

Introduction

The NIBA welcomes the opportunity to provide these comments to the NSW Government independent review of the New South Wales workers compensation scheme.

Insurance Brokers play an integral role in the workers compensation system in New South Wales, both as employers, and as trusted advisors of other employers and businesses. In light of this, insurance brokers are uniquely placed to offer insights on the current workers compensation system.

About the National Insurance Brokers Association

The National Insurance Brokers Association (NIBA) is the peak representative body for general insurance intermediaries in Australia.

NIBA represents over 450 member firms and 15,000 individual intermediaries including multi-national broker firms, broker networks, large Australian-owned insurance broking firms and small to medium-sized broker businesses.

Brokers place almost half of all general insurance premiums in Australia. In the 2019/20 financial year insurance brokers placed over \$25 billion in premiums and directly contributed \$2.6 billion in gross value added (GVA) to the Australian economy.

Insurance brokers perform a number of valuable services for their clients including;

- Helping clients to understand, manage and minimise their risk exposure
- Identifying and arranging appropriate insurance or other risk-financing mechanisms in either domestic or international markets
- Acting as the clients advocate if an insured event occurs.

In performing these duties, insurance brokers act as advocates for their client and have statutory, common law and professional obligations to act in the best interests of their client at all times.

Insurance brokers represent the interests of the purchasers of insurance, the policyholders, and not those of insurance companies. Consequently, comments made by NIBA and its members are made on behalf of its members and the public that purchases insurance, not on behalf of insurance companies.

Insurance brokers have extensive experience in workers compensation across Australia. They are heavily involved in privately underwritten workers compensation schemes in Western Australia, Tasmania, Australian Capital Territory and the Northern Territory, and also advise and assist their clients in government underwritten schemes in New South Wales, Victoria, Queensland and South Australia.

The role of brokers in the NSW Workers Compensation system

Consistent with the broad role and responsibilities of insurance brokers, insurance brokers play a vital role in the NSW workers compensation system.

Insurance brokers;

- Work with their clients to assist them in understanding their roles and responsibilities under workplace health and safety and workers compensation legislation
- Advise on risk management strategies and actions that can be taken to minimize or eliminate certain risks from the workplace
- Advise and assist employer clients in relation to claims that may be made by their workers, including the resolution and closure of those claims
- Arranging and assisting with the purchase of workers compensation insurance on behalf of their clients, including detailed discussions with and support for clients subject to experience rated insurance premiums.

Financial viability of the Workers Compensation Scheme

NIBA remains concerned about the continuing decline in the financial position of the Nominal Insurer. It is disappointing that the annual financial statements of the Nominal Insurer for the year ending 30 June 2020 have not been published as at 2 November 2020. We note that both Insurance Australia Group and Suncorp Group both published their annual financial reports some time ago. Both groups operate across Australia in a wide range of short and long tail insurance product areas, while the Nominal Insurer operates in one state with one line of business.

A recent ABC Four Corners investigation into the Nominal Insurer paints a disturbing picture for the future of the scheme. Documents uncovered by the investigation, revealed that the fund's liabilities outweighed their assets by almost \$460 million. In the nine months to March 2020, the scheme apparently recorded a \$2 billion loss. In addition to continuing losses the insurers' funding ratio has also fallen below the board preferred minimum 110 per cent.

This places NSW workers in a vulnerable position as a funding ratio below 100 per cent indicates that the organisation no longer has sufficient assets to fund their outstanding claims liabilities.

NIBA is concerned about the potential impacts to small businesses and workers if the scheme plunges into deficit. At its simplest level, insurance is the principle that the claims of the few are spread across the policies of the many. Traditionally premiums are set at a level that allows the insurer to cover the costs of claims, the administration of the fund and a return on the capital invested in the business. For most cases, premiums by and large are a reflection of the total cost of claims. If an insurer no longer has the required assets to fund these claims, the insurers' response is to either reduce the level of cover being provided or increase premiums.

In 2012, following systemic scheme deficits, sweeping reforms were introduced to significantly reduce benefits for injured workers in order to return the scheme to surplus. That this scheme will likely return to deficit so quickly after these reforms raises serious questions as to the sustainability of the current model.

Lack of competition

NIBA is also concerned that the lack of competition within the workers compensation space has led to a decline in service standards. Despite changes to icare's policy and premium procedures, injury management and claims management model, NIBA members continue to report poor claims and injury management practices. NIBA members have report that there has been no improvement since the agreed procedures with SIRA following the Dore report, and in many areas the experience has deteriorated.

Poor injury management and claims management practices prevent injured workers from receiving necessary medical and rehabilitation services in a timely and efficient manner. Since 2018 return to work (RTW) rates have fallen by at least 10 per cent across every period measured (4-week, 13-week and 26-week).

This delay in returning injured employees back to work penalises both workers and employers. Delays in RTW can create a secondary trauma as the injured worker undergoes a psychological injury. Meanwhile employers must both pay for an additional staff member to cover the injured worker for this extended period and pay higher premiums as a result of longer claims.

Issues and concerns of insurance brokers were raised with icare at regular meetings during 2018 and 2019. As concerns were continually raised, with little change being implemented to address those concerns, it became apparent that icare and the service providers had little or no capacity to introduce changes necessary to improve the operation of the system. NIBA members indicate those concerns remain to this day.

The concerns related to –

- Management of insurance policies. Icare recently created significant confusion in the marketplace by writing directly to employers who were represented by insurance brokers, raising confusion among employers as to the role of their broker. (Icare subsequently apologised for the error, however brokers are still working to resolve these matters with their clients.)
- Assessment of premiums, especially in relation to experience rated employers, leading to the position where insurance brokers were unable to give indications to clients of what their expected insurance renewal might cost.
- Failure to properly assess whether the scheme was liable for injuries that had been sustained (ie was it a work-related injury or did the injury arise as a result of some other cause).
- The overall failure of the injury management reforms, and the difficulties that have been identified in relation to claims handling and issues with adequate support for return to work.
- The impact of poor claims handling on the overall cost of claims, and hence the premiums of employers.

Competition is a key driver of innovation and productivity. As the monopoly provider of a government mandated insurance, icare and their claims management provider have little incentive to improve service delivery. While some employers are able to move to a self-insurance model as an alternative to icare, for most small business such models are not suitable.

Additionally, workers compensation in New South Wales has continually suffered due to the fact that the liabilities of the scheme reside within a legal entity (the Nominal Insurer) that is a creation of statute, but does not have a physical existence in its own right.

The claims liabilities of injured workers are not carried on the balance sheet of icare (they are published as a separate section in the icare annual financial reports), nor are they carried on the balance sheet of the NSW Government. The Government does not “own” those liabilities, nor does icare. In fact, it can be argued that no-one owns the liabilities of the NSW workers compensation scheme.

In these circumstances, there is little incentive to drive responsible oversight and management of the scheme’s operations. Where liabilities are owned within an organisation (as occurs in privately owned

insurance companies, which are subject to external prudential regulation and oversight by the Australian Prudential Regulation Authority) management is required to be fully accountable for the management strategies that are adopted and implemented, and the financial outcomes of those strategies. This has not occurred in relation to New South Wales workers compensation for many years.

In reviewing the Nominal Insurer scheme, NIBA encourages the independent reviewer to consider the legislative arrangements in other jurisdictions and how they support injured workers and businesses. Schemes that include private insurers as underwriters (such as Western Australia, Northern Territory, Tasmania and the Australian Capital Territory) generally deliver better outcomes to injured workers and their employers. The risk of loss is transferred from the employer to APRA authorised and regulated insurance companies, who own and are responsible for the correct management of liabilities and claims, in accordance with legislative requirements and scheme obligations.

For example, in Western Australia (the largest privately underwritten scheme where seven insurers compete within the market) medical costs have remained stable and 91 per cent of claims had liability decisions made within 14 days. This has resulted in an extremely high level of premium stability with average premium levels remaining within 1.48% and 1.65% of employer's wages for the past five years. The scheme is able to achieve this while also providing higher weekly entitlements to injured workers than NSW.

Conclusion

Insurance brokers in New South Wales have had great difficulty supporting their employer clients with the assessment of premiums, the determination of liability for claims, the arrangement of appropriate injury management strategies and the payment and resolution of claims. Work undertaken by the State Insurance Regulatory Authority following the completion of the Dore report was intended to address many of these issues. The experience of our members is that very little if any progress has been made. In light of this, it is NIBA's recommendation that the review consider alternative mechanisms for the delivery of workers compensation insurance in New South Wales.