



## Self Insurance, Workers Compensation & Workplace Law

written by

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### WORKCOVER UPDATE 2011

## THE YEAR OF UNCERTAINTY, THE RABBIT'S BEEN CAUGHT IN THE SPOTLIGHT!

*Employers and workers alike face another year of uncertainty with a range of issues likely to impact upon the troublesome WorkCover Scheme.*



In March I wrote that employers and workers alike face another year of uncertainty with a range of issues likely to impact upon the troublesome WorkCover Scheme.

I reflected upon Scheme performance, the Scheme review which is currently being completed and the impact upon the Scheme if the Supreme Court determines that the Medical Panel cannot bind the Tribunal.

In more recent times there have been some further upheavals which give cause for concern and justify my view that we are certainly, so far as WorkCover is concerned, experiencing a year of uncertainty.

### Changes at the Top

A couple of weeks ago it was announced that Jeff Matthews (Deputy CEO WorkCover SA) and Ian Rhodes (CFO WorkCover SA) have been made redundant.

Mr Thompson, who arrived from New South Wales to take over the role of CEO from Julia Davidson just 12 months ago confirmed that the positions of Deputy Chief Executive and Chief Financial Officer were "no longer required in WorkCover's organisational structure". He went on to say that the structure, "has been realigned with our new strategic direction and has refocused the organisation

*on enhanced service delivery to injured workers and employers".*

With the unfunded liability sitting at \$865 million dollars it is difficult to accept that the position of Chief Financial Officer of this embattled organisation is redundant. Ian Rhodes was, in his role as CFO "responsible for strategic and day to day management of revenue, finance and investment functions, strengthening actuarial modelling and performance monitoring and reporting capacity". With the many financial challenges facing the Scheme and the proposed changes to the Employer Payment System one would think that a CFO was an important role in the structure.

Similarly it is a little difficult to understand how the position of Deputy CEO can be made redundant at this point in time.

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It would be reasonable to assume that there has been a difference of opinion on some fundamental matter that has led to these decisions.

All staff at WorkCover will now be wondering just how safe their own positions are and it will be a difficult task to keep morale up in the current environment.

At the same time as the redundancies of Jeff Matthews and Ian Rhodes were announced the Hon Bernard Finnegan MP resigned from Cabinet and his Industrial Relations portfolio has been taken up by Hon Patrick Conlon MP. At least it would appear that the portfolio is in a safe pair of hands but there will be much for Mr Conlon to grapple with in the portfolio during the coming months.

#### Rehabilitation Report

Mr Thompson's avowed aim to realign the structure of WorkCover and refocus the organisation on enhanced service delivery to injured workers and employers will be tested in the coming months as WorkCover assesses the results of the independent review into the use of vocational rehabilitation services in the Scheme which was carried out by Price Waterhouse Coopers' partner (and my name sake) John Walsh. The review needs to be viewed in the context of the latest Australia and New Zealand Return to Work Monitor which shows SA had the nation's lowest and slowest return to work rate in 2009-10 and the highest proportion of workers on compensation payments. SA had an 80% return to work rate compared with the national average of 85% and those who have returned to work have been there for fewer days at the time of reporting than their interstate counterparts.

The report found that there were too many rehabilitation providers in SA and that claims were over serviced without corresponding outcomes. Claims management by EML was criticised in the report which concluded that there was "limited upfront and strategic case management practice" which was exacerbated by inexperienced case managers.



The report called for an "outcome focused" incentive scheme.

While it may be appropriate to criticise claims management by EML it would be unfair if criticism were deflected from WorkCover because EML can only operate with the policies and procedures imposed by WorkCover and it would be important to

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assess the terms of the contract which exists between WorkCover and EML to determine whether there is sufficient incentive for EML to produce outcomes rather than adhere strictly to WorkCover policy, procedures and requirements.

One of the key findings from the review is that, "the Scheme shows little evidence of improved return to work performance, in spite of very heavy referrals to and cost of vocational rehabilitation compared to comparable schemes". This a damning finding for WorkCover particularly as the rehabilitation industry is represented on the Board of WorkCover by Ms Sandra DePoi. Ms DePoi has been a board member since July 2003 and her business interests include one of the largest providers of rehabilitation services to WorkCover.

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#### A New Employer Payment System for the Scheme

During 2010, WorkCover commenced consultation with employers on a new employer payment system. The bonus – penalty scheme was removed from 1 July 2010 with all employers now paying the published industry rate. Previously employers with low claim expenses could get premium discounts of up to 30% whilst poor performers paid penalties of up to 50% of the base premium.

We can expect WorkCover to introduce an experience rating system to replace the bonus – penalty scheme. The amount an employer can expect to pay in premium will be impacted by industry and employer experience thereby providing an incentive for employers to improve their claims experience through good OHS and injury management practices. The size of the employer will determine the relative proportions between base premium and experience adjusted premium. The likely outcome for employers in the first instance is an increase in premium given that WorkCover appear keen to introduce claims estimates in addition to actual claims costs because they consider it will produce a fairer result for employers. The introduction of claims estimates requires strategic reviews to be undertaken at review points in each

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claim where the estimate is reviewed and altered dependent upon current status.

Experience in the New South Wales' scheme is that there is a lot of activity in reviewing estimates with the insurer to check that they are accurate given their impact on premium. It would be a big job to firstly develop estimating guidelines and then train all the claims staff and then implement them. The inclusion of secondary disabilities in the calculation and the removal (or increase) of the industry rate cap similarly point to an increase in premium being the likely result for many employers.

WorkCover is also likely to introduce a retro paid loss system in conjunction with the experience rating system and it will likely be modelled on the system introduced in New South Wales in 2009.



It is proposed that entry into the retro-paid loss system would be a privilege with employers having to meet pre-determined criteria to participate. The purpose of the system is to align the employer's premium more closely to their individual experience with only limited association with industry experience. It would only be available to large employers with demonstrated capacity and resources to manage their OHS and injury management. The retro-paid loss methodology provides large employers with an alternative to traditional scheme insurance or self insurance.

It is said that the retro-paid loss premium scheme more closely reflects the actual claims costs (plus a share of expenses) during the policy year. In theory, good claims experience would impact actual premiums immediately rather than taking three years to work through the premium formula. Conversely, a bad year would only affect that year's premium.

There are disadvantages associated with the scheme. It presupposes the employer having the ability to actively manage claims and improve return to work outcomes but the scheme only started in New South Wales in 2009 and so it is too early to know how well it is working. It is also important to note that the

relationship between the employer and their chosen insurer is different in New South Wales and that relationship would be a large driver in how effectively the employer is able to manage their claims.

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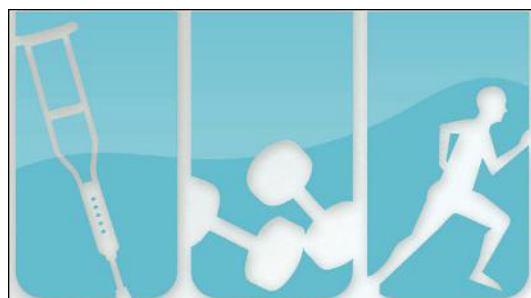
Premiums would be volatile from year to year and the final premium paid would be unknown until the end of the run off period.

It is also important to note that there are also additional costs to be incurred including the cost of bank guarantees and the additional costs associated with improving the ability to manage claims and return to work outcomes.

The attraction for large employers will be lower up front premium payable but the potential for premium to blow out should not be underestimated. An actuarial example that I have seen shows the initial deposit premium fixed at \$500,000.00 for an employer with a \$25 million wage bill. With adjustments over a period of 5 years the total premium blew out to \$1.610 million, more than three times the initial deposit premium and compared to claims costs for the policy year of \$920,000.00.

Although designed as an alternative for self insurance I doubt that it truly competes with the financial and cultural benefits associated with self insurance and the ability to maintain complete control of the injury management process.

We will provide detailed guidance to employers who may be considering entering into the retro-paid loss system after its introduction into the Scheme has been confirmed by WorkCover.




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**The Review of the 2008 WorkCover Reforms**

The review headed by former SA Courts Administration Authority Chief Bill Cossie and senior Price Waterhouse Coopers' partner Chris Latham has received many submissions from employer and union groups. Criticisms are understood to have included the assertion that the new provisions were confusing, complex, unreasonable or unworkable and impacted by judicial intervention with the likelihood of unintended consequences adversely affecting the proposed operation of many of the amendments.

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There can be no doubt that return to work rates will be highlighted again and it is doubtful if the review will support a view that the scheme has demonstrated a sustained financial turn around.

The levy rate remains high and employers will no doubt have concerns that the levy rate will remain high and continue to place businesses at a competitive disadvantage as compared with their interstate counterparts.

Unions are understood to have submitted that employer levies should remain high until the unfunded liability has been eliminated and that any future cuts be based on improved return to work rates.

It is frankly unrealistic to believe that the unfunded liability can be eliminated without dramatically decreasing the level of benefits available to injured workers or escalating the levy rate to unacceptable levels.

I understand that the report will be tabled in parliament and made public at the end of the month. The report following so soon after the review into rehabilitation will further highlight the poor performance of the Scheme and Patrick Conlon will have a difficult challenge in deflecting criticism from the role that government has played in the continued deterioration in the performance of the Scheme.

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