

**Submission
No 175**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Motor Traders' Association of NSW
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**JOINT PARLIAMENTARY
COMMITTEE SUBMISSION**

WORKERS COMPENSATION REFORM

Motor Traders Association of New South Wales:
SUBMISSION RELATING WORKCOVER REFORMS

1.0 Summary

The Motor Traders' Association of NSW (MTA) welcomes the commitment of the New South Wales Government to develop solutions for the challenges facing the NSW Workers Compensation system.

The prohibitive cost of Workers Compensation Insurance in NSW is a significant barrier to business competitiveness in the motor trades industry in NSW.

As an industry group the MTA wholeheartedly endorses the seven reform principles outlined by the NSW Government, namely:

1. Enhancing NSW workplace safety by preventing and reducing incidents and fatalities;
2. Contribute to economic and jobs growth by ensuring premiums are comparable with other states and there are optimal insurance arrangements;
3. Promote recovery and the health benefits of returning to work;
4. Guarantee quality long term medical and financial support for seriously injured workers;
5. Support less seriously injured workers to recover and regain their financial independence;
6. Reduce the high regulatory burden and make it simple to navigate; and
7. Discourage payments, treatments and services that do not contribute to recovery and return to work.

The MTA strongly believes that the Workers Compensation Scheme can be improved by re-opening the specialised insurer license category to new entrants with an industry based focus.

Granting specialised insurance licences will enable industry groups such as the motor industry in NSW to take direct responsibility for and be accountable for Workers Compensation arrangements. Specialised insurance has a strong track record in NSW of delivering better economic and jobs growth, by ensuring that premiums appropriately reflect the risk profiles of the industry. An industry-led specialised insurance scheme can also improve workplace safety and enhance the health and financial outcomes of injured workers.

2.0 MTA background

MTA is a not for profit employer association registered under the Workplace Relations Act. The association was registered in 1910 and has continually represented the industry at the highest level since then.

The employers represented by the MTA are an important part of the overall economy of NSW. The MTA has more than 4,000 members and 700 associate members. The automotive industry employs more than 98,000 people in NSW reflected in a payroll which has averaged over \$1.2 billion over the last six years.

Members range from small family operations, franchise organisations, small to medium enterprises and large organisations. These include all aspects of the motor industry such as new and used car dealerships, manufacturing enterprises and motor vehicle accident repair shops.

In the recent past the industry has been subjected to unprecedented levels of competitive pressure. This has led to very low margins amongst participants quite apart from the broad challenges of the prevailing economic climate. This has been intensified by overseas corporations establishing or acquiring entities in the state.

3.0 The impact of the current Workers Compensation scheme on MTA members

The MTA believes that the current Workers Compensation Scheme is damaging the economic development and business competitiveness of its members and the motor industry as a whole. This is due to several factors, including: the inflated cost of premiums; lack of predictability of annual premiums; costs not reflecting risks; and undue complexity.

Workers Compensation insurance is the second largest business cost (after wages) for MTA members. The present system produces a range of critical challenges for members, which impede on their viability and competitiveness.

These challenges are set out below:

(i) Inflated cost of premiums

Workers Compensation premiums under the NSW WorkCover scheme have historically been higher than the national average. This is evidenced by data supplied by Safe Work Australia which shows that during the last 5 years the rates of workers' compensation premiums as a percentage of payroll for NSW has been the highest of the major states.

(ii) Lack of predictability

Since the inception of the WorkCover system in 1988, it has operated in a manner that has made it very difficult for employers to predict with any certainty the level of premium they will be paying from year to year. During the mid-90s the system was in surplus, later in the decade it was in deficit and then back in surplus. Currently the system is again in deficit.

Volatility has meant that the funding requirements of the system have been erratic leading to unpredictable premium levels. In some years this has meant unexpected and significant increases in premiums for members placing them under real financial stress.

(iii) Undue complexity hampers budgeting

The premium formulae are complex and impractical making business planning challenging. When the deposit is calculated, a formula is used which is different from the formula used to calculate the premium at the end of the insurance year. This makes it extremely difficult for employers to predict what their cost will be, because the calculation at the end of the period is done in hindsight, with different claims valuations at the end of the period than at the beginning. The Premium Order setting the elements of the formulae for the current and coming financial year is released in June so it is impossible for an employer to be able to budget for a defined cost during the period corresponding to the insurance year. If a policy lapses during the year for any reason, a different formula is used to calculate the premium payable at the date the employer leaves, confusing the situation still further.

(iv) Premiums are not aligned with the cost of claims

The impact of the cost of claims to individual employers is grossly out of alignment with premiums. There have been instances where MTA members have suffered premiums which have been significantly more in one year than the combined cost of claims for the previous three years. This is all the more surprising given that the valuation of claims used for calculation purposes includes the estimated future cost of the claims against the policies in the calculation.

(v) General complexity

Many areas of the WorkCover legislation are overly complex and difficult for a non-lawyer to understand. A good example is the basic question of who should be included in declarations for wages purposes. This is an extremely complex matter however employers have no way of obtaining any binding advice from WorkCover to ensure that if they follow a particular course, they will have fulfilled their obligations.

If an employer requests advice from WorkCover as to how to comply with the provision of the legislation in this respect, they are given a general publication dealing with the position and instructed to follow it. But this situation is far from clear and several interpretations are possible. There have been examples where employers have been retrospectively told that they are liable for substantial premiums involving declarations of wages which have been calculated on a misunderstanding of the relevant law.

4.0 Proposed solution: re-opening the specialised insurance scheme

The MTA strongly believes that industry associations can take a key role in improving workers compensation outcomes for businesses, and that this can be done by allowing industry associations to hold specialised insurer licenses.

Re-opening the market for specialised insurers on a limited basis to trusted industry participants would assist in the financial sustainability of the workers compensation scheme. By allowing associations to operate specialised insurance schemes for their industry, premiums could be reduced and brought back into line with premiums in other jurisdictions.

Specialised insurance has an extremely positive track record in NSW. Current specialised insurers in NSW are:

Catholic Church Insurances Limited;

Coal Mines Insurance Pty Ltd;

Guild Insurance Limited;

Hotel Employers Mutual Limited;

North Insurances Pty Ltd;

Racing NSW; and

StateCover Mutual Limited.

Specialised insurers have been a part of the scheme for a considerable time. Some have become significant insurers for their respective industries in other risks as well as workers' compensation. For example, Guild which now markets insurance in many products to its members.

A specialised insurer brings a level of focus to the workers compensation situation in a way not possible in the broader scheme. The specialised insurer is able to concentrate on the needs of a particular industry and can therefore provide a more relevant service than is possible under the normal WorkCover arrangements. The advantage for an industry group in creating a specialised

insurer is that by using their resources, they can achieve a result for their members equivalent to the result for a self-insurer but on a greater scale.

The requirements relating to the creation of a specialised insurer are very stringent and governed by the same APRA rules relating to general insurers. This ensures financial stability. It is noteworthy, that no specialised insurer has ever been the subject of any financial problems of a similar kind to those experienced by other financial institutions.

A prime example of how a properly managed specialised insurer can improve the performance of an industry in workers' compensation is provided by the recent results achieved by Coal Mines Insurance following its claims management being contracted to an authorised agent.

Reductions in premium rates have occurred on a number of occasions since the new arrangements were put in place over the last 5 years with the most recent reduction being in the current year. The rate has fallen to 3.6% which is 7% below the projected rate for the year. This occurred because of better than expected claims cost for the scheme. Additionally, the actuarial report confirms that the scheme is fully funded which is in stark contrast to the experience of the larger WorkCover scheme.

MTA believes that industry-based specialised insurers could deliver unique benefits to policyholders and the NSW economy, including:

(i) Industry specialisation delivers better outcomes

As specialised insurers would operate across a whole industry, it would be able to set up programs for rehabilitation and redeployment industry-wide and therefore have a greater chance of succeeding in these crucial efforts to the benefit of employees and employers.

(ii) Greater transparency on premiums

As a specialised insurer, the policyholders are not subject to the normal premium order issued by WorkCover, or the premium formula which must be followed under the normal system. Therefore the rate set would be referable to the claims cost of the insurer, and this is what would be paid by the policy holders, together with the prudential requirements as determined by an actuary and APRA. The result should be a more transparent cost to the industry from the use of the specialised insurer.

(iii) Improved claims management

Another significant advantage is that because the insurer would only be concerned with one industry group, it would become very familiar with the problems experienced in that industry, and therefore should attain a high degree of expertise in managing the claims which flow from it. This would

mean once again, that the efforts relating to matters such as rehabilitation, injury management and redeployment programmes should be much more effective than under the normal system arrangements.

(iv) Enhanced risk management

Risk management activities would be enhanced in the same manner. Effective procedures would be developed for the whole industry which would assist everyone, and therefore further reduce the exposure of employees to injury and the industry to claims. These would of course include a targeted OH&S program which would further enhance the situation.

(v) Industry collaboration

The effect of peer pressure acting on the members of the specialised insurer cannot be overestimated. Members which did not have good records would be known by the larger group and this would generate significant impetus to improve.

(vi) Pro employment

The net impact of these changes will be pro-employment through cost savings for members, a better OH&S culture and greater certainty for business planning.

5.0 Industry associations deliver health and safety benefits

Industry associations already lead many initiatives in safety, training and environmental management, delivering proven results due to their strong connection to their members' businesses. Delivering a specialised insurance scheme would be a natural extension of these activities.

The MTA is a leading industry association and has a solid reputation for advancements in safety, training and environmental protection. A number of the MTA's programs are prime examples of how a membership based association can deliver tangible results to an industry. A selection of these programs is set out below.

(i) MTA Safety improvements

The MTA is a leader in improving safety practices and avoiding accidents and consequential injuries to workers.

The MTA has worked co-operatively with QBE Insurance for a number of years to facilitate lower claims and costs of claims for motor industry policies. This partnership has delivered positive outcomes reflected by a reduction in the number of claims over the three year period 2009 – 2011

by just over 25% (2009:197 claims; 2011:147 claims) with a resulting net cost of claims reducing by 62% (2009:\$2.59m; 2011 \$0.96m). During this time the number of policies in the portfolio has remained relatively stable.

This proves that industry associations, in particular the MTA, can have a positive impact on the safety and wellbeing of workers, while reducing the insurance costs to business.

(ii) MTA Apprenticeship Program

Industry associations are the leaders in providing relevant and up-to-date training that meets the needs of businesses. With a close connection to businesses and a deep understanding of the issues they are facing, industry associations can identify training needs and meet them with specialised programs.

MTA Apprenticeships Plus was started in 2004 by the MTA to address the skills shortage in the automotive industry. It is an outstanding example of how an industry came together to collectively solve a problem.

MTA Apprenticeships Plus is a specialist automotive industry recruitment, employment and training organisation. It offers programs to introduce new workers to the industry, as well as to attracting qualified tradespeople out of retirement or from other industries back into the industry.

The program has employed and successfully trained more than 1000 apprentices since 2004 and currently has more than 500 apprentices in employment or training by MTA across a range of trades including mechanical, panel beaters, spray painters and diesel mechanics.

The automotive industry's skill shortage was caused by people leaving the industry and not enough young people entering and staying in the industry. The MTA understood the drivers for attracting and retaining workers in the industry, and took action to reverse the skilled labour crisis by establishing MTA Apprenticeships Plus.

The program's success could only be achieved with a deep knowledge of, and genuine long term commitment to, the automotive industry. An organisation without specialist knowledge of the industry would not be able to achieve the same outcomes as MTA Apprenticeships Plus.

(iii) Managing Return to Work

An industry association is well placed to manage injured workers' return to employment. This is because of the employer networks within the industry association, along with the association's own knowledge of the operations and challenges of its members.

The MTA is providing leadership in showing injured workers how they can return to work following an illness or injury. The MTA Employment Relations Team provides advice and guidance to employer members on managing workers compensation claims and return-to-work activities. The

MTA is of the firm view that a more hands-on industry management approach to this issue will facilitate improved return to work outcomes for the industry.

(iv) Co-operative relationships with the Regulator

Many industry associations have close relationships with regulatory authorities, including WorkCover.

The MTA currently has a partnership arrangement with WorkCover to allow a co-operative approach to meeting the needs of injured workers and affected businesses. A number of industry specific activities have arisen out of this partnership including sector specific forums and the delivery of targeted training. WorkCover staff have attended MTA member meetings to update members on WorkCover initiatives.

This close partnership shows the high level of confidence placed in industry associations like the MTA, as well as their ability to work proactively and co-operatively with WorkCover. Expanding an industry association's ambit in workers compensation to include offering specialised insurance is a natural extension of the expertise and responsibility that has been demonstrated for many years.