

**Submission
No 117**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Australian Road Transport Industrial Organisation
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ARTIO
Australian Road Transport
Industrial Organisation

New South Wales Branch

17 May 2012

Ms Rachel Callinan
Director
Joint Select Committee on the NSW
Workers Compensation Scheme
Parliament House
Macquarie St
SYDNEY NSW 2000

Email: workerscompinquiry@parliament.nsw.gov.au

Dear Ms Callinan

The Australian Road Transport Industrial Organisation NSW Branch (ARTIO NSW) welcomes the opportunity to lodge a submission in response to the NSW Workers Compensation Scheme Issues Paper.

This submission provides background information on ARTIO NSW as well as an outline of ARTIO NSW's position in response to issues raised. This submission also raises other issues which, while they may not be considered in the course of this inquiry do in the view of ARTIO NSW require serious consideration if a more efficient, equitable and viable workers compensation scheme is to operate in NSW.

Background

ARTIO NSW is the NSW Branch of the Australian Road Transport Industrial Organisation (ARTIO) which is recognised by Fair Work Australia, the Transport Workers Union of Australia and other key stakeholders as the peak employer body in the road transport industry insofar as workplace relations issues are concerned. ARTIO NSW is a registered association of employing contractors in NSW. ARTIO NSW's interests in terms of member representation encompass all aspects of workplace relations, including workers compensation.

Introduction

ARTIO NSW has a strong view that the overwhelming mandate given by the electors of NSW to the O'Farrell Government in the March 2011 state election means they have a responsibility to reform public administration in NSW and to 'make NSW number 1 again'.

ARTIO NSW welcomes this inquiry on the basis that reform of the NSW workers compensation scheme is urgently required. The key to reforming this scheme is in its design. Good design means the potential exists to improve the efficiency of the scheme while also ensuring it remains fair to employees in terms of income and other support, affordable to employers in terms of premiums, especially when compared to neighbouring jurisdictions while preserving financial viability.

It is clear from the content of the Issues Paper that urgent reform is necessary. The NSW workers compensation scheme requires remodelling to ensure it is efficient, equitable and viable from 2012-13 onwards.

Guiding Principles

ARTIO NSW supports the guiding principles outlined in the issues paper because they address core issues in terms of scheme design.

Changes made to workplace health and safety (WHS) laws which took effect on 1 January 2012 which ARTIO NSW has wholeheartedly supported provide a very sound policy and regulatory framework for lowering the incidence of workplace incidents and fatalities. This is because under these reforms the concept of the 'chain of responsibility' for WHS has spread well beyond employers to other parties, including employees who in turn can be expected to give a higher priority to WHS based risk issues. These reforms should be supported by ongoing education and communication, especially in industries with a relatively high rate of fatalities and injuries such as road transport.

There are no grounds for administering a workers compensation scheme whereby premiums are notably higher in neighbouring jurisdictions. This is because high workers compensation insurance premium costs add to the cost of doing business in NSW, discourage job creation and hamper overall economic growth. An objective of the NSW Government should be to structure a scheme in a manner which ensures premiums do not exceed other jurisdictions, especially Victoria and Queensland.

Notwithstanding the trauma involved to affected workers there are also no grounds for imposing a financial responsibility on an employee for any injury or medical episode which is beyond the control of the employer in question. Employers who underwrite the workers compensation scheme are entitled to expect that employees will be given every encouragement to return to work while also being provided with a reasonable level of financial support during rehabilitation.

ARTIO NSW also supports any reform which better aligns workers compensation arrangements in NSW with other jurisdictions as this is a step towards creating a more nationally uniform workers compensation system.

Options for Change

The position of ARTIO NSW in response to the options for change is outlined below:

Severely Injured Workers: The notion of providing improved income support for severely injured workers with whole of person impairment exceeding 30 per cent through the provision of improved income support is supported in principle. However it is important to consider this measure along with other reforms which may reduce scheme costs. Issues requiring resolution include assessment of the cost of this reform and overall scheme redesign so that premiums can be set at reasonable levels having regard to other jurisdictions and the scheme itself is financially sound.

Removal of Coverage of Journey Claims: In general a worker travelling to and from work should not be covered by workers compensation. This is because an employee is not engaged in work and the employer has no responsibility for or control over their actions. There may be exceptions to this in an area such as road transport where a truck driver's day may begin or end at home because that driver is undertaking a journey directly related to work and is being remunerated for that task. It is suggested that the test for determining whether workers compensation is payable could be based on whether the person concerned is entitled to remuneration at the time the incident took place.

Prevention of Nervous Shock Claims: As previously stated, ARTIO NSW agrees with the principle that premiums paid by employers should be limited to circumstances where employers have limited control. This means that ARTIO NSW agrees that workers who

witnessed the workplace death of a colleague are entitled to receive psychological assessment and to make a claim. It also means that this right should not be extended to family members notwithstanding the significant emotional trauma associated with the death of a loved one.

Simplification of the Benefits of Pre-Injury Earnings: ARTIO NSW supports in principle the notion of simplifying pre-injury earnings benefits and of ensuring there is a better relationship between benefits paid and actual weekly earnings prior to injury.

Weekly Benefits – Total Incapacity: The notion of reducing weekly benefits for incapacitated workers through the adoption of 'step down' procedures and linking that reduction to medical testing to determine fitness for work as applies in Victoria and SA is sound in principle. ARTIO NSW believes that providing a financial incentive to return to work where that prospect exists should be strongly encouraged in order to potentially reduce scheme costs and also enhance the self-respect and dignity of the injured worker. However, it is important to assess whether such a prospect exists and structure payments (and by inference incentives) accordingly.

Weekly Benefits – Partial Incapacity: It is clear that current arrangements for injured workers affected by partial incapacity in NSW provide absolutely no incentive to return to work. As a matter of principle partially incapacitated workers should receive less than their total earnings from the outset as such workers realise they will return to work and have a financial incentive to do so from the outset. Better structured compensation arrangements can also have significant attitudinal benefits for the affected worker while also reducing scheme costs.

Work Capacity Testing: Workers compensation payments to injured workers should never be automatically considered as a lifelong benefit except in the most exceptional of circumstances. As beneficiaries injured workers should be obliged to undergo regular medical assessment to determine whether they are capable of work. They are also entitled to believe there is hope of recovery to an extent where resuming some form of work is a possibility. The scheme should be designed to ensure that any worker who is capable of working is encouraged to do so in a compassionate manner through rehabilitation, counselling and appropriate financial incentives.

Cap Weekly Payment Duration: Arrangements in other jurisdictions strongly suggest that current arrangements in NSW are overly generous. ARTIO NSW supports critical evaluation of these arrangements and implementation of reforms which strike the right balance between equity and efficiency.

Remove "Pain and Suffering" as a Separate Category: ARTIO NSW supports the removal of subjective measures which by definition lack robust medical assessment, encourage disputes, escalate legal costs, lead to inequitable and arbitrary outcomes and fail basic tests of equity and efficiency. ARTIO NSW supports the introduction of a provision which allow for lump sum payments based on whole person impairment will address current flaws in the scheme.

Only One Claim Can be Made: ARTIO NSW agrees that allowing for no more than one claim enhances the prospects of appropriate compensation while also reducing the risk of fraud.

One Assessment for Impairment for Statutory Lump Sum, Commutations and Work Injury Damages: ARTIO NSW supports the concept of a single assessment process so that the injured worker can focus on rehabilitation and return to work and in order to simplify scheme administration.

Strengthen Work Injury Damages: ARTIO NSW supports reforms which bring workers compensation Common Law matters into line with the provisions of the *Civil Liability Act 2002*.

Cap Medical Coverage Duration: Same comments apply as to Cap Weekly Payment Duration above.

Strengthen Regulatory Framework for Health Providers: This appears to be a question of judgement however ARTIO NSW agrees with the principle that as costs rise improved accountability is warranted. In such circumstances it is important to ensure improvements in accountability are well designed and well targeted so as not to unnecessarily burden medical practitioners in 'red tape'.

Targeted Commutation: Initiatives which narrow the scope for the use of commutations within the NSW scheme are supported by ARTIO NSW.

Exclusion of Strokes/Heart Attack: ARTIO NSW supports measures to exclude strokes and heart attacks from coverage under the scheme on the grounds that they are medical episodes which are beyond the control of an employer, notwithstanding that these are very serious health issues.

Other Reforms

No consideration is given to restructuring premiums. Current arrangements mean that employers within the same industry pay the same premium irrespective of their claims history. The benefits of any reductions in workers compensation claims by an employer are shared with all employers in that industry. The employer in question (and, indirectly, the employees) receives no direct reward for their efforts.

ARTIO NSW believes there is a case for reviewing whether to alter the basis for calculating premiums from the industry in which the employer operates to the claims history of the employer. Another option worthy of consideration is to add an additional category based on claims history at the company level. ARTIO NSW recommends that a future review of workers compensation insurance arrangements consider an evaluation of claims history as a factor in setting premiums.

Conclusion

ARTIO NSW generally supports the proposed reforms and believes, once implemented, they can be expected to improve scheme administration, lower operating costs, reduce the pressure on premiums and lead to a better balance between encouraging a return to work while not compromising on the provision of adequate financial assistance for injured workers.

Please contact Hugh McMaster, Secretary/Treasurer, telephone _____, email _____, if further information is required.

Yours sincerely

Hugh McMaster
for and on behalf of
Laurie D'Apice
President