

Special Report

WORKERS COMPENSATION & SELF INSURANCE

Rau's World - Public Sector Shake Up

By John Walsh

The SA Government's Cabinet recently discussed and approved the transfer of its public service workers compensation claims to the State's two existing claims agents. Public Sector Injury and Claims Management employees were notified of the changes by email on Friday, 4 November 2016.

I have no doubt that the transfer of administration of Public Sector claims to RTWSA is a consequence of the need to make the scheme more attractive to private insurers.

The email referred to a review of the injury management and return to work performance of the South Australian Public Sector which was carried out by Mr Philip Bentley, a former chairman of the Board of WorkCover Corporation and Mr Chris Latham. I believe that the report recommended that the administration of claims of Public Sector employees be undertaken by Return to Work SA ("RTWSA") from 1 July 2017. The direction applies to "new claims" and Public Sector Agencies, "will still be required to support and facilitate the return to

work of injured workers" while a transition plan is being developed.

The review was undertaken but I suspect that the result was pre-ordained!

I think it most likely that all existent claims will be "run off" by each agency, with any residual open claims being transferred for administration by RTWSA from 1 July 2018.

Amongst the transitional matters to be considered will be how premium is to be set for each Public Sector Agency when there is no existent

Continued Overleaf ...

history of premium setting to guide them. That should make for some interesting discussion around the tables in Treasury. Whilst the recommendations following the review come as no surprise, it is interesting to hear that Cabinet has, or is likely to, approve the Public Sector Agencies moving into the scheme as registered employers rather than retaining their current self-insured status pursuant to Section 130 of the Return to Work Act 2014.

If the aim was simply to reduce head count amongst Public Sector employees (and about 150 people are thought to be affected), it would seem much more logical for the administration of the Public Sector claims to be transferred to RTWSA but under a Treasury-managed fund model, as is the case in New South Wales. I have pointed out in various articles over the years, there are significant advantages associated with being self-insured. They include:

- the potential for significant financial savings;
- an improved safety focus;
- better control over claims;
- accountability of senior management;
- more control over costs;
- increased awareness of occupational health and safety;
- better day-to-day management of claims and results through early intervention; and
- better control of human resources.

... why would Cabinet choose to transfer the administration of public sector claims to RTWSA as a registered employer and, in so doing, relinquish the very advantages that self-insurers have in managing claims?

In fact, the superior performance of self-insurers as a cohort was acknowledged by the Deputy Premier and CEO of RTWSA when they appeared before the House of Assembly Estimates Committee in June 2013. The Deputy Premier, John Rau, had this to say:

“One of things that I found very interesting in this exercise is – bearing in mind that we are not necessarily comparing exactly apples with apples, because the cohort of employers with other self-insured cohorts tend to be the larger, more sophisticated employers than the employers that are in the scheme. However, even if you take that into account, it is clear, at least anecdotally, that the overall performance of the self-insureds in respect of exactly the same statutory framework, as you quite rightly say, is more impressive.”

More of a point, the single most significant difference I have been able to ascertain from my looking at the problem is the effective personal attention they give to individual claimants.....”

So, if it has been widely acknowledged by the Deputy Premier and the CEO of RTWSA that self-insurers out-perform the scheme on every measure, why would Cabinet choose to transfer the administration of public sector claims to RTWSA as a registered employer and, in so doing, relinquish the very advantages that self-insurers have in managing claims? In an article I wrote in [November 2011](#), I postulated that:

“Perhaps it is time to think outside the square, encourage self-insurance and diminish the role of WorkCover and allow the introduction of private insurers...the free market will

enable employers to source insurance where their needs are best met by the premium quoted”.

I have no doubt that the transfer of administration of Public Sector claims to RTWSA is a consequence of the need to make the scheme more attractive to private insurers.

Plan A

Plan A involved RTWSA actively promoting a return to the scheme with a number of self-insureds and being prepared to negotiate an attractive premium. Plan A failed because self-insurers value the status. The rigour of retaining self-insurance makes them better and more competitive in the market place and invariably the cost of managing their own claims is significantly less than the premium they would pay.

Plan B

Earlier this year RTWSA released a “consultation paper” in relation to

proposed changes to the policy on self-insurance. The consultation paper proposed dramatic changes for those employers who are currently self-insured in the scheme and those wanting to become self-insured. The changes would have resulted in a number of current self-insurers being forced back into the scheme and effectively closed entrance to self-insurance for any employer into the future other than the very largest.

Details of the proposed changes and their impact are set out in my article in [February 2016](#).

The proposed changes were met with concerted opposition from existent self-insurers and very quickly withdrawn.

The proposed changes, in my view were part of a Plan B to boost the scheme after Plan A had proven to be a failure.

Continued Overleaf ...

Plan C

So, Plan A failed, Plan B failed and the only remaining option to strengthen the scheme and make it attractive for privatisation was to move the administration of Public Sector claims to RTWSA.

The CTP legislation was changed a few years ago with a dramatic reduction in benefits available to people injured in motor vehicle accidents. The Government then announced a privatisation of the scheme, which delivered a massive \$355 billion surplus in the mid-year budget review handed down by Treasurer Koutsantonis in December 2015. The Government rationalised the decision by saying that Government had no place in what was essentially personal injury insurance.

The Government is following exactly the same path with Workers Compensation. The Return to Work Act 2014 made dramatic changes to the scheme and capped the

entitlement to income maintenance for all but “seriously injured” workers at 2 years. As a result, scheme performance went from an unfunded liability of \$1.4 billion to be fully funded to the extent of 115%. The same rationalisation that was applied to CTP can be applied to Workers Compensation. It is just another form of personal injury insurance.

No doubt the Government is hoping for a similar windfall when the scheme is privatised.

The decision to transfer the administration of Public Sector claims to RTWSA and relinquish self-insurance status presumably was canvassed and approved by the relevant unions. The union movement generally has had a philosophical objection to the concept of self-insurance for many years, even though in more recent times there has been a quite pragmatic acceptance of the undoubted fact that

members that are employed by self-insured companies achieve better outcomes. The PSA, in particular, must have mixed feelings because many of their members will be adversely affected by these changes.

Why Do It?

For all the criticism that the workers compensation scheme has attracted over the years, and particularly since 2001 when it slid into deficit, the one shining light has been the ability of the people responsible for the investment of premium funds to develop and maintain a successful investment portfolio. That immensely attractive asset would be very useful to a Government which is struggling to gain traction in an extremely difficult economic climate.

With Plan C the Government will achieve:

- their aim of making the scheme more attractive for private insurers to enter; and



- a windfall in the process, as they did with the CTP scheme; and
- at the same time a reduction in the head count in the Public Sector with additional savings as a result.

These are big brave changes that will have a massive effect upon those impacted.

All of this transition will be taking place in the lead up to the next State election and a number of unanticipated and unintended consequences can be expected to reveal themselves in the transition period.

The Impact

There are a number of practical issues that the Claims Agents and RTWSA will need to deal with. The Claims Agents will have their work cut out for them in incorporating Public Sector claims in their portfolios as a consequence.

EML and Gallagher Bassett who will be responsible for the management of the claims will need to gear up again, after shedding staff following the reduction of claims associated with the impact of the *Return to Work Act 2014*.

There will inevitably be a loss of claims management expertise as a result of the transition. It would be folly to think that EML and Gallagher Bassett will recruit the good Public-Sector claims managers as a matter of course. Many will in fact choose to stay in the Public Service and others will simply be lost to the industry. That is what always happens with this sort of change.

The profile of Public Sector claims is very different to the profile of claims currently in the registered scheme.

Continued Overleaf ...

The Public Sector is the largest and most diverse employer in the State. There are more than 100,000 employees in over 250 different job types. The roles include regulatory, health, education, policing, corrective services, construction, agriculture, scientific, administrative, legal, social welfare, emergency services, maintenance, parks, policy and legal enforcement.

The Commissioner for Public Sector Employment, Ms Erma Ranieri appeared before the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation Inquiry into work related mental disorders and suicide prevention. The Report was published on 15 November 2016. Ms Ranieri asserted that Public Sector employees are covered by several different legal instruments such as the *Public Sector Act 2009*, the *Police Act 1998*, *Education Act 1972* and others. The Code of Ethics which is issued under

the *Public Sector Act* sets out professional standards expected of all public sector employees and is underpinned by Public Sector values which establish a shared culture and vision for the sector. All will need to be taken into account by claims managers unfamiliar with Public Sector claims and process.

Ms Ranieri said that:

"The proportion of mental stress claims is higher in the Crown than in the registered scheme, and this is primarily due to the inherent risks in much of the frontline Public Sector work. The Crown has many employees working in the highest risk human service industries such as policing, corrective and emergency services."

Data from RTWSA from the 2013 financial year supports that assertion. The report notes that:

"A total of 1,503 psychological injury claims were reported. Registered employers were responsible for 744 of those while the Crown self-insured sector recorded 530 and the remaining 229 were recorded by private sector self-insured employers."

RTWSA data reveals that the number of psychological injury claims submitted by Crown self-insured agencies increased in the financial years 2014 and 2015.

Although the Crown represents 18% of the scheme they are responsible for nearly 40% of the total number of psychological injuries.

Psychological injury claims represent about 4% of all accepted claims but they are responsible for five times more in direct costs and indirect costs associated with absence from work. The high numbers of psychological injury claims being made by Public Sector workers is

largely as a consequence of the fact that the Crown is the sole or major employer of employees in the high risk categories for mental stress namely primary and secondary school teachers, police officers, registered nurses and welfare professionals.

The expectations of the heads of the Public Sector departments will be high and it will be a real challenge to deal with those expectations.

Premium setting for the various agencies will be a challenge because of a lack of premium history and department heads will be under pressure to keep premiums at an acceptable level. This will be extremely difficult in high risk departments like those referred to above. That pressure will in turn create tension. Registered employers have the ability to dispute a determination which accepts a claim if dissatisfied with the decision.

Will Public Sector agencies be afforded the same privilege?

That is an interesting question because effectively a government entity would be in dispute with another which is rather untidy but a necessary consequence.

All of this transition will be taking place in the lead up to the next State election and a number of unanticipated and unintended consequences can be expected to reveal themselves in the transition period.

It will be interesting to see what attitude the opposition takes to this initiative. Traditionally the Liberal party would be philosophically attracted to the privatisation of the Scheme but it is not often that a bi-partisan approach is seen in politics and we may yet see some Departments approaching the Liberal party to try to block the transition or at least to retain their self-insurance status in the scheme.

For further information in relation to the proposed changes please contact John Walsh at DW Fox Tucker Lawyers.

Contact details can be found below or on the DW Fox Tucker website at www.dwfoxtucker.com.au



MORE INFO

John Walsh Director

p: +61 8 8124 1951

john.walsh@dwfoxtucker.com.au

DWFoxTucker
Lawyers

DW Fox Tucker Lawyers

L14, 100 King William Street, Adelaide, SA 5000

p: +61 8 **8124 1811** e: info@dwfoxtucker.com.au dwfoxtucker.com.au

COMMERCIAL | CORPORATE | DISPUTES | INSOLVENCY | TAX | HOSPITALITY | IP | PROPERTY | ENERGY | RESOURCES
EMPLOYMENT | WORKERS COMPENSATION | SELF INSURANCE

Disclaimer: The information contained in this communication does not constitute advice and should not be relied upon as such. Professional advice should be sought prior to any action being taken in reliance on any of the information.

DW FoxTucker