

Options for Greater Involvement by Private Sector Life Insurers in Worker Rehabilitation

ACTU Submission to the Parliamentary Joint Committee on
Corporations and Financial Services Inquiry

Contents

Introduction	2
Executive Summary	2
The FSC Proposal	3
Privatisation of health and social services.....	7
Guiding Principles for the Workers' Compensation System.....	9
Australia's Workers' Compensation System	10
Private Life Insurance and Permanent Disability Cover	10
Conclusion	11

Introduction

1. The Australian Council of Trade Unions (ACTU) welcomes the opportunity to provide a submission to this inquiry. The ACTU is the peak representative body for Australian unions and Australian workers.
2. This inquiry is investigating options for greater involvement by private sector life insurers in worker rehabilitation, including consequent regulatory changes and related matters.¹ In particular, it is investigating options for how continuous disability policies, such as Total and Permanent Disability (TPD) insurance, could be utilised in worker rehabilitation, and the interaction of TPD and Income Protection (IP) insurance with government worker rehabilitation, health and disability schemes, and private health insurance.

Executive Summary

3. In summary, the ACTU is opposed to allowing private sector life insurers a greater role in worker rehabilitation, including via IP and TPD insurance, as this represents a move towards further privatisation which would ultimately:
 - a. Undermine the expansion of the public health system;
 - b. Undermine the universality of access and coverage and primarily public nature of the workers' compensation system;
 - c. Help shift the cost of workers' compensation from the employer to the worker;
 - d. Impact superannuation costs as superannuation funds are required to withdraw money from the general fund in order to meet legitimate claims costs that the insurance companies underwriting their policies refuse to pay, as has often been the case;
 - e. Lead to 'step down's, whereby life insurers reduce the benefits paid if workers do not participate in the therapies recommended by life insurers;
 - f. Compromise the independence of doctors and the voluntary nature of treatment. Doctors' groups raised a plethora of concerns about the practices of the life insurance industry in the previous inquiry into the life insurance industry by this

¹ See Terms of Reference:
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Rehabilitation/Terms_of_Reference

Committee. As the life insurance industry is motivated by profit and has an incentive to reduce the costs of claims, we are concerned that life insurers' earlier involvement in rehabilitation will allow them greater control over treatment and give them access to broader medical information. This information can be used to build data profiles to add cost-saving exclusions and to unfairly reduce claims; and

- g. Be against the public interest. The recommendations of this Committee's recent inquiry into the insurance industry; for example, Recommendations 8.1 through to 8.7 and 10.3 highlight serious inadequacies in the life insurance industry. On this evidence alone, any expansion of the role of life insurance industry would be anathema to the public good and is opposed.
4. The ACTU submits that there are numerous coverage gaps in the underfunded public health and social security systems and that the public services should be expanded and strengthened to address this. Likewise, there are various ways that the publicly-administered, employer-funded public workers' compensation system is inadequate and should be expanded. This is preferable to eroding the public systems further through substitution with private provision by for-profit companies where the worker pays the cost.
5. The Terms of Reference for this inquiry are very broad and group together different private insurance products with varying terms and conditions which cannot be assessed without a very clear map of their interactions and the purpose and details of any intended changes. We discuss the ills of the proposal put forward by the Financial Services Council ('FSC') to this inquiry² as an example of the misguided nature of private substitution and of giving private life insurers a greater role in workers' compensation and rehabilitation. It is incumbent on those seeking to change the workers' compensation, superannuation and health insurance systems to provide detailed proposals and demonstrate the changes are in the public interest. The FSC proposal is not supported by sufficient evidence or detail and is against the public interest even in principle.

The FSC Proposal

6. It must be noted that the present inquiry into workers' rehabilitation has not been born of the concerns of injured workers but rather it appears to have resulted from a push by the

² See Submission 1 to this inquiry by the Financial Services Council, dated 20 April 2018.

private life insurance industry to reduce costs and ultimately expand its market. Its genesis can be traced to a submission by the FSC to a recent Inquiry by this Committee into the life insurance industry.³ The FSC is a peak body representing Australia's retail and wholesale funds management businesses, (for-profit retail) superannuation funds, life insurers, financial advisory networks and licensed trustee companies.⁴

7. In its previous submission, the FSC proposed rolling back the firewalls between the workers' compensation, health and social security and superannuation systems on the one hand and private life insurance companies on the other so that life insurance companies could be further involved in worker rehabilitation. The Committee's report said it would not recommend such a proposal without a further inquiry⁵, which appears to be the main impetus for the current inquiry. The FSC has now filed a submission expanding on its proposal.⁶
8. The FSC proposes removing legislative restrictions that prevent life insurers from paying for rehabilitative medical treatment aimed at returning people to work. They argue that making early intervention payments could return people to work earlier and reduce the likelihood of continuous or permanent disability that might attract an IP or TPD payment.
9. The ACTU is alarmed that in support of the same proposal to the previous inquiry, the FSC proposed a need to "...*canvas tax incentives for individuals to obtain adequate insurance*" and to consider the ways in which "*support mechanisms such as the National Disability Insurance Scheme, social security and mandated workers compensation insurance can... act as a disincentive to take up disability insurance*".⁷

This makes clear that the FSC's current proposal is the first stage towards a broader objective of expanding their market by coercively substituting public health care and employer-funded workers' compensation with individually-funded private insurance. This

³ See the Financial Services Council Submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the Life Insurance Industry, Submission 26, dated 23 November 2016.

⁴ See Financial Services Council website: <https://www.fsc.org.au/about/>.

⁵ See Report of the Parliamentary Joint Committee on Corporations and Financial Services: Life Insurance Industry, March 2018, Recommendation 10.14, pxxv.

⁶ See Submission 1 to this inquiry by the Financial Services Council, dated 20 April 2018.

⁷ See Submission 1 to this inquiry by the Financial Services Council, dated 20 April 2018, p14.

is ultimately to be aided by 'tax incentives' – that is, through relative tax penalties for those who do purchase private insurance – and dismantlement of the public system. The 'tax incentives' the FSC mentions are suggestive of the Howard Government's introduction of the Medicare Levy Surcharge that coerced people into private health care by imposing a relative tax penalty on those without private insurance.

10. The ACTU is deeply troubled that the private life insurance industry has been the subject of at least 15 major inquiries in the last decade that have identified poor practice, including unfairly failing to pay out claims, conflicts of interest, overcharging, privacy breaches, provision of poor advice, opaque remuneration, commissions and fee structures, and inadequate consumer protections.⁸ Hence, the industry is thoroughly ill-suited to be trusted with a greater role in basic health protections such as workers' compensation and rehabilitation. The most recent inquiry into the life insurance industry by this Committee made a raft of unanimous recommendations for wide-ranging reform that have not yet been implemented. The life insurance industry is now under scrutiny by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services on the management of conflicts of interest and the ban on conflicted remuneration which is likely to identify further problems.⁹

11. Whilst objectionable in principle, the FSC's proposal is also lacking sufficient detail and evidence to be seriously considered. The only evidence they provide in support of their proposal to change the structure of the health and social security systems is a member survey, the details of which are unknown, and two hypothetical case studies.

⁸ See Report of the Parliamentary Joint Committee on Corporations and Financial Services: Life Insurance Industry, March 2018, and submissions to that inquiry. See also the ASIC Review of Retail Life Insurance Advice, 2014.

⁹ See 'Royal Commission Will Consider Life Insurance Remuneration', Risk Info, 1 May 2018, <<http://riskinfo.com.au/news/2018/05/01/royal-commission-will-consider-life-insurance-remuneration/>>, accessed 2 May 2018.

12. In the first hypothetical case study, an individual without private health insurance physically injures themselves and needs surgery before they can return to work and is placed on a public hospital waiting list for elective surgery with long wait times. FSC argues private life insurance could help this individual skip the public queue.
13. In the second, a woman has developed depression and anxiety as a result of workplace bullying, has no private health insurance, and has exhausted her paid leave and Medicare-subsidised sessions with a psychologist. Her workers' compensation claim has also been rejected. The FSC argues life insurance could help fund her sessions with a psychologist and anti-depressant medication.
14. In both hypothetical examples, the better solution would obviously be to improve the public health system. In the first example, the problem is the unacceptable wait times for elective surgery in the public system. Funding should be increased to reduce wait times. In the second example, it is not explained why the workers' compensation claim is rejected, given the psychological injury was caused by workplace bullying but, in any event, it highlights the uncontroversial fact that the public funding of mental health services is inadequate and needs to be increased.
15. Allowing private life insurers to offer an alternative form of private health cover is hardly a solution to the problems the FSC raise, given that they involve people who cannot afford private insurance. They are examples of people who happen to have one form of private insurance and not another and the reality of the inadequate funding of the public system. Free and universal health services are a fundamental human right and should not be left to private provision for those who can afford it.
16. Private life insurers have a history of litigiousness, conflicts of interest and unfairly refusing to pay out claims.¹⁰ There is a very real concern that life insurers, through early intervention and involvement, will use the increased access and the medical information gained to monitor claimants and deny or reduce final claims, particularly in relation to mental health, and that injured workers' might reject their earlier involvement in any event for this reason. As this Committee's previous report noted:

¹⁰ For example, see See Report of the Parliamentary Joint Committee on Corporations and Financial Services: Life Insurance Industry, March 2018, and submissions to that inquiry.

“The committee is... very concerned about evidence provided that patients are reluctant to seek necessary treatment, particularly for mental ill health, due to concerns over life insurers having access to their full medical record and then using such information to limit or deny coverage or a claim.”¹¹

17. Hence, the second hypothetical example is one where the early intervention by life insurance companies is particularly inappropriate and greater public provision is obviously preferable. That example involves someone who may potentially be delayed in returning to work because of an inadequate workers compensation system and public health system, particularly in relation to mental health injuries. Safe Work Australia reports that the acceptance rate for mental stress claims is under 70%, while it is more than 90% for all other work related injuries.¹² In the example, the woman could be working, spending and paying tax, not to mention released from suffering, but for the Government’s reluctance to invest in human capital through the provision of comprehensive, free mental health care. The example highlights the short-sightedness of austerity policies that seek to ‘save’ money by reducing or failing to expand necessary public health and social services when those services are a productive investment in a person’s ability to work and contribute to the formal economy as well as in human well-being.

Privatisation of Health and Social Services

18. Conservative economics assumes the private sector is more efficient than the public sector in all areas but the evidence suggests this is not the case. Austerity-driven Governments have progressively sought to dismantle the public system through cuts to public health services and the sale of public assets such as Medibank Private. Sometimes the public system is cut first and the private system allowed to expand, sometimes the private sector is allowed to expand first and then the public system cut, but one invariably follows the other. Once the private sector is in, it is difficult to restore the public, universal system and we are left with a system that is more costly in total and less universal in both access and provision.

¹¹ See Report of the Parliamentary Joint Committee on Corporations and Financial Services: Life Insurance Industry, March 2018 at pxi.

¹² Safe Work Australia, *The Incidence of Accepted Workers' Compensation Claims for Mental Stress in Australia*. Canberra, 2013, p9; Tyler Lane, Alex Collie and Behrooz Hassani-Mahmooei, *Work-related injury and illness in Australia, 2004 to 2014*, Institute for Safety, Compensation and Recovery Research Report, June 2016, p24.

19. Especially in areas that are natural monopolies, as well as health, education and other basic and essential services, privatisation leads to inflated cost, poorer quality services and lack of investment in necessary infrastructure and long-term community needs. The privatisation of electricity and telecommunications are instructive examples. Electricity prices have been inflated and, after privatisation, Telstra refrained from investing in the national infrastructure the nation needed, leaving Australian internet speeds and coverage to slide behind the pace of the developed world and inadequate services in the bush. The privatisation of the public TAFE system has been an unqualified disaster that is now universally condemned, resulting in inflated costs, a substantial portion of which was shifted onto students, wide-spread student exploitation, aggressive marketing for courses of increasingly dubious quality, and numerous bankruptcies of for-profit providers.¹³
20. Since privatisation by the Abbott Government in 2014, Medibank Private, formerly a state-owned enterprise comprising 29 per cent of the private health insurance market, has raised prices and increased gap fees. Without a public player in the private health insurance industry, Australians are paying more for private health insurance and receiving less. Private health insurance premiums have risen 27 per cent since 2013.¹⁴ In public hands, Medibank Private allocated 86 per cent of its premiums to meet claims, whereas general insurance only allocated approximately 50 per cent.¹⁵ Coverage and policy quality has also declined. A decade ago, less than one in 10 health insurance policies contained exclusions, whereas now four in 10 do.¹⁶

¹³ See John Quiggin, 'People have lost faith in privatisation and it's easy to see why', *The Conversation*, 10 August, 2016.

¹⁴ See Catherine King and Andrew Leigh, 'It's no wonder we're questioning the value of private healthcare', *The Sydney Morning Herald*, 5 March 2018 <<https://www.smh.com.au/national/its-no-wonder-we-re-questioning-the-value-of-private-healthcare-20180301-p4z2b2.html>>.

¹⁵ See The Australia Institute, '40 years on, Whitlam's Vision under threat', <<http://www.tai.org.au/content/40-years-whitlams-vision-under-threat>>, accessed 1 May 2018.

¹⁶ See The Australia Institute, '40 years on, Whitlam's Vision under threat', <<http://www.tai.org.au/content/40-years-whitlams-vision-under-threat>>, accessed 1 May 2018.

21. There is less control over the activities in the private sector, less transparency and accountability, and greater chance that the system will be exploited. In particular, the life insurance industry is not subject to the same regulatory oversight as the health and other social security systems.

Guiding Principles for the Workers' Compensation System

22. The ACTU believes both the public health system and workers' compensation system should be free of charge to individuals, comprehensive and leave no-one behind.

23. The following principles of workers compensation are drawn from the ACTU's Union Charter of Workplace Rights, endorsed at the 2012 ACTU Congress. These principles are based on ILO Conventions No. 155, 161 and 187, which provide a framework for best practice on occupational health and safety matters.

24. The ACTU believes that all workers have the right to a healthy and safe work environment, and that any worker injured at work should have access to fair and equitable levels of compensation and effective rehabilitation.

25. Claims should be resolved, and benefits provided, in a speedy, efficient and fair manner, noting that any delay in payment and treatment will result in prolonged suffering and unnecessary financial hardship for the injured worker.

26. Workers should be compensated for the total cost of their medical rehabilitation, with fair lump sum payments for permanent disability or death.

27. The ACTU believes that for rehabilitation services to be effective, they must be voluntary and independent of the employer and insurance companies. Hence, the ACTU opposes any coercion, intrusion or interference by insurers on the medical treatment determined by injured workers and their doctor/s.

Australia's Workers' Compensation System

28. Australia's workers' compensation system remains primarily public. It is administered and ultimately underwritten by State and Federal public agencies and government departments, and generally requires all employers meeting a certain remuneration threshold to take out workers' compensation insurance. The insurance premiums are paid for by employers and generally fixed by public agencies. The coverage and insurance is regulated by public authorities under public schemes and provided through a mixture of government, private and non-profit organisations including the capacity for self-insurance.¹⁷ The publicly-administered system provides for greater capacity and enforcement and so produces better health outcomes for workers.
29. The aim of the system is to ensure all workplaces are safe and all workers who injure themselves in the course of work are supported. Hence, it is a no-fault system: workers are covered whether or not the injury involves fault by the employer or employee. Where an employer fails to take out the necessary insurance, workers are generally still able to make claims through the government schemes.
30. Workers' compensation includes compensation and support to return to work for work-related injury or illness, including permanent or continuous disability. In the case of death, this includes lump sum payments and/or weekly pensions for partners and dependents. Dependents may also be able to recover damages at common law or under state legislation where negligence or tortious behaviour is involved such as under the *Wrongs Act 1958* (Vic).

Private Life Insurance and Permanent Disability Cover

31. Life insurance, income protection insurance, and total and permanent disability insurance, on the other hand, are additional, optional, commercial insurance products that cover death or permanent disability arising for any reason, including outside the workplace. These commercial insurance products are paid for by workers. A common way in which

¹⁷ Eg, see Safe Work Australia, Comparison of Workers' Compensation Arrangements in Australia and New Zealand, 2017, <https://www.safeworkaustralia.gov.au/system/files/documents/1801/comparison-of-workers-compensation-arrangements-australia-new-zealand-2017_0_1.pdf>, Table 2.2.

workers have such insurance is through their superannuation fund which usually offers IP and TPD insurance as part of their superannuation policy by default unless the worker opts out. The level of cover corresponds to the level of premium paid. Hence, shifting cover for worker rehabilitation from the workers' compensation scheme to life insurance would shift the cost from the employer to the worker, with coverage linked to the amount of the premium they choose. It would undermine the universality of access and provision that the workers' compensation and public health schemes should provide.

32. Income protection insurance does not provide the same protections and access to rehabilitation or dispute settlement procedures as workers' compensation. Many life insurance products require a worker to be 100 per cent recovered in order to return to work. The FSC does not indicate if life insurance products will be amended to ameliorate this problem.

Conclusion

33. The ACTU opposes giving private life insurers a greater role in worker rehabilitation and the ongoing attempts to further privatise essential social services such as health care and workers' compensation, including via FSC's proposal.
34. The private life insurance industry is not fit to provide essential social services, which are, in any event, only universal in both access and provision, if part of a comprehensive public social insurance system.
35. The ACTU recognises that the medical evidence suggests the early and correct diagnosis and treatment of work-related injuries and return to good work correlates to better health and recovery for injured workers. The ACTU notes that in recent decades the public health system has been diminished and people have been coerced into private health care and private individual insurance. The ACTU supports strengthening the public workers' compensation and health systems to ensure all people have access to free, comprehensive health care and are fully protected from work-related injuries, including comprehensive compensation and early and adequate rehabilitation support and the early intervention and treatment of injured workers. This includes reducing wait times for elective surgery and expanding public mental health services to the full extent of social need.

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