Submission No 256

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: White Outsourcing Pty Limited

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WHITE OUTSOURCING
ACCOUNTING & INVESTMENT ADMINISTRATION SERVICES

16th May 2012

Joint Select Committee on the NSW Workers Compensation Scheme
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Hon. Robert Borsak, MLC,

White Outsourcing and its antecedent organisations have operated in the Sydney CBD for over 100 years. We provide fund administration services for over $18 billion of client funds. There is no compelling reason to be located in NSW and we complete with Australian and international administrators.

We are supportive of workers' compensation reforms along the lines proposed in the Issues Paper. We consider the most important changes are those that link compensation to capacity. For this to work, we believe that changes must occur to who is responsible for referring to medical specialists that prepare capacity reports.

NSW Workers Compensation premiums are prohibitively expensive in NSW, increasing the cost of employment. This reflects an Act that is focused on "worker rights" and provides financial incentives for workers not to do what is good for them, namely return to work (RTW).

We understand that with the recent decrease in fixed interest returns, the WorkCover NSW deficit is likely to be well over $5 billion. NSW employers own this liability and it affects decisions on where to invest and operate. NSW employers can't afford an additional 28% in workers' compensation premiums or a larger increase to reflect a continued deterioration in the scheme and the further drop in investment returns since 31 December 2011.

Workers Compensation Commission (WCC)

Decisions of the WCC:

- Can only be appealed on matters of law. This would be a reasonable system if there was a medical panel that decided on medical questions. As it is, people without medical experience are making decisions based on varying evidence provided by GPs or specialists. This system is deeply flawed (see next heading). Under the current system, the decisions of the WCC appear heavily worker biased and unfair. We recommend that matters of fact and law go initially to two Presidents, thereby allowing a system of checks and balances over the equity of the system.
- By Agents with WorkCover approval. The WorkCover legal department denies appeals as a matter of course, denying natural justice to employers.

The functioning of the WCC is systematically biased against employers. Applicant solicitors use this process to increase their fees and encourage workers to remain on compensation:

- Employers must place all evidence before the WCC, but applicant solicitors wait, providing them the opportunity to alter their submissions.
- Employers can only seek around $800 of legal advice per claim per year, while applicant solicitors are not limited.
- Applicant solicitors can commence an action without merit and are still paid.
- Applicant solicitors can commence an action, discontinue and recommence. The employer solicitor does not have time to reconsider and gain new evidence to contradict what is effectively a new approach by the worker's solicitor.
- Employers solicitors do not get paid if they appeal and are unsuccessful.
- Workers have more rights in terms of when they must place evidence (after all employer evidence), their rights to legal representation and the workers right to appeal without requiring approval from WorkCover – which is most often denied.

Workers compensation schemes around the world working in an adversarial legal environment need to be reviewed and the legislation tightened periodically. Worker solicitors try different approaches and over time achieve an expansion of coverage. This is not different to what happened with Public Liability, requiring legislative change. While this is generally the case, in NSW it has been 'open season', with what appear to be supportive actions by the previous WorkCover management and the WCC.

Along with any changes to the legislation, we strongly recommend that the legislation and regulations around the WCC are rebalanced in favour of equity between 'worker rights' and actions that support workers' obligations to return to work when there is capacity to do so.

Medical Assessments

Whole Person Impairment (WPI) assessments regularly vary significantly. With few exceptions the assessments support the party that appointed them. The differences in WPI are staggering and systematic. It is not surprising that applicant solicitors find WPI assessments that are materially higher than WorkCover Agent assessments. If an Approved Medical Specialist provides high assessments, they get more work and make more money. This is a fundamental flaw in the system.

We strongly recommend that there should be one medical panel. Ideally it would be controlled by the Motor Accidents Authority, as they have shown a great success in the management of the panel to achieve fair assessments. WorkCover have an abundance of cultural and capacity issues during this process of reform.

It is critically important that referrals come from the WCC and that the assessment is binding.

Without these changes we consider the Issues Paper reforms will not achieve the success necessary to achieve lower deficit reduction or improved return to work.

Use of Work Injury Specialists to Support RTW

Another fundamental flaw in the system is the use of family doctors to provide medical certificates. General Practitioners have a financial incentive to ensure the worker is happy with the certificate, thereby supporting continued family medical practice referrals. In

addition, GPs have neither the experience nor the time to dedicate to discussing RTW options with employers. Employers are extremely focused that GPs are a central part of the system when their conflicts are so apparent.

While we do not propose an injured worker should not be able to visit their GP, we recommend that should a claim exceed four weeks, the Agent should appoint a Work Injury Specialist (WIS), being a doctor trained in occupational medicine. The legislation should give predominance to the WIS in matters that relate to RTW.

Excluding Non-Work Injuries

While we support the exclusion of Journey Claims and heart attacks, we believe these exclusions do not reflect the material increases in coverage that have occurred. The most significant increases relate to the coverage of non-work related injuries within the definition of work being 'a substantial contributing factor'. To correctly rebalance this, we believe the legislation should be amended to 'the substantial contributing factor'. A reading of the definition in the legislation indicates that the section was designed to exclude claims where there was not a strong link, but it has been watered down to the degree it is virtually redundant. As with many areas of the legislation, the only way to recalibrate it is to amend the wording.

We believe the legislative changes in the Issues Paper are critical to reduce the deficit and support premium decreases so that NSW can complete with states like Victoria and Queensland. We believe that the changes around capacity and the measurement of capacity are also critical to support outcomes that are good for workers. The current focus on 'worker rights' (rather than RTW) destroys many workers lives, resulting in poor health outcomes, depression and breakdown in relationships. Many people state 'workers rights' as a moral issue, but there is something much more fundamental, which is establishing a system which provides good life outcomes to the injured worker while supporting future employment by balancing coverage with cost.

Above all, I hope the scheme assists injured workers focus by removing the perverse financial incentives for the worker to stay off work and for applicant solicitors to focus on lump sums rather than a return to work.

Yours Sincerely,

Peter Roberts
Managing Director