Workers compensation financial and premium supervision

Premiums (Policies of Insurance)

Risks

The Chamber notes that three of the five key risks that have been identified are, first of all, "*information availability, consumer protection and review avenues for policy holders*", secondly, "*minimising premium volatility*" and thirdly, "*reducing incentives to game the system*".

The Chamber submits that these risks are related. In other words, a lack of sufficient information to explain the recent volatility that a number of the Chamber's members have experienced in their premium levels is, of itself, an incentive to "game" the system.

For example, as the lodging of claims can have a profound impact on an employer's premium especially in terms of the speed an injured worker is returned to work, this can act as an incentive for employers to fail to progress a claim, once notified, in as expeditious a manner as possible. This can lead to under-reporting and impede an injured worker's timely return to work. We support the principle identified in the earlier Workers Compensation Financial and Premium Supervision Discussion Paper that "*perverse incentives or incentives that might compromise the objectives of the scheme in relation to the effective treatment and rehabilitation of injured workers must be avoided*"[1].

Further, the Chamber submits that, given the participation of specialised insurers in the premium system, regulatory frameworks need to be maintained to ensure that specialised insurers are restricted from "cherry-picking" the premium pool as this would leave the statutory scheme as the insurer of last resort and, as a consequence, transfer costs to employers in the statutory scheme without any overall improvement in scheme performance.

Availability of Premium Information for Employers

The Chamber notes the recent publication by SIRA of the *NSW Workers Compensation System Inaugural Performance Report*[2]. While we welcome the release of this report, the Chamber remains concerned that the information included in it is far less than the actuarial report previously released by the former Workcover.

The Chamber notes recent comments made by both SIRA and icare during parliamentary hearings in response to calls by the Chamber and other stakeholders for the release of full actuarial reports on the performance of the scheme:

[1] Page 33 *Workers Compensation Financial and Premium Supervision Discussion Paper*
[2] http://www.sira.nsw.gov.au/__data/assets/pdf_file/0003/108372/2014-2015-Workers-compensation-system-performance-report.pdf

The Hon. LYNDA VOLTZ: *I will begin by asking about actuarial reports. As you know, they were previously publicly available documents. They are no longer publicly available. Will you make them public?*

Mr LEAN: *I have been in the role for 12 months; I am not familiar with the history. The current Act provides that certain information is to be treated confidentially. There is an exception, in that I am able to certify that it is in the public interest that information be released. I am aware that employers have argued that there is a need for an increased level of transparency in this area. That is certainly something that we will be looking at over the coming weeks. We received the latest valuation from icare quite recently. We will be looking at the document to work out whether there is more information that can be released over and above what has been put out in the past through summaries of the valuations.*

….The point to make is that icare operates in a commercial market. It has competitors with specialist insurers. My understanding is that they hold the view that a lot of the information in the valuation is commercially sensitive. We need to work through those issues. But we are certainly mindful of the need for greater transparency[3]

The Chamber believes that any "commercial" interest in this information should be considered in light of icare acting as a statutory insurer and the clear public interest in ensuring that employers (the funders of the scheme) and workers (those covered by the scheme) are provided with sufficient information to engage in meaningful discussion and debate to ensure the scheme remains fair and sustainable over the longer term.

The Chamber also notes with some concern what appears to be a fundamental shift in thinking on the role of specialised insurers. Specialised insurers have been admitted to the system on the assumption they can bring specific industry experience and expertise to bear so as to produce better outcomes for injured workers, employers and the overall scheme. It is not a 'normal' competitive environment and it is the Chamber's view that employers and workers are entitled to know what is happening with the scheme and icare.

The Chamber agrees that a premium comparison calculator will be of use to experience rated employers, however cautions against the provision of such a tool at the expense of providing more detailed information about premiums and how they are calculated.

The Chamber submits that the information to be made publicly available should include:

- The fact that filings have been made (and the date that such filings were made).
- The key actuarial assumptions underpinning the filing.
- The date filings have been approved
- If any filing has been rejected, the grounds of such a rejection and the remedial action required by SIRA.
- Measures of an insurer's performance – for example, RTW rates and the nature and type of complaints made by employers and employees.

[3] See: https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryEventTranscript/Transcript/9825/Transcript%20-%207%20November%202016%20-%20Uncorrected.pdf

Cross subsidies – classes of employers

The Chamber recognises that a degree of cross-subsidisation will be inherent in any insurance system, but submits that care should be taken to avoid cross-subsidisation becoming institutionalised. The Chamber submits that this can be achieved through making it a premium design requirement that cross subsidisation be avoided but that if and when it occurs, insurer premium filings should identify how the cross-subsidisation is to be addressed.

Complaints, reviews and appeals

Avenues

There is currently limited scope for employers to action complaints and issues concerning claims and to formally appeal decisions beyond a formal premium appeal. The Chamber submits that this situation needs to be addressed.

MPPGs being prescriptive regarding timeframes, processes and escalations

The Chamber submits that the MPPGs should be prescriptive regarding timeframes, processes and escalations that are applicable to all licensed insurers. This will provide transparency and certainty to employers.

MPPGs allowing for final SIRA determinations on premium matters

The Chamber submits that the MPPGs should allow for final SIRA determinations on premium matters regarding industry, wages, claim costs and worker classifications. To do otherwise runs the risk determinations made by insurers will not be seen as balanced.

Wage Audits

The Chamber agrees with each insurer establishing and maintaining its own wage audit program with the caveat that each insurer's program be subject to compliance with overarching principles to be set and regularly reviewed by SIRA.

The Chamber also agrees with the prescription of minimum requirements for wage audit programs and submits that they should include:

- The provision of adequate notice to the employer to enable arrangements to be made to accommodate the audit activity;
- The provision of clear guidance as to the type of information that needs to be provided at the audit;
- A proper interrogation of an employer's activities to ensure that the correct classifications are assigned to an employer's business;
- A business practice that accommodates the exclusion of particular types of information from the audit. One example is where an employer engages sub-contractors. The Chamber submits that any information as to whether or not those sub-contractors engage their own sub-contractors should be excluded from the audit as such information would not be held by the employer but would be held in the books and records of the sub-contractor; and
- How data-matching activities between the SIRA and regulators such as the Australian Taxation Office will be incorporated (if at all) into the audit programs.

The Chamber submits that the compliance burden that faces employers when audited is of such a magnitude that a separate review into audit processes is warranted. That review should provide opportunity for employer recommendations to be put forward and included in the design of the program's overarching principles.

Cross-border insurance provisions

The Chamber submits that the regulatory burden imposed upon an employer's cross-border business operations is not only challenging but is also poorly understood both by regulators and employers.

The Chamber submits that not only should cross-border insurance provisions be described as comprehensively as possible, included in the MPPGs and published separately but an education and awareness program needs to accompany the publication of such material and commence well before the provisions commence (so that a suitable transition period can take place).

Apprentices/internships

The Chamber supports the adoption into the guidelines of the current apprenticeship incentive scheme. That incentive provides a premium reduction where an employer hires a recognised apprentice.

The Chamber is aware however of the workers compensation premium concerns among group training organisations and believes a re-examination of the current incentive should be undertaken to ensure it is meeting its objective of supporting the greater employment of apprentice workers.

The Chamber believes GTOs play an important role in undertaking training and developing the workforce of the future.

With the current incentive only applying on the tariff rate, not the experience rated component of an apprentice employer's premium, we have heard from a number of GTOs that are struggling to meet their premium obligations. Without some consideration towards premium relief some of those GTOs may exit the industry. This will ultimately impact on the availability of skilled staff at a time when NSW is seeing a surge in demand for skills particularly within building and construction. Any impact on skills availability will have wider consequences on the operating environment for NSW businesses.

The Chamber is aware that SIRA is actively considering these issues. While we support consideration of mechanisms to provide relief to GTOs, any solution must have general application to employers of apprentices, ensure that incentives for improved safety performance remain and that any impact on the wider scheme is sustainable over the longer term.

The Chamber believes that the incentive should remain part of the statutory scheme and not expand to specialised insurers. In terms of expansion to other training pathways, the Chamber believes that any such expansion be limited to those to which a training contract applies or linked to a course that is being subsidised under the NSW Smart and

Skilled (or equivalent) program (such as the new Federal Government program Youth jobs PaTH).

Small business - employer size

The Chamber agrees with the retention of special rules for small business employers and submits that the current methodology should be continued but be subject to review to ensure its continued relevance.

Definition of a Worker

The Chamber recognises that this is a complex area for employers especially as the different statutory regimes that apply to them are unlikely to be harmonised in light of the differences that exist between the underlying policy objectives.

The Chamber submits that employers need to be provided with as much assistance as possible in this respect, such assistance to include the provision of comprehensive guidance material to be regularly reviewed and updated to reflect changes in work and employment practices.

The Chamber has general concerns about the reliance upon an automated worker's status ruling service given that the decision-making process for determining a worker's status is essentially qualitative by nature. The Chamber submits that, should such a service be provided, it must be accompanied with appropriate measures which would protect an employer from retrospective application.

Definition of wages

The Chamber submits that the *Wages definition manual* not only be updated by SIRA to reflect the MPPGs but should also be included in an annexure to the MPPGs. Updates that directly reflect the remuneration requirements of the Office of State Revenue should also be included as they would assist employers with their compliance burden.

Definition of industry

Given the high level of compatibility between jurisdictions on industry rates, the Chamber submits that any changes made to the rating system should be done in conjunction with the other jurisdictions.

The Chamber is of the view that, given the breadth of classifications used by the ANZSIC system, any move to alter the current system of classification needs to ensure that sufficient particularity of data is maintained so adequate monitoring of industry-specific behaviour can continue and risk rates adjusted in a timely manner.

Financial and Prudential

Risks

The Chamber agrees in principle with the key risks identified by SIRA.

However, those principles are to be applied to a market which is established by statute and is not subject to normal market conditions.

It is the Chamber's view the application of the principles must not result in a weakening of the capacity of the principle insurer icare to mitigate fluctuations in premium rates and sustain a low volatility premium regime over time. Since 1987 in NSW, the statutory insurer has stepped in on occasions of significant volatility in the scheme to hold premium rates at or below break-even to minimise impacts on premium holders. If the statutory insurer had not done so, the impact of the volatility in the scheme on business operations would have been far more significant with consequential impacts on business closures and employment.

Consistent with this position, it is our view icare should not be constrained simply because it has different structure and prudential supervision than specilaised insurers.

APRA capital requirements

The Chamber submits that care should be taken to ensure that any requirements imposed by SIRA upon icare in pursuit of 'fairness' not undermine its capacity to address significant adverse events over time. An example of this from the late 1990's when the deficit peaked at $3.3Bn and premiums were artificially capped to limit the negative impact on the economy and employment

Similarly, it is our view SIRA should not seek to impose quasi–capital requirements on icare. To do so will result in upward pressure on premiums and that burden will have to be carried by those employers who are not self–insured or covered by a specialised insurer.

Workers Compensation Operational Fund Levy

The Chamber is not in a position to comment on the methodology for determining the Operational Fund Levy. Whatever the methodology, it needs to result in self and specialised insurers making a fair contribution.

Market Practices and Guidelines

Risks

The Chamber submits that specialised insurers "cherry-picking" the scheme is a key risk that requires measures be introduced to monitor specialised insurers so this type of behaviour can be detected and addressed.

Government competition policy

The Chamber submits that the Government's focus should be on providing a fair workers compensation system at an affordable price. Central to that outcome is the role of icare. SIRA should ensure icare, and other licensed insurers, act ethically and not anti-competitively but in doing so it should not impose artificial constraints or limits on icare simply because it has a different structure to specialised insurers.