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Agency risk management practices

The Tasmanian Risk Management Fund Unit of Treasury would like to hear from other agencies about their risk management practices.

Contributions to this newsletter on any subject related to risk management can be emailed to Bindi Knoop at bindi.knoop@treasury.tas.gov.au.

Welcome

Welcome to the June edition of the Tasmanian Risk Management Fund (TRMF) newsletter, *riskmatters*, published by the Department of Treasury and Finance.

A memorandum was sent to agencies on 17 March 2003 outlining the estimated contributions for the 2003-04 financial year to assist in agency budgeting for the coming financial year. Another memorandum was sent to agencies on 8 May 2003 asking agencies to nominate the excess level to which their agency will be subject for each category of risk. The TRMF Steering Committee will confirm 2003-04 contributions as soon as possible after 30 June 2003.

Treasury and the Fund Administration Agent, Marsh Pty Ltd, organised three risk management seminars in March and a workers' compensation open forum in April 2003 – all of which were very successful. For more information on these seminars, see pages 4 and 5.

Public liability continues to be an important issue for the Tasmanian Risk Management Fund. An extract of a presentation made to the Fund's Liability Sub-Committee on the Government's intended response to the review of the law of negligence is featured on page 2 of this newsletter.

This issue includes an update on the development of the Statements of Indemnity for the risks covered by the Fund. The Statements of Indemnity set out the basis on which the Fund will meet claims costs for risks and is equivalent to a traditional private sector insurance policy (see page 7).

The claims experience of the Fund in 2002-03 was mixed. The increase in payments for weekly benefits for workers' compensation, which was of major concern in early 2003, seems to have improved in recent months. However, still of concern is the significant increase in the average cost of motor vehicle claims for 2002-03. For more information on the performance of the Fund as at 30 April 2003, see page 2.

The TRMF Unit has a new member – Alison Lyne. Alison has a sound knowledge of risk management, having worked at the Hobart City Council as a Legal Services Officer for over seven years. I would like to take this opportunity to welcome Alison to the Unit and to Treasury.

Philip Mussared
Chairman

Tasmanian Risk Management Fund Steering Committee

Performance of the Fund in 2002-03

Following are some facts and figures regarding the performance of the Fund in relation to workers' compensation claims, public liability claims, property claims, and other claims, extracted from the Fund Administration Agent's report as at 30 April 2003.

Workers' compensation

Monthly workers' compensation payments peaked in October 2002 at \$2.51 million. There has been a general downward trend since then, with payments decreasing to \$1.15 million in April 2003.

Weekly payments peaked in November 2002 at \$875 164, but have steadily decreased since then, with the exception of March 2003. In April 2003, weekly payments were \$273 110.

The number of workers' compensation claims reported (regardless of when the incident leading to the claims occurred) decreased from 154 in July 2002 to 115 in April 2003.

Overall, the number of workers' compensation claims reported is estimated to decline from 1 566 in 2001-02 to 1 532 in 2002-03, a fall of 2.2 per cent. Total workers' compensation costs are expected to decrease only slightly from \$20.925 million in 2001-02 to \$20.841 million in 2002-03, which represents less than a less than 1 per cent decrease.

Light motor vehicle fleet claims

As at 30 April 2003, 144 claims had been made with a total estimated cost of \$537 525 in relation to the light vehicle fleet. If claims continue to be made at this rate, there will be 173 claims made in 2002-03 with a total estimated cost of \$645 030, compared to 165 claims made in 2001-02, with a total estimated cost of \$338 543. This represents an increase of 5 per cent in the number of claims and 91 per cent in claims costs.

This increase has been largely driven by an increase in large claims. As at 30 April 2003, there had been 28 large claims - ie claims with a total estimated cost of more than \$5 000 - with a total estimated cost of \$415 828, compared to 20 large claims in 2001-02 with a total estimated cost of \$242 045.

Police, Ambulance and miscellaneous motor vehicle claims

The estimated total number of claims for Police for 2002-03 is 52, which is a decrease of 39 per cent compared with 2001-02. However, the average cost of claims is estimated to increase by 56 per cent.

The estimated total number of claims for Ambulance is 16, which is 18 per cent less than for 2001-02. However, the average cost of claims is estimated to rise 310 per cent.

The estimated total number of claims for Miscellaneous vehicles is 7, which is 9 per cent less than for 2001-02. However, the estimated average cost of claims has increased by 141 per cent.

Property (excluding Housing) claims

There have been a total of 9 claims to date at a cost of \$288 880. If this trend continues, it is estimated there will be

a total of 12 claims for 2002-03, with a total estimated cost of \$305 173, compared with 14 claims in 2001-02 costing \$1.69 million (reflecting a few large claims for the Department of Education). The average cost of claims has decreased from \$120 673 in 2001-02 to an estimated \$25 431 in 2002-03, which represents a 79 per cent decrease.

Housing claims

As at 30 April 2003, there have been 2 313 claims made with a total estimated cost of \$2.42 million in relation to Housing. If claims continue to be made at this rate, there will be 3 084 claims made in 2002-03 with a total estimated cost of \$3.22 million, compared to 3 031 claims made in 2001-02, with a total estimated cost of \$1.83 million. This represents an increase of 2 per cent in the number of claims and an increase of 76 per cent in claims costs. This increase has been driven by an increase in the number of large claims.

Liability claims

The average cost of liability claims in 2002-03 is currently \$9 159, compared with \$26 087 in 2001-02.

There have been a total of 28 liability claims to date in 2002-03, with an estimated cost of \$256 461. If claims continue at this rate, it is estimated that the total number of claims will decrease from 57 claims in 2001-02 to 37 claims in 2002-03, representing a 35 per cent decrease. The cost of claims is estimated to decrease from \$1.49 million in 2001-02 to \$341 948 in 2002-03, representing a 77 per cent decrease.

Public liability issues

Jenny Milne, Principal Policy Analyst, Economic Policy Branch, Treasury, gave a presentation to the Liability Sub-Committee of the Tasmanian Risk Management Fund on 17 April 2003 on the Government's response to public liability issues.

Ms Milne provided a brief overview of proposed tort law reform arising from recent events that have impacted strongly on the insurance market, driving up the cost of public/professional liability cover in recent years.

Following is a summary of Ms Milne's presentation:

Overview

The terrorist attacks on 11 September 2001 and a decrease in competition because of the collapse of HIH and a number of recent mergers/acquisitions have had a significant impact on the cost and availability of insurance generally, and public/professional liability cover in particular.

In response, the Tasmanian Government has adopted a three phase approach:

- short term strategies aimed at helping those hardest hit, especially community organisations;
- the first stage of legislative changes that could be implemented without having national consistency; and
- a review of the law of negligence – consideration of the Ipp report.

What is the problem?

- higher insurance premiums;
- more restrictions are being placed on insurance policies – eg higher excesses and no coverage for certain events; and
- insurance cover is no longer available in some cases.

Causes of the problem

- the under-pricing of insurance in the past;
- an increase in the number and cost of successful insurance claims. In Tasmania, in the period 1997 to 2001, personal injury claims costs increased by 25 per cent per annum, with the result that the average cost of such a claim was \$25 500 in 2001 (\$37 500 nationally);
- reduced competition in the insurance market;
- higher reinsurance costs, especially after 11 September 2001;
- difficulties in assessing risks and estimating future claims costs; and
- increased focus of insurers to not place shareholder funds at risk.

Phase 1 response

- abolition of stamp duty on public liability premiums;
- worked with Local Government to establish the “Our Community” scheme. Under this scheme, councils provide “umbrella” cover to organisations through their public/professional liability cover; and
- established the Public Liability Insurance Facilitation Scheme (PLIFS) for not-for-profit and community-based organisation. Under PLIFS, funding is provided to assist organisations to meet the gap between the cost of their previous public liability cover and the cost of their new cover.

Phase 2 response

The Phase 2 reforms are contained in the *Civil Liability Act 2002*, which came into force on 1 January 2003. Some of the reforms contained in the Act are as follows:

- restricting the amount of damages that can be awarded when the use of recreational drugs by a person has contributed to their injuries;
- preventing people from being able to claim damages if they are injured while they are engaged in serious criminal activity;
- providing courts with the power to order structured settlements; and
- clarifying that saying sorry is not an admission of liability.

Phase 3 response

Most of the Ipp Report recommendations relating to the law of negligence are to be implemented on a nationally consistent basis, with those Ipp recommendations that relate to the awarding of damages to be implemented on a state-by-state basis.

A copy of the Report can be accessed at:

www.revofneg.treasury.gov.au/content/Report/PDF/LawNegFull.pdf;

Key elements of Tasmanian legislation are as follows:

- professional standards of care and duty to inform;
- removing liability for obvious risk for recreational service providers;
- defining foreseeability, standard of care, causation and remoteness of risk;
- clarifying contributory negligence;
- specifying the liability of public authorities;
- setting thresholds to apply to general damages;
- providing indemnity for volunteers; and
- the introduction of proportionate liability for economic loss.

Insurance clauses in contracts

There have been a number of recent inquiries regarding the use of “standard” insurance clauses in contracts. For example, common amounts used as “standards” in contracts seem to be \$10 million for public liability cover and \$5 million for professional indemnity cover for all contractors.

These amounts are not always appropriate. Each contract involves different risk exposures and in some circumstances professional indemnity insurance may even be irrelevant.

Insurance requirements should always reflect the particular risk exposures of each individual contract. Agencies also need to be aware of contractors who attempt to remove or reduce their own liability and play agencies against each other.

Establishing what is appropriate cover may require you to seek advice from a range of sources, such as from industry experts and contract managers of similar contracts. If you are unable to obtain any information on cover for similar contracts, contact Crown Law for advice.

Recent address to Heads of Agencies

The Secretary of Treasury, Mr D W Challen, addressed a recent Heads of Agency meeting on the importance of risk management within agencies and the need for senior management commitment and support. Following is a summary of the presentation.

The Tasmanian Risk Management Fund is now directing resources to information, communication and education strategies. The Fund's objective is to assist agencies to better identify, mitigate and manage risk and, in so doing, reduce the cost of risk.

A series of seminars have been conducted for agency staff on risk management issues. It is important that Heads of Agency provide leadership and support for enhancing the management of risk. The financial provision for risk is only one aspect of risk management and all agencies need to adopt a holistic approach to risk management.

At present, there is a high level of interest in risk management at all levels within agencies. Heads of Agency are urged to harness this interest to create a more holistic approach to risk management.

The level of interest in risk management within agencies is evidenced by the number of participants attending recent risk management seminars:

- two risk management workshops were held in October 2002 and a further three workshops in March 2003, with approximately ninety agency representatives in total attending; and
- a workers' compensation forum was held in April 2003, with approximately 30 agency representatives attending.

Commitment to risk management

The key driver of agency contributions to the Fund is their ability to manage risks. While Marsh, Lumley, NRMA and the Office of the DPP are there to provide assistance once an incident has occurred, it is up to agencies to take a more pro-active approach to managing risk.

All agencies need to commit resources to establishing an organisational philosophy and culture that ensures risk management becomes an integral part of all activities of the agency. The commitment to risk management must come initially from senior management. This is illustrated by the Risk Management Standard AS/NZS 4360 for developing and implementing a risk management program – ie:

- obtain the support of senior management;
- develop an organisational policy;
- communicate the policy;
- manage risks at an organisation level;
- manage risks at the program, project and team level; and
- monitor and review.

Strategies

There are a number of potential strategies to ensure that risk management becomes an integral part of all activities of an agency, including:

- considering ways to encourage agency managers to be more accountable for managing risk – eg by devolving responsibility for the payment of agency contributions

to division level, rather than meeting those costs from a central pool;

- supporting the establishment of processes to review agency risks and develop subsequent action plans. In this regard, a number of agencies, including Treasury, the Department of Education and the Department of Infrastructure, Energy and Resources, have recently completed agency-wide risk audits; and
- encouraging agency staff to attend risk management training sessions and information forums organised by the Fund and Marsh.

Workers' Compensation Forum

Late in 2002, the Tasmanian Risk Management Fund and its Fund Administration Agent, Marsh Pty Ltd, identified a need to hold a forum on workers' compensation matters, in particular weekly benefits and rehabilitation. This was in response to the fact that weekly compensation payments looked set to increase from \$6 million in 2001-02 to approximately \$8 million in 2002-03, a rise of 33 per cent.

A Workers' Compensation Forum was held on 15 April 2003 at Salamanca Inn. Approximately 20 agency personnel involved in workers' compensation matters attended the forum.

Paul Turner, of the Office of the DPP, discussed the calculation of weekly benefits and outlined a number of possible strategies agencies may be able to adopt to better manage claims. Following is a summary of Mr Turner's presentation:

Calculation of normal weekly earnings

The amount of weekly benefits to which an employee is entitled to in the case of incapacity is set out under section 69 of the *Workers Rehabilitation and Compensation Act 1988*. It is crucial for agencies to make accurate calculations early as it is difficult to reduce the amount of weekly benefits if they have been incorrectly calculated initially.

Normal weekly earnings means the average weekly earnings of the employee for 12 months leading up to the commencement of the period of incapacity. Once the payment has been lawfully calculated, that payment cannot be reduced without making an application under section 69(8) or section 88 of the Act.

Greg Rowell of NRMA suggested that, where a reduction is sought, consultation with the worker/solicitor of the worker/the workers' representative is useful. In this situation, an agency would put a case forward as to why you would like to reduce payments. The resultant agreement to reduce weekly benefits should be set out of a Memorandum with Consent to go to the Tribunal, so that the Tribunal can issue a Consent Order.

Section 70(2) of the Act contains the general principles for the assessment of the degree of impairment and the calculation of weekly earnings.

However, the Act does not cover the circumstances of employment – these are covered in the *State Service*

Act 2000 and the *Long Service Leave Act 1975*. In addition, the contract of employment often incorporates the terms of awards.

There is a common distinction between day and shift workers as shift workers do not necessarily as part of their contract of employment have to work overtime – ie it may not be a term of the contract. So, if a shift worker did work overtime, this may not have to be included in the calculation of normal weekly earnings.

It is also important to look at rosters (which can include informal rosters) and patterns of work to determine what is to be included in calculating normal weekly earnings. It is always important to work through the factors contained in section 70(2).

Wholly or partially incapacitated?

The first step is to determine if the employee is wholly or partially incapacitated (section 69). The general way to establish this is through a doctor's certificate. If you don't agree with the level of incapacity asserted, you should consider discussing this further with the doctor. If you are still doubtful about the level of incapacity, you may choose to dispute it.

If an employee is partially incapacitated – eg, has a hurt back, but is fit for light duties etc – the weekly rate payments equals the difference between normal weekly earnings and the amount a worker would be able to earn in suitable employment during the period of incapacity [section 69(1)(b)]. In this situation, there is no reason to pay full normal weekly earnings - the employer is entitled to make an assessment of what the amount the worker is able to earn and set the weekly rate payments at a level less than normal weekly earnings (assuming there is a proper basis for so doing). However, as noted, once the rate is set it must be continued (outside the clearest of errors), until lawfully reduced by order made pursuant to an application to the Tribunal, or one of the conditions in section 86 being satisfied.

If the employee can undertake alternative work at the same pay, the employer is not required to make payments. If the employee could earn alternative income, but a lesser amount, the employer need only pay the difference.

It is advisable to consult with the doctor on what other duties the employee can do, then make an assessment by working out normal weekly earnings and the amount they are able to earn in their current condition and pay the difference.

Return to work and recovery from injury

Sections 86 and 88 of the Act deal with terminating or reducing weekly payments in respect of return to work and recovery from injury.

Question: If an employee has a return to work clearance certificate [section 86(1)(a)] and returns to work, then 14 or more days later produces a certificate to say he/she is wholly or partially unfit, does the employer have to pay weekly payments?

Answer: No. There has been a lawful termination of payments under section 86(1). The *legal onus* is on the

employee to go to the Tribunal and prove the existence of incapacity.

Risk management seminars

A half-day risk management seminar and two two-day risk management seminars were organised by Treasury and Marsh Pty Ltd at Salamanca Inn from 24-28 March 2003. The principal presenters were Alan Champness, of Champness Risk Consulting, and Stuart Bassett, Director, Marsh Risk Consulting (Australia).

Philip Mussared, Chairman of the TRMF Steering Committee, who opened each seminar, emphasised the importance of all agencies developing a risk management culture.

The half-day seminar, which was held on Monday 24 March, was aimed at members of the Fund's Steering Committee and Sub-Committees and other managers with a sound knowledge of risk management. There were 21 attendees at this seminar.

The two-day seminars were held on 25-26 and 27-28 March 2003 and were based on the seminars held in October 2002. There were 24 participants in total, all of whom rated the seminar useful to very useful. Many mentioned the good mix of practical and theoretical content and indicated that the pace of the course was good. Suggestions for future seminars included the use of more government-related examples, greater explanation of the issue of due diligence and the possibility of the course being split into two shorter seminars – one covering risk at an operational level and the other covering risk at a strategic level.

Department of Education's claims management approach

At the Workers' Compensation Forum held on 15 April 2003, David Salisbury and Trudi Keenan, of the Department of Education, discussed their Agency's approach to rehabilitation and monitoring the performance of rehabilitation providers. The following is a summary of the presentation:

Good relationship with employees

It is important to have a good relationship with your employees and to be fair, equitable, consistent and reasonable.

As soon as it is discovered that an employee has been injured at work – through a call from the injured employee's supervisor, the union, the doctor, or the injured employee or by receiving a claim for compensation - record the details. Also record any other details that you may know of at the time, such as a history of compensation claims.

What do you do next?

Call the worker to see how they are going and ask general questions to find out how it happened and what their doctor

told them. Then let the worker know what is going to happen next:

- investigations – medical and factual;
- worker needs to provide workers' compensation certificates, or they will not receive any pay;
- the worker must participate in a rehabilitation program;
- there will be a rehabilitation provider;
- the worker must attend all appointments;
- the aim of the process, if possible, is to return the worker to their job;
- an employee assistance program (EAP) is available to the worker and their immediate dependent family members; and
- the worker's union may be of some assistance.

Also explain what the rehabilitation provider's role is:

- to help the worker back to work as soon as they are able to do something;
- work with the doctor, supervisor/manager about coming back to work safely, and gradually if necessary;
- identify alternate duties as necessary;
- put together a return to work plan so that the relevant people understand what the worker's needs and responsibilities are; and
- provide reports on the worker's condition, progress and capacity.

Contact the manager

Call the injured worker's manager and ask them about the injury. See whether the manager knows of any other issues at work, or at home, that will affect the employee's return to work.

Other places that may be able to assist

- the employee's doctor;
- NRMA (as claims administrator for the Fund);
- industrial representatives;
- the grievance investigator; and
- the employee assistance program provider.

Education uses an Access database to store all the above information on injured workers.

Choosing a rehabilitation provider

Education outsources rehabilitation. The Access database that Education has for its injured workers also includes information on preferred rehabilitation providers, which contains details on their achievements with injuries etc. Education then matches the worker to the rehabilitation provider.

What to look for in a rehabilitation provider

Look at the list of approved rehabilitation providers for someone who has a good track record with:

- the area that the worker is in;
- the type of injury;
- personality type;
- the group of employee (manager, technician, administration, labourer etc)
- the gender
- the worker's general practitioner
- employees that have had multiple claims (if this is the case)
- an older/younger employee;
- someone who sounds like they've had enough/wants to change professions etc;
- communicating at an appropriate level;
- not over-servicing;
- recognising issues straight away;
- contacting the employee straight away;
- reporting back quickly and appropriately;
- visiting the employee at home initially;
- visiting the worksite frequently;
- meeting the employee at work at some stage on their first day back;
- knowing/finding out what else there is in the employee's life that may impact on the return to work; and
- knowing what the employee's plan is, or if there's an ulterior motive.

Education has a rehabilitation policy that states that the provider is to meet with relevant parties within 5 days and report back to Education within 28 days with an initial assessment, which shows:

- recommendations for rehabilitation strategies;
- return to work objectives; and
- a return to work proposal, including the return to work date.

Education requires monthly reports and interim progress reports from the providers.

What if it goes wrong?

If there has been no improvement despite favourable medical prognosis, or the program is going backwards or too slowly, or the employee is avoiding commitments/appointments, then quick action is required.

Options are to visit their doctor, visit the injured employee at their home and/or with the doctor and rehabilitation provider, have another independent medical assessment, have a meeting with all parties, consider changing the rehabilitation provider, or as a last resort use surveillance.

Rehabilitation options

Develop a new return to work plan with the following new options:

- new location;
- new supervisor;
- section 86 (1)(c) or (d) of the *Workers' Rehabilitation and Compensation Act 1988*; or
- settlement.

Education advises to try and keep matters out of the Tribunal and always talk to people. The last resort is settlement.

Through the application of the above policies and practices over the past seven years or so Education has reduced the number of teachers who are incapacitated for work by about 90 per cent.

Marsh Pty Ltd and NRMA support Education's approach and believe good negotiation is necessary in order to try and avoid litigation. Early contact with the injured employee is also very important and they suggest calling the employee first, then visiting their home if possible.

Statements of Indemnity update

At its meeting on 23 January 2003, the Fund's Steering Committee approved the establishment of a sub-committee to meet and consult with Crown Law on the appropriateness of the Statements of Indemnity.

The Sub-Committee consists of five representatives - one each from Treasury, TAFE, Education, Primary Industries, Water and Environment and Health and Human Services.

On 28 March 2003, the Sub-Committee and representatives of the Tasmanian Risk Management Fund Unit met with Crown Law, where the Sub-Committee resolved that:

- the Liability Statement of Indemnity would be abandoned, but the Property and Motor Vehicle Statements of Indemnity would not, as they relate to property damage, loss and costs to "Agency property" that an agency may have to repair or replace in order to continue to carry out its functions. However, that is not the case with bare liability claims, which involve nothing but a claim for money as damages;
- Crown Law will complete the Personal Accident Statement of Indemnity as a matter of urgency, followed by the completion of the Property and Motor Vehicle Statements of Indemnity; and
- Crown Law will consult with Treasury on whether Medical Negligence, Fidelity/Fraud and Professional Negligence risks will require Statements of Indemnity, or whether they can also be abandoned on the same grounds as the Liability Statement of Indemnity.

It is currently anticipated that the Personal Accident Statement of Indemnity will be completed by the end of June 2003. The Property and Motor Vehicle Statements of Indemnity will then be finalised.

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