

Allianz Australia Limited

ACN 000 006 226

Terry Towell
Managing Director

17 June 2011

Richard Grant
Acting Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Grant

**Families, Housing, Community Services and Indigenous Affairs and Other
Legislation Amendment (Further Election Commitments and Other Measures)
Bill 2011**

I write in relation to the review of certain parts of the above Bill by the Economics Legislation Committee. Thank you for the opportunity provided to Allianz to highlight to the Committee its concerns with the notification requirements placed on 'compensation payers' by Schedule 4 – Notice of payments of recompense for personal injuries of the Bill.

Allianz is concerned that obligations the Bill appears to place on compensation payers would place significant administrative and financial burdens on affected companies, government agencies and others, and also cause financial hardship to injury compensation recipients and their families.

The intent of the legislation is to amend the Social Security Act 1991 (the "Act") to require that compensation payers provide to Centrelink, advance information on the payment (or, if a periodic payment, a change in the payment) of any compensation under an "injury compensation scheme or insurance contract". This is so that Centrelink can adjust (eg reduce) a "compensation affected payment" (eg age or disability support pension, social security benefit etc – see s17(1) of the Act) if any such payment impacted on the eligibility for or amount of a person's (or their dependent's) Centrelink benefit.

Material accompanying the Bill (eg the Explanatory Memorandum (EM) and Second Reading Speech) emphasise its application to insurers and statutory authorities. However, the notification obligations in the Bill would apply to a large range of other compensation payers, such as businesses (including small businesses), non-government and not-for-profit organisations (such as Churches) and even individuals. Allianz understands that there has only been limited consultation with only a few of the affected government authorities, and none with affected businesses, NGOs and

others. As such many affected parties may not even be aware of the potential impacts of the Bill on them. Allianz therefore encourages the Committee to seek input into its deliberations from a wide cross-section of all affected 'compensation payers', as there may be many impacts that are unique to stakeholders other than insurers.

The EM implies that the notification obligations would only apply to payments made in respect of the lost earnings of injured persons. However, legal advice to Allianz suggests that the obligations would potentially apply to all payments related to an injury (eg medical costs etc) paid either to the injured person or to the provider of injury-related goods and services. An analysis of the impact of such requirements suggests that the Bill may require the notification of over 20 million payments per annum, just in respect of workers compensation injuries alone.

The administrative and financial burden on workers compensation payers if this were the case would be significant, amounting to over \$100 million per annum just in the wage costs of the additional staff that would be required to meet the Bill's proposed notification requirements. Once the payments relating to injuries or illnesses suffered in other circumstances were included (eg motor vehicle accidents, on public or private property, medical misadventure) these impacts would be significantly increased.

Earlier consultations with the relevant Australian Government Department indicated an intention that only payments relating to lost earnings would need to be reported. However, nothing in the Bill indicates that the requirements are so limited. Indeed, the drafting suggests otherwise. For example, to identify the sorts of payments intended to be covered by the Bill, a new concept of 'Recompense' is defined. This definition is identical to an existing definition of 'Compensation' in s17(2) of the Act, except for the removal of the words "that is made wholly or partly in respect of lost earnings or lost capacity to earn resulting from personal injury" from a reference to the type of payment covered by the definition of compensation. The removal of these words in the otherwise identical definition of "Recompense" can only be interpreted as having the intention of ensuring that the sorts of payments intended to be covered were not limited to those made "in respect of lost earnings".

Moreover, the proposed notification requirements set out in the s1167B(1) of the Schedule apply to a "payment of a lump sum of recompense", referred to as a "one-off payment" in the heading to that sub-section. While lost income (or economic loss damages) payments can be of a one-off or lump sum nature (as well as being "periodic payments"), so are many millions of payments made to injured persons or "anyone", such as to a medical services provider or chemist. In the absence of any definition of "lump sum" (eg one restricting it to lost income payments), and in light of the unconstrained types of payments covered by the definition of 'recompense', legal advice to Allianz suggests that all types of payments (whether related to lost income or not) would need to be notified.

An example of the apparent broad scope of payments, payees and the payment circumstances covered by the Bill can be seen in Row 4 of the Table in the Schedule, which requires notification of payments by "Anyone" to "Anyone" if the "Payment affects ... the payability of a compensation affected payment to the payee or someone else". As an "advance pharmaceutical allowance" is a "compensation affected payment (see s17(1)(l)(i) of the Act), it would appear that, for example, the payment

(one-off or periodic) by an insurer to a chemist for medicines (or reimbursement of the injured person for such a payment) could be captured. As a compensation payer would have no idea if a payment in that situation (or any other) would affect the payability of compensation affected payment a payee (let alone "someone else"), they could only notify such a payment to ensure they were in compliance with the notification requirements. If a notification was required in this instance, all payments to, or on behalf of, an injured person would need to be notified.

Even if the notification requirements were limited to payments relating to lost income, this would still impose a significant burden on compensation payers in various circumstances. For example, the Bill would require a notification (14 days in advance of the payment) of any "change" in a periodic payment (see s1167A(2)). A person on workers compensation benefits, depending on their circumstances, could receive a (slightly) different compensation payment nearly every pay, requiring notifications in each case. As many workers compensation payments are paid by the injured worker's employer through its payroll system, (subsequently receiving reimbursement from the workers compensation insurer or agent) the notification requirements would place significant administrative burdens on affected employers.

Further, if the employee was paid weekly, the employer would have to delay the salary payment in each instance by at least a week in order to meet the Bill's requirement that notifications occur "at least 14 days before ... the proposed payment." Such delays in receiving wages could impose significant hardship on injured workers and their families. It is also noted with alarm that if there is a failure to notify results in any debt due to the Commonwealth as a result of the overpayment of a compensation affected payment, that debt can be recouped from the person (or insurer, NGO, business etc) that was required to make the notification.

The Attachment provides more detail on the potential scope and impacts of the Bill's notification requirements.

Should you wish to discuss any of the matters raised in this letter further, please contact Nicholas Scofield, General Manager Corporate Affairs (02-9390 6596 or 0416088414, nicholas.scofield@allianz.com.au).

Yours sincerely

Terry Towell
Managing Director

ATTACHMENT**Families, Housing, Community Services and Indigenous Affairs and
Other Legislation Amendment (Further Election Commitments and
Other Measures) Bill 2011****Potential impacts of Schedule 4 – Notice of payments of recompense
for personal injuries****In what circumstances do payments of ‘recompense’ have to be notified to
Centrelink?**

The intent of the legislation is to obtain from compensation “payers”, advance information on the payment (or, if a periodic payment, a change in the payment) of any compensation under an injury compensation scheme or insurance contract. This, therefore, captures compensation payments made under the following injury compensation schemes and insurance contracts:

- workers compensation schemes underwritten by private insurers, which operate in Western Australia, Tasmania, the Australian Capital Territory, the Northern Territory, and under the Seacare scheme nationally;
- workers compensation schemes underwritten by governments, which operate in New South Wales, Victoria, South Australia and Queensland, as well as the Commonwealth (ie Comcare). And specialist government schemes such as that operated by the NSW Dust Diseases Board;
- specialist workers compensation insurers that operate in some States, for example,
 - Catholic Churches Insurance,
 - Guild Insurance,
 - State Cover Mutual (workers compensation for NSW Local Government Authorities – similar entities exist in some other States),
 - NSW Coal Mines Insurance.
- self insurers operating in all jurisdictions (ie large companies that self insure for workers compensation);
- motor accident schemes underwritten by private insurers, which operate in NSW, Qld and the ACT;
- motor accident schemes underwritten by governments, which operate in Victoria, WA, SA, Tasmania and the NT;
- government self-insurance arrangements that provide, for example, workers compensation, public liability and other injury-related compensation payments to public sector employees and individuals injured on government-owned or operated premises (eg Comcare, Comcover, NSW Self Insurance

Corporation (SICorp) and similar self insurance entities in other States and Territories;

- specialist providers of non-workers compensation, injury-related compensation insurance (eg public liability), for example, Catholic Churches Insurance and Guild Insurance.
- public liability insurance contracts;
- product liability insurance contracts;
- professional indemnity insurance contracts;
- directors and officers insurance contracts; and
- medical indemnity insurance contracts.

Who are the compensation 'payers' required to notify payments to Centrelink?

While there is a focus on insurers as compensation payers in material connected with the Bill (eg Explanatory Memorandum, Second Reading Speech), the obligations are placed on "anyone" that makes such payments (and many other entities other than insurers make compensation payments and hence will have notification obligations under the Bill). These include:

- private insurers;
- businesses providing workers compensation payments (in many cases employers pay workers compensation payments through their own payroll systems and are subsequently reimbursed by the workers compensation insurer or government WorkCover agency);
- businesses (eg corporations, unincorporated businesses, sole traders, partnerships) making payments in respect of settlements and damages awards in relation to injury claims for which they may be able to claim against a professional indemnity, public liability, products liability, directors and officers, or medical indemnity insurance policy;
- businesses making payments as above in relation to injury claims for which they are unable to claim against an insurance policy;
- not-for-profit organisations (eg Churches, NGOs, charities, community groups) making payments in the same circumstances as a business as outlined in the preceding three dot points;
- specialist providers of non-workers compensation injury compensation insurance cover, for example, Catholic Church Insurances
- private individuals making payments in the circumstances described above in respect of businesses and not-for-profit organisations;

- State and Commonwealth Government workers compensation authorities where private insurers are not involved in claim payments (eg Qld WorkCover, Comcare);
- Other government workers compensation agencies, for example, the NSW Dust Diseases Board;
- State Government motor accident authorities where private insurers are not involved in claim payments (eg Victoria, Western Australia, Tasmania and the Northern Territory);
- State and Commonwealth Government self-insurance agencies (eg Comcover, NSW SICorp and other State and Territory agencies)

What sorts of payments are required to be notified to Centrelink?

Section 17(7) of the Bill would require notification of any payment arising out of a settlement or court award in relation to injury compensation litigation, any payment under a government scheme of insurance (eg workers compensation) or "any other compensation or damages payment" ((17(7)(d)). Depending on the nature of the claim, for example, whether it was pursued under common law or through a statutory compensation scheme, payments for the following items would appear to be required to be notified:

- past economic loss;
- future economic loss;
- gratuitous care;
- general damages;
- compensation for relatives;
- funeral expenses;
- medical and related expenses;
- medication and pharmacy expenses;
- rehabilitation expenses;
- artificial aids and appliances;
- statutory workers compensation permanent impairment entitlements
- payments for time off work (ie workers compensation payments);
- domestic assistance (eg cleaning, lawn mowing);
- home or motor vehicle modifications; and
- travel expenses.

To whom do payments need to be made to be covered by the notification obligations?

The Table in Section 1167A of the Bill sets out the circumstances in which a payment made by a payer to a payee needs to be notified. Examples of such circumstances include a payment to "anyone" by an "insurer" under a "contract of insurance", or a payment by "anyone" to "anyone". Thus, in the context of personal injury compensation, the Bill would appear to require the notification of payments to the following individuals and other entities:

- an injured person;
- dependent of the injured person;
- medical services provider (eg hospital);
- allied health provider (eg physiotherapists, occupational therapists, etc)
- medical practitioner;
- rehabilitation provider;
- pharmaceutical products provider (eg Chemist)
- transport provider (eg Taxi operator, airline);
- provider of aids and appliances;
- domestic care provider (eg nurse);
- domestic services provider (eg cleaner, gardener, handyman);
- provider of services related to home modifications (eg builder, plumber, tiler); and
- provider of services related to vehicle modifications (eg motor mechanic, auto electrician, panel beater).

How many payments are made that are potentially required to be notified?

The area of injury compensation for which the most data is relatively easily available is workers compensation.

According to the Australian Bureau of Statistics, in 2009-10, around 229,000 injured workers received workers compensation benefits, with approximately 217,500 taking some time off work.

According to Safe Work Australia, in 2008-09, 128,735 workers suffered a serious injury (defined as more than one week of time off work) and received workers compensation benefits. Depending on their wage payment frequency (ie generally weekly or fortnightly), many of those would have received periodic payments.

In addition, to new claims lodged every year, insurers and other workers compensation payers will at any point of time have a number of open claims relating

to injuries suffered in earlier periods. It is not uncommon for a workers compensation insurer to have up to the same number of open claims as the number of new claims received in a 12 month period.

Item	How many?	No. of related payment notifications
New workers compensation claims per annum	Approx 230,000	At least 230,000 (assume at least 1 medical payment each)
No. of injured workers taking some time off work	Approx 217,500	At least 217,500 (assume at least 1 time-off-work payment)
No. of injured workers – more than 1 week off work	Approx 129,000	At least 65,000* (assume 50% cessations)
No. of injured workers on periodic payments (ie more than 2 weeks off)*	Approx 65,000 ⁺	Approx 260,000 (assume 4 notifications each).
No. of weekly payments made per annum*	Approx 600,000	Up to 600,000
No. of other payments "in respect of an injury" made per annum*	Approx 20 million	Approx 20 million
Total		Up to 21.4 million

* Estimated

⁺ Some workers can be on statutory benefits for decades and in any one year could have several changes in the amount of benefit (eg indexation). Thus, it is assumed that the average number of changes per year needed to be notified is four, but the average could be much higher.

Based on the table above, the Bill could require workers compensation payers to notify up to 21.4 million payments per year to Centrelink.

It is worth noting in this context that most workers compensation recipients will not be in receipt of a Centrelink income support payment (at least those employed full time before their injury). Moreover, the spouses of most workers compensation beneficiaries will not be in receipt of a Centrelink payment (at least those whose spouse works full time). According to ABS labour market statistics, of the 11.4 million people currently in the labour force, 8 million of these people are employed on a full-time basis, and therefore would fall into the category of workers who would not be in receipt of a Centrelink payment.

Therefore, as only 2% of the labour force received workers compensation benefits, we can assume that of the 3.4 million part time workers who *may* be entitled to a Centrelink payment, this equates to a potential 68,000 workers who may fall into the category of receiving both workers compensation and Centrelink benefits. This means that less than 30% of the notifications made to Centrelink would have any bearing on a person's entitlement, as the vast majority (703%) of workers compensation recipients working full time and therefore not in receipt of a Centrelink payment. Thus, most of the information collected by Centrelink through the proposed notifications will not be relevant to their assessment of the correct amount of a Centrelink beneficiary's payment.

For these 161,000 full-time workers who receive workers compensation but who are not Centrelink clients, the Bill would materially impact the timeliness of their benefit payments with 14 days notice required to be provided before commencing, varying or ceasing a payment for periodic compensation. This will cause undue financial hardship for a number of workers and their families.

When are notifications required to be made?

On commencement of the legislation (1 October 2011), compensation payers are required to provide information to Centrelink in relation to all current relevant compensation claims 14 days in advance of any further payment being made to any of the claimants. Going forward, for new claims, notification is required 14 days in advance of any payment relating to the claim being made.

States require workers compensation wage replacement payments to be paid (or commence) within a certain number days of a claim being accepted. This is often 7 days but can be as low as 3 days, and insurers and/or employers may be subject to penalties for late payment. In the absence of an agreement with Centrelink for an alternative notification period, such payments would need to be delayed for up to 14 days in order to satisfy the notice period under the proposed legislation. Hundreds of thousands of injured workers (and in some other injured people) would have the payment of their weekly (or other) benefits delayed.

After initial introduction, any change to a periodic payment (eg ongoing workers compensation benefit) to the more than 100,000 injured workers in receipt of such payments at any one time, would need to be notified to Centrelink at least 14 days in advance of making a change in the amount of the payment. The amount of a periodic workers compensation payment can change for a large range of reasons, including:

- a change in the injured worker's work capacity resulting in a partial return to work (eg a few days a week);
- a change in an injured worker's work capacity that results in a change in the nature of the limited work they are undertaking (eg more days per week, normal work duties instead of restricted work duties, working overtime);
- 'step down' in weekly payments due to the time on benefits (workers compensation schemes generally provide for workers compensation benefits to be paid at pre-injury wages for an initial period, after which the level of benefits reduces to some percentage of pre-injury wages or to a statutory rate of payment;
- the indexation of the rate of statutory periodic workers compensation benefits, which occurs at least annually (in some jurisdictions, half yearly or quarterly); and
- if on statutory benefits, a change in the status of the injured worker's dependents (eg a spouse commencing or ceasing work, or a child ceasing to be classed as a dependent (eg on reaching 18 years of age)).

Any of the above events (or other reasons not listed) that result in a change in the amount of an injured worker's periodic payment, will require a notification to Centrelink and potentially a delay in the relevant payment in order to comply with the 14 day advance notice requirement.

What is the potential financial burden on workers compensation payers?

In addition to the impact on workers, there are also significant administrative impacts on this volume of notifications being required to be made. Making notifications would be a manual process. During consultations with insurers, the Department gave no indication that it would be possible to put in place automated data collection processes. And the proposed 1 October commencement date provides no time to develop and implement such processes. The IT costs of putting in such an arrangement would be substantial.

During consultation with insurers, the Department indicated that they would make available an on-line form which could be used for notifications. The details that could be expected to be required to complete such a form would, at a minimum, include:

- personal details of the injured person (eg name, address, age);
- nature and amount of the compensation payment;
- details of to whom the payment was made (eg if not the injured person);
- amount of the previous payment if the notification relates to a change in a periodic payment; and
- details of the entity (eg insurer, business, person etc) making the notification (eg name, address etc).

If it took 15 minutes to complete the notification form for each payment, the estimated number of hours required to provide such notifications in relation to workers compensation payments alone would be 5.35 million hours.

- A full time equivalent (FTE) employee may work approximately 2000 hours per year (40 hours per week * 48 weeks per year).
- On this basis, across Australia, workers compensation payers alone would need to employ around 2,675 FTEs to undertake the notifications required by the Bill.
- At an average total employee cost of \$40,000 per annum, the wages impact alone on workers compensation payers would be \$107 million per annum.

Adding the number of notifications relating to non-workers compensation injuries would significantly increase the numbers above.

Centrelink estimates that this measure will produce budget savings to the agency of around \$12 million per annum (in respect of payment notifications across all injury compensation classes).

No attempt has been made to estimate how many hours of work would be required for Centrelink to sort through all the notifications and apply the information to their objectives.