

**Submission  
No 134**

## **INQUIRY INTO NSW WORKERS COMPENSATION SCHEME**

**Organisation:** Master Builders Association of New South Wales  
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**Master  
Builders  
Association**  
New South Wales

17 May 2012

The Honourable Robert Borsak  
Chair  
Joint Select Committee on the  
NSW Workers Compensation Scheme  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Chair

Master Builders Association of New South Wales (MBA) welcomes the opportunity to participate in the Inquiry into the NSW Workers Compensation Scheme.

Please find enclosed the MBA submission for consideration by the Joint Select Committee on the NSW Workers Compensation Scheme. We also look forward to appearing before the Committee on Monday 28 May 2012 at 11.00am.

In the meantime, should you have any further enquiries, please do not hesitate to contact our office.

Yours sincerely

Brian Seidler  
EXECUTIVE DIRECTOR

Enclosure:



**Master  
Builders  
Association**

New South Wales

Submission to the  
Joint Select Committee on the

# State Workers' Compensation Scheme



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## **1.0 INTRODUCTION**

1.1 Master Builders Association of New South Wales (MBA) is the premier employer Association representing the interests of all sectors of the State's Building and Construction Industry with some 8,000 members.

1.2 MBA has been representing the interests of its members since 1873.

1.3 The Building and Construction Industry is a major contributor to the economic wellbeing and progress of New South Wales.

1.4 MBA members build the homes in which we live, the places and spaces in which most of us work and play, our schools and hospitals, and the construction of infrastructure such as roads, water and electricity supply essential to the State's citizen's day to day living.

## **2.0 PURPOSE**

2.1 MBA is concerned about the deteriorating performance of the State's Workers Compensation Scheme. Consequently, MBA is seeking urgent action from the NSW Government to ensure the long term sustainability of the Scheme and to provide injured workers with the support they deserve while remaining affordable, fair and competitive for MBA members.

2.2 MBA supports outcomes which amend the NSW Workers' Compensation system which delivers:

- ✚ Enhanced NSW workplace safety by preventing and reducing incidents and fatalities;
- ✚ Contribute to the economic and jobs growth, including for small businesses, by ensuring that premiums are comparable with other States and there are optimal insurance arrangements;

- ✚ Promote recovering and the health benefits of returning to work;
- ✚ Guarantee quality long term medical and financial support for seriously injured workers;
- ✚ Support less seriously injured workers to recover and regain their financial independence;
- ✚ Reduce the high regulatory burden and make it simple for injured workers, employers and service providers to navigate the system; and
- ✚ Strongly discourage payments, treatments and services that do not contribute to recovery and return to work.

### **3.0 THE NEED FOR REFORM**

- 3.1 The workers' compensation system is a critical component of the NSW economy. MBA members and their employees are entitled to expect a workers' compensation system that is efficient, cost effective and offers fair, timely assistance to employers and workers.
- 3.2 MBA shares the view of the NSW Government that the State Workers' Compensation Scheme is a broken system. It does not produce good outcomes for MBA members or for injured workers. Also, unless significant improvements are made to the scheme, it is not financially sustainable.
- 3.3 MBA notes that the premiums paid by New South Wales employers are estimated to be between 20% and 60% higher than equivalent employers in competitor States. Also, the insurance arrangements offered to businesses are not optimal insurance arrangements reflecting risk.
- 3.4 Anecdotal evidence from MBA members supports the contention that the system is difficult to navigate for all participants with a lot of red tape.

3.5 Payments for seriously injured workers are inadequate, weekly payments in lieu of lost earnings for totally incapacitated workers that bear no relation to the income they have lost.

- ✚ Recovery and the health benefits of returning to work are not effectively promoted as there are perverse financial incentives for workers to remain off work and there is not effective work capacity testing;
- ✚ Less seriously injured workers are not sufficiently encouraged through financial incentives and the system for workers to recover and regain their financial independence is inadequate; and
- ✚ WorkCover has inadequate powers to strongly discourage payments, treatments and services that do not contribute to recovery and return to work.

3.6 MBA submits that because the NSW Scheme does not deliver the above outcomes very well, it costs far more to get a claimant back to work in NSW than it does by comparison to Queensland or Victoria.

3.7 MBA submits that with premium rates already significantly higher than neighbouring States (para 3.3), attracting investment for building and construction work in New South Wales is that much harder in an already very difficult economic market.

3.8 MBA notes that the Independent Scheme Actuary projects that an increase of 28% in premium rates would impact on current and future jobs in New South Wales. In particular, it would have a crippling affect on the State's already struggling Building and Construction Industry.

Given these risks, increasing premium rates is not an acceptable solution.

3.9 MBA submits that the goal of any package of reforms should be to:

- ✚ Adopt the most effective workers compensation measures from around Australia;
- ✚ Simplify benefit calculation;
- ✚ Make workers entitlements more transparent and easier for workers and employers to understand;
- ✚ Workers whose injuries are less serious should have greater incentives and support to return to work, while more seriously injured workers should received improved weekly benefits and lump sum compensation entitlements.

3.10 MBA notes that the financial sustainability of the NSW Workers' Compensation Scheme is deteriorating. MBA understands that a Peer reviewed report on the financial viability of the Scheme shows that at 31 December 2011, the Independent Scheme Actuary calculated the Scheme's deficit at \$4.083 billion, a deterioration of \$1,720 million in 6 months. MBA notes that this is the worst financial result incurred since the Scheme commenced in 1987. Clearly, the financial sustainability of the Scheme, at current premium levels, is expected to deteriorate further in future years. This prospect is not good for business or injured workers.

3.11 MBA is extremely concerned at the prospect of premium levels increasing by 28% (para 3.8). In the economic climate which currently exists in the NSW Building and Construction Industry, there can be no doubt that more employers will be closing their doors.



3.12 The comparative table below demonstrates the premium cost disadvantage both current and prospective being experienced by MBA members in respect of neighbouring States.

<b>Employer</b>	<b>Annual Wages \$</b>	<b>NSW Current Premium \$</b>	<b>Victorian Comparison \$</b>	<b>Queensland Comparison \$</b>	<b>NSW If Premiums Increase By 28% \$</b>
A Residential Construction Company	250,000	12,600	2,570	6,983	16,128

#### **4.0 OPTIONS FOR CHANGE**

4.1 MBA submits that it supports the options for change contained in the recently released “NSW Workers’ Compensation Scheme Issues Paper”.

##### ***Severely Injured Workers***

Severely injured workers assessed by a level of whole person impairment of more than 30% to receive improved income support, return to work assistance where feasible and more generous lump sum compensation.

##### ***Removal of Coverage for Journey Claims***

Currently in NSW workers are covered for injuries sustained on their journey between home and work. Victoria, WA and Tasmania exclude such claims.

SA and Queensland allow for journey claims in restricted circumstances.

As employers have limited or no control over circumstances arising from journey claims, workers compensation costs should be eliminated in NSW.

***Prevention of nervous shock claims from relatives or dependents of deceased or injured workers***

It is proposed that an employer's liability for the physical injuries to family members following the serious injury or death of a worker does not fall within the objects of the legislation and should no longer be allowed.

***Simplification of the Definition of Pre-injury earnings and adjustment of Pre-injury earnings***

In Australia, NSW is the only State that does not take regular overtime and allowances into account when calculating a totally incapacitated worker's weekly payment.

By creating a single measure for pre-injury earnings, the existing disparity between benefits to award and non-award workers would be removed and administration of benefit arrangements would be simplified.

***Incapacity Payments – Total Incapacity***

Currently in the NSW model, weekly benefits step down at 26 weeks. It is proposed to align weekly benefits more closely with other jurisdictions and to an earlier step down with capacity testing. An earlier step down would harmonise NSW arrangements with Victoria, South Australia and Western Australia.

***Incapacity Payments – Partial Incapacity***

In other jurisdictions, excluding Victoria and South Australia, financial disincentives are utilised to prevent long term dependency.

Therefore, it is proposed to increase benefits as workers increase their hours of work, all participants, workers, employers and treatment providers have a clear and simple objective.

### ***Work Capacity Testing***

It is proposed that work capacity testing at specific points could assist injured workers on long term weekly benefits in transitioning from weekly benefits back into paid employment. This approach would also need to be supported by appropriate rehabilitation to make them as work ready as possible.

### ***Cap Weekly Payment Duration***

It is proposed that capping weekly payment duration to within a certain timeframe and thereafter ceasing payment of weekly benefits would give workers a fixed timeframe during which they know they need to work toward a certain level of work readiness.

### ***Remove 'pain and suffering' as a Separate Category of Compensation***

It is proposed that the incorporation of this provision into lump sum payments for injuries with Whole Person Impairment greater than 10% would reduce disputation and reduce administration costs.

### ***One-Assessment of Impairment for Statutory Lump Sum, Commutations and Work Injury Damages***

It is proposed that there is no reasonable rationale for obtaining multiple reports which can be distressing for injured workers and does not allow them to focus on recovery.

### ***Strengthen Work Injury Damages***

Principles used to determine negligence in workers compensation law matters diverge from the current law.

It is proposed that this situation compromises the ability of insurers and employers to defend work injury damages claims. Therefore, it is suggested that there is no reason to exclude workers compensation common law claims from the principles of the law of negligence which apply to other damages claims.

### ***Cap Medical Coverage Duration***

There is currently no cap on benefits for medical and related treatment and many workers have access to medical treatment many years after their injury and return to work.

### ***Strengthen Regulatory Framework for Health Providers***

Increases in medical costs over the last 5 years have been significant and scheme resources should be directed to evidence-based treatment with proven health and return to work outcomes for injured workers rather than on treatments that maintain dependency.

### ***Targeted Commutation***

The Scheme Actuary and industry experts have advised against broadening access to commutations and such a measure would need to be limited to very specific classes of injury / claim.

### ***Exclusion of Strokes / Heart Attack unless a work a significant contribution***

Causation of strokes and heart attacks are not normally associated with workplace injuries and factors that impact on rehabilitation.

## **5.0 INDUSTRY SPECIFIC OPTIONS**

### **5.1 More Regular Premium Payments**

- 5.1.1 MBA submits that the nature of the Building and Construction Industry is such that many employers experience significant fluctuations in their workforce numbers. This is often due to the project specific nature of work. As a result, a more flexible approach to estimating wage premium calculations is suggested. MBA submits that quarterly or even monthly wage estimation adjustments be permitted. This would align wage premium calculation payments with Superannuation contribution payments, thus ensuring a more accurate level of workers compensation insurance cover relative to an employer's current workforce.

5.1.2 Monthly collections of premiums from employers in the Building and Construction Industry will have benefits for employers in that cash flows will be more easily managed. Monthly collections will reduce the underpayment of premium calculations from companies in financial difficulties as those companies will be identified at an earlier stage to ensure that steps are taken to collect premiums before the financial difficulties impact upon the payment of their premium.

## **5.2 Insurance Cover for Self Employed**

5.1.3 Due to the extensive use of sub-contracting in the Building and Construction Industry, many workers are self employed. The current workers compensation insurance policies offer a common law extension where damages are payable to an injured worker who has been injured as a consequence of the negligence of their employer. Similar benefits cannot be offered to the self employed. If a self employed worker is injured during the course of their employment as a consequence of an unsafe system of work, they will not have a common law claim available as they will only have themselves to blame for the negligence.

5.1.4 Further, provisions concerning injury management plans and return to work programmes can have no sensible application to a self employed worker. If private insurers were required to offer workers compensation premiums for the self employed which were less than the workers compensation premium which would be charged to a company with one or two employees, then small employers might have to consider alternate financial structures and employment arrangements which could result in an increase in the numbers of self employed.

## **5.3 A CONSTRUCTION INDUSTRY COMPENSATION SCHEME**

5.1.5 MBA submits that consideration be given to the establishment of a Construction Industry Compensation Scheme. Considerable investigative work was undertaken by the industry in the late 1990's. This work was discussed at Ministerial level with the then State Government.

- 5.1.6 MBA submits that one option is for universal cover on all sites, universal compliance in premium payment and a “whole-site” approach to workplace safety, compensation, rehabilitation and return to work, strongly suggests the inclusion in a new construction industry system of all people working in the industry.
- 5.1.7 It has been suggested that an industry specific scheme be established which would require all workers including self employed workers and employers to be registered for workers compensation coverage on a site specific basis. This registration would be managed by a scheme similar to the NSW Long Service Corporation. Basic insurance premiums could be funded on the same basis as the industry’s Long Service Leave liability. Namely through the lodgement of Development Applications. Employers would then be responsible for insuring only their individual claims history experience. Such an approach would ensure that every worker and business engaged in the industry would be covered for workers compensation insurance.

## **6.0 CONCLUSION**

- 6.1 MBA would be pleased to discuss aspects of this submission with the Joint Select Committee on the NSW Workers Compensation Scheme.