

**Submission
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INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

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NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA (NIBA)

SUBMISSION ON

NSW WORKERS COMPENSATION SCHEME INQUIRY

17 May 2012

ABOUT NIBA

NIBA is the voice of the insurance broking industry in Australia. NIBA represents 500 member firms and over 2000 individual qualified practising insurance brokers (QPIBS) throughout Australia. Brokers handle almost 90% of the commercial insurance transacted in Australia, and play a major role in insurance distribution, handling an estimated \$18 billion in premiums annually and placing around half of Australia's total insurance business. NIBA member firms also place large and special risks into the world insurance markets.

Over a number of years NIBA has been a driving force for change in the Australian insurance broking industry. It has supported financial services reforms, encouraged higher educational standards for insurance brokers and introduced a strong independently administered and monitored code of practice for members. The 500 member firms all hold an Australian financial services (AFS) licence under the Corporations Act that enables them to deal in or advise on Risk Insurance products.

ABOUT INSURANCE BROKERS

The role of insurance brokers

The traditional role of insurance brokers is to:

- Assist customers to assess and manage their risks, and provide advice on what insurance is appropriate for the customer's needs;
- assist customers to arrange and acquire insurance; and
- assist the customer in relation to any claim that may be made by them under the insurance.

In doing the above the insurance broker acts on behalf of the customer as its agent.

Insurance brokers offer many benefits to consumers:

- assistance with selecting and arranging appropriate, tailored insurance policies and packages



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- detailed technical expertise including knowledge of prices, terms and conditions, benefits and pitfalls of the wide range of insurance policies on the market
- assistance in interpreting, arranging and completing insurance documentation
- experience in predicting, managing and reducing risks
- assistance with claims and a higher success rate with settlements (about 10 per cent higher than claims made without a broker).

In limited cases insurance brokers may act as agent of the insurer not the insured but where such a relationship exists the customer must be clearly advised up front.

SUBMISSION

A successful workers compensation system must be structured so that it supports and encourages –

- safe work places, which have appropriate financial and other incentives to minimise the risk of workplace injury and disease;
- appropriate medical treatment, rehabilitation and return to gainful employment of those who sustain relatively minor injuries;
- appropriate care and support for those who sustain more severe injuries and disease, with limited or no ability to return to gainful employment; and most importantly –
- efficient systems and operations, so that the process occurs with lowest possible administrative and overhead expenses, and available funds can be concentrated on where they are needed most.

These core principles are consistent with the seven reform principles set out in the Government's Issues Paper, with which NIBA respectfully agrees.

A comprehensive analysis of all features of the NSW workers compensation system which addresses these key principles would require several volumes of material. In the time available, NIBA would like to assist the Joint Select Committee by making the following key suggestions.

1. What is happening to the nature and scope of employment in NSW, and to the nature and extent of workplace injuries and disease?

The PricewaterhouseCoopers actuarial valuation as at 31 December 2011 (PwC) examines many aspects of the current workers compensation scheme, but does not examine the context in which that scheme operates. Account must be taken of the nature of the NSW economy, the nature of current and future employment trends, and the number and nature of injuries. Careful analysis must be undertaken to ensure work health safety and injury prevention measures are operating effectively, in order to reduce the incidence of injury and disease as much as possible.



2. Are there sufficient incentives for employers to minimise workplace injury and disease?

There is widespread consensus that Australia should have a nationally consistent workplace health and safety regime. Steps must be taken within NSW to ensure that scheme is promoted, adopted and applied across all industries, and that employers have real incentives to implement effective workplace health and safety programs, policies and procedures.

Strongly allied to this is the nature of workers compensation premiums. The insurance process is one that prices the risk of a claim arising under the relevant policy of insurance: the higher the risk, the higher the premium.

In the context of workers compensation, risk arises from the nature of the industry in which the employer operates, and the nature of the employer's own operations and attitude to workplace health and safety. The normal insurance process responds to both of these factors by pricing risk on a broad industry basis, and then take account of individual factors and circumstances of each employer to develop a premium (ie the price of risk being insured) relevant and appropriate to that employer. This occurs in the Western Australian workers compensation system, where the starting point is the recommended premium rate for each industry classification published by WorkCover WA, but where private insurers can discount or load these rates by up to 75% in order to take account of the relevant experience of the individual employer. In Western Australia, workers compensation premiums provide real incentives to maintain safe workplaces, and strong disincentives to employers who do not take workplace safety seriously.

NIBA notes that the PwC report *Recommended Premium Factors for the 2011/2012 Insurance Premiums Order*, 29 June 2011, indicates that 86.8% of workers compensation policies are not experience rated. These policies account for 24.2% of wages, 13.0% of claims, and 24.6% of reported incurred cost. NIBA questions whether the current premium setting process in NSW sends the correct pricing signals to those workplaces where workplace health and safety is not taken seriously.

3. Who owns the risk?

In the normal insurance process, when an insurance policy is issued the risk covered by that policy is transferred to the insurer. The insurer manages the collective cost of risks it accepts under the policies it has issued, establishes a premium pool from which claims are paid (which is supported by the insurer's own capital in order to meet prudential regulatory obligations), and manages the claims arising under those policies. The insurer has very strong financial incentives to ensure the risks it accepts are correctly priced, that the premium pool is prudently and conservatively invested until required to meet claims costs, and to manage and pay valid claims, and deny payments to claims that are not valid under the terms of the policy. If the insurer performs any of these functions



poorly, shareholder's funds will be required to meet claim payments, and the standing and reputation of the company will suffer as a result.

In the case of NSW workers compensation, WorkCover agents collect premiums and pay claims, doing so on behalf of and at the direction of WorkCover. But the risk of claim costs is not transferred to them.

The risk of claims is carried by the NSW Workers Compensation Nominal Insurer, which does not collect premium or pay claims. Indeed, NIBA understands that the NSW WC Nominal Insurer is a separate entity to WorkCover.

Hence, the risk of claims is not "owned" by the operators of the business. It is not owned by the NSW Government, the WorkCover agents, or WorkCover. It is not owned by NSW employers, although they ultimately finish up paying for the costs of the scheme via their workers compensation premiums.

In Western Australia, the normal insurance process is followed. Under the supervision of WorkCover WA, insurers determine and collect premiums, and assess and pay claims. Insurers are financially responsible for the operation of the insurance process, within a legislative framework that defines the terms of the insurance policy and the benefits that are available to injured workers.

More importantly, insurance brokers play an effective role in Western Australia's workers compensation scheme by helping their clients, the employers, assess manage and minimise risks, and gain access to competitive insurance premiums from the respective licensed insurers. Insurance brokers also assist their clients when claims have to be pursued with the relevant insurer. Recent surveys by WorkCover WA has confirmed the highly valued role of insurance brokers in the WA workers compensation scheme.

The lack of ownership of the NSW workers compensation scheme ultimately results in little or no financial accountability for the operational and financial performance of the scheme. A large number of issues and concerns are raised in the PwC 2011 actuarial valuation report, and the fact that these issues and concerns have not been adequately addressed in recent years is a stark signal to the fact that financial ownership and accountability is totally lacking in this scheme.

4. What should be the level of benefits provided by the scheme?

Workers with minor injuries should have their medical treatment provided efficiently and effectively, with a view to return to work at the earliest (medically appropriate) possible time. Where some form of rehabilitation or support is required, this should be very carefully planned and provided. Checks and balances should be in place to ensure services are delivered when and where needed, to the necessary level, but no further. There should be no incentives or ability to provide medical or



rehabilitation services without careful oversight and review as to necessity and likelihood of achieving sound medical and return to work outcomes.

Workers with more serious injuries should be properly and compassionately cared for. Where appropriate, the community also expects more seriously injured workers would have access to damages for the injuries and losses they have sustained. At all times, though, the strongest emphasis must be on return to work, or return to gainful employment, rather than maximising losses and disability in order to maximise an award of damages.

With the large number of workers compensation schemes in Australia, it should be possible to develop a series of benefits that are consistent with other schemes, and which do not operate in a manner which delivers windfall opportunities to the respective service providers.

Most importantly, it should be possible to have adequate and proper compensation and damages for seriously injured workers, so long as the insurance premium mechanism operates as a strong and direct incentive to prevent such injuries in the first place. In other words, the pricing process should send strong and direct signals to employers, and should provide strong encouragement to employers to actively adopt comprehensive workplace health and safety programs, and minimise the number and incidence of injury and disease in the workplace. Employers who do not take sufficient care for the safety of their employees should be required to face the financial consequences via appropriate insurance premiums.

The time available to complete submissions does not permit a comprehensive review of benefits in NSW or elsewhere. It is important, however, to ensure that the benefit design is one which encourages those with relatively minor injuries to return to work as soon as it is appropriate, and one where more serious injuries are properly managed and supported.

5. What about service providers?

Experience has shown that compensation scheme outcomes are invariably affected by behaviour that responds to the perception of a likely financial benefit:

- Claims will be pursued if it is perceived compensation is reasonably easy to be obtained;
- Services will be provided if there are few checks and balances on the reasons and need for those services, and little accountability is demanded in terms of medical or other outcomes;
- Legal services will be provided where it is easy to incur costs and there is little or no accountability for the conduct of adversarial proceedings for commercial gain.

In the normal insurance environment (including where insurers underwrite workers compensation), insurers have a direct financial incentive to ensure that claims assessment, management and payment is undertaken in a highly efficient manner. Valid claims need to be identified and paid quickly. Claims with no merit must also be identified and strongly defended. Dispute resolution



procedures must be available to ensure disputed claims are assessed and resolved in the most efficient manner possible.

With little or no true “ownership” of claims liabilities in the NSW workers compensation scheme, it is of no surprise that the 2011 PwC actuarial valuation raises serious concerns about the delivery and cost of various component parts of the NSW scheme. For example, the PwC report states (at page 23 of the Executive Summary) that in relation to large medical claims (which should be the best handled of all claims, in NIBA’s respectful opinion):

“WorkCover has previously undertaken a detailed file review of these claims. These file reviews have highlighted the lack of independent care need assessments, care plans, controls around expenditure and outcomes. **We recommend WorkCover develop a strategy for better managing and caring for this significant subgroup of claims.**” (PwC emphasis)

This report suggests that in the absence of a more comprehensive review of insurance arrangements, there needs to be a thorough overhaul of the management and funding of scheme service providers.

CONCLUSION

NIBA respectfully agrees with the comment in the Government’s Issues Paper that the current workers compensation scheme in NSW is not financially sustainable. Indeed, the PwC 2011 actuarial valuation tends to indicate that the scheme is fundamentally broken in most respects.

An effective workers compensation scheme is critical for the NSW economy. It is critical for employers who wish to start and continue business operations in the State.

It is critical for workers who want to make a contribution to the economy, and return to their families at night without the fear of injury or disease from dangers in the workplace.

And it is critical that those who sustain serious injury or disease are properly cared for and supported at their time of need.

NIBA respectfully suggests that none of these issues will be adequately and fully addressed unless and until the issue of “ownership” is fully and finally addressed. Recent management of workers compensation in this State has failed to achieve sound scheme outcomes for the key stakeholders.

NIBA strongly suggests the Joint Select Committee seriously consider a workers compensation insurance scheme model along the lines of that in Western Australia, where the insurance process provides true ownership of the financial risks associated with the scheme, and therefore delivers more efficient and effective incentives in the longer term than the NSW WorkCover model has delivered in recent times.



If you would like to discuss any aspect of this matter further do not hesitate to contact us.

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