

**REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE
WORKERS' COMPENSATION (DUST DISEASES) BOARD**

Organisation: NSW Workers Compensation Self Insurers Association Inc.

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N.S.W. Workers' Compensation
Self Insurers Association Inc.

Employers Managing Their Own Risk
ABN 69 780 464 009

SUBMISSION INTO THE REVIEW OF THE WORKCOVER AUTHORITY OF NSW AND WORKERS' COMPENSATION (DUST DISEASES) BOARD

DATE: 17 January, 2014

Introduction

This submission is made by the New South Wales Workers Compensation Self Insurers' Association Incorporate (NSW SIA) and encompasses the general views of the members, being Self Insured Companies, Specialised Insurers and Companies seeking Self Insurance.

The NSW SIA provided a submission to the Inquiry into the NSW Workers Compensation Scheme and again welcomes the opportunity to provide a response to the Review of the exercise of the Functions of the Workcover Authority of NSW and the Workers' Compensation (Dust Diseases) Board. Further, the Association is available to provide further information or evidence if required.

The NSW SIA is a non-profit Association of New South Wales Employers who are licensed to manage their own risk for workers compensation. The Association commenced in 1979 and has grown to have a membership of 60 full member companies, 6 associate members, 12 provisional members, and have had expressions of interest from over 40 companies to obtain affiliate membership, which will commence early 2014.

In all, the Association has increased its representation to a very large number of businesses which vary in size from international and multi state employers to single state entities. Many of our members are top ASX listed companies who have experience operating under different political environments. They have employees working in a range of different Industry Sectors, from banking to steelworks, government controlled entities to health care. Self Insured companies in NSW equate to 23% of the NSW workforce.

Further self and specialised insurers occupy a unique position within the Workers Compensation Scheme. Unlike scheme agents, who are licensed to manage claims on behalf of the nominal insurer (Workcover Authority NSW) the self and specialised insurers are licensed to **underwrite their own risk**, are fully funded for the costs of all claims and therefore played no part at all in the development of the substantial deficit which led to recent reforms in the Workers Compensation legislation. For self and specialised insurers there is no capping of claims costs at \$150,000 and the claims do not fall out of premium calculation after 3 years, but remain an ongoing cost for the life of those claims.

It is instructive to note that, while the Workcover NSW scheme accumulated that deficit, self and specialised insurers continued to operate in a way which allowed costs to employers that are self insured, or are covered by a specialised insurer, that were substantially lower than that of non self or specialised insurer employers and operated in a manner which did not give rise to any deficit.

The licensing requirements for self and specialised insurers have always included substantial prudential and security requirements to guarantee the ability of self and specialised insurers to satisfy all outstanding Workers Compensation liabilities. The New South Wales Self Insurers' Association has always accepted the requirement for such prudential criteria in the licensing process.

On the other hand the Association and its members have substantial concerns arising from increased regulatory requirements imposed in licensing conditions that have no connection to prudential or security requirements. It is this over regulation that forms the substantive part of the Association's submission.

Review of Workers Compensation (Dust Diseases) Board

The NSW SIA has no specific concerns with the exercise of the functions of the Workers Compensation (Dust Diseases) Board.

Review of the Workcover Authority NSW

One of the main concerns of members of the NSW Self Insurers' Association has been ever increasing and restrictive regulatory oversight by the Workcover Authority NSW on self and specialised insurers.

The primary manifestation of this over regulation arises by reason of the Workcover Authority NSW subjecting self and specialised insurers to substantial and regular auditing in a number of areas including work health safety, case management and injury management. The requirement for these audits are imposed as licensing conditions and have added substantial (and the Association says unnecessary) compliance costs to members of the Association.

The imposition of audits in the area of work health and safety by the Workcover Authority NSW on a regular basis adds hundreds of thousands of dollars to members costs of doing business as well as unnecessarily diverting substantial resources away from actual work health and safety initiatives in favour of compliance and auditing outcomes, for no discernible benefit to the business or its employees.

The Association is strongly of the view that there can be no rational reason for the imposition of work health and safety audits on members of the Association in circumstances where those members contribute nothing to the burdensome costs of the nominal insurer and where those members already have a substantially higher level of incentives than all other employers to promote safety.

There is no evidence at all that work health and safety audits contribute to improved safety outcomes but incontrovertible evidence that they contribute substantially to the cost of doing business and therefore impact adversely on the competitiveness of businesses that are subject to it.

For comparison purposes, Western Australia is a jurisdiction where compliance requirements are low and there is no requirement that self insurers undergo mandatory and scheduled audits by the Regulator. *Safework Australia, Comparison of Work Health & Safety and Workers Compensation Schemes Fifteenth Edition* indicates that the performance of Western Australia is superior to, and not worse than, that of New South Wales in the key areas of:

- The incidence rate of serious injuries and disease
- The frequency of serious injury
- The number of compensated fatalities
- The rate of disputation
- The frequency of long term workers compensation claims
- The durable return to work rate.

At the same time that these audits are imposed on members of the Association it is clearly anomalous that companies that are not self insured and that contribute directly and substantially to the costs incurred by the nominal insurer are not subject to the work health and safety audits of any kind.

The Association has been told on many occasions by the Workcover Authority NSW that it has an interest in ensuring consistency across all scheme participants but there is no such consistency when it comes to the auditing obligations imposed on members of the Association representing only 23% of the NSW workforce. With all the legislative changes and the many guidelines imposed on Insurers, the work health and safety audits remain subjective and open to the interpretation of a few auditors that have little or no understanding of the business being audited. This can be shown by recent disparity between work, health and safety audit results.

It is the strong view of the majority of members of the Association that work health and safety audits for self insurers should be removed altogether. At the very least and in the alternative, such work health and safety audits should be imposed (if they are imposed at all) on every employer in New South Wales.

As a further alternative the consideration of the imposition of work health and safety audits on employers (whether self insured or otherwise) should only arise in circumstances where an employer demonstrates (by incident notification or otherwise) a repeated inability to comply with its work health and safety obligations.

Workcover Authority NSW continues to devote substantial resources to work health safety auditing on self insurers and to the development and amendment of a national audit tool in circumstances where the requirement for the auditing process is, at best, questionable and is, in any event, misdirected.

It has been apparent to the Association during the limited and at times hasty consultation process associated with the development of the audit tool that the Workcover Authority NSW has no genuine interest in making business in New South Wales more competitive and less costly. It is difficult to avoid the observation that the whole work health and safety auditing process, only on self insurers, appears to be an exercise in generating work for its own sake.

In addition to conducting onerous and expensive Work Health and Safety auditing, the Workcover Authority NSW also conducts auditing of case management and injury management on self and specialised insurers. The rationale for this ongoing auditing is also difficult to understand in circumstances where self and specialised insurers have continually demonstrated themselves to be substantially more competent than scheme agents in the areas of case management and injury management.

Self Insured organisations regularly achieve safety and claims management outcomes we maintain are a consequence of our commitment to our workforce rather than a result of having to undergo time-consuming and costly auditing exercises.

Workcover Authority NSW produces a 'Self Insurance Performance Report' which compares the self insurer's performance against like industries as well as scheme insured employers. This reporting shows that Self Insured employers state-wide perform better than Scheme employers in the following areas:

- Average duration of lost time injuries
- Rate of new claims reported per \$1M
- The rate of lost time injuries
- The rate of incurred claim cost per \$1M of wages

Further, the adequacy or otherwise of case management by self and specialised insurers is already the subject of review by the Workers Compensation Commission and by the Workcover independent review officer, in circumstances where case management is carried out in a manner which is inappropriate or incorrect. The Workcover Authority NSW is able to capture key safety and claims management data through other existing mechanisms, including the Claims Assistance Service, Annual Self Audits, Section 189 Reporting, as well as monthly data submissions. Adding an auditing requirement to this process on self & specialised insurers simply increases costs to business with no material benefits.

Further, the intervention of the Workcover Authority NSW in the requirements for the development of return to work and injury management plans have had the effect of rendering such plans overly complicated, a duplication of information, lengthy and unworkable. Such plans are now developed in a manner consistent with requirements imposed by the Workcover Authority NSW but also in a manner which provides no material benefit to injured workers or to employers. Lengthy and detailed plans prepared "in consultation" with injured workers and their treating medical practitioners are almost always entirely unread by either the injured worker or the medical practitioner and have become an object in themselves rather than a useful tool for assisting in return to work or injury management. They have become a bureaucratic nonsense and at times, impede the smooth return to work process for which they were designed.

As indicated members of the Association have a specific and direct incentive in achieving successful return to work and proper injury management. It is unnecessary for the imposition of bureaucratic and regulatory oversight to interfere with this process and the intervention of the Workcover Authority NSW does not add anything positive to this process.

The Association also continues to have substantial concerns with the role of the Workcover Authority NSW in the development and imposition of guidelines made pursuant to the legislation.

It is the experience of the Association that such guidelines are almost inevitably developed with minimal or no consultation with those on whom they are imposed. This has often had the result that guidelines are developed in a manner which is inconsistent with the legislation pursuant to which they are made and which are unduly onerous and do very little to assist safety in the workplace or improve the smooth return to work process.

In the view of the Association there is an inherent difficulty with the Workcover Authority NSW being responsible for what is essentially subordinate legislation. The legislation and regulation governing the Workers Compensation scheme are already complex enough without being rendered more complex and difficult to follow by lengthy and often inconsistent guidelines.

There is also an inherent inconsistency with Workcover Authority NSW operating as the nominal insurer while, at the same time, having a role in such things as the development and implementation of guidelines relating to claims management (which impacts directly on payments to be made by the nominal insurer) and the operations of the Workers Compensation Commission and the Workcover independent review officer (each of which have a role to play in determining the liabilities for the nominal insurer). Such inherent conflicts would be resolved, to some extent, by excluding Workcover Authority NSW from any role in the development and the implementation of guidelines, the oversight and implementation of the dispute resolution process (including the Workers Compensation Commission and the office of the Workcover independent review officer) and by allowing for private underwriting to remove Workcover Authority NSW as the nominal insurer. There is a clear conflict between the business of insurance and the business of legislative administration, the Workcover Authority NSW cannot function as both.

Summary

The New South Wales Self Insurers Association has previously called for substantial reform to the role and functioning of the Workcover Authority NSW and for a substantial reduction in the onerous, inequitable and unnecessary regulation imposed by the Workcover Authority NSW on its members. The Association welcomes the opportunity to repeat that call.

The substantial and unnecessary cost imposed by over regulation continues to impact adversely on the ability of businesses in New South Wales to compete both nationally and internationally. This is an issue which the Association seeks to have addressed expeditiously.

The Association is of the view that the starting point for such reforms should be the immediate removal of the requirement for work health and safety audits imposed by Workcover Authority NSW and for the progressive reduction in other auditing and regulatory processes imposed by the Workcover Authority NSW on members of the Association.

The Association welcomes the opportunity of contributing further to the Parliamentary review process should such assistance be required.

Denise Fishlock - Chairperson