

**FIRST REVIEW OF THE WORKERS COMPENSATION  
SCHEME**

**Organisation:** Australian Road Transport Industrial Organisation NSW Branch  
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## New South Wales Branch

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Ms Teresa McMichael  
Standing Committee on Law and Justice  
Parliament House  
Macquarie St  
SYDNEY NSW 2000

By email: [lawandjustice@parliament.nsw.gov.au](mailto:lawandjustice@parliament.nsw.gov.au)

Dear Ms McMichael

### **Submission: First Review of the Workers' Compensation Scheme**

#### **Introductory Remarks**

The Australian Road Transport Industrial Organisation NSW Branch (ARTIO NSW) welcomes the opportunity provided by the Standing Committee on Law and Justice (the Standing Committee) to make a submission to the Standing Committee into the Standing Committee's First Review of the Workers' Compensation Scheme.

ARTIO NSW notes that this inquiry relates to the operation of the insurance and compensation schemes in NSW relating to workers' compensation insurance and motor accident insurance.

#### **ARTIO NSW and its Interest in this Inquiry**

ARTIO NSW was established in 2008 and is an association of road transport operators based in NSW. Collectively, ARTIO NSW's Members are involved in local, intrastate and interstate transport and operate in metropolitan, regional, rural and remote areas of NSW. Collectively, they carry a wide variety of types of freight in vehicles ranging from small rigid trucks to prime mover/multi trailer combinations.

ARTIO NSW is registered as a federal industrial association of employers under the *Industrial Relations Act 1996 (NSW)* (the Act). ARTIO NSW is also a registered association of employing contractors under the Act.

ARTIO NSW's principal interests in relation to this inquiry arise because Members:

- Pay compulsory third party insurance under the motor accident insurance scheme; and
- Pay workers' compensation insurance.

This means the road transport industry is unusual in that safety concerns and associated insurance schemes relate to both the workplace and to vehicles. This recognises that in the road transport industry the road is a place where work is carried out.

In the road transport industry improvements in road safety also arise from better vehicles and vehicle standards, better roads and a better road environment and better trained drivers. Put another way, it takes a lot more than just reforms to WHS and road law and associated consultative mechanisms to create safer workplaces in the road transport industry.

The road transport industry also has relatively high rates of death and injury. This is reflected in premium levels payable by road transport operators.

This submission will focus on opportunities for further reform related to policy, legislation and the design of insurance schemes.

### **The Approach to Reform**

ARTIO NSW views the past decade or so as a time in which there has been substantial reform of insurance arrangements, especially in relation to workers' compensation but also in relation to the manner in which insurance and compensation schemes are structured. Both major political parties are to be commended for tackling what was 15 or so years ago a workers' compensation system which was becoming unviable and which was not structured in a manner which encouraged a return to work and sent other behavioural signals based on the notions of dignity at work for employees and 'reward for effort' for employers. 'Ambulance chasing' was a growth industry which needed to be severely curtailed and it has been.

Perhaps the most substantial reform package was the Insurance and Regulation Reform Package introduced last year which established Insurance & Care NSW, the State Insurance Regulatory Authority and SafeWork NSW. These structural reforms removed potential conflicts of interest and established a structure which ensures the agencies concerned focus on either regulation or care and rehabilitation. These reforms recognise that functions transcend risk areas such as motor accidents, workers' compensation, home building compensation and specialist areas of care arising from particular adverse workplace exposures.

### **Fundamental Principles of a Scheme**

Fundamentally, a scheme should pay for itself while providing care for those in need and incentives to reduce costs through the development of a safer workplace culture and encouragement to injured workers to return to work.

ARTIO NSW believes the objective of any insurance scheme should be to achieve a modest surplus on a consistent basis in the knowledge that this objective may not always be achieved in any year. This gives the government of the day and responsible agencies the opportunity to reduce premiums, better structure premiums and associated incentives and/or gradually improve entitlements and support to injured workers. If an insurance scheme is exposed to the risk of not making modest surpluses on a consistent basis, or, worse still underlying losses, improvements cannot be made over time either to the design of the scheme as far as premiums are concerned or to entitlements to those most in need of care.

There are many important considerations in scheme design. Two that require particular consideration are the downward trend in returns on investment of funds held by insurance schemes and the underlying increase in health care costs which continue to grow over time at rates well above inflation.

### **Opportunities for Further Reform**

#### ***Nationally Uniform Legislation***

There is a need to ensure there is legislation which is national in scope and is underpinned by the concept of 'chain of responsibility'. This is particularly important in the road transport industry because:

- The actions of supply chain parties other than the transport operator and the truck driver can have a coercive effect on behavior on the road and at places where freight is loaded and unloaded and, in turn, compromise safety through, for example, excessive speeding, driving for longer than permitted by driving hours' laws, poor load restraint on trucks or fork lifts and poor traffic management in warehouses and distribution centres.

- Industry participants and other supply chain parties have obligations under both workplace health and safety law and road law. These legislative frameworks are not consistent, even if the policy objectives of both sets of legislation are to create a safer work environment and to ensure the party or parties primarily responsible for a breach of the law are at the greatest risk of prosecution for an offence. There is a need to align WHS law and road law so that supply chain parties have a clearer understanding of legislative and regulatory obligations.
- Parts of the road transport industry engage in interstate transport and a consistent cross border legislative framework is important in aiding supply chain parties to achieve compliance with the law. This makes the industry different from almost any other industry because not only may it carry on business in more than one jurisdiction but it can also do so while completing a task.

There has been considerable progress in the last 20 years or so through the creation of the National Transport Commission, the National Heavy Vehicle Regulator and Safe Work Australia. However, more needs to be done to harmonise safety related laws which affect the road transport industry.

### ***Reforms to the Compulsory Third Party Insurance Scheme***

The State Insurance Regulatory Authority's paper, *On the Road to a Better CTP Scheme*, (the SIRA paper), which outlines options for reforming the CTP Scheme in NSW, highlights deficiencies with current arrangements. ARTIO NSW did not make a submission to this review, however, it has an interest in Scheme reform.

ARTIO NSW notes there are four reform options put forward for consideration. ARTIO NSW believes that a reformed Scheme should contain the following features:

- It should be a hybrid no-fault defined benefits scheme in order to remove restrictions on potential claimants while also providing greater certainty regarding claims payments. The private insurer underwriting model currently in place should be retained. Reforms should be designed to encourage a more competitive market and attract additional Scheme insurers.
- A defined benefits scheme is preferred to a lump sum scheme in order to reduce the scope and incentive for fraudulent and exaggerated claims and improve the timeliness of claims payments. Defined benefits schemes are also more likely to provide greater certainty to the insurer and the claimant and allow the claimant to focus on returning to as normal a life as possible given the injuries experienced.
- Common law access should be retained but it should be limited scope to the most seriously injured as is the case in the Victorian scheme. This will reduce legal costs and the risk of widely differing claims payments for similar types of impairments in terms of duration and severity.
- There should be caps on benefits payable under a no-fault scheme to provide greater certainty and predictability to the insurer and the injured party and in order to reduce the scope for legal action.
- Income benefits payable should be set at levels consistent in broad terms with the features of existing schemes in Victoria, Tasmania and the Northern Territory.
- Caps should be retained to cover past or future economic loss. The current cap in NSW seems to be excessively generous. The three times Average Weekly Earnings cap in place in the Queensland, Tasmanian and Western Australian schemes seems to be a reasonable upper limit and will have a very limited impact on individuals capable of attracting a high salary while providing additional certainty to insurers.
- Lump sum impairment payments should be payable on a sliding scale with a minimum impairment to be attained before a potential claimant is eligible as is currently the case in the Victorian and Northern Territory schemes.
- Restricted payments for non-economic loss based on existing arrangements in New South Wales should be retained.
- Legal fees should be based on the prevailing court scale as applies in Victoria, Tasmania, South Australia and Western Australia.

ARTIO NSW believes that such a package of reforms will reduce administrative costs, reduce premiums, reduce the scope for lawyers to initiate litigation, provide greater certainty for claimants in terms of entitlements, improve claims management for insurers, speed up the claims process of claimants, ensure insurers can trade off higher certainty in scheme design through lower profitability levels in the knowledge that the Scheme is more sustainable and make the NSW Scheme more attractive to insurers who do not participate in it.

ARTIO NSW also believes that consideration needs to be given to extending the concept of 'reward for effort' through better premium design to the compulsory third party insurance scheme.

Existing arrangements are 'socialised' in that there is no incentive provided to reward vehicle owners with a superior claims experience. Clearly approaching this type of reform would require very careful consideration. However, other insurance schemes including those related to workers' compensation, comprehensive motor vehicle insurance as well as home and building insurance have incentives through lower premiums based on claims record. ARTIO NSW recommends this be investigated further in order to determine whether this can be developed as a potential feature of the Scheme.

### ***Enhancing Stakeholder Relations***

In ARTIO NSW's opinion, formal structures in which dialogue can take place with agencies with WHS responsibility have broken down, at least in the road transport industry. Tripartite structures need to be rebuilt.

### ***Improving Links Between Agencies with Safety Responsibility***

ARTIO NSW believes there is a need to ensure there are effective links between the NSW Centre for Road Safety and agencies with responsibilities related to motor accidents and WHS. This is necessary because in the road transport industry safety transcends road law and WHS law.

### **Recommendations**

1. That the NSW Government work with the Commonwealth and other jurisdictions to ensure harmonisation where appropriate of safety related workplace health and safety law and road law throughout Australia.
2. That fundamental reform of the comprehensive third party motor vehicle insurance scheme be pursued based on the SIRA paper but reform should extend to consideration of reforms to premium levels with the objective of rewarding Scheme participants with a superior claims record.
3. That SafeWork NSW be encouraged to restore tripartite stakeholder forums to enable it to work with representatives of employer organisations and trade unions to develop education and communication material aimed at promoting safer workplaces in industries with high rates of death and injury.
4. That better links be established between agencies with responsibility for WHS and road safety and industry.

Please direct any enquiries to Hugh McMaster, ARTIO NSW Secretary/Treasurer, telephone , email .

Yours sincerely

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

