



EDUCATION, TOURISM, INNOVATION AND SMALL BUSINESS COMMITTEE

Members present:

Mr SJ Stewart MP (Chair)
Miss VM Barton MP
Mr MA Boothman MP
Mr SL Dickson MP (via teleconference)
Ms JE Pease MP
Mr BM Saunders MP

Staff present:

Ms K Holden (Research Director)
Ms M Coorey (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO THE WORKERS' COMPENSATION AND REHABILITATION (NATIONAL INJURY INSURANCE SCHEME) AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 4 AUGUST 2016

Brisbane

THURSDAY, 4 AUGUST 2016

Committee met at 2.02 pm

CHAIR: I declare open the committee's public hearing into the Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016. I would like to introduce the members of the Education, Tourism, Innovation and Small Business Committee. I am Scott Stewart, member for Townsville and chair of the committee. Other members include Ms Verity Barton, member for Broadwater and deputy chair; Mr Mark Boothman, member for Albert; Ms Joan Pease, member for Lytton, who is replacing Mr Rick Williams, member for Pumicestone, at today's hearing; Mr Bruce Saunders, member for Maryborough; and Mr Steve Dickson, member for Buderim, who appears today via teleconference.

The hearing is being transcribed by Hansard and a transcript will be published on the committee's website. The hearing is also being broadcast live on the parliament's website. Those here today should note that the media might be present so it is possible that you may be filmed or photographed. Please turn off your mobile phones or at least put them on to silent mode if you have not done so already.

The committee's proceedings are proceedings of the Queensland parliament and are subject to its standing rules and orders. The purpose of this hearing is to hear from WorkCover Queensland about certain provisions in the Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016. I remind witnesses to please speak into the microphones and make sure that they are turned on.

HAWKINS, Mr Tony, Chief Executive Officer, WorkCover Queensland

HELEY, Mr David, General Manager Finance, WorkCover Queensland

REID, Ms Janine, Legal Counsel, WorkCover Queensland

CHAIR: Welcome. We have allowed about 20 minutes to hear from you followed by questions from our committee members. Mr Hawkins, would you like to introduce yourself and make an opening statement?

Mr Hawkins: Thank you, Chair. I appreciate the opportunity to make an opening statement, but to be honest I am happy to take questions because our departmental colleagues have provided a fair bit of information and I think that may be where the questions may have come from. I am happy to waive any opening address.

CHAIR: Thank you for that, Tony. However, we do have a new member to the committee who is probably not fully aware of the role of WorkCover and what you have submitted. Can you give us a brief about WorkCover?

Mr Hawkins: Yes, my apologies. WorkCover is a statutory authority which operates to provide workers compensation for the workers of Queensland and it is a requirement of all employers of those workers to hold an accident insurance policy. We at WorkCover manage all of the claims, both statutory and common law, that arrive. We have approximately 80,000 statutory claims per year and at the moment about 2,400 common law claims, but they will increase as a consequence of recent legislative changes. We have 150,000 policy holders, of which 140,000-odd we call a small business. They are businesses that have wages of under \$1½ million.

We operate in Adelaide Street with about 700 people. As I say, we are the only workers compensation jurisdiction in Australia where we manage our own claims. The other claims in other jurisdictions are outsourced. We manage those from our office in Adelaide Street. We have surplus funds that are invested with QIC, the Queensland Investment Corporation, and it is a combination of those funds and the premium we collect from employers of Queensland in total to pay the claims that are expected. Those claims are paid annually, but with common law there can be lead times of up to three years so those claims are what is called 'provided for'. A lot of our balance sheet is held up with liabilities which have been incurred but not necessarily reported. WorkCover operates as a not-for-profit operation and it tries to hold what is called a solvency of in excess of 120 per cent as mandated.

CHAIR: Thank you, Tony. I will now open it up for questions from the committee.

Miss BARTON: Thank you, Tony. Lovely to see you again. I have a couple of questions with respect not only to solvency and the impact on claims but also the consequences of some other amendments in the bill. You said that your solvency is at 120 per cent?

Mr Hawkins: No, it is a requirement to be at 120 per cent. The minister at the estimates hearing two weeks ago advised based on unaudited figures—they are still subject to audit by the QAO—that the solvency for the year ending 30 June was sitting at 162 per cent.

Miss BARTON: In terms of the premiums over the next five years, when you appeared before the Finance and Administration Committee last year with respect to some changes to your solvency, some other changes and the minimum solvency rate, at the time you had some actuarial evidence that you had been able to use to plot what the premiums would be over I think a five-year period. Have you obtained any actuarial advice with respect to what the impact of the National Injury Insurance Scheme will have on premiums or, alternatively, if you are not going to have premiums impact on your solvency?

Mr Hawkins: Yes, I understand the question. The actuary has costed the WorkCover cost for the NIS—and bear in mind that it is evolving—at about \$20 million per annum gross. We currently pay about \$4 million out now for those people who are part of that injury so it will be an additional \$16 million on an annual basis.

Miss BARTON: Is that an additional \$16 million in claims that WorkCover pays?

Mr Hawkins: Will pay, correct. As advised previously, the indicative number of people who would be on NIS that WorkCover would be attributed to would be 10 to 11. That is the actuarial assessment, but that is 10 to 11 people per year. That \$20 million is \$20 million over the life of that person's care for the period of time, and that is based actuarially on the basis that whilst they are regrettably catastrophic injuries in a lot of cases there is a lot longer life span than would have been the case before. That \$20 million is \$20 million for the first 10 people this year. Then there will be another \$20 million for the next 10 people. When I say that is the provision; that is the total allowance. We might be paying out for an individual, for example, \$100,000 in that first year so it starts to compound. Over many years it compounds and that is a provision because it is a liability that WorkCover has to pay.

To go back to your question about the premium, the indicative figure from the actuary for that \$20 million on an annual basis—and, as you are aware, we have an average premium rate of \$1.20—would be around about 1½ to two cents.

Miss BARTON: Is that each year or is that for the first year and it is impossible to quantify?

Mr Hawkins: No, that covers it. That would start to allow for each of the compounding effects.

Miss BARTON: With respect to the explanatory notes and the advice provided by the Office of Industrial Relations when we first received a briefing on the bill, the explanatory notes talks about a saving of I think \$40 million as a result of the changes to hold harmless clauses. My understanding is that it is not necessarily a saving per se but it is a reduced liability on the basis of co-claims. Janine might be the best person to answer if we are talking about claims—

Mr Hawkins: I am happy to answer that. You are quite right. We are referring to the Byrne decision. Prior to this proposed amendment, WorkCover had a liability for those particular claims which were stated at that time at \$40 million. We have had some actuarial advice subsequently to suggest that it may not be quite as much as that because of the reduced numbers of common law claims. However, you are correct: it is a liability that WorkCover has to put on its books and would, in normal circumstances, be required to get the premium or income to match it. If this legislation is passed, that liability is not on WorkCover's books. I guess in terms of that it is a saving to the extent that it would not need to be charged for premium for that component.

Miss BARTON: My understanding is that it is only a co-claim if the injured person seeks to make a claim against both their employer and the principal contractor, whereas if they only make a claim against their employer you are still 100 per cent liable so the premiums that that host employer pays is based on your acceptance of 100 per cent liability.

Mr Hawkins: Are you talking before or after the legislative changes?

Miss BARTON: Currently.

Mr Hawkins: Currently we are responsible if there is a hold harmless clause by the principal to the subcontractor. Yes, we are responsible for 100 per cent of that claim and that is what makes up that \$40 million.

Miss BARTON: If the amendment were to pass and the employee decided to only make a claim against their employer, not the principal contractor, you would still be liable for 100 per cent of the claim, so there would still be the liability on the books is the way I understand it?

Mr Hawkins: No, because we would make a contribution claim for that from the principal contractor.

Miss BARTON: Even if the principal contractor has not been mentioned by the injured person in making their claim?

Mr Hawkins: We would join them as well.

Miss BARTON: My understanding is that principal contractors have been excluded from WorkCover since the mid-1990s.

Mr Hawkins: In terms of cover, that is what was called the old section 46 and 47. That went out with the Kennedy amendments in 1996.

Miss BARTON: What happens to principal contractors in terms of their coverage of liability if they are not able to go through WorkCover, so they have to go and get private insurance from the market?

Mr Hawkins: Most large principal contractors would normally have public liability insurance. They would then make that claim against their public liability insurance. If they do not have it, then they have decided to self-insure or to take that risk themselves, and in each of those cases there could be an excess associated with that claim.

Miss BARTON: If they default on the excess—for example, say there is a claim made and the excess is \$800,000 or \$200,000—whatever the excess is for their claim—if they are not able to pay that excess, the injured person who has paid the claim gets nothing?

Mr Hawkins: No, they will still get the 100 per cent from us.

Miss BARTON: Then you come in at the back and cover them?

Mr Hawkins: Correct.

Miss BARTON: Has there been any consideration as to whether or not principal contractors could come back into the WorkCover scheme in the same way that subcontractors are able to take out WorkCover insurance? Has there been any consideration as to whether or not that is a viable option so that there are no potential unintended consequences?

Mr Hawkins: That is a very valid question and one that WorkCover has been discussing for a few years now with respective industry associations. The chair of WorkCover wrote to the minister to suggest that that is an option that could or should be looked at. The minister has written back and said they are more than happy for us to have a look at that and please make sure we discuss it with all of the respective stakeholders to ensure that all the options are considered.

Mr SAUNDERS: In terms of the stakeholders in the group and the principal contractor, that is no different to a director of a company who cannot get WorkCover if they are employing staff and they are a director of a company? That is correct, is it not?

Mr Hawkins: They cannot have an accident insurance policy, that is correct, but they can take out what we call a WPI policy, which is a working director policy.

Mr SAUNDERS: Can the principal contractor do a similar thing?

Mr Hawkins: If he is an employer, he must take a workers compensation policy out for his employees. If he the individual is a working director, he cannot have workers compensation; he has to fund his WPI policy or he may take an income protection policy from the private market.

Mr SAUNDERS: Thanks. I just wanted to clarify that.

Miss BARTON: I had another question with respect to the Byrne decision. I put this question to Paul Goldsbrough from the Office of Industrial Relations within Treasury and he indicated that it was best to put this question to you. When the Byrne decision was handed down, was there any consideration given to appealing the decision?

Mr Hawkins: Clearly our engagement with counsel is legally privileged and we really do not publicly discuss that.

CHAIR: Are there any further questions from the committee? With no further questions, I would like to thank our witnesses who have come in to appear before the committee today. The committee has not taken questions on notice at this stage. I declare the hearing of the Education, Tourism, Innovation and Small Business Committee closed.

Committee adjourned at 2.19 pm