

SUCCESS STORY

Overturing WorkCover premium audit findings can materialise substantial economic results

'Our client challenged the outcome of a WorkCover premium audit that had resulted in changes to the WorkCover industry classifications of each of its workplaces and caused a substantial increase in its annual WorkCover insurance premiums. We advocated strongly for our client's position by seeking to establish a watertight case that would prove difficult to refute.'

Michael Kohn, Partner, Revenue Law

Our client – Gigpower

Our client is a labour hire business operating predominantly in the performing arts and event promotion industries. It is a major industry player that employs over 400 staff in Victoria.

Given its services business model, a large proportion of our client's expenditure is employee wages and associated costs (including WorkCover insurance). Accordingly, the increase in its aggregate annual WorkCover premiums bill as a consequence of the WorkCover premiums audit (effective immediately) was commercially significant from both cash flow and ongoing profitability perspectives.

Their ambition

To comply with the legislative timeframes for review, our client sought to move swiftly in challenging the outcome of a WorkCover premium audit that had resulted in changes to the WorkCover industry classifications of each of its workplaces and caused a substantial increase in its annual WorkCover insurance premiums.

Our client sought our advice on whether the WorkCover premium audit findings were legally correct; and if not, how it could recover past expenditure and ensure its WorkCover premiums were calculated on a fair, reasonable and legally correct basis going forward.

Enhancing their success

Following initial review and consultation, we provided our client with a comprehensive analysis of the matter's prospects of success. This analysis considered not only the strengths and weaknesses of our client's legal position, but also the potential cost implications (including non-recoverable legal costs) of pursuing a judicial or administrative appeal beyond the first step in the review process – being an internal review by a Senior Review Officer.

A commercial and realistic analysis allowed our client to balance the possible upside of a significant WorkCover premium adjustment against the potential cost implications, in order to make an informed decision on whether to pursue formal review of the WorkCover premium audit findings.

The WorkCover internal review by a Senior Review Officer resulted in a series of requests for further information and clarification, which we responded to in a timely and cost-effective manner – constantly seeking to narrow the issues in dispute. Ultimately, we were successful in securing revised WorkCover classifications for each of our client's actual and imputed workplaces, causing a commercially significant and commensurate reduction in our client's current and forecasted WorkCover insurance premiums.

Throughout the internal review process, we had a singular overriding aim: secure the best economic outcome for our client. Through frequent contact with the Senior Review Officer conducting the premium audit review, we were able to determine that the matter appeared to be progressing in a manner favourable to our client. This caused a shift in focus (or an increased emphasis on one element of a dual focus): to examine in detail the individual WorkCover industry classifications that would apply separately to each of our client's 'imputed workplaces' (ie, workplaces where our client's staff work on a daily basis during an engagement).

This close examination of the predominant activity at each of our client's imputed workplaces helped us identify an applicable WorkCover industry classification (being an 'administrative' classification, which attracts a comparatively low premium rate) not previously within the contemplation of the parties. We were able to establish that this WorkCover industry classification applied to a portion of our client's imputed workplaces and, in doing so, delivered an economic return to our client that exceeded its best expectations at the commencement of the audit.

Behind the headlines

Challenging the outcome of a WorkCover premium audit can seem at first glance to be an overwhelming process that is a considerable addition to a business' administrative burden. However, our approach to handling these matters is commercial, pragmatic and economically focused. We ensure our client understands the strength of its legal position and has a realistic expectation of the potential economic upside (ie premium adjustment) and downside (eg legal and appeal costs, diversion of resources) of taking any action.

We avoid assumptions by conducting a primary review of our client's current business activities (given a business' circumstances are fluid) and stress-test our client's legal position. We also focus on the information-gathering process to ensure that our client's legal position is substantiated by appropriate evidentiary material. We streamline this process as much as possible by reviewing all WorkCover correspondence and distilling requests for information into a logical and coherent format, before directing any requests to our client to furnish the required information. We also manage all aspects of the procedural timeline and incidental procedural matters (eg lodging prescribed forms).

Name of the partner managing the matter

Cornwall Stodart has achieved great results for clients in the area of WorkCover industry classification. If you would like a confidential and complimentary discussion about your WorkCover obligations, please contact: Michael Kohn, Partner; Joe Naccarata, Partner; or Lesley Naik, Associate.