

**Submission  
No 7**

**REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE  
WORKCOVER AUTHORITY**

**Organisation:** National Insurance Brokers Association of Australia

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## **NATIONAL INSURANCE BROKERS ASSOCIATION OF AUSTRALIA (NIBA)**

### **Submission to the NSW Legislative Council**

### **Standing Committee on Law and Justice**

### **Review of the Exercise of the Functions of the WorkCover Authority**

**January 2014**

#### **ABOUT NIBA**

NIBA is the peak body of the insurance broking profession in Australia. NIBA represents around 400 member firms and over 3000 individual Qualified Practising Insurance Brokers (QPIBs) throughout Australia. In total NIBA represents an estimated 90% of all insurance brokers in Australia.

NIBA –

- Represents and speaks on behalf of its members to governments, Members of Parliament, regulators, the media and other interested stakeholders;
- Promotes the professionalism of insurance broking through industry based training and professional qualifications (NIBA College) and through a strong, independently administered and monitored Code of Practice for members;
- Communicates the importance of insurance and the role of insurance brokers to the community; and
- Provides a number of services to its members, including member communications and an annual industry Convention.

The 400 member firms all hold an Australian financial services (AFS) licence, issued by the Australian Securities and Investments Commission under the Corporations Act, which enables them to deal in or advise on Risk Insurance products.

NIBA Members include large multinational insurance brokers, large Australian-owned insurance brokers, and around 380 small to medium sized insurance broker businesses located in the cities, towns and regions across Australia.



## **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 personal or business needs;
- assist customers to arrange and acquire insurance; and
- assist the customer in relation to any claim that may be made by them under their insurance program.

In doing the above the insurance broker acts on behalf of the customer as their representative or agent. Insurance brokers offer many benefits to customers and consumers, including:

- assistance with selecting and arranging appropriate, tailored insurance policies and packages
- 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; and
- assistance with claims and the resolution of claims.

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

Insurance brokers handle around 90% of the commercial insurance transacted in Australia, and play a major role in risk assessment, risk financing and insurance distribution, handling over \$17.8 billion in premiums in the 12 months to 30 June 2013, and placing around half of Australia's total insurance business. Insurance brokers place most insurance business with Australian authorised insurers, but also place substantial insurance business into overseas markets for large and special risks.

Because of the nature of the New South Wales workers compensation scheme, there is currently little involvement by insurance brokers in advising on the risk of workplace injury and disease, and access by employers to the insurance markets for workers compensation in this State.

Some insurance brokers provide extensive advice and support to their clients on workplace risk and workers compensation insurance issues, on a fee for service basis.

### **OWNERSHIP**

The NSW WorkCover Authority purports to be the "insurer" of the risk of workplace injury and disease in New South Wales, via the Workers Compensation Nominal Insurer.



It would appear, however, that there is in fact no insurance in effect, as the financial risks associated with workplace injury and disease “are owned by the employers of NSW, who are also responsible for meeting any shortfall”<sup>1</sup>.

Insurance involves the transfer of risk, and the financial consequences of those risks, from the policyholder to the insurer. The insurer then becomes responsible for the financial consequences if the risk eventuates, and manages the underwriting process (valuing the risk and setting and collecting premiums to cover the cost of risk and the expenses of administration) and the investment process (maintaining sufficient assets in order to be able to meet the cost of claims as and when they fall due for payment) on the basis that they are legally and financially responsible for the liabilities that arise under the policies they issue.

In Australia, private insurers are fully accountable to and are prudentially regulated by the Australian Prudential Regulation Authority (APRA) in the performance of these functions. APRA has a comprehensive suite of prudential regulatory requirements and standards designed to ensure insurance companies are managed in a prudent and responsible manner, and are able to meet their claims obligations as and when they fall due.

The WorkCover Authority and the Workers Compensation Nominal Insurer are not subject to prudential regulation by APRA, and in fact would be unlikely to meet key APRA prudential requirements and standards.

In one sense this is not surprising: they do not insure the risk of workplace injury and disease in the first place. These risks are not transferred to WorkCover or the Nominal Insurer, they remain with the employers of New South Wales.

Therefore, WorkCover is managing very significant financial liabilities which it does not own, and for which it is not legally responsible – the responsibility for meeting any shortfall remains with NSW employers.

Equally, NSW employers (ie those employers who are not self insurers under the scheme) remain financially responsible for the outcomes of the NSW workers compensation scheme, but they have no capacity to manage, influence or control the financial position of the scheme, or the ultimate financial burden they carry.

Hence there is a fundamental disconnect between those who carry the ultimate financial responsibilities of NSW workplace injury and disease (employers) and those who manage the process (WorkCover). This is not insurance.

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<sup>1</sup> NSW WorkCover Scheme Report 2012-13, page 4.



## ACCOUNTABILITY

The Standing Committee's Terms of Reference include "to monitor and review the exercise by the authorities of their functions"<sup>2</sup>.

The NSW WorkCover Scheme Report 2012-2013 is the primary reporting mechanism through which the management of the workers compensation scheme can be monitored and assessed. There is little or no information in that report to permit a clear understanding of the operation of the scheme in the period under review, or the activities and strategies adopted by WorkCover, on behalf of the Nominal Insurer, to manage the scheme.

For example, the Scheme Report includes almost 8 pages of information in relation to scheme investments<sup>3</sup> but only 3 pages of summary information on the nature of the scheme's liabilities<sup>4</sup>. We have been unable to locate the scheme actuarial report which would have analysed trends in the number, nature and cost of claims, so it is difficult if not impossible to independently verify whether the scheme is performing well or not.

For example, the December 2011 actuarial valuation identified a very significant deficiency in the management of 110 large medical claims<sup>5</sup>. The current Scheme Report notes<sup>6</sup> that there are now 21 severe injury case managers providing case management services in respect of 517 injured workers. There is no information in the Scheme Report about the success of those case management programs, from an injury management, quality of daily living, return to some form of employment, or financial perspective.

In relation to premiums, the PricewaterhouseCoopers Key Results document in relation to outstanding claims liability as at 31 December 2012, dated 6 June 2013, indicates the need to set a target premium collection for 2013/2014 at 1.68% of covered wages. The Scheme Report advises<sup>7</sup> that there was an average premium reduction of 7.5% as from 30 June 2013, but there is no information as to whether the target premium will be achieved, whether the premiums will meet liabilities likely to be incurred during the 2013 – 2014 financial year, or whether the overall financial position of the scheme will improve or deteriorate as at 30 June 2014.

Finally, the Scheme Report notes the appointment of seven scheme agents to perform certain functions in relation to the management and operation of the scheme, as agents of WorkCover and

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<sup>2</sup> Terms of Reference, clause 2 (a).

<sup>3</sup> Scheme Report, Note 12 to the Financial Statements, pages 26 and following.

<sup>4</sup> Scheme Report, Note 15 to the Financial Statements, pages 34 and following.

<sup>5</sup> WorkCover NSW Executive Summary: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011, dated 12 March 2012

<sup>6</sup> Scheme Report, page 5.

<sup>7</sup> Scheme Report, page 5.



the Nominal Insurer. There is little or no information regarding the role of WorkCover in directing and managing the agents performing services on its behalf, nor the actual performance of the agents who presumably are acting in accordance with those directions.

Overall, there is little accountability at the present time for the performance of functions by WorkCover, as there is little information on which a reasonable assessment of the achievement of scheme objectives can be made.

### **THERE IS A BETTER WAY**

NIBA respectfully submits the Standing Committee of Law and Justice should commence consideration of alternative forms of administering and operating the NSW workers compensation scheme. In particular,

- the risk of workplace injury and disease should be transferred from employers to an insurer who would be legally and financially responsible for the management of those risks;
- insurance premiums should reflect the nature of the risk being insured, taking account of an employer's industry and individual risk profile – thus providing a direct and immediate incentive on the employer to maintain safe work practices and minimise (preferably remove) the risk of workplace injury or disease;
- because they are financially liable for the cost of claims, insurers would have a direct incentive to handle claims efficiently, and to minimise the cost of claims by promoting early and effective return to work when medically appropriate to do so (and it is acknowledged that any scheme should also have the capacity to resolve disputes regarding the cause of injury, nature and extent of injury, and capacity to return to work, quickly, efficiently and objectively);
- insurers would be subject to stringent prudential regulation by APRA, and would be required to maintain conservative assets and investments to cover the liabilities they insure;
- there would be clear ownership of scheme liabilities, and those who own the liabilities would be truly held accountable for the management of those liabilities;
- as employers would have choice of insurer, there would be competitive pressure (within the limits and parameters determined by the scheme legislation) to provide insurance cover at competitive premiums and with genuine commitment to serving the needs of employers and those employees who have had to lodge a claim for benefits.

This approach is already operating in Western Australia, and NIBA strongly recommends the Standing Committee take steps to familiarise itself with the management, operation and regulation of the Western Australian workers compensation scheme.



If you would like further information in relation to this submission, insurance broking, insurance brokers, or their place in the Australian insurance industry, please do not hesitate to contact me.

**Dallas Booth**

**Chief Executive Officer**

**National Insurance Brokers' Association of Australia**