

TWO YEARS ON - THE NSW WORKERS COMPENSATION SCHEME

SUMMARY:

The Liberals/ Nationals 2012 amendments to the NSW Workers Compensation Scheme were harsh and unnecessary.¹ They manufactured a flimsy crisis based on a lie of ‘economic necessity’ to cost-shift the financial burden of workplace injury on to injured workers and their families.

WorkCover’s PwC actuary has confirmed that the 2011 prediction of a \$4 billion deficit was largely based on a temporary low-point in returns from yields as a result of the Global Financial Crisis.

Even while praising its 2012 amendments, the Government acknowledges that the bulk of its ‘turn-around’ of the Scheme to its current surplus was not as a consequence of slashing benefits to workers, but rather massively increased returns as ‘a result of stronger investment yields.’

PwC has also confirmed that with the ending of the GFC:

- Without any of the 2012 changes, the deficit would have fallen to \$2 billion in June 2014 and to \$500 million in June 2018. It would have approached full funding by 2021. The Scheme that the Liberal’s “inherited” in 2011 was solvent.
- With the 2012 changes, by 2019 WorkCover will hold 55% more in assets than it needs to meet its liabilities. This would amount to a surplus of around \$5 billion.

WorkCover premiums paid by employers have been cut by 17.5 per cent, but the Baird Government has not provided a single cent to injured workers struggling to survive after being injured at work.

The 2012 changes were a major cost shifting exercise from the workers compensation scheme and employers,² and on to injured workers, their families and the Federal Government through Medicare and the (ever harsher and more restricted) social security system. These unfair changes should be scrapped.

LABOR’S POLICY ON WORKERS COMPENSATION:

In Government, NSW Labor will:

- scrap the changes to workers compensation introduced in 2012;
- conduct a genuine review of the workers compensation scheme;

¹ *Workers Compensation Legislation Amendment Act 2012 (NSW)*

² Insurance companies essentially act as contractors (the scheme agents) to deliver claims management and legislative administration. The money is the schemes (WorkCover Authority).

- restore “journey claims” to cover workers for injuries occurring on their way to and from work;
- give injured workers the financial assistance they need to pay their medical bills;
- reinstate protections for workers with total and permanent disabilities; and
- improve claims management and return to work outcomes by cracking down on the performance of those with claims management and injury management responsibilities such as those insurance companies who are contracted to WorkCover as scheme agents.

FINANCIAL VIABILITY:

The financial viability of the Scheme has supposedly been under threat for over three decades. Competitive federalism postulates the unsupported notion that capital will flee if NSW workers compensation premiums are not as low as another state – even though the States all have different schemes³ - and accordingly every seven to ten years benefits are cut as the scheme is claimed to be ‘blowing out’ or ‘becoming insolvent’ with the downturns in the market or changes in actuarial assumptions.

Thus the NSW Liberal-National Government justified its 2012 changes as being essential to avoid major increases in premiums, which would supposedly be required to cover the cost of the ‘blow-out’ unless drastic cuts were made.

COST SHIFTING:

In 2013, without any review of the impacts that the 2012 amendments were having on injured workers, the NSW Government announced that employers were to be given an average 7.5% premium reduction in June and a further 5% premium reduction as of 31 December. This 12.5 % reduction in rates was justified as being ‘to help grow the state’s economy.’⁴

In May 2014 the Government now claimed premiums were \$1.1 billion lower than they would have been without the 2012 changes.⁵ In the 2014/15 Budget, again with the even statutory review not yet completed, the Government cut premiums by a further 5 per cent.

Yet at the same time as employers are receiving a 17.5 per cent premium reduction, Ministerial correspondence is urging injured workers to approach Medicare once their medical treatments ceases after 12 months.

³ For example, both Queensland and Victoria have employer excesses.

⁴ 7.5% reduction in June 2013 and 5% in December 2013. Constance ‘Strong Investment Returns Deliver a Boost to Workers Comp Scheme’ www.nsw.liberal.org.au/news/state-news 28 April 2014

⁵ Perrottet Media Release ‘Review of Workers Compensation Scheme Underway’ 16 May 2014

The 2012 changes have in effect resulted in a major cost shifting exercise - away from the scheme and employers, and on to injured workers, their families, and the Federal Government through the Medicare system.

FINANCIAL DRIVERS OF THE SCHEME:

The Liberal-Nationals continue to claim:

- that they ‘inherited an unsustainable Workers Compensation Scheme with a deficit of more than \$4 billion’ as at December 2011;⁶
- that the 2012 amendments ‘turned around’ this deficit, resulting in a current surplus of \$1.36 billion;⁷ and
- that without the 2012 amendments businesses were facing a 28 per cent increase in their premiums, and over 12,000 jobs were at risk.⁸

The claimed ‘deficit’ in December 2011 of \$4.083 billion for outstanding claims liability remains contested. It included long term projections that made multiple assumptions regarding likely future investment returns and the discount rate. Any talk of ‘deficit’ relates to actuarial predictions of funding needed to cover long term future liabilities. ‘Deficit’ and ‘surplus’ in this context do not mean that the scheme was ‘going in to the red/ black’ in any particular year.

Myriad inquiries have identified the key drivers of the performance as being investment returns and actuarial choices in regard to matters such as discount rates.⁹ For instance, in 2012 the Auditor-General concluded that it was not claims by injured workers that had adversely affected the performance of the scheme, but rather: ‘The key drivers of the increase in the outstanding claims liability are movements in the discount rate, inflation rate and changes to the risk margin.’¹⁰

Even the insurance industry acknowledges that claims by injured workers are not the most significant driver of the scheme. Suncorp for instance acknowledges that 50% of the December 2011 deficit “was driven by investment markets that impacted the asset side of the Nominal Insurer’s balance sheet … of the remaining 50 per cent, half was due to the deterioration in performance of weekly benefits, and the other half was due to workplace injury damages.”¹¹

⁶ Constance Media Release ‘Getting WorkCover Back on Track.’ 31 December 2013

⁷ Constance ‘Strong Investment Returns Deliver a Boost to Workers Comp Scheme’ www.nsw.liberal.org.au/news/state-news 28 April 2014

⁸ Constance ‘Strong Investment Returns Deliver a Boost to Workers Comp Scheme’ www.nsw.liberal.org.au/news/state-news 28 April 2014

⁹ See Roth and Blayden, ‘Workers Compensation: An update’. NSW Parliamentary Research Service e-brief 2012

¹⁰ NSW Auditor General Report to Parliament, Volume 5, 2012, p. 99.

¹¹ Suncorp Group, answers to questions on notice, LC Law and Justice Committee Review of WorkCover Authority, 24 April 2014.

The Liberals and Nationals laid responsibility for the financial performance of the Scheme squarely on injured workers. The 2012 amendments focussed almost entirely on reducing benefits to injured workers, introducing financial penalties to require them to return to work more quickly; measures to prevent access to compensation for certain types of injuries; and processes to remove some injured workers from the compensation system altogether.

Yet perversely while still claiming that its 2012 amendments that have hurt so many injured workers and their families, had ‘turned around’ the scheme - which has now recorded a \$1.36 billion surplus - even the Government has acknowledged that: ‘... it’s important to note that two thirds of the billion dollar improvement is a result of stronger investment returns.’¹²

None of these increased returns have been used to resume paying any of the benefits that had been removed from injured workers. Instead the money has been used to reduce the cost of premiums paid by employers. Without even a hint of irony, one of the reasons given by the Government for giving employers this extra cash is ‘to enable business to invest back into safer work places.’¹³

WHAT IF THE 2012 AMENDMENTS HAD NOT BEEN IMPLEMENTED?

PWC¹⁴ concluded that if the 2012 amendments had NOT been enacted:

- By December 2013 the deficit would likely have been halved to between \$2.0 to \$2.5 billion.
- By June 2014 the deficit would likely have been reduced to \$2.0 billion.
- By June 2018 the deficit would likely have been reduced to \$0.5 billion.
- By 2021 no deficit.

As previously detailed, ‘deficit’ in this context relates to actuarial predictions of funding needed to cover long term future liabilities. ‘Deficit’ and ‘surplus’ do not mean that the scheme was ‘going in to the red/ black’ in any particular year.

¹² Constance ‘Strong Investment Returns Deliver a Boost to Workers Comp Scheme’

www.nsw.liberal.org.au/news/state-news 28 April 2014

¹³ 2014/15 Budget Paper No. 1, p. 7.

¹⁴ PWC letter to Acting General Manager of NSW WorkCover 1 April 2014, p. 3 (tabled at LC Inquiry into WorkCover)

CURRENT FINANCIAL STATUS OF THE SCHEME:

From June 2008 to December 2011, there was a major deterioration in the funding position of WorkCover NSW, taking the Scheme from a funding ratio of 104% to one of 78%.¹⁵ This period corresponded with the Global Financial Crisis. PWC argues that around half of this deterioration was due to external factors during the GFC, while the other half was due to deterioration in the underlying claims management performance.¹⁶

At 31 December 2011, WorkCover's Investment Division estimated a long term average return on assets of 6.58% p.a. This formed part of the basis for the assertion of a '4.1 billion deficit' by the Government when it introduced its legislation in 2012. However, the actual investment return in calendar 2012 was 10.0%. In calendar 2013 it was 11.2%.¹⁷ The 2011 estimates were simply wrong.

The risk free discount rates have also changed significantly since December 2011. Yields on Commonwealth Government Securities have increased, reducing the value of the outstanding claims liabilities. The discount rates continue to be well below the typical levels observed prior to the GFC.¹⁸

At present the scheme is slightly over \$1.3 billion in surplus, and that is a \$1 billion improvement over the last six months.¹⁹ But even with the recent reductions in premiums, **around 20% more is being collected in premiums than is required to pay the current package of benefits.**²⁰

If no changes to premiums or benefits are made for the next 12 months, by June 2015 the scheme will achieve a funding ratio of 125%, or assets in excess of liabilities of 25%.²¹ This is well above the preferred solvency upper target of 110%.²² Accordingly the government can choose to:

- Continue to lock away society's capital in WorkCover's balance sheets; or
- Further reduce premium rates; and/or
- Improve benefits to injured workers. For example, at a minimum:
 - If items currently excluded such as hearing aids, batteries, prostheses, home and vehicle modifications were exempt from the medical cap, there would be a cost of only \$20 million per annum,

¹⁵ PwC, WorkCoverNSW – Executive Summary: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011 (12 March 2012), p. 2.

¹⁶ Evidence of Mr Michael Playford, LC Law and Justice Hearings 12 May 2014, p. 19.

¹⁷ PWC letter to Acting General Manager of NSW WorkCover 1 April 2014, p. 3 (tabled at LC Inquiry into WorkCover)

¹⁸ Constance 'Strong Investment Returns Deliver a Boost to Workers Comp Scheme'
www.nsw.liberal.org.au/news/state-news 28 April 2014

¹⁹ Evidence of Mr Michael Playford, LC Law and Justice Hearings 12 May 2014, p. 20.

²⁰ Evidence of Mr Michael Playford, LC Law and Justice Hearings 12 May 2014, pp. 20-21.

²¹ Evidence of Mr Michael Playford, LC Law and Justice Hearings 12 May 2014, p. 21.

²² Constance 'Strong Investment Returns Deliver a Boost to Workers Comp Scheme'
www.nsw.liberal.org.au/news/state-news 28 April 2014

and a one-off impact for all existing claims of around \$100 to \$140 million.²³ The total size of the Scheme is around \$11.3 billion, so the cost would be around 1%.

- If the medical cap was removed for those with 21-30% whole person impairment, there would be a cost of \$18.5 million per annum, and a one-off impact for all existing claims of around \$183 million.²⁴ The cost when compared to the size of the total scheme is around 1.3%.

GOUDAPPEL:

Despite undertakings from former Premier O'Farrell that the 2012 changes would not be retrospective, WorkCover's successful High Court appeal in *Goudappel* means that the NSW Government will now avoid paying about \$350 million in lump sum workers compensation payments to over 16,000 injured workers.²⁵

Mr Goudappel had suffered crush injuries to his left foot and ankle during a workplace incident in April 2010. Soon afterwards he made a claim and began receiving weekly benefits and payment of his medical expenses. In August 2011, he was assessed as having a 6% Whole Person Impairment (WPI).

On 20 June 2012, Mr Goudappel made a claim for lump sum compensation in respect of his WPI which at the time entitled him to a payment of \$8,250. Unfortunately for Mr Goudappel, on 27 June 2012, the *Workers Compensation Legislation Amendment Act 2012* (NSW) was assented to with retrospective effect. Lump sum claims for a WPI of 10% or less were barred unless they had been brought before 19 June 2012, up from the 1% threshold.

CONCLUSION:

There was no economic justification for the 2012 amendments which solely targeted injured workers. While any winding back of the harshest aspects of the Liberals and Nationals changes would be welcome, none of the anguish they have caused was necessary. The retrospective elements are particularly repugnant. The 2012 changes that are continuing to hurt so many people in NSW should be scrapped. A genuine review should be conducted that focusses on the performance of claims and injury management by WorkCover, scheme agents, and employers.

²³ Evidence of Mr Michael Playford, LC Law and Justice Hearings 12 May 2014, p. 27.

²⁴ PwC letter to Acting General Manager, WorkCover NSW, 2 June 2014, p. 5 (tabled at LC Inquiry into WorkCover in response to questions asked at the hearing on 12 May 2014). These are lower estimates.

²⁵ PwC letter to Acting Director of Claims, WorkCover NSW, 14 April 2014, p. 3 (tabled at LC Inquiry into WorkCover on 12 May 2014)