

Special Report

WORKERS COMPENSATION & SELF INSURANCE

Fattening the Calf for Sale?

All signs pointing towards ReturnToWorkSA ("RTWSA") pumping up the tyres of the Scheme to put it on the market in 2017

By Patrick Walsh

Since the introduction of the *Return to Work Act SA* ("the Act") it has certainly been a turbulent time in South Australia for those impacted by changes to the Scheme. This shows no signs of stopping any time soon and with a closer look at the recent announcement of proposed changes to self-insurance, you could be forgiven for thinking that the ReturnToWorkSA Board has taken some lessons from Anchorage Capitals' sale of Dick Smith Electronics! Inflate profits and cut costs!

Aside from the many legislative changes, we have seen:

1. ReturntoWorkSA's announcement in March 2015 that the Scheme is fully funded, followed by the 2014/15 Annual Report stating that the Scheme had achieved a 114.3% funding ratio. This being achieved by an astounding improvement of \$1.501 billion in the Scheme's net assets as a result of the write down in its actuarial liability;
2. Changes to the premium calculation for experience rated employers which means that only weekly payments will have a direct impact on employers' premiums;
3. A reduction in the average premium rate to 1.95%; and

4. The introduction of mobile case managers as ReturntoWorkSA trumpets its new service focussed model.

Don't be surprised if the next step by the ReturnToWorkSA Board is to require the claims agents to cut costs now that claims liabilities have been significantly reduced.

Interestingly, despite all of these improvements to the Scheme, no self-insurers elected to return to the registered Scheme. In fact businesses are still applying for self-insurance and are set to leave the Scheme. As Deputy Premier John Rau said before the House of Assembly Estimates Committee "*They (self-insured employers) will vote with their feet if they think it (the Return to Work Scheme) is good...*"

The release of ReturnToWorkSA's 'Consultation Paper' in Relation to Proposed Changes to the Policy on Self Insurance shows that the Board has given up trying to use the financial carrot to encourage self-insurers to return to the fold and it has now turned to the stick. For those who haven't already, I suggest reading [John Walsh's article](#) on the topic.

There are many reasons beyond, simply the savings associated with self-insurance, that cause large employers to seek self-insurance. The ability to provide a holistic approach to the workforce is but one of them.

A self-insured can administer claims consistently in accordance with the Act without being subject to the often changing policies and procedures of RTWSA and its claims agents.

Self-insurance is highly sought and prized. As a cohort self-insurers outperform the Scheme. It "*ain't broke*", and in fact is thriving so why the changes?

There is no evidence to suggest that any self-insured employer poses a risk to the Scheme, and even if a self-insurer were to become insolvent ReturnToWorkSA enjoys the benefit of Excess of Loss Workers Compensation insurance policies held by self-insurers, which all include wording mandated by ReturnToWorkSA to ensure that benefits payable under the policy are payable to ReturnToWorkSA in the event that the employer is insolvent. This is before you consider the \$40 million plus fund that ReturntoWorkSA hold on behalf of self-insurers to cover any liabilities not covered by insurance!

As John notes in his article, Deputy Premier John Rau and Greg McCarthy (then Chief Executive of WorkCover Corporation) before the House of Assembly Estimates Committee in June 2013 acknowledged that self-insurers on the whole achieved better outcomes, not just for the business, but also for their workers.

In more recent appearances before the House of Assembly Estimates Committee Greg McCarthy has asserted that large employers in the Scheme perform as well as self-insurers, but ReturnToWorkSA has not published any data to substantiate this claim.

In any event, if self-insurers are out-performing or at worst matching the performance of the best performing employers in the Scheme, it just doesn't make any sense to try and drive them back into the Scheme unless it is to improve the attractiveness of the Scheme for private insurers. In an environment where insurers cannot control legislative requirements like they can with their own policy wording the more large low risk employers in the Scheme the better.

In general terms, employers apply for self-insurance licences because they are able to make a reduction in their costs by no longer paying premiums and because they can achieve better outcomes for their injured workers. Self-insurance also drives better work health and safety compliance because the employer is directly impacted by the cost of **every** workplace injury, even the minor ones.

Effectively forcing unwilling self-insurers back into the Scheme will drive up costs, resulting in jobs leaving the state as businesses move their operations elsewhere or reduce employee numbers. It will produce poorer work health and safety outcomes for workers as self-insurers divest themselves of their claims management teams.

The only reasonable conclusion that can be drawn from recent moves by the ReturnToWorkSA Board is that they are trying to improve the risk profile of Scheme, with a view to re-introducing private insurers. **Even if doing so damages the local economy.**

It is noteworthy that the service contracts for the claims agents and legal providers of ReturnToWorkSA all terminate on 30 June 2017. This is in addition to the 27 August 2015 announcement by ReturnToWorkSA that nominations by employers to change claims agents will not resume until 2017.

If the Government is intent on opening up the market to private insurers in 2017, it would be better to start following some of the principles of an open market sooner rather than later. At the moment self-insurers provide the only competition in what is otherwise a Government controlled monopoly where employers can't even choose their claims agent!

The ham fisted approach of ReturnToWorkSA in releasing its Consultation Paper simply creates more uncertainty and risk to the South Australian economy at a time when we just don't need it.

Imagine a CEO of a local manufacturing company pondering:

"at a time when our electricity costs have gone up 50% we would be hit with an additional million dollars of fixed overhead if the Company falls back into the Scheme. How do I now respond to shareholders urging us to move our base offshore?"

The Premier says (Advertiser Supplement 13/2/16) *"Adelaide ... is regularly voted one of the most liveable cities in the world. But we also want to be known as the best place to do business. There really is no better place to invest in, start or expand a business."*

Adelaide's transformation and growing attractiveness is in large part the result of bold State Government action: tax, planning and workers compensation reforms; stamp duty concessions; and changes to small bar licensing".

The Premier should talk to CEOs likely affected by the proposed policy and see how many are pondering a move interstate or offshore and then tell the Board of ReturnToWorkSA to stimulate the climate for self-insurers and not stifle it. We should encourage excellence not force mediocrity.

What the Board in proposing these policy changes is actually doing is imposing a **BIG NEW FAT TAX ON AFFECTED BUSINESS!**

The inevitable result is a further loss of jobs and expertise!



MORE INFO

Patrick Walsh Senior Associate

p: +61 8 **8124 1941**

patrick.walsh@dwfoxtucker.com.au

DW Fox Tucker Lawyers

L14, 100 King William Street, Adelaide, SA 5000

p: +61 8 **8124 1811** e: info@dwfoxtucker.com.au **dwfoxtucker.com.au**

COMMERCIAL | CORPORATE | DISPUTES | INSOLVENCY | TAX | IP | EMPLOYMENT | WORKERS COMPENSATION | SELF INSURANCE | PROPERTY

Disclaimer: The information contained in this communication does not constitute advice and should not be relied upon as such. Professional advice should be sought prior to any action being taken in reliance on any of the information.