

**Submission
No 129**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: NSW Business Chamber

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SUBMISSION

JOINT SELECT COMMITTEE ON THE NSW WORKERS COMPENSATION SCHEME



INTRODUCTION

The Submission is made by the New South Wales Business Chamber, our industrial affiliate Australian Business Industrial and our other affiliates Sydney Business Chamber, Hunter Business Chamber and Illawarra Business Chamber.

NSW Business Chamber is a not-for-profit member organisation committed to helping businesses of all sizes manage their people and growth more efficiently.

We currently have over 9,500 members and represent more than 20,000 businesses through associations with Local Chambers throughout NSW.

Our membership base is diverse, ranging from small local businesses requiring day-to-day operational support with HR, industrial relations and OHS issues to large multinational corporations interested in shaping and influencing the business environment in NSW and Australia.

EXECUTIVE SUMMARY

The NSW Workers Compensation Scheme is not viable and requires significant change. The Scheme is fast losing a focus on return to work as its primary objective. The growth of lump sum payments together with the increasing duration of workplace injury claims point to a rapidly growing lump sum culture and the use of the Scheme as an alternative to other forms of social support.

Short-term options for addressing the problem include premium increases of up to 28%. Premium increases are not a viable option. NSW premiums already exceed those in other states, particularly Queensland and Victoria. Victoria has announced further premium reductions from July. Increases will also have a significant jobs impact. Very conservative estimates based on a survey of New South Wales Business Chamber Members show 12,600 job opportunities would be lost if premiums rose by 28% and around 8,000 if the increase was in the order of 10%.

Reforming the workers compensation scheme does not need to be, and should not be seen as a win/lose situation. Changes to encourage injured workers to return to work and return to full duties when they can also contribute to the scheme being financially viable. Changes which place limits on some scheme benefits, properly and fairly administered will also encourage injured workers to resume control of their own lives and that will be better for them, their health and the Scheme.

The medical evidence is clear - getting back to the workforce in a sustainable way as soon as possible is better for the health of the injured worker.

The Government has raised a number of potential areas for reform. The Chamber supports those proposals.

However we also believe they will not be sufficient in themselves to bring about a sustainable and fully funded scheme. Substantial systemic changes are needed to the structure, capability and operations of WorkCover and other non-legislative aspects of how the Scheme operates. Experience during the 1990's cost blow-out demonstrated that reforms of this kind are needed to reverse the cost escalation momentum already in the system.

WHAT IS THE EXPERIENCE IN NSW

Objectives of the NSW workers Compensation system are clearly set out in S 3 of the Workplace Injury Management and **Workers Compensation Act 1998**.

“S3 System objectives.

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 dependants 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.

(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.”

The performance of the Scheme, and any proposals for reform, need to be considered against these system objectives.

It is apparent from the most recent, and earlier actuarial reviews of the Scheme¹ it is not meeting the scheme objectives in a number of ways.

- Claims duration is increasing at a time when there is no evidence to suggest there is any increase in the severity of injuries
- There is evidence of overuse of medical services
- The Scheme is not financially viable
- The key goal of returning injured workers to the workforce is being replaced by a focus on accessing of lump sum benefits.

It is also clear from feedback from scheme users and others there continue to be challenges in the delivery of scheme services to employers.

¹ WorkCover NSW Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer at 31 December 2011, Pricewaterhouse Coopers Actuarial Pty Ltd. See also valuations as at June 2011 and December 2010.

- There continue to be complaints about the behaviour of sections of the medical profession who do not encourage return to work
- An apparent reluctance on the part of Scheme agents to investigate claims which employers believe to be fraudulent or exaggerated
- Where a claim is for other than a relatively straightforward and simple injury it is likely the employer will find the level of support and assistance from their claims agent less than ideal and in the view of the employer, with a final cost higher than it might otherwise have been had it been managed effectively
- Apparent delays in the engagement of rehabilitation providers in the injury management process²
- There continues to be systematic commercially driven activity to extract benefits from the scheme where the outcome for claimants is likely to be small but the returns to service providers significant (e.g. hearing loss).

One disillusioned member expressed his views succinctly as follows:

“The difference between an armed hold-up and workers compensation is the gun”

WHAT IS DRIVING THE PROBLEMS WITHIN THE NSW WORKERS COMPENSATION SYSTEM

Scheme Actuaries have identified the key drivers of scheme costs as:

- Increasing numbers of Work Injury Damages claims;
- Increases in Permanent Impairment (Section 66) and Pain and Suffering (Section 67) Lump Sum Benefits;
- Increasing medical costs;
- How catastrophic medical claims are managed; and
- Deterioration in front end Return to Work Performance.

The Actuaries also identified issues with data quality and the management of tail claims.³

External Peer Review of Outstanding Claims Liability not only supported the findings of the Scheme Actuary it also pointed to the fact “the Scheme currently has a deterioration momentum which may be difficult to arrest”.⁴

The experience when the scheme was last in difficulty in the mid 1990’s showed that once trends in the scheme gain momentum they are not susceptible to remedy by incremental change and there is a need for clear and definitive action to arrest the momentum if the scheme is to be set on a new course.

² Australian Rehabilitation Providers Association (ARPA NSW) Research Project – Effectiveness of Rehabilitation Services. Cortex Solutions 2010. This independent study commissioned by APRA involved 76781 claims.

³ WorkCover NSW Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer at 31 December 2011, Pricewaterhouse Coopers Actuarial Pty Ltd.

⁴ External Peer Review – Outstanding Claims Liability of the Nominal Insurer as at 31 December 2011 – Ernst & Young Pty Limited p4

PREMIUM INCREASES ARE NOT A VIABLE SOLUTION

The Scheme Actuaries have advised premium increases of 28% will be required if the scheme is to be returned to full funding within five years, all other things being equal. A more modest increase of around 8% will achieve the same outcome in 10 years⁵.

It might be argued an increase in premiums of 8% is an acceptable solution on the basis the increase is not large and it follows a period when premiums have been reduced by over 30%. However adopting this route ignores three critical issues.

First, average premiums in NSW are already higher than those in Queensland and Victoria, with Victorian premiums due to go down by another 3% from 1 July⁶. So any increase will only exacerbate an already unacceptable situation.

**Standardised Average Premium Rates⁷
2009-2010**

Queensland	1.12%
Western Australia	1.22%
Victoria	1.39%
Tasmania	1.40%
Northern Territory	1.82%
New South Wales	1.82%
ACT	2.03%
South Australia	2.76%

Second, increasing premiums might balance the books but it does not address the reasons for the scheme being in deficit. Unless the underlying issues are addressed effectively, increased premiums might at best give some short term relief however improvements in the Scheme's financial position will be overwhelmed by the cost drivers, mainly the growth in weekly payments, work injury damages and statutory lump sums. Changes to the Scheme in the late 1990's provided short term relief but were soon overwhelmed. It wasn't until more fundamental changes were made that the scheme break even premium dropped, the scheme deficit was reduced and premium reductions became possible.

Third, premium increases will impose a further and unwelcome burden on NSW businesses at a time when many are struggling to survive and provide jobs.

PREMIUM INCREASES MEAN FEWER JOBS

A state - wide survey of NSW Business Chamber members, which had just over 500 respondents, immediately following the announcement of the Joint Committee, shows the significant impact any premium increase will have on employment opportunities in NSW. The survey had respondents from across the spectrum of industries and business sizes.

⁵ WorkCover NSW Executive Summary: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011 p3

⁶ Victorian Budget 2012 -13 Treasurer's Speech

⁷ Comparative Monitoring Report 13th Edition 2009-10 – October 2011

TABLE 1

Employment Impact of Premium Increases		
	Job Losses	No Job Impact
28% Premium Increase	83.8%	16.2%
10% Premium Increase	58.4%	41.6%

Table 1 shows that a 28% increase in premiums would have employment effects on 83.8% of respondents to the survey and 58.4% of respondents said there would be employment impacts if premiums were to rise by 10%.

Clearly, even premium increases at a level which would enable the scheme to return to full funding in 10 years will result in NSW workers being faced with reduced employment opportunities.

TABLE 2

How will Job Losses Occur			
	Termination	Natural Attrition	Not Fill Vacancies
28% Premium Increases	31.6%	34.6%	55.1%
10% Premium Increase	17.3%	24.5%	37.4%

Table 2 shows how respondents reported they would achieve staff reductions made necessary by increased premiums.

Termination of current employees is the least likely option but would be the course of action for at least 17% of employers when the increase in premium was 10% and nearly 32% for an increase of 28%. The more likely approach from employers will be to achieve employment reductions gradually over time through a combination of natural attrition and/or not filling vacancies. For example, more than half of all NSW employers indicated that they would reduce staff levels through not filling vacancies if premiums increased by 28%.

For a premium increase of 28% more than 400 members told us that they would reduce their number of employees. This represents 4½% of the Chamber's membership. Applying that same percentage to approximately 280,000 workers compensation policy holders in NSW would result in 12,600 businesses reducing employment opportunities. Assuming a very conservative one employment opportunity lost per company that would mean 12,600 employment opportunities would be lost. The majority of these job losses would still occur under a 10% premium increase, where the corresponding number would be 8,120 policy holders and lost job opportunities,.

In manufacturing where employers face not only the imposts of increased costs but also imports and a strong currency the impact will be even more profound. Ninety-five percent of manufacturers said a 28% increase would have an impact on employment, and 74% said a 10% increase would have an effect. Respondents indicated the likely response would be to relocate overseas. Those job losses will be permanent.

THE BEST OUTCOMES FOR INJURED WORKERS AND A FINANCIALLY SUSTAINABLE SCHEME ARE NOT MUTUALLY EXCLUSIVE

Whenever there is debate about changes to workers compensation systems and particularly ways in which benefits might be structured and/or applied it seems inevitable the debate is reduced to a win/lose equation. The Chamber does not accept this proposition nor do we come to this issue from that perspective.

In our view, across the board premium increases are not sustainable. We need to find ways to not only address the current problems but also set a course for premium reductions so the disadvantages NSW currently has relative to our neighbours in Queensland and Victoria might be removed.

It is also our view that economically sustainable premium levels are consistent with providing injured workers with proper levels of support, including income support, while they recover and return to the workforce, or additional support for those who are more seriously injured.

Fair and appropriate levels of benefit which support and encourage return to work and affordability can co-exist provided the benefits and access to those benefits are properly structured and the system participants including employers and workers, Scheme Agents, medical and service providers meet their obligations. WorkCover also needs resources, skills and expertise to provide proper oversight and direction.

There seems to be no argument that when an injury occurs the medical goal is to get the patient functioning as close to normal as possible, as quickly as possible.

It is also evident prolonged absences from work and the workplace do not promote health and wellbeing.⁸

A key aim of an effective and sustainable workplace injury management system is the sustainable return of injured workers to work as soon as possible and where this is not possible because of the injury, to make appropriate longer term provisions for the care and support of those injured workers and their dependants.

How that return might be best achieved does not preclude early return to work where this is possible. In fact the final resolution of the injury may be delayed where return to work is delayed.

“...where the cause of loss of work is itself impaired health then unwarranted delay in return to work is often associated with delayed recovery. In most instances we do not have to recover completely before returning to work, provided there is a will and there are means to accommodate the fullest possible restoration of function; physically, mentally and socially”⁹

⁸ College of Physicians, Australian Faculty of Occupational and Environmental Medicine, Australian Position Statement Realising the Health Benefits of Work 2011

⁹ Royal Australian College of Physicians, Australasian Faculty of Occupational & Environmental Medicine, Compensable injuries and Health Outcomes, 2001

The literature also shows that the outcome of workplace injuries can be influenced by a multitude of factors which may not be directly related to the injury¹⁰.

How well the injury management system works will be the result of the interface between the legislative framework, the regulatory environment, including most importantly how the regulator carries out its functions and the many service providers with the scheme agents and health professions having a major role. How these elements come together will produce the experience the injured worker and their employer have of the scheme. That experience then impacts on the final outcome by influencing the behaviours injured workers and employers adopt.

Consequently the design of a workers compensation system needs to contemplate the effect its provisions and how they are delivered will have on the behaviour of scheme participants.

This is clearly illustrated in the work undertaken by the Australasian Faculty of Occupational and Environmental Medicine¹¹.

Requirements that injured workers meet properly, designed and administered obligations under the injury management system and the inclusion of benefit structures which encourage resumption of and continued participation in the workplace are not contrary to the best interests of injured workers. Such an approach has the added benefit of focussing the scheme on its primary objective, it reduces the opportunity for the scheme to become a default social security provider and it may be expected to release financial resources some of which can and should be applied to assist those with the greatest need.

Reforms to the Scheme since 2001 had a focus on improving injury management, better return to work outcomes and more effective and less costly dispute resolution. They have also included increases to benefits. Those changes also resulted in significant reductions in workers compensation premiums.

RESPONSE TO ISSUES PAPER PROPOSALS

QUALIFICATION

The proposals for reform contained in the Issues Paper are not accompanied actuarial advice as to their impact on the scheme, claimants and employers.

The Recommendations contained in this submission to the Committee are being made on the basis of the anticipated impact. The organisations making this submission reserve their right to change their views in the light of actuarial advice which may be forthcoming.

SEVERELY INJURED WORKERS

The provision of improved support and benefits to severely injured workers is a goal which should be pursued. The issues paper does not provide any insight into the extent to which

¹⁰ Royal Australian College of Physicians, Australasian Faculty of Occupational & Environmental Medicine, Australian Position Statement Realising the Health Benefits of Work

¹¹ Royal Australian College of Physicians, Faculty of Occupational Medicine, Compensable Injuries and Health Outcomes, 2001

benefits might be improved and the impact of those changes on the cost to the scheme, self and specialised insurers and as a consequence, premium levels.

Recommendation

NSWBC recommends the provision of improved benefits for severely injured workers provided those improvements can be funded on a sustainable basis by improvements in scheme performance, not by increases in premiums.

REMOVE COVERAGE OF JOURNEY CLAIMS

Employers understand the payment of workers compensation benefits when there is a clear connection between work and the injury. They do not see that connection with respect to journey claims. Journey claims do not have direct impact on the premiums paid by employers of journey injury claimants, nevertheless allowing journey claims undermines the credibility and validity of the scheme for many employers. Journey claims for the 2010 premium year ending cost the scheme \$117 million after recoveries.¹² Most Australian jurisdictions do not allow nor limit journey claims.¹³

Recommendation

NSWBC recommends the scheme does not provide for journey claims.

PAYMENT TO RELATIVES AND DEPENDANTS FOR NERVOUS SHOCK

As the Issues Paper recognises, workplace fatalities have a profound impact extending beyond the workplace however it is not appropriate for the scheme to provide coverage for nervous shock. While it is understood these payments are small relative to total payments made by the scheme they are not payments which in our view should be covered by the Scheme. It should also be noted that the Workers Compensation Act 1987 provides that compensation is not payable when the injury is solely attributable to the serious and wilful misconduct of the worker, unless the injury results in death or serious and permanent disablement of the worker.¹⁴ The maintenance of this payment would mean the scheme and employers would be liable for payments which, but for the nature of the injury, would otherwise not be accepted. The proper place for such claims is civil courts and the Scheme should not indemnify employers for such claims as is the case in most other Australian jurisdictions.¹⁵

Recommendation

NSWBC recommends the scheme does not provide for payments to relatives and dependants for nervous shock.

¹² Information provided by WorkCover NSW

¹³ WorkCover NSW – Comparison with other Australian Jurisdictions

¹⁴ Workers Compensation Act 1987 S 14 (2)

¹⁵ WorkCover NSW – Comparison with other Australian Jurisdictions

SIMPLIFICATION OF THE DEFINITION OF PRE-INJURY EARNINGS AND ADJUSTMENT OF PRE-INJURY EARNINGS

Employers find the current methodology for pre-injury earnings not only confusing but also inequitable with respect to non-award employees. Employers find it difficult to understand why payments from the scheme for non-award workers are less than their normal earnings and lower than the wages used to calculate premiums. The Issues paper does not provide any data on the financial impact of this change however it is expected the change will add to scheme costs.

Recommendation

The calculation of pre-injury earnings be simplified as proposed subject to the expected increased cost to the scheme being affordable within the overall reform package.

INCAPACITY PAYMENTS –TOTAL INCAPACITY

As the Issues Paper identifies, most workplace injuries are resolved within the proposed first step down at 13 weeks. The Issues paper does not propose a particular model for the timing and size of step downs. The purpose of step downs in benefits within the context of scheme focused on return to work is to act as an encouragement to injured workers to re-engage with work. The vast majority of claims are resolved within three months. When claim duration moves beyond that point it would seem a sensible time at which to include a moderate step down.

Recommendation

The scheme provide for step downs in benefits at 13 and 26 weeks.

INCAPACITY PAYMENTS – PARTIAL INCAPACITY

The primary aim of a workers compensation scheme is to return injured workers to work as soon as possible. Achieving that outcome may result in a graduated return to work programme. The Issues Paper proposes a system which would reward partially incapacitated workers for increasing their hours of work. It is not uncommon to hear complaints from employers that partially incapacitated workers are not increasing hours or returning to full duties because the injured workers are on normal earnings and can see no reason to change. An independent assessment process may be an alternative however that may prove to be expensive, inefficient and provide the basis for additional disputation.

Recommendation

Partial incapacity benefits be structured so as to provide a reward for injured workers who increase their hours of work. For partially incapacitated workers returning to work before 26 weeks the payment structure be tied to the total incapacity benefit unless the injured worker is working more than 80% of normal hours.

WORK CAPACITY TESTING

Whether or not an injured worker is fit to resume duties is a continuing issue for employers. There are multiple complaints of injured workers either not returning to work when they are assessed as capable of doing so or doctor shopping to find a practitioner who will provide medical certificates to allow continued absences from work. Such instances not only add unnecessary costs to the scheme, they may not be in the best interests of the worker and they only serve to undermine the credibility of the scheme in the minds of some employers. It is reasonable the scheme should require work capacity testing. As the issues paper identifies, the process needs to be properly designed with appropriate support for injured workers. Two jurisdictions in Australia use work capacity testing, Victoria and South Australia, and their respective workers compensation schemes have quite different performance overall which would suggest the effectiveness of work capacity testing is dependent not only on the way in which the provision is designed but how it is applied.

The discussion paper does not identify who is to do the work capacity testing. It is assumed it will be a person other than the nominated treating doctor, and not necessarily a doctor but person who has the necessary qualifications and expertise.

Work Capacity testing needs to be accompanied by appropriate decision review and appeal mechanisms.

Recommendation

The NSW Scheme introduce work capacity testing at appropriate points for weekly benefit recipients.

CAP WEEKLY PAYMENT DURATION

Section 52A was added to the Workers Compensation Act to provide a check point to ensure claimants who were continuing on benefits were entitled to receive those benefits. It was modelled on a similar provision in Victoria however in its modified form it has not been effective. The Scheme should provide longer term support for workers with serious injuries but it is not a substitute social security system. The process should ensure affected claimants receive proper notice of any change in their circumstances and provide appropriate review mechanisms.

Recommendation

Provide a mechanism by which long term claimants who should not continue to be covered by the scheme can be removed from scheme coverage.

REMOVE PAIN AND SUFFERING AS A SEPARATE CATEGORY OF COMPENSATION

The Issues Paper does not provide any information on how often or by what extent S67 awards might vary from the S66 award which gave rise to it however the creation of a nexus between statutory lump sum payments and pain and suffering for claims involving WPI of more than 10% will remove unnecessary transaction and friction costs from the system.

Recommendation

Remove pain and suffering as a separate category of compensation.

ONLY ONE CLAIM FOR WHOLE OF PERSON IMPAIRMENT

It is of concern the actuaries are reporting an increased incidence of multiple claims arising from the same injury and that increased incidence is impacting the overall performance of the scheme. The question which remains unanswered is whether or not those multiple claims are the result of ways being found to maximise returns from the scheme for claimants or their advisors. The Scheme should reasonably expect that lump sum claimants should wait until injuries are stabilised before proceeding. In the event there are circumstances which justify a further claim an approach might be to require a further minimum change in Whole of Person Impairment before a further award can be made. Ernst & Young in their Peer Review also identifies the three year threshold for initiating Work Injury Damages claims as an area for investigation.¹⁶

Recommendation

Claims for whole of person impairment to be limited to one claim. In the event additional claims might be considered those claims to be subject to a further threshold requirement. Consideration be given to the steps necessary to strengthen the 3 year limitation on Work Injury Damages claims.

ONE ASSESSMENT OF IMPAIRMENT FOR STATUTORY LUMP SUM, COMMUTATION AND WORK INJURY DAMAGES

A single assessment for all lump sum claims appears to be a sensible proposal with benefits for both the injured workers and the scheme. However for the proposal to work it needs to be accompanied by robust operating guidelines for Agents which do not unreasonably limit their capacity to legitimately question those assessments¹⁷.

Recommendation

A single assessment process be adopted provided it is accompanied by guidelines to agents which enable them to question assessments when such action is warranted.

STRENGTHEN WORK INJURY DAMAGES

The growth in work injury damages claims is a major concern to employers which if left unaddressed can only lead to further and probably accelerating deterioration in the Scheme. A Work Injury Damages claim comes at the end of a process not the beginning, consequently the expenditure on Work Injury Damages (WID) represent only a portion of the cost to the scheme arising from the claim. Claimants may well adopt behaviours which seek to support and maximise their outcome from the claim. That behaviour will include additional medical and other expenses and longer periods on weekly benefits than may be otherwise necessary. The health outcomes for injured workers may also be undermined by absences from work and the workplace that are longer than necessary. Ernst & Young in

¹⁶ External Peer Review – Outstanding Claims Liabilities of the Nominal Insurer as at 31 December 2011 – Ernst & Young Pty Ltd p8

¹⁷ External Peer Review – Outstanding Claims Liabilities of the Nominal Insurer as at 31 December 2011 – Ernst & Young Pty Limited p6

their Peer Review recommend WorkCover use more rigour in applying threshold tests to establish entitlement to WID and in defending matters.¹⁸

Recommendation

A more rigorous approach to defending Work Injury Damages Claims be adopted by the scheme.

CAP MEDICAL COVERAGE DURATION

Capping medical expenditure has been identified as a potential area for savings within the Scheme . Medical costs, \$3,339 million, were the second largest outstanding claims liability as a 31 December, 2011.¹⁹ Caps or some other control measure on medical costs are applied in some jurisdiction but not all. The Scheme should provide for reasonable and necessary medical and related costs for workers however that entitlement should not be without reasonable controls. The control measures should be designed so as to minimise disputation and support the scheme objectives of injured workers re-joining the workforce and community as fully as possible .

Recommendation

NSWBC supports the proper control of medical and related costs to injured workers.

STRENGTHEN REGULATORY FRAMEWORK FOR HEALTH PROVIDERS

Health Providers are key service providers in the system. No doubt the vast majority of providers endeavour to meet their obligations honestly and diligently. However this is clearly not always the case. While there is clearly a need to provide a regulatory framework which enables the regulator to take appropriate action against those who seek to abuse the system that while important is not likely to provide a complete response. WorkCover has in the past undertaken initiatives to assist health providers, particularly GP's, to understand and work within the system. Initiatives which seek to actively engage with the service providers and their representative bodies are essential.

Recommendation

Strengthen the regulatory framework for health providers in conjunction with other initiatives e.g. education, and guidance materials taken in concert with the providers and their representative organisations.

TARGETED COMMUTATIONS

Commutations can be an effective strategy for managing long tail claims and providing long term claimants with both the incentive and means to move away from scheme dependency. A targeted commutation programme in the 1990's was initially successful allowing long tail claimants to move on while reducing scheme liabilities. That initial success was lost when commutations became a convenient way for the then licenced insurers to reduce their tail

¹⁸ Loc cit

¹⁹ WorkCover NSW Executive Summary: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011 p7

claims by offering settlements which were greater than the projected cost of individual claims. This is not a sustainable outcome and it lead to the current highly constrained commutation provisions. The use of commutations needs to be redesigned to allow for their greater use, but that design has to guard against commutations becoming another driver of a lump sum culture in the scheme. The design should consider the merits of a programme which can be used periodically as and when warranted.

Recommendation

A targeted commutations programme be introduced so that the cost of the programme does not add to scheme costs or promote a lump sum culture among claimants.

EXCLUSION OF STROKE/HEART ATTACK UNLESS WORK IS A SIGNIFICANT CONTRIBUTOR

For an injury to be compensable work is required to be a significant contributory factor²⁰. Section 9A (2) of the Workers Compensation Act 1987 then goes on to set out matters that might be taken into account when making that determination. Those factors include the likelihood of the injury occurring at that stage in the workers life if they had not been at work, the workers state of health before the injury and any heredity risks and the workers lifestyle and activities outside the workplace. With an increasingly aging workforce there are more likely to be events generally associated with age, including death, occurring at the workplace. As tragic as those events will be it is not the role and function of a workers compensation scheme to provide a general protection for particular types of events. It is not clear why this particular proposition has been put forward. The only conclusion which can be drawn is strokes and heart attacks are being subject to a different work test to other injuries, and that should not occur.

Recommendation

Strokes/heart attacks be subject to the same work test criteria as any other injury and that that criteria be properly applied.

OTHER CONSIDERATIONS

The package of reforms outlined in the issues paper will improve the capacity of the Scheme to deliver fair and appropriate levels of support and benefits to injured workers on a sustainable basis. However it is also apparent legislative change in the absence of other changes which align other aspects of how the scheme is oversighted managed and operates will not achieve its full potential and may be at risk.

The following recommendations are intended to support and reinforce not only legislative changes but to reinforce the objectives of the workers compensation scheme as set out in the Workplace Injury Management and Workers Compensation Act.

²⁰ Workers Compensation Act 1987 S9A

WORKCOVER - STRUCTURE & RESOURCES

WorkCover as the Nominal Insurer is responsible for one of the largest insurance operations in Australia in terms of the assets under its control and premiums collected. How well WorkCover fulfils its function has a direct impact on injured workers and employers.

Most other Australian jurisdictions separate their workers compensation arrangements from their Work Health and Safety regulatory and compliance functions. A similar approach should be considered for NSW. To do so would give the Workers Compensation operations focus from the top to the bottom of the organisation.

The staffing requirements in terms of both members and most importantly skills and expertise should be reviewed and changes, including the recruitment of additional expertise undertaken.

Workers Compensation schemes are complex, they require constraint vigilance, investigation and WorkCover needs to recover to allow that to happen.

Recommendation

Consideration be given to creating a separate Workers Compensation Authority.

CENTRALISED IT

Effective management of a system as large as the NSW workers compensation system requires timely and accurate information, not only for those charged with its overall management but also those who are directly engaged in the delivery of services to injured workers and their employers.

Worker's compensation systems are complex and dynamic and their effective management requires timely and reliable information. Similarly claims agents will be better equipped to meet their claims management responsibilities if they have access to more complete information.

A centralised core system would not prevent agents operating their own front end systems in correlation with the centralised core capacity.

Recommendation

WorkCover to investigate the cost benefits of a centralised core system for the NSW Workers compensation System.

PREMIUM SYSTEM

The NSW WorkCover premium system provides for experience rating of employers with a basic tariff in excess of \$100,000 p.a. About 12% of policy holders have their premiums directly affected by their claims history. The remainder not so.

Experience rated employers, depending on their size of their basic tariff, may also be subject to other provisions which seek to limit the impact of significant claims costs in any one year. There is also a cap (\$150,000) how much of a claims costs is included in their premium calculation for all experience rated employers.

The premium formula for experience rated employers is widely seen as punitive and unfair particularly for employers who at the lower end of the experience rating scale. Notwithstanding the protections built into the system it is possible for a business to find its premiums increasing by up to 50% in a single premium year, and given the complexity of the premium formula business may not be aware of the impact of that claim until they receive their premium notice.

The introduction of the Retro Paid Loss Scheme which enables larger employers who do not qualify for, or choose not to self- insure has been a positive initiative. The fact WorkCover was prepared to step outside the established framework is welcome and perhaps is a pointer to the approach which needs to be taken in the future i.e. differing approaches to premiums for different cohorts in the portfolio.

Employers with basic tariff premiums of less than \$10,000 p.a. are not experience rated.

While that provides them with a predictable premium environment it does not result in any positive incentives for those employers who have exemplary safety records.

Simply extending the current premium formula down from the current \$10,000 threshold is not an option.

Recommendation

Develop a new premium system which is fair and balanced and rewards employers who make no or little use of the system while motivating those who need to improve their safety performance.

PREMIUM NOTICES

One of the goals of the premium system is to act as an motivator, most specifically to encourage those employers who make greater demands on the scheme through increased premiums.

The premium formula, particularly for experience rated employers, is complex and difficult to understand is not aided by premium notices which are also not user friendly.

There is a need to simplify and clarify premium notices so that employers can understand why their premium is what it is, what is driving premium increases or decreases and assists them to identify what they can do to reduce those premiums.

Recommendation

The WorkCover premium notice be redesigned so as to provide policy holders with clear and useful information on premium, reasons for the premium level and to assist policy holders identify actions to manage premiums.