

36/06 Compensation for injured clergy

(A report from the Standing Committee.)

Introduction

1. At the 2nd ordinary session of the 47th Synod, Synod passed resolution 36/06 as follows –

“Synod –

- (a) desires that members of clergy in the Diocese ought to have their medical expenses covered following workplace injury in a manner that is comparable with that afforded to employees under the NSW WorkCover legislation, and
- (b) requests that Standing Committee report to the 3rd session of this Synod on mechanisms by which Synod's desire might be realised.”

2. On 11 December 2006 the Standing Committee requested that the Finance Committee prepare for its consideration a report for the purposes of resolution 36/06. The Finance Committee presented its report and recommendations to the Standing Committee on 28 May 2007.

3. This report assesses the mechanisms by which clergy in the Diocese might be afforded comparable cover to employees under NSW WorkCover legislation and indicates the action taken by the Standing Committee in response to such assessment.

Background

The Sydney Diocesan Sickness and Accident Fund

4. Under the Sickness and Accident Ordinance 1969 (the Ordinance), clergy can claim medical expenses incurred from the Sickness and Accident Fund where they exceed \$50. Currently, the maximum amount per claim is limited to \$1,000 (the Prescribed Amount). However, Standing Committee may approve an increase in this limit under clause 10(2) of the Ordinance.

5. The Sydney Diocesan Sickness and Accident Fund (the Fund) is 'self-insured' and is funded from contributions from parishes via the Parish Cost Recoveries system (PCR). At the date of this report the reserve available for future claims is about \$200,000.

6. Under Part 3 of the Ordinance and clause 10, a claim can be made on the Fund where clergy incur medical, hospital, rehabilitation or related expenses (including reasonable and necessary travel costs) following an accident which occurred in the course of performing normal ministry duties.

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7. The types of claims for which costs are incurred in the Fund are the same as those claimable by workers under the Workers Compensation Act 1987 (the Act) (refer Appendix 1).

8. Over the past few years, the greatest amount of claims paid have been in relation to the additional costs incurred by parish's replacing ill clergy under Part 2 of the Ordinance. There have been infrequent and moderate claims made for medical and related expenses under Part 3 (refer Appendix 2).

9. A best estimate of the total costs incurred by clergy for medical expenses from 2002 to 2007 is about \$5,000 or an average \$845 per claim.

10. Clergy are encouraged to take up private medical insurance in the *Guidelines for the Remuneration of Parish Ministry Staff* and the *Understanding your remuneration and related benefits* brochure released by Clergy Services. It is not known how many clergy have private medical insurance and further the Diocese does not include it in the list of ministry related expenses available to be paid through an MEA.

11. In recent history, there have been no formal requests made to the Standing Committee from injured clergy under clause 12 of the Ordinance to be compensated for an amount greater than the Prescribed Amount.

NSW WorkCover Legislation prescribed benefits

12. Currently, under the Workers Compensation Act 1987 (the Act), medical and related expense claims are limited to \$50,000 for workers injured in the work place. Other expenses for occupational rehabilitation, ambulance costs etc. are also limited. Refer to Appendix 1 for the prescribed benefits and rates applicable under the Act.

Workplace injury statistics for NSW

13. The *Statistical Bulletin 2004/05* produced by NSW WorkCover, indicates that over the last 6 years total compensation payments have decreased substantially. This is primarily due to the 2001 Workers Compensation reforms and subsequent changes made to the Act, particularly in relation to return to work programs.

14. The incidence of workplace injury dropped to its lowest recorded level during 2004/05 (13.4 injuries per 1,000 employees) for all industry sectors. The gross incurred cost of compensable injury dropped by four percent on the previous year for all industry sectors. The lowest incident rates occur in the professional and administrative sectors.

15. During 2004/05, there were about 77,881 claims made for medical and related costs which cost about \$340.98m. This was measured across all industry sectors and is an average cost per claim of about \$4,400.

16. In the occupation sector of administrators during 2004/05, there were about 750 claims (incident rate of about 5.0 per 1,000 employees) at a median gross incurred employment cost per claim of around \$9,000 with total claims costing nearly \$10.0m.

17. As can be seen from the above, the average cost of claims made is well below the maximum amounts afforded under the Act.

Options for paying comparable benefits

Three 'mechanisms' for the payment of medical expenses to injured clergy in a comparable manner to that afforded under the Act

A. Self Insurance

18. Currently, there are inadequate reserves available in the Fund to sustain medical expense claims to the same prescribed levels under the Act, should they arise. Commonly, actuarial advice would need to be taken to understand the levels required in a Fund of this sort to support future claims.

19. Without an actuarial assessment, it will be difficult to adequately estimate the charge to be paid by parishes through the PCR system. If the Fund was to be used to pay comparable benefits to clergy, then an actuarial assessment and annual review would need to be undertaken.

20. It is estimated that an initial actuarial assessment could cost between \$45,000 and \$65,000. It is estimated that it could cost between \$20,000 and \$30,000 each year for ongoing actuarial advice and 'compliance certification'.

21. This option is not considered to be a practical solution because of the significant cost of building up and maintaining adequate reserves in the Fund, the initial actuarial advice required and the ongoing compliance costs.

B. Effect workers compensation

22. Currently, Sydney Anglican ordained clergy are not 'deemed workers' under the Act. Therefore, another option would be to change that position and to include clergy as deemed workers under the Act.

23. The main features of this approach are as follows –

- (a) Clergy need to be deemed as workers under the Act because they are officer holders and not workers or employees at law generally. Deeming clergy as workers not employees for the purposes of the Act would not of itself have any effect on whether clergy should be regarded as employees for other purposes.
- (b) The Act requires that the religious body, the class of clergy who are covered and the deemed employer be identified in the declaration. Defining the class of clergy and a suitable employer could prove difficult. Other

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dioceses have, for example, identified their property trust or corporate trustees as the deemed employer for their clergy. The class of clergy would also need to be carefully specified to ensure that none are inadvertently missed or included. For example clergy licensed by the Archbishop but serving elsewhere or in another capacity probably should not be included in such arrangements.

- (c) A workers' compensation policy held by each parish for their lay and administrative workers could not be held jointly with a policy for their clergy (i.e. the individual parish or a specific set of churchwardens). Rather there would need to be the one common diocesan employer for clergy specified in the declaration.
- (d) There would be certain legal obligations to be adhered to under the Act, specifically in regard to instituting mandatory injury management plans and return to work plans for injured clergy (this will be covered as part of the Parish Risk Management Program in relation to lay and administrative workers). If the deemed employer did not comply with the requirements of the Act there may be penalties imposed by WorkCover.
- (e) Once a declaration is made to deem clergy as workers or employees for the purposes of the Act, the declaration is irrevocable.

24. This option is not considered to be a practical solution because of the potential legal consequences and complications of irrevocably deeming clergy as workers and the increased cost of centrally administering such a scheme.

C. A special purpose policy

25. A third alternative was to investigate with an insurance broker how the diocese could cover parish clergy under a policy which provides benefits equivalent to that under a workers compensation policy but only in respect of medical and related expenses.

26. Our insurance broker has advised that there is no such policy, other than a workers compensation policy, that would provide the same benefits.

27. The only policy available on the market that would provide some cover for medical and related expenses would be a private health insurance policy. A group policy for clergy would operate like any normal type of private health policy that is available, but is generally cheaper and provides greater rebates (but not 100% rebates) due to the size of the membership under the one organisation. Members could join as a single or as a family and have the option of hospital only or hospital and ancillary benefits (e.g. physiotherapy).

28. The broker advised that the policy would be operated centrally by the diocese in a similar manner to the stipend continuance program. This of course would increase the administrative costs of the Sydney Diocesan Secretariat of managing such a policy.

29. The broker provided a 'ball park' premium (based on 460 single clergy) of \$600,000pa or \$1,300 per single clergy per annum (according to the broker, the family rate is about double the single rate). The current sickness and accident premium charged through PCR per clergy is \$240 per annum.

30. This option is not considered to be a practical solution because of the expected high cost of the premiums and the increased cost of central administration.

Option for providing increased but not comparable benefits

Increasing the Prescribed Amount

31. The Fund claims history, in respect of medical and related expenses, indicates that it has not had a claim (or heard of a claim) that exceeded \$2,000. Additionally, no amounts in recent history have been ordered to be paid over and above the Prescribed Amount, as is available under clause 10 of the Ordinance.

32. Despite this, consideration should be given to increasing the Prescribed Amount above the current \$1,000 limit. Given the desire to see clergy more adequately covered, the Prescribed Amount could be increased to a level that reflects this to say, \$5,000.

33. The Prescribed Amount should be reviewed annually having regard to the previous years claim history, but only ever be increased.

34. Where there have been excessive claims in a year such that the reserves of the Fund have been depleted below a certain level (say, net assets of \$200,000), the annual sickness and accident premium would be adjusted to restore the reserves to the desired level by the end of the following year. The increase in the premium may include a 'special once off levy' on parishes, where deemed necessary.

35. While this does not provide the same level of benefits under the Act, it is the most cost effective and internally manageable option. It also recognises that our actual claims history does not indicate that the same level of benefits afforded under the Act should be currently afforded to our clergy.

Conclusion

36. Synod Resolution 36/06 specifically asked Standing Committee to report on the mechanisms for providing comparable benefits for clergy, yet there are no compelling reasons, facts or claims history that indicate a need to provide up to the level of benefits provided under the Act. Work Cover statistics also indicate that the level of claims do not reach the upper limits.

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37. That aside, there is no mechanism as described in paragraphs 18 to 30, that does not entail some significant cost or potential unintended consequences, complications or additional administrative systems being put in place.

38. Finally, recent claims history suggests that there are minimal medical expense claims being made by clergy and the amounts involved are generally minimal. Further, to date, no claimants have called upon the discretion of the Standing Committee to provide a greater amount than the Prescribed Amount under the Ordinance or have expressed that they have been significantly out of pocket.

Recommendation of the Finance Committee

39. The Finance Committee recommended that the Prescribed Amount under clause 10(2) of the Ordinance be increased from \$1,000 to \$5,000 from 1 January 2008, with further increases dependent upon annual review.

Response of the Standing Committee

40. The Standing Committee approved an increase in the Prescribed Amount under clause 10(2) of the Ordinance from \$1,000 to \$5,000 from 1 January 2008, with further increases dependent upon annual review.

For and on behalf of the Standing Committee

MARTIN THEARLE
Manager, Diocesan and Policy Services

26 July 2007

Appendix 1

Maximum Amounts and Prescribed Rates for Benefits - Workers Compensation Act 1987 – Part 3, Division 3

Benefit Type	Maximum amount payable
Medical or related treatment	\$50,000
Hospital treatment	\$50,000
Ambulance treatment	\$10,000
Occupational rehabilitation	\$2,304
Car travel expenses	55c per km

Appendix 2

Sickness and Accident Fund Claims history – January 2002 to March 2007

Year	Total Claims	Parish Recovery	Medical Expenses
2002	16	15 claims totalling \$102,660	1 claim of \$452
2003	6	6 claims totalling \$32,656	No claims made
2004	3	2 claims totalling \$20,616	1 claim – max. paid \$500
2005	7	5 claims totalling \$21,090	2 claims of \$500 and \$1,000*
2006	6	5 claims totalling \$31,597	1 claim - \$407
2007	3	2 claims totalling \$15,758	1 claim – max. paid \$1,000 **
Totals	41	35 claims totalling \$224,377	6 claims totalling - \$3,859

* Total medical expenses incurred were \$1,711.75.

** Total medical expenses expected to be incurred will exceed \$1,900 due to ongoing medical (physiotherapy) costs.