

Insurance Council of Australia Limited ABN 50 005 617 318 – Level 3 56 Pitt Street Sydney NSW 2000 Australia Telephone: 61 2 9253 5100 or 1300 728 228 Facsimile: 61 2 9253 5111

Scanned copy of Submission

Mr Mike Woods
Presiding Commissioner
Inquiry into National Workers Compensation and OH&S Frameworks
Productivity Commission Po Box
80
Belconnen ACT 2616

25 September 2003 Dear

Commissioner

ICA makes this further supplementary Submission to the Productivity Commission Inquiry into National Workers Compensation and OH&S Frameworks on behalf of ICA members, all of whom are licensed insurers and subject to the *Insurance Act 1973*.

Specifically, this Submission seeks to clarify ICA's position on a number of matters raised by the Department of Workplace Relations (DEWR) in their submission'.

ICA also draws the Commission's attention to a specific example of the unnecessary overlap between Commonwealth and State regulation in the area of workers compensation.

ICA response to the DEWR Submission

ICA wishes to clarify the industry's position on some of the matters raised by DEWR.

1. DEWR described the Commonwealth Government's social security scheme as having become "a '*de-facto*' workers' compensation scheme".²

ICA agrees with DEWR that "*(t)he cost associated with a work-related injury, disease or fatality, is the primary responsibility of the employer. ...and the [workers' compensation] scheme design should encompass those costs.*"³

Any cost transfer which occurs between workers compensation and social security is a consequence of features primarily relating to the design of the workers compensation scheme and benefit structure within that scheme and is not a factor within control of participating insurers.

2. DEWR stated that it "*is possible for the scheme/insurer to effectively 'park' a claimant on benefits until they reach the statutory cut-off or until they redeem future benefits*"⁴ and that this was not achieving durable return-to-work outcomes for injured workers.

ICA considers that proactive injury management is fundamental to achieving good outcomes in workers' compensation. The structure of the benefits and the design of the systems should promote early return to work, as appropriate, for the injured worker. Very close interactions

² Submission No. 166, as viewed at: <http://www.pc.gov.au/inquiry/workerscomp/subs/sub166.pdf>, accessed 17 September 2003. ³ DEWR, 2003, paragraph 9, p. 4.

³ DEWR, 2003, paragraph 10, p. 4.

⁴ DEWR, 2003, paragraph 23, p. 12.

between workers compensation systems, the health system and health professionals to support effective injury management and early return to work where appropriate and longer term assistance to those who sustain very serious injuries in the workplace environment should be encouraged.

Effective injury management is significantly influenced by scheme design. In many cases the injured worker can achieve a return to health and a capacity to work but in circumstances where no work is available with their current employer. It then becomes an issue as to whether or not those people should stay within the workers compensation framework. ICA has no firm view on this, but the issue does require consideration. There is a need for delineation between the role of workers compensation in terms of aiding and fostering the recovery from the injury and the placing of the worker in a position to return to work. However, where no suitable work is available then the question needs to be asked as to whether it is the role of the workers compensation system, the social security system or some other income support or job placement process to provide for that worker. In any event, insurers have a financial incentive to facilitate return to work, as this minimises the cost of claims and the financial commitment of the insurer.

3. To address the current complex and inconsistent approaches to coverage, DEWR has flagged an option to allow employees and employers to make their own decisions about coverage for workers compensation⁵.

ICA raises concerns about this option for two reasons:

- a. If workers' compensation is voluntary, as DEWR noted there will be issues of the certainty of coverage, and
 - b. More importantly, if workers are responsible for their own workplace insurance, the incentive on the employer to provide a safe workplace environment through risk-rated premiums is greatly reduced.
4. DEWR was concerned with the ability of insurers to discount premiums to attract business.⁶

ICA draws the Commission's attention to the new APRA prudential standards that have been in place since 1 July 2002. These requirements are onerous on insurers and, among other things, include the requirement that insurers must carry provisions and capital for outstanding claims and inadequate premiums. Under the requirements if an insurer becomes aware that a premium charged has been inadequate they must now apply additional capital to that business to cover for the fact that the premiums were not sufficient in the first place⁷. Consequently, there is strong control both on the pricing side and on the liability side. This requires a much heavier focus by insurers on the actual conduct, identification, and management of all of the risks across the operation of their business and the proper pricing of all of those risks, including premium risk.

The anomaly of Specialised Insurers in New South Wales

In NSW a facility exists whereby companies are permitted to underwrite insurance outside of the State scheme if they are licensed as specialised insurers by WorkCover New South Wales (WorkCover).⁸ There are currently two insurers who perform this role, Catholic Church Insurances (CCI) and Guild Insurance and Financial Services (Guild). One of the preconditions

⁵ DEWR, 2003, paragraph 96, p. 29.

⁶ DEWR, 2003, paragraph 105, p. 32.

⁷ Please refer to: Prudential Standard 110 - Capital Adequacy for General Insurers.

<http://www.auia.gov.au/General/loader.cfm?url=/commonspo/Security/oe/oe.cfm&PageID=4176>, accessed 23 September 2003.

⁸ See section 177A, *Workers Compensation Act 1987* (NSW)

to granting a licence is that the licensee must hold an authority granted by APRA to conduct general insurance under the *Insurance Act 1973* (Cth).⁹

CCI is an insurance company dedicated to providing insurance products and services to the Catholic Church in Australia. Similarly, Guild offers a range of specialist insurance services to retail pharmacies.

The requirement for specialised insurers to be licensed under both the NSW and Commonwealth regimes presents a particular difficulty for CCI and Guild in that they must satisfy the prudential requirements of both WorkCover and APRA. WorkCover requires licensees to lodge a deposit or provide a bank guarantee to secure total outstanding claims liabilities, calculated as a central estimate of outstanding claims liability plus a prudential margin of 20%.¹⁰ APRA's prudential requirements are different, being based on capital adequacy requirements and which exclude amounts held on deposit or bank guarantee in calculating the insurer's solvency to the extent that the amount exceeds APRA's capital adequacy calculation.

Consistent prudential requirements for Specialised Insurers

Under the scheme in NSW, CCI and Guild are required to lodge a deposit with, or provide a bank guarantee to, WorkCover which, when calculated in accordance with WorkCover's Licensing Policy, can exceed \$50 million. This means that both insurers must apply a considerable amount of their reserves against WorkCover's security requirements, which security is held by WorkCover in a limited range of government bonds. The effect of this is that investment portfolios may become heavily skewed and the insurers' investment management performance and risk profile can be undermined.

Further, under APRA's capital adequacy requirements so much of the amount held on security by WorkCover as exceeds APRA's capital adequacy calculation is excluded from APRA's solvency calculations. This has a potentially adverse effect on CCI and Guild's solvency for APRA's purposes.

ICA is concerned to ensure that specialised insurers such as CCI and Guild can continue to operate competitively and not be disadvantaged owing to the onerous and unnecessary dual prudential regulation. In particular, ICA considers that compliance by specialised insurers with APRA's prudential requirements should be sufficient to protect workers' compensation entitlements in New South Wales.

ICA's position remains that to avoid duplication or regulation and unnecessary costs, APRA should be the only regulator with responsibility for prudential regulation of all entities underwriting insurance, including entities underwriting statutory insurance. ICA therefore recommends that the additional prudential requirements of WorkCover be removed as a standard licence condition for specialised insurers who are authorised and regulated by APRA.

Yours sincerely

Dallas Booth
Deputy Chief Executive

⁹ See section 177A(c), *Workers Compensation Act 1987* (NSW)

¹⁰ Licensing Policy for Specialised Insurers under Division 3 of Part 7 of the *Workers Compensation Act 1987*, February 2001