

**INQUIRY INTO 2018 REVIEW OF THE WORKERS  
COMPENSATION SCHEME**

**Organisation:** Australian Road Transport Industrial Organisation NSW Branch  
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15 June 2018

Ms Sharon Ohnesorge  
Committee Secretariat  
Standing Committee on Law and Justice  
Parliament House  
Macquarie St  
SYDNEY NSW 2000

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

Dear Ms Ohnesorge

**Submission: 2018 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 Committee) to make a submission to the Committee's 2018 Review of the Workers Compensation Scheme.

ARTIO NSW notes that this inquiry relates to Recommendation 16 of the Committee's 'First Report of the Workers Compensation Scheme' (the Report) issued on 9 March, 2017 which stated (at page 86):

'That the NSW Government consider the benefits of developing a more comprehensive specialised personal injury jurisdiction in New South Wales.'

It was clear from the contents of this report, including evidence provided by stakeholders from the legal profession and from an association of self-insurers that the scope of the proposed jurisdiction's work would cover both workers compensation and comprehensive motor vehicle (CTP) insurance. ARTIO NSW welcomes this development.

Specifically, ARTIO NSW notes that the Committee would like to hear views on:

- The feasibility of a consolidated tribunal;
- Where such a tribunal should be located; and
- What legislative changes are required.

This submission will address each of these matters.

**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 and in other jurisdictions.

Members of ARTIO NSW carry a wide variety of types of freight in vehicles ranging from light rigid trucks and vans to prime mover/multi trailer combinations.

ARTIO NSW is registered as a federal industrial association of employers and a registered association of employing contractors.

ARTIO NSW's principal interests in relation to this inquiry arise because Members and road transport operators more broadly pay both workers compensation insurance and CTP insurance. Further, the aggregate cost of both of these classes of insurance are significant to ARTIO NSW Members and to other road transport operators in NSW.

ARTIO NSW's interest also arises because the road transport industry has relatively high rates of death and serious injury in both on-road and off-road work environments.

While not necessarily relevant to this inquiry, it is also important to note that proposed reforms to the National Heavy Vehicle Law, which are scheduled to take effect from 1 October, and recent reforms to workplace health and safety (WHS) law will mean that both heavy vehicle law and WHS law will become very closely aligned. This close alignment is welcomed by the road transport industry because it simplifies the legislative and regulatory framework under which road transport operators and other supply chain parties operate without weakening obligations under the law. Alignment of dispute resolution procedures for CTP and workers compensation would be welcomed by the industry for the same reasons.

### **The Feasibility of a Consolidated Tribunal**

Although insurance arrangements under CTP and workers compensation have differing characteristics and are underpinned by different legislative and regulatory frameworks, both have broadly common objectives, common stakeholders in areas of medicine, the law and insurance as well as affected workers and their employers. Both sets of insurance arrangements have broadly similar rights and obligations whenever disputes arise.

It follows that in a management and operational sense it should be possible to establish a 'one stop shop' which can administer insurance claims, make more consistent assessments, provide for improvements in corporate knowledge of case history while ensuring appropriate rights and obligations to parties to seek redress through dispute resolution are retained with the assistance and advice of suitably qualified professionals. Hopefully, system improvements achieved through a standardised process will also facilitate earlier resolution of disputes and reduced recourse to avenues of appeal.

In establishing a tribunal which deals with disputes in relation to s CTP and workers compensation, consideration should be given to the rights of claimants to:

- A triage process from the outset so that all stakeholders can understand what can be expected to be the appropriate pathway to resolve the dispute.
- A process which:
  - Encourages early conciliation or mediation.
  - Allows prompt resolution of small and/or less complex claims.
  - Can accommodate the appropriate management of more complex claims.
  - Encourages the parties to identify areas of dispute as quickly and efficiently as possible.
  - Encourages the prompt and efficient exchange of information relevant to areas of dispute. and documentation relevant to those matters.
- Appeal any decision to the highest available Court.
- An overarching process which simplifies administration, especially in areas where roles and functions of existing bodies dealing with CTP and workers compensation insurance can be integrated, including stakeholder relations and back office functions.
- A medical assessment process which:
  - Reduces the likelihood of inconsistent outcomes.
  - Reflects the latest science as understood and accepted as being valid by the profession.
  - Provides an opportunity to appeal a decision.

This should be underpinned by an assurance that basic legal principles and processes such as access to justice and efficient administration, access to 'plain English' documentation and access to interpreter services for claimants with a non-English speaking background are available, along with effective cost management and procedural fairness.

Such a framework should be simpler to administer and to navigate, lead to reduced legal and medical assessment costs, and instil in all stakeholders a greater level of confidence and integrity in the dispute resolution process. Beneficiaries can be expected to include those who are injured as well as employers, especially road transport operators who have a significant stake in both schemes.

#### **Where the Tribunal Should be Located**

The location of the proposed tribunal should be determined by considerations such as ease of transport and building access, especially for those who are more seriously injured.

ARTIO NSW is aware that public transport patronage is growing substantially in Sydney and on inter-city services. This reflects relative changes in the reliability of the public transport network, especially on rail, compared to transport by passenger vehicle. Accordingly, access to efficient, reliable public transport should also be an important consideration in determining where the tribunal should be located.

#### **What Legislative Changes are Required**

ARTIO NSW does not intend to comment in detail on changes to legislation required beyond noting that it would appear necessary to consider the possibility of synthesising existing provisions in:

- Division 7 of the *Motor Accident Injuries Act 2017*.
- Chapter 7, Parts 4 to 7 of the *Workplace Injury Management and Workers Compensation Act 1988*.

#### **Conclusion**

As a matter of principle, ARTIO NSW supports reforms to dispute resolution processes in relation to CTP and workers compensation insurance which put the injured person first by providing a consistent process in which decisions can be made.

Aside from providing benefits to claimants, a consistent dispute resolution process can be expected to assist practitioners in the law and medicine as well as insurance assessors because the process itself should be easier to understand and follow. In turn, the quality, reliability and consistency of the service provided by these service providers should be more efficient, more reliable and less costly to the benefit of claimants and their employers.

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**