

**Submission
No 10**

**FIRST REVIEW OF THE COMPULSORY THIRD PARTY
INSURANCE SCHEME**

Organisation: Unions NSW

Date received: 13 May 2016



Submission

Standing Committee on Law and Justice: First Review of Compulsory Third Party insurance scheme (Motor Accidents Scheme)

13 May 2016

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Executive Summary

- **It is estimated between 3000 and 3500 workers have lost any insurance coverage when travelling to and from work and their place of abode when they are at fault.**
- **Unions NSW recommends that the CTP scheme be extended to all at fault claims for workers driving to and from their work and place of abode.**
- **Unions NSW recommends that the Motor Accidents Compensation Act and Industrial Relations Act 1996 be modified to protect all workers from termination for the same period as available under the Workers Compensation Act 1987, if making a claim under the provisions of the Motor Accidents Compensation Act.**
- **Unions NSW recommends that the Law and Justice Committee inquire with the scheme actuary to identify what cost estimate would cover all workers on journeys to and from their work and place of abode (regardless of fault) under CTP.**
- **Unions NSW recommends that the Law and Justice Committee inquire with the scheme actuary to identify the likely differences in premium when the extended coverage was shared across over 5 million CTP policy holders.**

Introduction

1. Unions NSW is the peak body for trade unions and union members in NSW. It has over 65 affiliated unions and trades and labour councils representing approximately 600 000 workers across NSW.
2. Our union affiliates cover the spectrum of the workforce, stretching from workers in finance, agriculture, hospitality, manufacturing, retail, construction to communications.
3. Unions NSW has been an active campaigner in relation to the compensation system for over a century.

4. Unions NSW has made extensive submissions on the interaction of workers compensation and the Compulsory Third Party insurance scheme.
5. Unions NSW welcomes the opportunity to make a submission to this inquiry as we submit that there are gaps in insurance coverage that have the potential to destroy the financial security of working people injured in a motor accident.

Operation of Workers Compensation Journey Coverage

6. On June 19, 2012, the NSW Government amended Section 10 of the Workers Compensation Act 1987 making workers vulnerable if they have an at fault accident on the way to or from work.

7. Prior to June 2012 the workers compensation system in NSW was designed to be a no fault system and covered workers travelling to and from work. It said:

“10 Journey claims

(cf former s 7 (1) (b)–(d), (f), (g))

(1) A personal injury received by a worker on any journey to which this section applies is, for the purposes of this Act, an injury arising out of or in the course of employment, and compensation is payable accordingly.

.....

(3) The journeys to which this section applies are as follows:

(a) the daily or other periodic journeys between the worker’s place of abode and place of employment,

(b) the daily or other periodic journeys between the worker’s place of abode, or place of employment, and any educational institution which the worker is required by the terms of the worker’s employment, or is expected by the worker’s

employer, to attend, (c) a journey between the worker’s place of abode or place of employment and any other place, where the journey is made for the purpose of obtaining a medical certificate or receiving medical, surgical or hospital advice, attention or treatment or of receiving payment of compensation in connection with any injury for which the worker is entitled to receive compensation,”

8. The coverage of journey claims in Section 10 is broader than travel to and from work, and also covers other means of transport than road transport. It was

designed to cover all reasonable transport that is incurred for the requirement to attend work and return home.

- In June 2012 the government amended the Workers Compensation Act to insert the following legal requisite.

*“(3A) A journey referred to in subsection (3) to or from the worker’s place of abode is a journey to which this section applies **only if there is a real and substantial connection between the employment and the accident or incident out of which the personal injury arose.**”*

(emphasis added)

- This legal standard has proven significant. Since 2012 the numbers of substantiated journey claims under workers compensation has plummeted with insurers also declining journey claims still covered by the definition under the Workers Compensation Act 1987.



Source: PWC Letter to Gary Jeffery, A/ General Manager, NSW WorkCover, 20 March 2014

- The above table demonstrates the vast reduction in journey claims under the workers compensation system.
- Unions NSW does not have access to the same data as ICare NSW or SIRA nor access to the actuaries for both schemes. Therefore with a rudimentary assumption of 50% at fault claims, Unions NSW estimates that approximately 3000-3500 claims per year are now without effective insurance coverage if they are injured on the way to and from work.

Recommendation: That the CTP scheme be extended to all at fault claims for workers driving to and from their workplace.

Employment Security

13. A consequence of the Workers Compensation Amendment Act 2012 is the transfer of not-at-fault vehicle journey claims to the Motor Accidents Scheme. But this means that those workers will not be protected in their employment if injured in a motor vehicle incident going to or from work and home.

14. Section 248 of the Workers Compensation Act 1987 provides employment protection for workers injured at work.

Section 248 states:

“248 Dismissal within 6 months of injury an offence

(cf IR Act, s 99)

(1) An employer of an injured worker who dismisses the worker is guilty of an offence if:

(a) the worker is dismissed because the worker is not fit for employment as a result of the injury, and

(b) the worker is dismissed during the relevant period after the worker first became unfit for employment.

Maximum penalty: 100 penalty units.”

15. There is no such protection for workers or anyone who is injured as a result of a motor vehicle accident apart from those specified in the discrimination legislation. The discrimination legislation however, does not operate as a prohibition, has exceptions/defenses, and rarely results in a reinstatement.

16. The consequences are numerous for both the individual injured worker and also the motor accidents scheme.

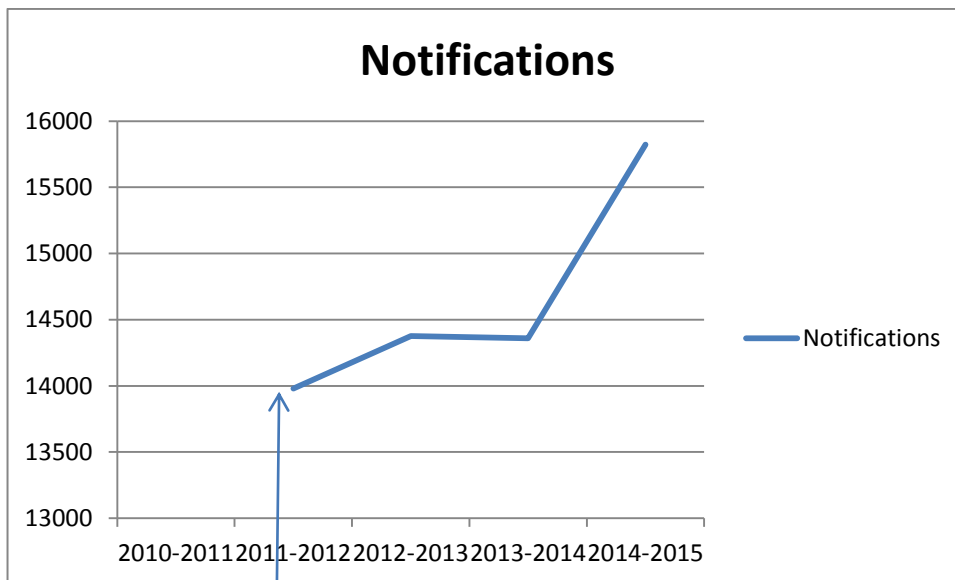
17. Firstly the chances of a worker returning to work in a sustainable manner are increased if they can return to their own job even with reasonable adjustment supported by the scheme. By enabling the worker to be terminated, the Motor Accidents Scheme inhibits the ability of the worker to return to work.

18. Secondly, by not returning to any work for an extended period of time, this will then increase the cost of current and future income loss components to the scheme.
19. The transfer of some workers injured in not-at-fault vehicle journeys to or from work from the workers compensation scheme to the compulsory third party scheme has also reduced workers' employment protections.
20. Another consequence is the transfer of costs from employers (through reduced workers compensation premiums) to the general populace through increased CTP premiums and increased costs to the public health and social security systems.

Recommendation: That the Motor Accidents Compensation Act and Industrial Relations Act 1996 be modified to protect all workers from termination for the same period as available under the Workers Compensation Act 1987 if making a claim under the provisions of the Motor Accidents Compensation Act.

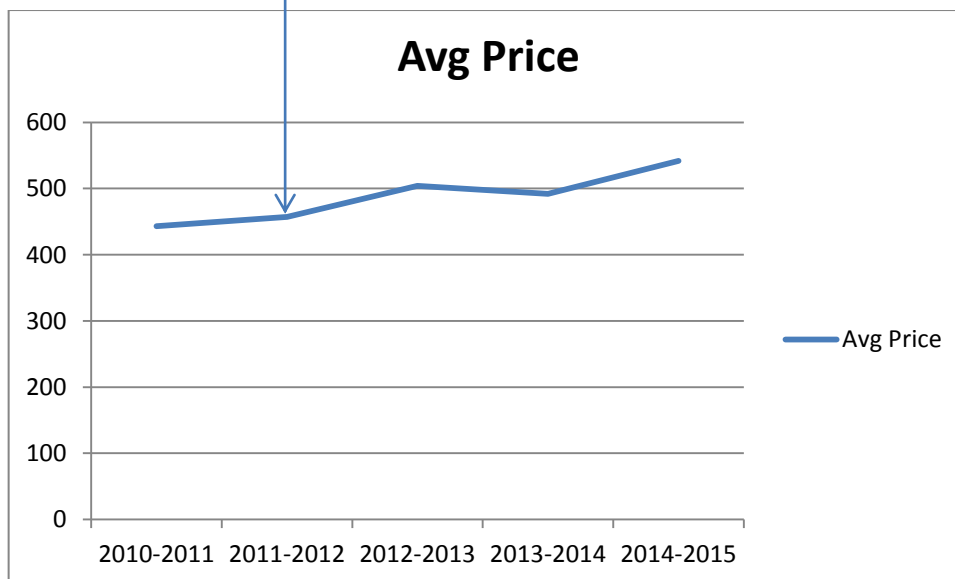
Workers Compensation Amendments, CTP Claims and Premiums

21. Whilst there are a number of factors that will affect premiums and also claims notification numbers, the following tables indicate a significant increase in notifications and changes in the premium price after the Workers Compensation Amendments of 2012.



Source: Annual Reports Motor Accident Authority 2011-2012:2014-2015

June 2012 WC Amendments



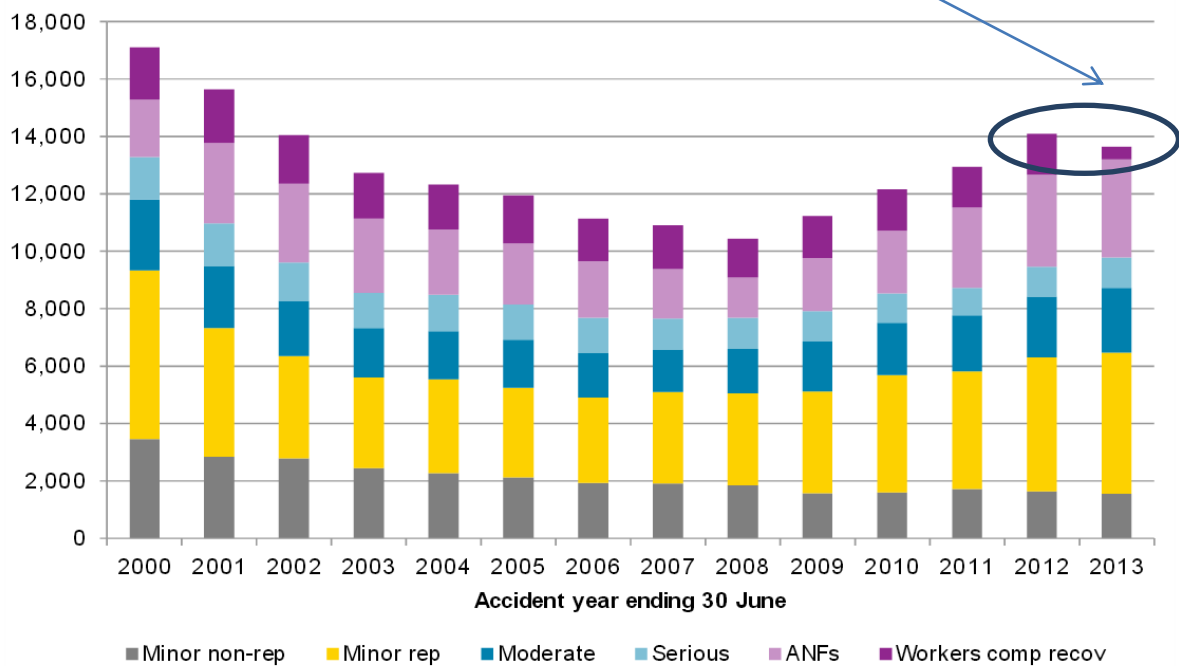
Source: Annual Reports Motor Accident Authority 2011-2012:2014-2015

22. The following table details what has happened as a result of the changes to the Workers Compensation Amendment Act 1987. It does not include those claims that are now no longer able to be made in an at fault scenario.

23. Insurance coverage is a major issue for at fault workers. What these tables show is a greater number of people falling through the gaps as they are not protected for at fault claims.

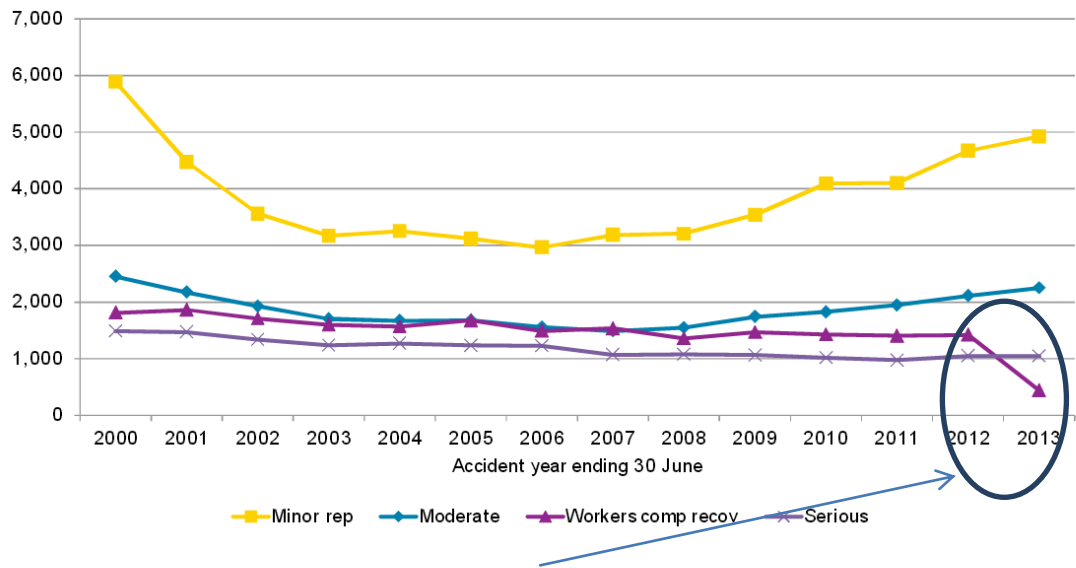
Decline in workers comp recoveries year 1 post Amendments

Figure 3: Ultimate number of full claims and ANFs



Source: Ernst and Young, Selected Indicators of the performance of the NSW CTP Scheme to 2013, p. 6

Figure 4: Ultimate number of claims for minor severity legally represented, moderate severity, serious severity and workers compensation recoveries



Workers Compensation Recoveries (claims between schemes)

Source: Ernst and Young, Selected Indicators of the performance of the NSW CTP Scheme to 2013, p. 7.

The PWC report identified that of the \$4 billion workers compensation alleged deficit, only \$70 million was made up of journey claims... Of this, approximately \$35 million was recovered against third party insurers under the Motor Accidents Compensation Scheme. (Australian Lawyers Alliance, Submission to the Joint Select Committee on the NSW Workers Compensation Scheme 2012: 12)

Our rough calculation estimates the cost of including this coverage at \$7 per policy, creating peace of mind for the millions of workers who drive to work daily.

Recommendation: That the Law and Justice Committee inquire with the scheme actuary to identify what cost estimate would cover all workers on journeys to and from their work and place of abode (regardless of fault) under CTP.

Recommendation: That the Law and Justice Committee inquire with the scheme actuary to identify the likely differences in premium when the extended coverage was shared across over 5 million CTP policy holders.

The END