

FIRST REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: NSW Business Chamber

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The Hon. Shayne Mallard MLC
Chair
Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW

Via online portal

Dear Mr. Mallard,

First Review of the Workers Compensation Scheme

The NSW Business Chamber (the Chamber) welcomes the opportunity to make a submission to the First Review of the Workers Compensation scheme.

As you may be aware, the NSW Business Chamber (“the Chamber”) is one of Australia’s largest business support groups, with a direct membership of more than 19,000 businesses, providing services to over 30,000 businesses each year. Tracing its heritage back to the Sydney Chamber of Commerce established in 1825, the Chamber works with thousands of businesses ranging in size from owner operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises.

The Chamber is a leading business solutions provider and advocacy group with strengths in workplace management, occupational health and safety, industrial relations, human resources, international trade and business performance consulting.

Our interest in Workers Compensation

With a membership that overwhelmingly consists of employing businesses, that is businesses that fund the workers compensation scheme through the payment of insurance premiums, the Chamber takes an active role in discussion and debate on workers compensation and workplace health and safety (WHS) regulation.

The Chamber is a committed advocate of the need for a workers compensation scheme and WHS regulatory framework that is both sustainable and fair over the longer term.

The Chamber recognises the need to support injured workers and the benefit, wherever practical, of allowing this recovery to occur at work. It needs to be emphasised however that support for injured workers needs to be appropriately balanced against maintaining the long term sustainability of the scheme.

It is fair to say that there has been significant reform to the scheme, WHS regulation and to the agencies responsible for managing WHS and workers compensation in recent years. The Chamber was a leading advocate for the *Workers Compensation Legislation Amendment Act 2012* which helped avert, by our measure, a premium hike of 28 per cent and the potential loss of 12,600 job opportunities in NSW.

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The Chamber has participated in subsequent reviews of the legislation (including reviews by this committee) and its operation since 2012 most notably:

- ***Statutory Review of the 2012 Workers Compensation legislative arrangements*** (conducted by the Centre for International Economics);
- ***Workcover Independent Review Officer's Parkes Review***; and
- ***The Review of the Functions of the Workcover Authority***¹

We have supported, through these submissions and other advocacy, further changes to the legislation (which have been subsequently been implemented) including appropriate increases in benefits for injured workers, the separation of the functional operations of the former WorkCover Authority and more flexible premium options for larger employers (the new Loss Prevention and Recovery product).

Although insurance schemes and workers compensation schemes in particular, need constant monitoring and targeted refinement, we believe that at a principle level the current legislation governing the scheme and the agencies is consistent with the underlying aim to support injured workers to recover at work in a manner that is affordable, efficient and sustainable.

Noting our earlier submissions on these matters, we will confine our comments to those areas in which we feel there has not been sufficient action undertaken at either a Government or agency level.

Experience with the State Insurance Regulatory Authority (SIRA)/ SafeWork NSW/ Insurance Care NSW (icare)

As the committee is aware, on 1 September 2015 the regulatory and insurance functions of WorkCover were assumed by three new organisations SIRA (for workers compensation regulation), SafeWork NSW (for workplace health and safety regulation) and icare (for workers compensation insurance).

While the Chamber did not actively call for the separation of WorkCover, it understood and appreciated the challenges in engaging with such a large organisation with such diverse functions and the potential conflicts (both real and perceived) between its regulatory and workers compensation functions.

Although the separation into three agencies does make it far more obvious to both understand and engage with the relevant functional area, it should be recognised that improvements in the operations and approach of WorkCover had become apparent before the separation occurred. These improvements included:

- Greater clarity about WorkCover's mission and its impact on the NSW economy
- Greater focus on positively engaging with businesses as the preferred way to achieve safer and more productive workplaces
- Providing targeted support to 'high-risk' industry sectors
- Improving communication and engagement with small business at a local level by developing a small business strategy and a revised communications strategy

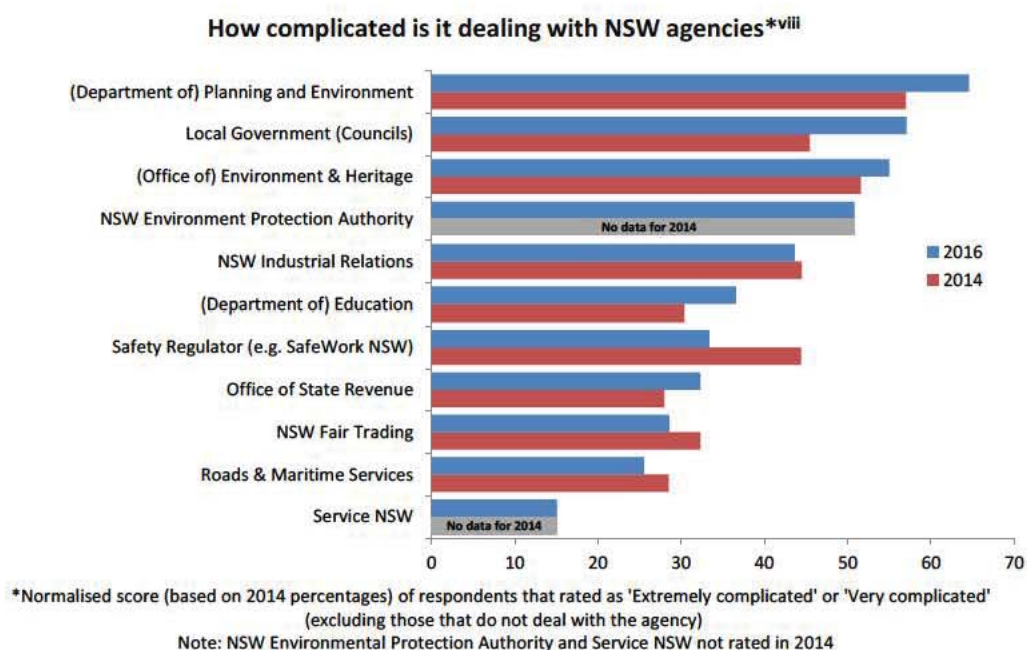
¹ These and other submissions are available from the Chamber's website:

<http://www.nswbusinesschamber.com.au/Issues/Issues/Workplace-Health-Safety/Recent-submissions-and-publications>

It has been pleasing that these initiatives have continued following the separation of the agencies. While still, very much, a “work in progress” it does appear a culture of support and partnership with workers, employers, insurance agents and the community is driving the agencies in undertaking their functions.

Although this should not be taken as suggesting that it is universally the case, the improvement in approach was broadly reflected in the Chamber’s recently released annual red tape survey results.

Almost 1000 businesses participated in the survey and while the results suggest red tape remains a major concern for NSW businesses², there were some significant improvements in some measures; in particular there had been improvement at the individual state agency level in terms of business perception of complexity.



Positively, the Safety Regulator (e.g. SafeWork NSW)³ had the greatest positive improvement on this measure.

While these results are pleasing, the agencies had come off, historically, a very low base.

Although there have been improvements in the communication and engagement approach by the agencies, this can always be further improved. The sharing of information around changes to the scheme is essential in ensuring there is an informed debate on how the scheme can be improved and issues addressed.

² On the basis of the results received, we estimated NSW businesses are weighed down by around \$10 billion in compliance costs annually, with the annual cost of complying with government regulatory requirements as being \$58,000 for the average respondent.

³ A generic title “safety regulator” was used as there were changes in the names of the agencies during the period the survey concerned. This will change in future surveys

As an example, icare is making significant changes to the way in which the policy and billing requirements under the NSW Workers Compensation Scheme will be administered. These are changes which the Chamber has long advocated with the first step in bringing the management of all policies under icare's management the development of a centralised computer system.

The changes to policy and billing will result in employers being able to purchase and renew their NSW Workers Compensation Insurance policies directly through (a yet to be finalised) icare online self-service portal. The introduction of the portal will allow all policy information to be consolidated in one place – broadly aligning NSW practice with the operations of workers compensation policies in South Australia and QLD (where policy and premium management is handled directly by the workers compensation authority).

Scheme Agents (Allianz, CGU, EML, GIO and QBE) will continue to undertake claims management.

The change will allow for online declaration of wages and policy maintenance and, as outlined above, aligns with calls the Chamber has previously made on the benefits of a centralised computer system.

While the Chamber is in support of this reform, the only formal communication from icare on the change has been in comment to the media⁴. While we understand there will be further communication with policy holders in the lead up to the adoption of the new arrangements, formal advice on such a significant reform should have been provided to, at the very least, peak representatives of employers and workers. In the absence of formal advice, stakeholders are left to glean information off media reports and each other which is not conducive to an informed discussion.

We also note that announcements and notifications regarding 2016/17 premium notices were extremely limited. Given there were few, if any, changes to premium formulae and tariff rates the poor communications had limited impact. In future years however, when changes will occur, there needs to be clarity around what information will be provided and by whom to fill the void left by the absence of the Insurance Premiums Order.

Transition to new premium system

As the committee would be aware, commencing in the premium period 2015-16, the NSW Government implemented reforms to the workers compensation system including new premium notices, a new method for calculating claims cost for premium purposes and a revised premium formula for over 14,000 experience-rated medium and large employers. These are medium or large employers with a basic tariff premium greater than \$30,000. The reforms changed the calculation of premiums to include:

- Employer Safety Incentive (ESI);
- Employer Safety Reward (ESR);
- Return to Work (RTW) Incentive;
- Scheme Performance Discount;

⁴ <http://insurancenews.com.au/regulatory-government/icare-makes-big-changes-to-nsw-compo-scheme>

- Annual Risk Assessments;
- Calculating Actual Cost of Claims;
- Introducing new minimum and maximum premiums; and
- Claims costs forming part of premium calculations for 3 years

Based on estimates provided by WorkCover at the time, of the 14,000 medium to large cohort, around 4,000 businesses were expected to see their premiums increase as a result of the changes, with between 200 and 400 businesses likely to experience significant increases.

While the changes to the premium notice and claims cost calculation were welcomed by the Chamber, we expressed at the time and remain concerned at the potential impacts on individual businesses of the new premium formula and the need for suitable transition arrangements.

We note that to assist in the transition that the Government capped premium increases at 30 per cent for two years and that on a case by case basis icare has been reviewing individual premiums against this threshold and making adjustments where they are appropriate.

As these changes are still being bedded down and individual issues in the new premium system are still emerging it would be appropriate that transitional support be further extended for at least the next 2 years with active engagement from icare to assist those businesses affected.

Regulatory Framework

The timing of the separation of WorkCover did mean there was limited time for the State Insurance Regulatory Authority (SIRA) to establish itself and set the regulatory framework for workers compensation authorities, including icare.

SIRA did consult with stakeholders and others during that process and we welcome its commitment to continue to do so as it further develops the Market Practice and Premium Guidelines.

Given the timing, SIRA's decision to quickly respond with interim guidelines was a sensible and pragmatic decision.

In carrying out its regulatory responsibilities with respect to workers compensation SIRA will be overseeing the activities of icare, specialised insurers and self-insurers.

The Chamber notes that currently there are limited numbers of specialised insurers, however in recent years there has been increased interest from some industry sectors to establish specialised insurers operations to provide workers compensation cover for specific industry sectors.

SIRA is required to ensure specialised insurers will not have an adverse effect on the efficiency of the workers compensation scheme⁵ and it is important SIRA give particular regard to this obligation when considering filings from specialised insurers.

⁵ SIRA – Licensing Framework for Specilaised Insurers –S 3.2.b

At first glance it may seem sensible to encourage specialised insurer arrangements. Why shouldn't better performing employers pay lower premiums and employers who have higher claims costs pay more? The difficulty with that proposition is that it is possible for specialised insurers to selectively price their offer so as to exclude higher cost employers, who will continue to be covered by the statutory scheme. By effectively excluding higher cost employers specialised insurers will be able to offer lower premiums but without any overall improvement in scheme costs. Consequently a greater premium burden will fall on the statutory scheme

Release of Information on Scheme Performance

The Chamber has, in a number of its more recent submissions on the NSW workers compensation scheme, drawn attention to the reduced flow of information on scheme performance, including actuarial reports, when compared to earlier years. That situation has not changed and in our view the absence of up to date and meaningful information only serves to hinder informed and constructive debate, increases the risk of adverse trends within the scheme becoming embedded and as a consequence raises the prospect of future major interventions to restore scheme viability. Workers compensation schemes are dynamic and require continual monitoring and adjustment, a process which is likely to be best facilitated if stakeholders and interested parties have a clear understanding the "state of play".

Re-establishment of a Ministerial Advisory Council

The Chamber has in recent years also called for the re-establishment of a Ministerial Advisory Council. We repeat that call in this submission.

A sustainable, fair and affordable workers compensation system is possible but achieving this outcome will require ongoing engagement of stakeholders⁶ and a process for identifying emerging issues and the appropriate responses to those issues. The effectiveness of an advisory body will be dependent on a number of factors, most prominently and as noted above, the availability of relevant data.

Private underwriting

While it is outside the terms of reference for this review and, to our knowledge, not currently being considered by Government, the Chamber believes that the Committee should note the concerns of business in relation to a potential future area of change – a move to privately underwrite the workers compensation scheme.

As the Committee is aware, each Australian jurisdiction operates its own workers compensation scheme or schemes.

Of the 9 major schemes (Commonwealth, 6 states and 2 territories) five are centrally managed (Commonwealth, Qld, NSW, Vic and SA) and the remaining four are privately underwritten. The three workers compensation schemes with the lowest average premium rates Vic, Qld and NSW are not privately underwritten.

⁶ In the Chamber's view the scheme stakeholders are those the scheme protects i.e. workers and those who pay for that protection i.e. employers

Until 1987, workers compensation was privately underwritten in NSW.

In the face of rising premiums and scheme costs the government made a number of significant changes to the scheme including the cessation of private underwriting.⁷ The Scheme's financial position improved.

Following a change in government, further changes were made to the Scheme in 1992 including the re-introduction of common law claims. The changes were not accompanied by premium increases

By 1995 the Scheme was again in trouble and premiums were increased by 40% (1995) and 12.5% (1996). Despite these premium increases, and other changes including some benefit reductions, the Scheme's financial position did not improve.

An inquiry into the Scheme, the Grellman Inquiry⁸, made a number of recommendations for change including the re-introduction of private underwriting.

Under Grellman's recommendations industry risk rates were to be centrally determined by a Premium Rating Bureau but individual insurers would have scope to vary their rates by up to 10% from those set by Premium Rating Bureau, provided the insurers first submitted their proposed rates for approval.⁹ (A file and write system similar to that applying in CTP (Compulsory Third Party) motor insurance.

At the time, the Chamber gave qualified support to the Grellman proposals. It was anticipated private underwriting would result in improved performance from insurers through increased competitive pressure. However private underwriting is fundamentally more expensive than centrally managed funds due to higher acquisition costs, capital and prudential requirements. Consequently, the Chamber's position was conditional on the insurance industry delivering on the savings it said it would and could achieve in a privately underwritten environment, savings which would cover or exceed the premium increase arising from private underwriting.

Private underwriting was scheduled to commence in 1999, however as the commencement date neared, the insurance industry reduced the savings it said it could achieve and extended the time it would take for those savings to be realised. The Chamber and other stakeholders withdrew their support and the plan was abandoned in 2000.

Since then the insurance industry has from time to time floated the idea of private underwriting. Most recently a proposal was made in submissions to the Competition Policy Review by Suncorp insurance¹⁰.

However, in its report into the NSW Workers Compensation Scheme in 2003, McKinsey found there was no compelling evidence, from an examination of 70 schemes around the world, that privatisation resulted in better financial performance. McKinsey also identified a number of additional costs in a privately underwritten market e.g. higher

⁷ Workers Compensation and Motor Accidents Compensation in NSW, NSW Parliamentary Library Research Service, Briefing Paper No 039/95

⁸ Inquiry into the Workers Compensation System in NSW, Final Report, Sept 1997

⁹ Ibid, p74

¹⁰ Insurance Council of Australia, QBE Insurance, Suncorp Insurance and National Insurance Brokers Association submissions to the Competition Policy Review

acquisition expenses and capital and prudential requirements. McKinsey modelling at that time found private underwriting would increase average premiums by at least 5% more than they might otherwise have been¹¹. That is equivalent to the premium reductions introduced in 2013.

Any consideration of private underwriting needs to require its proponents to demonstrate how the same or better coverage can be sustainably delivered at the same or lower cost. This is a challenge the insurance industry is yet to meet.

Thank you for the opportunity to participate in this consultation. If you have any further questions in relation to this submission, please feel free to contact Mr Luke Aitken, Senior Manager, Policy

Yours sincerely,

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NSW Business Chamber

¹¹Partnerships for Recovery, McKinsey and Company, 2003,pp37-39