost of the benefits themselves. To this end, the options for reform posited in the Issues Paper appear misdirected. The best evidence of the causes of instability in the scheme point to an administrative rather than legislative failure.

Secondly, the 'levers' that could be applied to this situation are to decrease benefits, increase premiums, and improve the performance of scheme administration. It needs to be remembered that the compensation scheme is constructed for the benefit of injured workers. To this end, reduction of benefits must always be the intervention of last resort. Improvements in scheme administration must always be the intervention of first call. Moreover, it is necessary to see the impact of administrative efficiency gains that should arise from the WorkCover NSW operational review before considering the appropriateness or otherwise of benefit changes.

Thirdly, any further erosion of common law is wrong as a matter of justice. Access to the common law has always been central to Australia’s civil justice system. It has provided a framework for the administration of justice for people who have been seriously harmed as

a result of the negligent or reckless acts of another. In NSW the common law rights of workers and their access to compensation was dramatically limited a decade ago.

A decade after this dramatic reduction of the common law rights, it is deeply concerning that the same bureaucracy is recommending the effective removal of remaining common law rights to address shortcomings in the scheme that are not related to the cost of benefits.

It would be an extraordinary move to further restrict access to common law, in circumstances where no government will guarantee that benefits and services will remain the same if scheme administrators run into financial trouble again.

Access to common law provides justice and a sense that justice will be done to address circumstances that have caused life changing harm. Further, the process of civil justice ensures that negligent acts are in the public domain. As a community we learn from the mistakes of others. As a consequence of common law, better policies and procedures are developed to minimise the harm to others, making for safer workplaces.

It is our submission that the reform priorities in the Issues Paper reflect an order of priority that is, frankly, upside down.

Furthermore, the Issues Paper conceptually lurches from one option to another before offering up a cluster of options which, we presume, are intended to be accepted as both necessary interventions and solid policy outcomes. This is despite the fact that the options are proffered without providing any information as to whether, and to what extent, the targeted reforms would even deliver the outcomes the scheme needs.

We submit that it is not in the interest of workers or employers to move to implement any options until confidence can be established that they have been appropriately designed to further the objects of the Act.

Context of Inquiry:

The reform options threaten to exacerbate the unholy trinity of workplace injury that already exists in this state. Workers in NSW are more likely to be injured, that injury is more likely to be serious, and the compensation received for that injury will be less than the expected experience of workers in other states.[5]

From a scheme design point of view, NSW employers pay higher premiums and workers receive inferior benefits than in key competitor states. It might be suggested that a reduction of friction in the administration of the scheme would lead to a correlating decrease in transaction costs that would ultimately make both workers and employers better off. We note that a structural review of the administration of the scheme has been established, and this is a positive step. From a timing point of view, we submit that that process should run its course prior to further consideration being given to benefit reform.

There is a further quirk of timing in this process. The Issues Paper stipulates that decisions relating to premium rates are to be made by the Government "...*at the latest at the end of May 2012*".[6] The Committee conducting this Inquiry is to report by 13 June 2012. It is somewhat difficult then to properly contextualise the intersection between the Inquiry and Government decision making on premium rates for the upcoming financial year.

The Issues Paper endeavours to create context for this 'review' process by setting out 7 'reform principles' that are said to guide decision making in this process.[7] In truth, these principles are an unnecessary distraction.

Decision making in the workers compensation context already has well established guiding principles, and these are set out in Section 3 of the *Workplace Injury Management and Workers Compensation Act (1998)* ('the 1998 Act'), as follows:

"*The purpose of this Act is to establish a workplace injury management and workers compensation system with the following objectives:*

(a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,
(b) to provide:
- *prompt treatment of injuries, and*
- *effective and proactive management of injuries, and*
- *necessary medical and vocational rehabilitation following injuries,*
- *in order to assist injured workers and to promote their return to work as soon as possible,*

(c) to provide injured workers and their dependents with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,
(d) to be fair, affordable, and financially viable,

5 For comparative standardised claim rates and serious claim classification see Safe Work Australia: Comparison of Workers Compensation Arrangements in Australia and New Zealand 2012, published April 2012, Table 2.3 (extract) p.17.
6 NSW Workers Compensation Scheme Issues Paper, p.2.
7 NSW Workers Compensation Scheme Issues Paper, p.2.

(e) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,

(f) to deliver the above objectives efficiently and effectively."[8]

Whatever additional considerations might be sought to be invoked in this process, the paramount principles are those already well established and clearly stated in the 1998 Act.

The Committee ought not be diverted from these well understood objectives of the workers compensation scheme, by virtue of the emergence of so called 'guiding principles' of recent invention and dubious standing.

8 Section 3, Workplace Injury Management and Workers Compensation Act (1998).

Commentary on the rational for reform of the NSW Workers Compensation Scheme:

Item 1.1 of the Issues Paper claims to set out the impetus for reform. It is pertinent to provide preliminary comment here on the explanations contained therein. It is instructive to explore the merits of the policy underpinnings of the factors said to necessitate this reform process:

1. *Premiums are unacceptably higher than competitor states, with an emerging likelihood that this gap could increase further:*[9]

Premiums are higher in NSW, than competitor states, but that competitive gap has in fact narrowed over recent years. Furthermore, what the Government has not done, and what it must do, is detail the anticipated impact on economic growth and on the jobs market of movements in the premium rate, either positive or negative. Until this is articulated, there is no means by which the relative importance of premium rates can be factored into the reform agendas.

2. *The system is difficult to navigate and encumbered by red tape*:

We deal with injured workers every day who are constantly drawn into red tape and encounter bureaucratic challenges in navigating the system to access benefits, medical care and rehabilitation to assist them to return to work.

It is difficult to identify the extent to which the suggested reforms might be expected to remedy this defect.

We see an important opportunity to work with scheme administrators to deliver process improvements to enable workers to receive compensation in a less costly and more efficient manner. We have a long history of such engagement in Victoria, with both the Transport Accident Commission and Victorian Work Cover Authority.

3. *Payments for seriously injured workers are inadequate:*

Good scheme design always encourages the delivery of benefits to those who most need them. The patent flaw with the articulation of this position in the Issues Paper is that in its proposed form, it is designed to do nothing more than reduce benefits overall.

This proposal needs to be seen for what it is; a Trojan horse intended to disentitle those who are already 'seriously' injured by inventing a new category of 'severely' injured but with a much higher threshold, therefore providing less benefits for most seriously injured workers.

9 Issues Paper p.4

4. *Return to work incentives and processes are inadequate:*

This should absolutely be a focus of scheme intervention. A successful return to work is the ultimate win-win-win; it is good for the scheme bottom line, good for employers, and good for injured workers and their families. The devil is of course in the detail, and any scheme initiatives need to be legitimate in their intent to return workers to meaningful employment. There are many initiatives that ought to be explored in this regard, but work capacity testing is not amongst them.

Work capacity testing is of utterly dubious merit, and likely contributes nothing to the return to work process. Experience tells us that scheme investments in this area are far more effectively administered when directed to retraining, job seeking assistance and sponsored jobs placements.

Methods to reinforce the return to work obligations of employers merit strengthening in the existing legislation. In addition, powers in relation to enforcement of these obligations provided to the Workers Compensation Commission could be strengthened to achieve improved outcomes in relation to return to work.

Scheme Agents need to improve their efforts in this area, including the provision of better training for their staff. PwC point to Scheme Agent improvements being warranted and this is a critical area that needs to be addressed.

5. *Less seriously injured workers are not properly incentivised to recover and return to work:*

Addressing this factor should be 'core business' for a compensation scheme. The fact that it is even noted here is again emblematic of the extent to which the administration of the scheme has struggled to effectively respond to this critical priority.

The foundations for durable and safe return to work lie in prompt and effective medical treatment, rehabilitation and the provision of appropriate return to work opportunities. This relies heavily on solid and sensible claims management and support and where necessary incentives for employers to cooperate. The reward for the worker is in the form of restoration of health, well being and a full return to work.

6. WorkCover has insufficient power to appropriately manage the administration of medical benefits:

This assertion is highly suggestive of the operation of administrative rather than legislative failure. There is sufficient power available to the scheme and its agents to ensure that only clinically justified and reasonable medical expenses are incurred by the scheme. There has however been difficulties experienced in managing this area and exercising decision making powers already available.

Submissions on Options for Change:

The Issues Paper outlines suggested options for change which are said to be "...*intended to promote recovery and health benefits for injured workers of returning to work while guaranteeing long term income support and treatment for severely injured workers and ensuring the costs of the workers compensation system are sustainable*."[10]

We submit that the fairer exposition is that, in the main, the options are singularly intended to reduce benefits payable under the scheme.

It is an important distinction to note. Having regard to the contribution of administrative cost blowouts to the current position of the scheme, it cannot be reasonably said that the reductions in scheme benefits will necessarily, or at all, actually operate to bolster the sustainability of the scheme.

A reduction in the *cost of benefits* is not the same thing as a reduction in the *cost of benefit delivery*. There is a powerful argument that the first and best contributions to the enhanced sustainability of the scheme will be found in reforms targeted at reducing the cost of benefit delivery, rather than in reforms to reduce benefits themselves.

To the extent that the options for reform do not target the underlying cause of the current position of the scheme, they are misconceived. Our response to the suggested reform options is as follows:

1. Severely injured workers;

The enhancement of benefits to the most seriously injured workers would be a welcome development. Money cannot restore these workers to health, but it can ease the devastation of workplace injury on seriously injured workers and their families.

However, if the intention is to invent a new category of 'severely' injured workers to increase the threshold for access to entitlements (which would disentitle otherwise 'seriously' injured workers), then this would represent a seismic change to a fundamental aspect of the scheme.

The imposition of a 30% WPI threshold for access to common law damages is arbitrary and wrong because it would exclude many severely injured people. Only those with paraplegia, quadriplegia, severe multi trauma, and catastrophic brain injury would meet the 30% test.

A 30% WPI threshold would exclude many workers with serious injuries, and these would include; workers with amputations, burns and other disfigurements, moderate brain injury, and debilitating spinal conditions requiring surgery.

In fact, currently many seriously injured workers are excluded from Common Law/Work Injury Damages (WID) by the current threshold of 15% WPI.

10 Issues Paper pp.21-22

The impact of a 15% WPI threshold can be simply illustrated – the majority of workers who suffer from back injuries that have serious ongoing consequences including chronic pain and severe limitation of movement and who are unable to return to any form of work are excluded from making a common law claim. The majority of workers with serious hand, wrist, foot, ankle and knee injuries are also excluded.

To meet the 15% WPI a worker would generally have to have to have sustained multiple conditions and this is rare in a workplace setting.

If the threshold for entitlements were to be increased to 30%, it would be an almost absolute bar to common law. This can be illustrated by the Victorian experience where 95% of workers who suffer a serious injury obtain access to common law via the "narrative test" as opposed to the 30% WPI threshold.

The "Narrative Test" is an alternative gateway to access common law in Victoria. To claim non-economic loss damages, a worker must demonstrate that they have a serious long term impairment or loss of body function. To claim economic loss damages a worker must establish a 40% loss of earning capacity.

Without provision for a `Narrative Test', as applies in Victoria, the current threshold should in fact be reduced to 10% WPI. This would at least provide consistency with the provisions in the *Motor Accidents Compensation Act NSW*. There is no justification for providing a person injured in the course of their employment with lesser compensation than a motorist.

The scheme actuaries have found themselves inclined to express the view that there is a risk of a 'lump sum culture' emerging in the compensation system. We take this to suggest, by inference, that a view has been formed that workers are accessing lump sum benefits by some dint of deceptive design. This is both a disappointing and erroneous conclusion.

Access to lump sum benefits under the scheme requires a worker to demonstrate injury constituting permanent impairment. This impairment must then be assessed and verified in accordance with the WorkCover Guides to the Evaluation of Permanent Impairment 3rd Edition, (which incorporates for the most part the AMA Guides to The Evaluation of Permanent Impairment, 5th Edition).

The Guides are specifically designed to provide an objective means of assessing impairment. Entitlement is not something that an injured worker can demonstrate by force of character. There is no 'cultural' aspect to the process at all. You either have a compensable permanent impairment, objectively determined, or you do not.

The danger in employing unwarranted and emotive tags such as 'lump sum culture' is that, especially when uttered by scheme actuaries, they can attain a currency that is not deserved, which then obscures the real issues in the debate.

To attack the entitlements of those workers who the scheme presently recognises as the most seriously injured, whilst pretending to do otherwise is shameless and duplicitous. It prioritises for further disadvantage the very cohort of injured workers who most need our support.

2. Removal of Journey Claims:

The jurisdictional comparison in the Issues Paper correctly invokes, for example, the exclusion of journey claims from coverage in Victoria. What it does not reveal is that commensurate coverage for journey claims in Victoria is provided for by the motor vehicle accident insurer in that state on a "No Fault" basis in addition to common law. The practical implication of exclusion in Victoria then is fundamentally that injury insurance protection for journey claims rests with a separate statutory entity. It does not mean that Victorian workers are not covered.

To exclude journey claims in the NSW context does not create the same situation as exists in Victoria, because it does not have the same additional insurance arrangements as exist in that state. If adopted, this option would bluntly exclude an entire category of injured workers from coverage under the scheme. This is a radical departure from the current position.

The Issues Paper does not provide any information going to the financial dividend to be derived from such a fundamental policy shift.

3. Prevention of Nervous Shock Claims from Relatives or Dependents of Deceased or Injured Workers:

The Issues Paper asserts that "*[a]rguably an employer's liability for the psychological injuries to family members following the serious injury or death of a worker does not fall within the objects of the legislation and it has been suggested that such claims should be removed*".[11]

Section 3 of the 1998 Act provides, relevantly, that dependents are an object of that legislation:

(c) to provide injured workers and their dependents with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,

It seems to us that, contrary to the assertion in the Issues Paper, the Act is quite express on the point.

4. Simplification of the Definition of Pre-Injury Earnings and Adjustment of Pre-Injury Earnings:

From our perspective, the present methods of calculation are well understood and functional. However, in principle we support a simplification (but not a reduction) of the definition and approach to "pre-injury earnings" and "currently weekly wage rate" contained within the Workers Compensation Act. Beyond this, it is difficult to meaningfully comment on this option without seeing any proposed revised calculation formula.

11 Issues Paper, p.23.

We submit that if this proposal is truly concerned with clarity of calculation as opposed to reduction of benefit, it is difficult to see how the option enhances the stated objective of ensuring the sustainability of the scheme.

5. Incapacity Payment – Total Incapacity:

This option concerns the reduction in the 'step down' period from 26 weeks to 13 weeks. This is patently a regressive and undesirable proposal. What is also concerning is the tortured policy basis upon which this is put forward as an option.

Firstly, it is put that *"[a]n earlier step down would harmonise NSW arrangements"*[12] with several other states. This statement implies that the mere act of harmonising with another jurisdiction on a discrete issue accords the option a sound policy platform. In truth, it does no such thing. Harmonisation has no implicit policy value when applied to an isolated benefit area and there is no harmonisation.

If harmonisation were being pursued as a broader agenda, then all the options for reform ought to be targeted to that goal. They are not. In these circumstances, the committee is entitled to regard any claim that a particular policy justification resides in harmonisation as dubious.

Secondly, the Issues Paper states the following:

"*Some jurisdictions have weekly benefits which incorporate 'step downs', or reductions, after 13 weeks, to encourage workers to return to work. This approach is in line with research which indicates the longer a worker is away from work, the less likely they are to return.*"[13]

This claim cannot be allowed to rest unchallenged, for it attempts to conflate two concepts that are not at all the same thing. Research does demonstrate that the longer an injured worker is away from work, the less likely they are to return. This is not to the point.

The correct question to ask is whether there is any relationship between the level of benefits payable, the duration of step-down periods, and return to work outcomes.

The answer is that the most powerful influence on return to work performance is implementing meaningful return to work strategies. Of Queensland, Victoria and NSW, Queensland has the best durable return to work performance, and it has a 26 week step-down; the same period as NSW, and double that of Victoria.[14]

12 Issues Paper, p.25.
13 Issues Paper, p.15.
14 Safe Work Australia – Comparative Performance Monitoring Report – Comparison of work health and safety workers compensation schemes in Australia and New Zealand; Thirteenth Edition, October 2011, p.52.

6. Incapacity Payments – Partial Incapacity:

It is not clear from the Issues Paper how the relative operation of return to work incentives in the scheme should be re-ordered for this category of workers. Needless to say, both the scheme and injured workers have a shared interest in working together to return to suitable employment at the earliest opportunity that the worker is fit and able to do so.

7. Work Capacity Testing:

This option suggests that work capacity testing should be pursued to assist injured workers return to meaningful employment. Work Capacity Testing in Victoria, has not proved to be of significant assistance in meeting the return to work objectives of the NSW scheme.

Work Capacity Testing has no meaningful role in the return to work process. The arbitrary and unrealistic testing of physical tolerances is valueless for the injured worker. It doesn't help them get a job; it merely tells them that theoretically, they may have a physical capacity to perform a job, if they are lucky enough to find one.

In our experience, injured workers have a good sense of whether they have any fitness for work, and they would take any opportunity to work that they can find. And this is the nub of the issue, they need to be able to find and perform work. Work Capacity Testing contributes nothing to this objective.

Scheme support for workers in the return to work process is imperative, but it will be misdirected if applied to Work Capacity Testing. We submit that the dividend on any return to work expenditure will be far more valuable if directed toward retraining, meaningful job seeking assistance, and scheme sponsored job placements.

8. Cap Weekly Payment Duration:

The Issues Paper asserts that giving injured workers a restricted duration in which weekly payments were payable would "...*give workers a fixed timeframe during which they know they need to work toward a certain level of work readiness".*[15]

This observation utterly misconceives the experience of injured workers, and the manner in which a return to work program should operate. Effective claims management and return to work support would see an injured worker preparing to go back to work at the earliest possible opportunity. This opportunity will never be referable to some arbitrarily imposed deadline, it will be referable to the state of an injured worker's health.

Additionally, the observation implies that workers have an element of choice about whether they go back to work, and that if they know their payments are going to stop, they will exercise that choice. There are many workers who, with all the good will in the world, can never return to work. To cut their benefits at some pre-determined time is for the scheme to do no more than wash its metaphorical hands of the responsibility that exists to support injured workers. This is an unacceptable position for the scheme to adopt.

15 Issues Paper, p.26.

Capping weekly benefits does not improve the chance of injured workers returning to work. Providing employers with incentives to provide suitable duties for longer and to integrate injured workers back into their workforce whilst the injured workers are appropriately supported, is a more mutually beneficial way of ensuring the objectives of the scheme are met. We believe the legislation contains sufficient incentives for workers to return to work as soon as they are able.

9. Remove Pain and Suffering as a Separate Category of Compensation:

The removal of compensation for pain and suffering would be a retrograde step and undercut an important aspect of acknowledgement of injury that the scheme presently provides. While it may be a subjective entitlement, there is no inherent virtue in objectivity. Determinations of impairment are objective but arbitrary from a quantum perspective. There is no greater methodological flaw in subjective awards of compensation than there is in objective but arbitrary ones.

Both methods attempt to do the best job that can be done at redressing injury with a pecuniary measure. The delivery of non pecuniary compensation is imprecise by its very nature, but equally, it is imperative acknowledgement of the very real loss experienced by injured workers.

The suggestion that the proposed reform would otherwise reduce disputation is querulous.

It is noted here that legal costs have been declining and the scheme actuaries have recently downgraded legal cost liabilities in the scheme.

To fix an award for pain and suffering at some arbitrary amount and incorporate it into only those claims that exceed a 10% impairment assessment is both flawed and objectionable. Firstly, it denies that workers who have suffered a permanent impairment of less than 10% have experienced any pain and suffering in association with that injury. This will patently not be the case.

Secondly, where an award of pain and suffering is actually attracted, the application of fixed amounts merely guarantees that the amount awarded will be wrong. Under the current system, a worker's circumstances are taken into account when evaluating, as best as is possible, the value that should be ascribed to their pain and suffering. The introduction of a fixed pain and suffering component removes this important flexibility. For the price of certainty it ensures that every worker will be over or under compensated. The clearly preferable position is that each worker is correctly compensated, according to their circumstances.

10 /11. Only One Claim for Whole Person Impairment, and One Assessment of Impairment:

The opportunity to potentially improve efficiencies in the benefit delivery process is always welcome, provided it does not prejudice the fair and equitable access to compensation to which injured workers are rightly entitled. The interests of fairness and equity necessitate the availability of an effective review process.

While there are potential efficiencies to be gained from the carrying out of one impairment assessment for multiple purposes, these efficiency gains are tempered by the potential for the introduction of abject unfairness to some of the most seriously injured workers in this state.

Workers are advised to wait a prudent amount of time to lodge an impairment claim to maximise the prospect of the assessment process accurately reflecting their true level of impairment. It is in their interests, and the interests of the scheme, to only lodge the one impairment claim, and for the outcome of that process to fairly reflect a worker's true level of impairment.

In the main, the process works as intended and workers do not have to submit a further claim. For some though, this is not the reality of their experience. Some injuries are insidious and degenerative. Some workers, through no fault of their own, get worse. Some workers get substantially worse. To prevent the making of a further claim in circumstances of unexpected, and undesired, deterioration in a compensable condition is to deny an appropriate level of compensation to those very workers who are most entitled to it.

12. Strengthen Work Injury Damages (Common Law):

The Issues Paper suggests the adoption of the general principles contained in the *Civil Liability Act 2002 (the "Act").* These principles are centered around the concept of personal responsibility. In this *Act, c*ontributory negligence is applied more strictly and defendants generally no longer owe a duty of care for failure to warn of obvious risks unless asked.

It is clear that these provisions in the "*Act"* should not apply to work place negligence. This is because the employer and employee relationship is special and unique. It is essentially a master and servant relationship and has at its origins in Biblical and Roman law. Master and servant has been used to describe the legal relationship between an employer and employee for the purposes of determining an employer's liability for acts of an employee. An employer is vicariously liable for acts of an employee committed within the scope of employment. Further the employer has a non-delegable duty of care.

The *Civil Liability Act* was not drawn to take into account this unique relationship and the duty of an employer to provide a safe workplace. The employer determines how, when and in what manner the work is to be undertaken. To such an extent the notion of personal responsibility is therefore removed from the employee. Nonetheless, contributory negligence still applies.

If the *Civil Liability Act* was applied it would have to be amended to incorporate provisions to safeguard the laws of vicarious liability and non delegable duty. The reason for this is very clear. There are many occupations which are inherently dangerous and involve obvious risks. To undermine an employer's duty to take reasonable care for its employees would be inconsistent with industrial work safety and all of the present occupational health and safety legislation.

It is not otherwise clear the extent to which this option is expected to bring about a meaningful decrease in scheme liabilities. The proposals in the Issues Paper seek to `pick and choose' components from different compensation schemes to suit Workcover's perceived current need and the result for injured people across the state is nonsensical.

To qualify for damages for personal injury in NSW, there are three different assessment criteria and entitlement to damages:

> The *Civil Liability Act* prescribes a gateway of 15% (in comparison to the worst injured person) and all heads of damages are available subject to caps.
>
> The *Motor Accidents Compensation Act 1999* prescribes a gateway of 10% WPI (AMA4), and all heads of damages are available subject to caps.
>
> The *Workers Compensation Act 1987* prescribes a gateway of 15% WPI (AMA V) and damages are restricted to economic loss alone.

Injured workers are already the most disadvantaged as it relates to a WID claim and the experience is suboptimal as compared to competitor states. The WID `package' forces many claimants to remain on weekly payments with there being no palatable exit strategy and therefore compounds the problem with long tail liabilities.

We strongly advocate the strengthening of WID. Other competitor states, with healthy viable schemes recognize the importance of appropriate common law damages for both workers and schemes alike.

13. Cap Medical Coverage Duration:

The escalation of medical expense liabilities is a function of lack of administrative intervention, not a legislative deficiency.

Injured workers are entitled to clinically justified and indicated medical interventions arising as a consequence of and attributable to, compensable injury under the scheme. There is no reasonable scope for the application of some artificial time dependent factor to be validly applied to this area of entitlement. The key question must always be whether medical treatment is reasonable and necessary for a compensable injury. The introduction of any other standard is artificial and objectionable.

14. Strengthen Regulatory Framework for Health Providers:

The standard for applicability of valid medical expenses under the scheme is addressed at Item 13 of this section of our submission. Beyond this, it is difficult to discern what is meant by 'strengthening the regulatory framework' for health providers. The scheme ought to already be assessing medical expenses claims for validity as they are presently entitled, empowered and indeed, obliged, to do.

15. Targeted Commutation:

Provided commutations are optional, supported by legal and financial advice being provided to workers, and calculated on a fair and equitable basis, they are likely a constructive option for some injured workers. It has the potential to assist in reducing problematic long tail claims.

16. Exclusion of stroke and heart attack injuries unless employment a significant contributing factor:

This proposal is unnecessary. It is already a requirement that there be an appropriate causative link between injury and work. S9A of the 1987 Act provides that employment must be a substantial contributing factor. If in an individual's case employment has been a substantial contributing factor to the stroke or heart attack, then the injured worker should be entitled to compensation as with any other injury where work has been a substantial contributing factor. The Act already provides the requisite legislative requirements for these types of claims.

It is our view that the legal position on this question is clear and does not require legislative amendment to give effect to this option.

Financial and Agent Management Issues:

The Issues Paper accurately points to a deterioration in scheme financial sustainability. This is obviously concerning to all who have an interest in the scheme. However this deterioration must be properly conceptualised and understood in order for appropriate interventions to be formulated. The Issues Paper is incomplete in this regard.

We make a variety of submissions in this regard which we say are pertinent.[16] The *WorkCover NSW Executive Summary: Actuarial Valuation of Outstanding Claims and Liability for the NSW Workers Compensation Nominal Insurer as at 2011* ('the PWC report') notes that the balance sheet result as at December 2011 was a reported deficit of $4,083 million, with a funding ratio of 78%.

A significant proportion of this deficit is related to investment performance, and it's uncertain if this will be addressed by the findings of this Committee. Of those operational features of the scheme that will concern the Committee, we note the following:

The deterioration between June 2011 and December 2011, which has precipitated this inquiry, was $1,720 million. The Estimate of Discounted Outstanding Liability as at 31 December 2011 attributable to changes in liabilities amongst compensation benefits amounts to only $135m;[17]

In 2008 the scheme was fully funded. PwC attribute that approximately 50% of the 4 billion deficit has emerged due to "external influences impacting investment returns" including a downgrading of bond yield rates and changes to the methodology for financial forecasting of future income and liabilities.[18]

Data provided to us by WorkCover NSW on 14 May 2012, has been analysed to examine what impact payments have had on the scheme and whether or not there has be growth in the real value of payments over and above CPI. Analysis of payments over the past decade reveals the following:

- Compensations payments (this includes medical and related services, death payments, pain and suffering, permanent injury, redemptions, weekly payments)

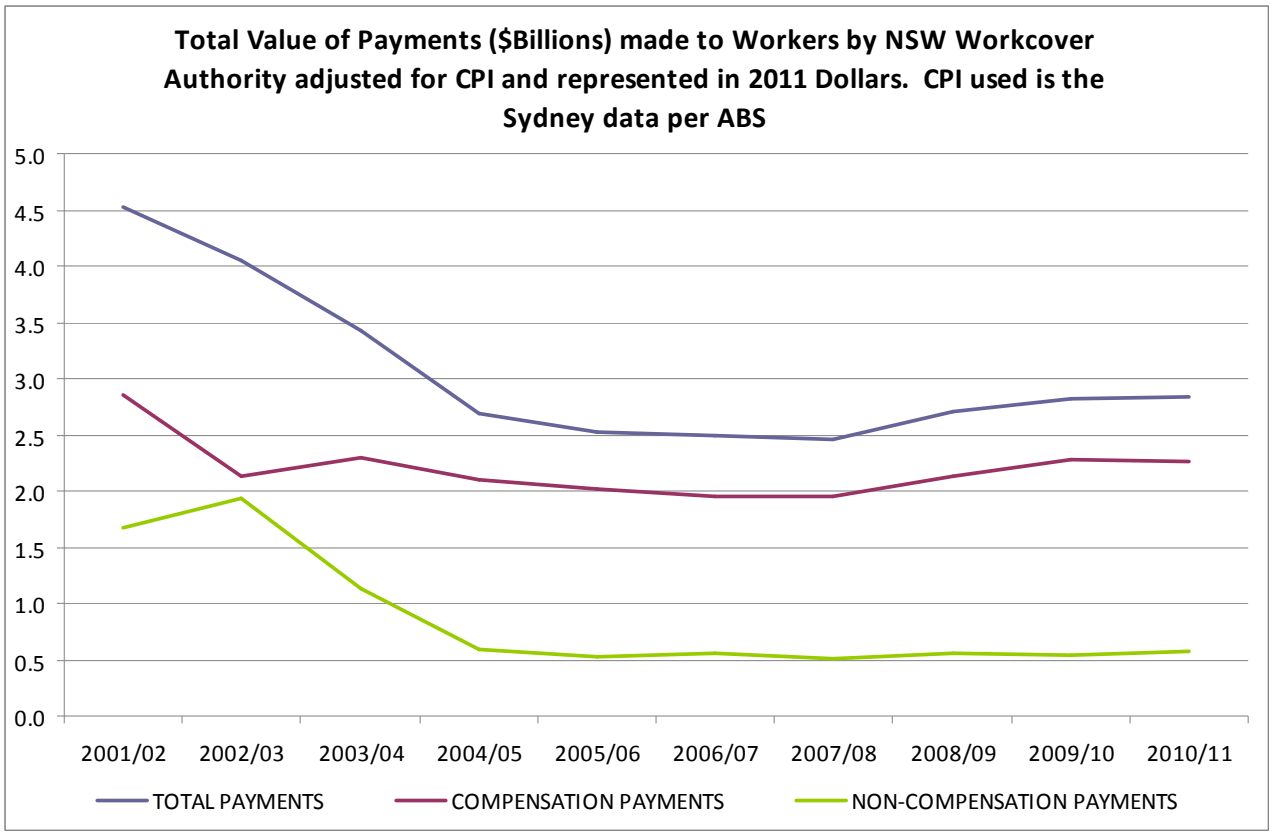
  These payments have had a 20.7% reduction in real value over the past 10 years.

- Non Compensation payments (this includes transport and maintenance, damages and common law, investigation expenses, interpreter services, legal costs)

  These payments have had a 69.5% reduction in the real value over the past 10 years.

The table below illustrates this analysis.

16 These assessments are based on the PWC Report alone as the relevant Appendices have not been made available.
17 PwC Report, p.7.
18 PwC report for NSW Work Cover p.2



See Appendix 1 for table data.

Clearly the overwhelming bulk of the deterioration in financial experience is attributable to items unrelated to benefit levels, such as changed assumptions on investment returns and administration costs. According to the summary produced by PwC, the impact on the Estimate of Discounted Outstanding Liability as at 31 December 2011 of increased Claims Handling Expense was $110m.[19] This figure alone is broadly commensurate with the entire amount attributable to changed liabilities associated with benefit levels.

- The PwC Report records a $209m increase in claims handling expense allowance to $1,132m as at 31 December 2011, an increase of over 20% in the 6 month period;[20]

- Payments to insurance companies between 2001 and 2009 have increased from $134m to $476m, almost half a billion dollars;

- The administrative cost of running WorkCover has increased from $70m in 1999 to more than $600m recently;[21]

- The cumulative cost to the scheme of this administrative cost increase alone could be anywhere up to $5 billion;

- The total cost to the scheme of managing a dispute has increased dramatically between 1999 and 2009.[22] This is against a backdrop of the number of major injuries to workers halving since 1996 (62,000 to 30,000), the number of disputes by

19 PwC Report, p.7.
20 PwC Report, p.5.
21 Law Society Memorandum dated 3 June 2011.
22 Law Society Memorandum dated 3 June 2011

scheme agents sitting at one third of the 1996 rate[23], and total payments to workers falling by almost 20% from 2002 to 2010;[24]

These factors do not detract from the need to apply proper scrutiny to the recent performance of the scheme. However, the identification of these performance factors is instructive in telling us where to look to find out what it is that is failing. This identification process is the first imperative step in coming to a solution to fix it.

The PwC Report clearly identifies that "...*some Scheme Agents continue to deteriorate*", that "...*[s]some of WorkCover's largest Agents do not appear to be improving*"[25] and recommends that "*WorkCover continue to focus on improving the scheme's front end performance, especially as:*

- *The performance of some of WorkCover's largest Agents has been deteriorating,*
- *Early intervention and management can be vital in positive claim outcomes, and*
- *Upfront performance is key to maintaining stable break-even premiums."*[26]

We also note that it is difficult to reconcile the scheme's experience of burgeoning claims handling expenses, with the deterioration in agent performance identified by the scheme actuary.

In combination, it would seem to point to a need to revisit the agent remuneration model to better incentivize positive and proactive claims management.

23 Law Society Memorandum dated 3 June 2011.
24 Law Society Memorandum dated 3 June 2011.
25 PwC Report, p.20.
26 PwC Report, p.29.

Scheme Funds Management – 2010/11 a challenging year

It should also be of concern to decision makers that WorkCover NSW's return on investments were comparatively poor during the period to 31 December 2011.

By way of illustration, for 2010/11 WorkSafe Victoria reported a return on investment of 11.8% of funds invested. For the same period WorkCover NSW's reported investment returns of 8%.[27]

Victoria had $9.7 billion invested for this period. For 2010/11 NSW WorkCover (via the Workers Compensation Investment Fund) had $11,256,823 ($11.3b) invested.[28] Applying the 3.8% differential in investment returns between Victoria and NSW, had WorkCover NSW achieved the Victorian result, it would have been $429m better off for this period.

This figure is nearly equivalent to the entire increase in assessed insurance liabilities that has precipitated this Inquiry. It is more than 3 times the amount attributable to altered actuarial assumptions of total gross outstanding claims liabilities for the same period.

Funds management on the scale applicable to the assets of the WorkCover fund is obviously complex. We know from recent experience that fluctuations in fund management performance can have profound impacts on the balance sheet of the WorkCover fund. However, recent short-term performance should not result in either an over-reaction or a misdirected reaction.

[27] WorkCover NSW 2010/11 Annual Report p.37
[28] WorkCover NSW 2010/11 Annual Report p.167

Target Collected Premium Rate:

Concern has been expressed over the impact on business competitiveness of the current target collected. The concern is a legitimate one; prevailing premium rates are no doubt a factor in business decision making.

The extent of the impact of this factor has not been made clear. The Government has stipulated that increasing premium is not an option, but it has provided no information around the anticipated impact on jobs or economic growth of a premium increase (or decrease). It should do so. This is vital information for the Committee in assessing the overall environment in which the current reform agenda is positioned.

Beyond this, it is worth putting the current premium rate in context. NSW employers have enjoyed a cumulative premium decrease of 33% since 2005, with "*resulting savings for employers of around $1 billion per annum*".[29] The Target Collected Premium Rate for 2012/13 is 1.70% of wages. The scheme has generated policies since the 1987/88 financial year. The current rate of 1.70% is the lowest ever. The average premium rate is even less. On that measure, NSW employers are faring better now than they have for a long time.[30]

This is not to say employers should not hope to do even better. That is a reasonable aspiration. However, these factors do lend some context to the current premium debate. The business competitiveness concern is not just one of absolute premium levels, but relative premium levels. The argument has been made that NSW is behind competitor states like Victoria and Queensland. This may be so, but this observation injects no new impetus into the equation. Consider the following:

Standardized Average Premium Rates 2004-05 to 2009-10[31]

Jurisdiction:	2009/10	2008/09	2007/08	2006/07	2005/06	2004/05
NSW	1.82	1.83	1.93	2.16	2.52	2.59
VIC	1.39	1.38	1.46	1.60	1.77	1.98
QLD	1.12	1.07	1.09	1.13	1.34	1.47

On this analysis, NSW is in a more competitive relative position than at any time in the reporting period.

29 Issues Paper, p.13.
30 PwC Paper, p.14.
31 Safe Work Australia: Comparison of Workers Compensation Arrangements in Australia and New Zealand 2012, published April 2012, Table 2.3 (extract) p.17.
33 PwC Report, p.23. No. 37

Reform Recommendations:

Beyond the matters raised as options for reform in the Issues Paper involving a reduction in benefits, there are a variety of improvements available to the Scheme that could be pursued, as follows:

1. Return to Work Arrangements Under the Scheme:

   The promotion of measures directed to achieving a successful return to meaningful work for injured workers is obviously of critical importance to the restoration of stability in the scheme. Current measures and approaches appear inadequate. A comprehensive strategic review of these operations within the scheme is clearly required.

   PwC assess that some scheme agents perform better than others. Accordingly best practices need to be employed across the scheme agents to ensure consistent and best quality outcomes.

2. Specialised Management of Catastrophic Injury Cases:

   The scheme actuaries have identified a failure of management of catastrophic injury cases to the extent that 110 claims identified as Large Medical Claims in the system account for 23% of the outstanding medical claims liability.[33]

   Management of catastrophic injury claims is a highly complex area requiring specialised competencies and claims management expertise.

   Consideration should be given to the formation of a specialised catastrophic injury management team in NSW. There would seem to be significant scope to generate positive scheme returns from such an initiative, both in terms of a reduction in scheme liabilities and an improvement in client experience.

3. Provide access to Commutations to remove “long tail” claims and to help injured workers exit the scheme and restore their autonomy and dignity.

4. Reduce threshold for WID to 10% WPI and improve overall damages package to reduce long tail claims and provide consistency with the *Motor Accidents Act*.

5. Permit negotiations in relation to impairment claims to allow earlier settlement of claims.

6. Impose strict times for Agents to provide material to claimants prior to the commencement of any proceedings in an effort to avoid the escalation of the dispute and legal costs.

7. Ensure claimants and service providers actively utilise the provisional liability provision within the legislation for prompt delivery of appropriate treatment and payment of benefits during the first 12 weeks.

8 Benchmark the skills and capacity of claims officers and establish a ratio of files per Officer to ensure that scheme agents can more effectively support individual claimants.

9 We also support the proposal by the ALA in relation to Third Party and Scheme Recovery Actions. The mechanics of the scheme are deficient in the extent to which the cost of workplace injury is equitably spread between responsible tortfeasors.

Section 151Z (2) of the *Workers Compensation Act 1987* should be revoked to allow for recovery by injured workers against third party tortfeasors under the *Civil Liability Act 2002*.

WorkCover NSW could review its current approach to its own third party recovery actions to ensure that it is maximizing the recovery of compensation amounts paid out by the scheme for which a liability ought to attach to a non employer entity.

Conclusions:

What fair scrutiny tells us is that the key operational drivers of the deterioration of the scheme stem from deficiencies in the administration. A separate review of WorkCover operations has been commissioned, and this is a positive step. It is also a step that renders this Inquiry premature. It is inappropriate to consider legislative change to the scheme until such time as the outcomes of the operational review are known and the impacts of changes stemming from those outcomes observed.

In the interim, this Inquiry will at least cast into sharp focus the imperative for WorkCover to vigorously apply itself to reforming and improving claims management and return to work practices. The implementation of new initiatives in these respects are not only likely to have the greatest influence on improving scheme performance, they are also the right place to commence any broader reform process.

Slater & Gordon Lawyers

Type of payments made from 2001/02 to 2010/11 - ($'000)
Present Value based on CPI increases

Type of Payments	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	Increase/ (Decrease) 01/02 to 10/11	% Var 01/02 to 10/11
COMPENSATION PAYMENTS	**2,852,147**	**2,123,564**	**2,293,653**	**2,097,111**	**2,008,367**	**1,945,916**	**1,949,854**	**2,136,078**	**2,275,820**	**2,260,559**	**(591,588)**	**20.7%**
Ambulance services	10,728	12,175	13,318	14,676	13,816	7,079	4,204	4,266	8,022	2,977	(7,751)	72.3%
Medical treatment	354,049	355,134	421,205	406,218	395,631	409,238	424,961	465,578	473,706	450,898	96,849	27.4%
Hospital treatment	77,466	73,702	89,988	88,606	84,496	85,247	85,631	97,993	102,091	104,987	27,521	35.5%
Rehabilitation treatment	112,579	138,845	149,578	143,491	122,973	106,166	104,152	117,217	134,538	123,070	10,491	9.3%
Physiotherapy and chiropractic treatment	84,582	76,607	83,905	79,421	70,002	68,231	69,265	76,086	78,975	80,926	(3,656)	4.3%
Damage to artificial limbs and clothing	4,645	5,476	6,800	7,661	9,099	9,818	10,816	12,093	13,452	14,107	9,462	203.7%
Death payments	26,380	32,126	30,950	30,194	26,107	26,591	23,693	53,677	47,076	53,743	27,363	103.7%
Permanent injury	200,162	331,741	319,241	223,061	221,138	186,567	163,991	181,827	213,481	201,385	1,223	0.6%
Pain and suffering	73,471	141,452	135,942	86,223	81,162	68,120	61,396	66,309	78,441	76,693	3,222	4.4%
Redemptions	1,038,303	33,408	35,238	21,083	22,178	20,599	26,554	33,890	48,224	31,415	(1,006,888)	97.0%
Section 38 (Weekly benefit)	134,945	150,383	168,521	149,551	127,753	116,235	114,676	128,050	146,806	139,866	4,921	3.6%
Total incapacity (Weekly benefit)	541,300	540,900	561,003	533,778	491,522	488,263	494,313	509,426	525,676	559,414	18,114	3.3%
Partial incapacity (Weekly benefit)	193,531	231,605	277,956	313,141	342,486	353,755	366,198	389,659	405,323	421,072	227,541	117.6%
NON-COMPENSATION PAYMENTS	**1,666,654**	**1,932,288**	**1,129,024**	**589,200**	**522,935**	**551,848**	**512,602**	**561,296**	**543,336**	**567,807**	**(1,098,847)**	**65.9%**
Transport and maintenance	20,194	18,677	19,390	15,777	18,508	26,485	30,165	31,821	27,968	32,945	12,751	63.1%
Damages and common law	900,488	1,265,217	526,790	249,228	217,530	254,959	244,920	287,658	275,187	295,690	-	-
Investigation expenses	221,220	172,201	143,413	127,601	126,732	114,456	97,464	99,309	101,392	105,523	(115,697)	52.3%
Interpreter services	2,854	2,840	2,951	2,940	2,912	2,606	2,394	2,799	2,717	2,850	(4)	0.1%
Legal costs	521,896	473,350	436,478	193,652	157,249	153,341	137,656	139,707	136,068	130,798	(391,098)	74.9%
Total payments to workers ($000s - normalised to 2010/2011 values)	**4,518,802**	**4,055,852**	**3,422,677**	**2,686,312**	**2,531,302**	**2,497,766**	**2,462,457**	**2,697,374**	**2,819,157**	**2,828,366**	**(1,690,436)**	**37.4%**
CPI	2.8	2.4	2.3	2.4	3.8	1.7	4.3	1.3	2.9	3.8		
Inflation Factor	78.3%	80.1%	82.0%	83.9%	87.1%	88.6%	92.4%	93.6%	96.3%	100.0%		
CPI NSW	2.8	2.4	2.3	2.4	3.8	1.7	4.3	1.3	2.9	3.8		
TOTAL PAYMENTS	**4.5188**	**4.0559**	**3.4227**	**2.6863**	**2.5313**	**2.4978**	**2.4625**	**2.6974**	**2.8192**	**2.8284**	**(1.6904)**	**37.4%**
COMPENSATION PAYMENTS	**2.8521**	**2.1236**	**2.2937**	**2.0971**	**2.0084**	**1.9459**	**1.9499**	**2.1361**	**2.2758**	**2.2606**	**(0.5916)**	**20.7%**
NON-COMPENSATION PAYMENTS	**1.6667**	**1.9323**	**1.1290**	**0.5892**	**0.5229**	**0.5518**	**0.5126**	**0.5613**	**0.5433**	**0.5678**	**(1.0988)**	**65.9%**
COMPENSATION PAYMENTS Excl REDEMPTIONS	**1.8138**	**2.0902**	**2.2584**	**2.0760**	**1.9862**	**1.9253**	**1.9233**	**2.1022**	**2.2276**	**2.2291**	**0.4153**	**22.9%**
TOTAL PAYMENTS Excl REDEMPTIONS	**3.4805**	**4.0224**	**3.3874**	**2.6652**	**2.5091**	**2.4772**	**2.4359**	**2.6635**	**2.7709**	**2.7970**	**(0.6835)**	**19.6%**
CPI Australia	2.8	2.7	2.5	2.5	4.0	2.1	4.5	1.5	3.1	3.6		
Total Payments	**4,589,876**	**4,107,611**	**3,459,592**	**2,712,636**	**2,551,191**	**2,507,529**	**2,467,351**	**2,697,409**	**2,813,725**	**2,828,366**	**(1,761,510)**	**38.4%**

Source Document: Table 7.1 Payments - 1997/98 to 2001/02. Workcover Ref: TRIM D12/055371 Run Date: 03/05/2012

Report produced by Research and Analsysis Team, Data Services Branch, Strategy and Performance Division

Table 7.1 Payments
Type of payments made from 1997/98 to 2010/11 - ($'000)

Type of Payments	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
COMPENSATION PAYMENTS	**1,551,316**	**1,772,244**	**1,893,362**	**1,970,775**	**2,231,884**	**1,701,629**	**1,880,195**	**1,760,340**	**1,749,910**	**1,724,319**	**1,802,104**	**1,999,882**	**2,192,505**	**2,260,559**
Ambulance services	10,086	7,641	7,812	7,165	8,395	9,756	10,917	12,319	12,038	6,273	3,885	3,994	7,728	2,977
Medical treatment	173,776	198,490	221,132	232,692	277,053	284,572	345,278	340,984	344,717	362,635	392,760	435,893	456,364	450,898
Hospital treatment	61,042	58,856	60,573	60,989	60,619	59,058	73,767	74,377	73,622	75,539	79,142	91,745	98,354	104,987
Rehabilitation treatment	54,262	57,600	58,099	74,258	88,096	111,258	122,615	120,448	107,148	94,076	96,260	109,743	129,613	123,070
Physiotherapy and chiropractic treatment	67,794	60,466	63,092	63,069	66,188	61,386	68,780	66,667	60,993	60,461	64,016	71,235	76,084	80,926
Damage to artificial limbs and clothing	2,902	2,275	2,317	3,327	3,635	4,388	5,574	6,431	7,928	8,700	9,996	11,322	12,960	14,107
Death payments	21,059	21,927	21,121	22,963	20,643	25,743	25,371	25,345	22,747	23,563	21,898	50,255	45,353	53,743
Permanent injury	277,821	182,318	145,122	136,377	156,632	265,827	261,694	187,240	192,680	165,321	151,565	170,234	205,666	201,385
Pain and suffering	110,749	67,008	55,583	50,620	57,493	113,347	111,437	72,377	70,717	60,363	56,744	62,081	75,569	76,693
Redemptions	130,673	462,667	615,182	665,565	812,501	26,770	28,886	17,697	19,324	18,253	24,542	31,729	46,459	31,415
Section 38 (Weekly benefit)	74,124	81,767	80,994	91,012	105,598	120,503	138,143	125,535	111,312	102,998	105,986	119,886	141,432	139,866
Total incapacity (Weekly benefit)	438,446	440,630	428,642	416,987	423,582	433,428	459,876	448,060	428,268	432,661	456,857	476,945	506,432	559,414
Partial incapacity (Weekly benefit)	128,583	130,593	133,688	145,745	151,443	185,587	227,851	262,854	298,411	313,470	338,449	364,814	390,485	421,072
NON-COMPENSATION PAYMENTS	**530,246**	**712,774**	**789,413**	**975,334**	**1,304,203**	**1,548,358**	**925,504**	**494,582**	**455,638**	**489,005**	**473,760**	**525,508**	**523,445**	**567,807**
Transport and maintenance	11,173	14,448	13,950	15,312	15,802	14,966	15,895	13,243	16,126	23,469	27,879	29,792	26,944	32,945
Damages and common law	179,092	311,448	329,211	460,307	704,657	1,013,829	431,830	209,205	189,536	225,925	226,361	269,317	265,113	295,690
Investigation expenses	96,629	107,269	127,781	150,152	173,111	137,986	117,561	107,110	110,423	101,422	90,079	92,977	97,680	105,523
Interpreter services	811	981	1,187	1,624	2,233	2,276	2,419	2,468	2,537	2,309	2,213	2,621	2,618	2,850
Legal costs	242,541	278,625	317,282	347,937	408,398	379,299	357,798	162,554	137,013	135,879	127,225	130,799	131,087	130,798
Total	**2,081,561**	**2,485,018**	**2,682,776**	**2,946,109**	**3,536,087**	**3,249,988**	**2,805,700**	**2,254,923**	**2,205,548**	**2,213,325**	**2,275,865**	**2,525,390**	**2,715,951**	**2,828,366**

Note: Payments data in this table have not been adjusted for inflation / deflation.
Care should be taken when interpreting unadjusted data.
To enable time series comparisons, a method of indexation is recommended.