

NORTHERN TERRITORY GOVERNMENT SUBMISSION TO THE PRODUCTIVITY COMMISSION INQUIRY INTO WORKERS' COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY FRAMEWORKS

1. PREAMBLE

The Northern Territory Government (NTG) supports both the terms of reference and the objectives of the Inquiry to identify pathways to achieve either a national framework for workers' compensation and Occupational Health & Safety (OH&S) arrangements or at least national consistency in such arrangements.

Since the Industry Commission's efforts in the mid 1990s, the Northern Territory acknowledges the difficulties encountered by the Commonwealth, State and Territory Governments to adopt national arrangements for either workers' compensation or occupational health and safety regulation. It has been disappointing that the significant efforts on the part of the jurisdictions has not delivered more consistent arrangements for employers or employees after the lapse of almost a decade since those Industry Commission's inquiries.

The historic adoption in May 2002 of the National OH&S Strategy by all governments in Australia and the social partners, including the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions, represents an important first step towards securing cooperation of the jurisdictions and the social partners towards adoption of consistent national arrangements for occupational health and safety and workers' compensation.

Recent moves by several states to adopt cross border workers' compensation legislation also represents important initiatives in addressing gaps between the jurisdictions which adversely impact on both industry and individual employees.

The Northern Territory welcomed the Commission's release of an Issues Paper during April 2003 and has below provided the Commission with a detailed submission in response, highlighting the Territory's particular concerns, which are seen as impediments to securing national frameworks and/or consistency in workers' compensation or OH&S arrangements.

2. CURRENT NTG ADMINISTRATIVE ARRANGEMENTS FOR OCCUPATIONAL HEALTH & SAFETY

Responsibility for (OH&S) provision is currently shared between four separate Northern Territory public sector agencies:

- Department of Employment, Education and Training's Office of Work Health which is responsible for Territory wide OH&S regulation and for securing system-wide regulatory compliance
- Department of Business, Industry & Resource Development's Minerals and Energy Group which is responsible for OH&S within the mining industry.
- Department of Corporate and Information Services which, through service level agreements with NT Public Sector agencies, is responsible for the provision of OH&S advisory and support services for all Northern Territory Government workplaces and employees.
- The Office of the Commissioner for Public Employment as the statutory employer of all NT public sector employees

3. THE OFFICE OF WORK HEALTH

The Office of Work Health (WHA) was established as an autonomous Authority under the *Work Health Act* in 1986, and currently forms one of three key business units within the Northern Territory Department of Employment, Education and Training (DEET). It is responsible for administering a workers' compensation system, regulating occupational health and safety and administering the following legislation:

- *Work Health Act*, Work Health Regulations and Work Health (Occupational Health and Safety) Regulations
- *Dangerous Goods Act* Regulations
- *Ozone Protection Act* and Regulations
- *Radioactive Ores and Concentrates (Packaging and Transport) Act* and Regulations

The OWH employs 33 staff in three locations including Darwin (29), Katherine (1) and Alice Springs (3). The OWH has two operational units: the Occupational Health and Safety Unit (27 staff) and the Rehabilitation and Workers' Compensation Unit (5 staff) with a Director as the administrative head of the office.

The Director is also a member of the DEET Executive Group. The Executive Group, headed by the departments' Chief Executive oversees policy and operational responsibilities for the agency of approximately 4000 staff.

DEET's corporate plan, accompanied by the OWH's Business Unit Plan, encapsulates the strategic and business objectives of the Office of Work Health for the period 2002/2003. (Refer attached).

a) Rehabilitation and Workers' Compensation

The OWH oversees a multiple private insurer workers' compensation scheme, where premiums are left to market forces and not regulated. It is a "no fault", long-term benefits system with no access to common law. The Northern Territory has five approved insurers and six approved self-insurers.

Approximately 3400 workers' compensation claims per annum are lodged with the Northern Territory's scheme with evidence over the past two financial years (2000/01 and 2001/02) of declining numbers of compensable injury claims. This trend is expected to be confirmed for 2002/03.

Rehabilitation providers are accredited by the OWH to conduct business within the NT workers compensation system. The (OWH) assists with case management and the development and implementation of return to work programs for injured workers.

Mediators are also accredited by the OWH to deal with disputed workers' compensation claims, which total approximately 300 or 8.8% of claims per annum.

Permanent impairment assessments total approximately 110 or 3.2% of claims per annum with 50-60 (less than 2% of claims) medical re-assessments occurring in 2001/02.

b) OH&S Unit

The Office of Work Health has 19 Work Health and Dangerous Goods Officers located across Darwin, Katherine and Alice Springs who are charged with implementing extensive OH&S preventative programs across NT industry.

In 2002, the Commonwealth, State and Territory governments adopted the historic National Occupational Health and Safety Strategy which committed them to achieving a targeted reduction of work related injuries of 40% and a targeted reduction of work related fatalities by 40% for the period 2002-2012

The National OHS Strategy targets for work related injury and deaths use 2002 outcomes as the base year the targets. (Refer table below).

It should be noted that fatality target figures at this time are indicative due to differing definitions in the jurisdictions for recording work relatedness. For example, long lead times for deaths from occupational disease have resulted in differing levels of fatality reporting within the jurisdictions.

NT injury and fatality claim projections (as per National OHS Strategy Targets)

Year	Injury claims against targets	Fatality claims against target
01-02	3471	5.0
02-03	3332	4.9
03-04	3199	4.8
04-05	3071	4.7
05-06	2948	4.6
06-07	2830	4.5
07-08	2717	4.4
08-09	2608	4.3
09-10	2504	4.2

10-11	2404	4.1
11-12	2308	4.0

The Office of Work Health will validate progress against these work related injury and fatality targets on an annual basis.

Due to the strategic implementation of OH&S preventative program initiatives, the securing of industry support for improved OH&S outcomes, the setting of industry based insurance premiums by approved NT insurers based on industry sector OH&S performance ratings, coupled with other factors, NT industry experienced a 7.8% reduction in workers' compensation claims during the period 2001/2002.

In 2003/04 the OWH is targeting the following industries in an attempt to secure sustainable reductions in work related injury and fatalities:

- Agriculture and Fishing
- Road Transport
- Building and Construction
- Public Sector
- Retail
- Gas
- Tourism and Hospitality
- Childcare

The OWH's strategic and business plans have been developed, in consultation with industry stakeholders, to complement the National OH&S Strategy commitments over the next decade. The OWH is confident that a proposed 4% per annum reduction in work-related injury in the Northern Territory will be easily achieved and has developed higher internal per annum targets.

Due to the limited size of the jurisdiction and the high incidence of high risk industries, work-related fatality targets will present some particular challenges to the OWH in seeking to achieve the national targets.

Unfortunate recent aircraft accidents and fatalities within the Northern Territory have resulted in relatively steep increase for fatalities to the year 2002/03 than has been experience annually for over the past decade.

c) **Reviews**

Since 2002, the OWH has participated in several extensive reviews including:

- A review of the NT Workers Compensation System which to date has resulted in 15 amendments to the *Work Health Act* with a further three amendments have more recently approved by Government.

- Selected recommendations following from a review into the medical and related interventions within the NT workers' compensation system (the Lord Report) developed by Dr Trevor Lord, have recently been approved by Government and will now be referred to the Office of Parliamentary Counsel for drafting of appropriate amending legislation which is expected to be introduced into Parliament before the end of 2003.
- A National Competition Policy (NCP) review into Part IV of the *Work Health Act* and Work Health (Occupational Health and Safety) Regulations has been completed. A broader review of Part IV of the *Work Health Act* and OHS Regulations is currently in progress.
- A review into the Definition of Worker under the *Work Health Act* for workers compensation purposes is currently in progress.
- A review into the operation and future orientation of the Office of Work Health has undertaken by Mr David Lea. Recommendations following that review together with a DEET position paper, has been presented to the Minister for Employment, Education and Training.

d) New Legislation

In May 2003 the Northern Territory Legislative Assembly passed amendments to the *Dangerous Goods Act*. At the same Sittings, a new *Dangerous Goods (Road & Rail Transport) Bill* was passed and these currently await the drafting of complementary regulations. The new legislation was initiated through the National Competition Policy (NCP) process and brings the Territory's dangerous goods legislation into line with the Commonwealth's 2001 National Transport Policy.

4. MINES & ENERGY GROUP

The *Mining Management Act* and Regulations provide OH&S guidelines for those involved in working, managing and securing safety compliance within the Northern Territory mining industry, while the *Petroleum Act* provides similar provisions for those engaged in the exploration and production of petroleum products.

5. DEPARTMENT OF CORPORATE AND INFORMATION SERVICES (DCIS)

OH&S in the NT public sector is administered through the *Public Sector Employment and Management Act* and Employment Instruction No 12 (made by the Commissioner for Public Employment pursuant to the Act) having regard to the general provisions of the *Work Health Act* and Regulations.

DCIS provides OH&S and workers' compensation policy, technical, administrative and advisory services through its Health and Safety Risk Management Branch. The branch comprises 30 staff located in both Darwin and Alice Springs and includes 13

OH&S Officers, 13 Workers' Compensation Officers together with administrative and Information Technology support.

Existing OH&S Service Level arrangements are being progressively replaced with Partnership Agreements that impose responsibilities on both the agency and DCIS in the implementation and management of a 10 point Occupational Health and Safety Management System. The system has as its platform, the NOHSC National Prevention principles, including a focus on systematically identifying, prioritising and controlling risks, the provision of OH&S awareness training and instruction and the incorporation of the system in day to day management practices.

Workers Compensation

The NT public sector is insurance exempt, effectively a self insurer. Workers' compensation claims for the public sector are administered by the Territory Insurance Office (TIO) in partnership with DCIS, where DCIS, as the agency representative, collaborates closely with the relevant agency in the provision of early intervention strategies and injury management.

The arrangement is governed by Standard Operating Procedures (SOPs) and is measured through key performance indicators (KPIs).

In recognising the value of the public sector's human resources, the system focuses on early intervention and injury management, regardless of the status of the compensation claim.

6. NATIONAL WORKERS COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY FRAMEWORKS

Comments in relation to points (a) to (l) in the "Scope of Inquiry" contained in the Issues Paper are provided below:

(a) *A consistent definition of employer, employee, workplace and work-related injury/illness and fatalities relevant to both workers' compensation and OH&S that could be adopted consistently across Australia;*

Comment:

- Currently the Northern Territory has a unique definition of a 'worker' in comparison to the other Australian jurisdictions.
- This definition of worker for workers' compensation purposes under the Work Health Act is Australian Business Number (ABN) based and is comparatively narrow, whereas the OH&S definition under the same Act is very broad. The two definitions are as follows;

OH&S Definition: -

'for the purposes of the provisions of this Act relating to occupational health and safety – a natural person who, under a contract or agreement of any kind (whether expressed or implied, oral or in writing

or under a law of the Territory or not), performs work or a service of any kind for another person;’

Workers Compensation Definition: -

‘for the purposes of the provisions of this Act relating to compensation and rehabilitation – a natural person –

- (i) **who, under a contract or agreement of any kind (whether expressed or implied, oral or in writing or under a law of the Territory or not), performs work or a service of any kind for another person unless and until the person notifies the other person, in writing, of a number that is, or purports to be, the ABN of that person for the purposes of the work or service;’**
- The NT is currently in the process of reviewing the workers’ compensation definition with the intent of arriving at a broader coverage base that is clear cut and unambiguous. If the definition of ‘worker’ for workers’ compensation purposes were to be broadened, a greater number of workers could be captured within an employer’s insurance policy which may result in an increased premium pool and exert pressure on insurers to reduce premiums. Government awaits the outcome of the review into the definition of worker which should include a report and recommendations that are anticipated to be provided to the Minister for Employment, Education and Training during July 2003.
 - The definition of work related fatalities needs to be nationally consistent and must also include fatalities resulting from work related disease and motor vehicle accidents to provide credibility to the information provided to both industry, the public and government on the true extent of work related deaths.
 - The Northern Territory supports “in principle” having nationally consistent definitions as per (a) on the basis that the Northern Territory will be involved in the process of determining nationally consistent definitions of employer, worker, injury/illness and fatality.
- (b) ***A consistent benefits structure that provides adequate levels of compensation, including income replacement and medical and related costs, for injured workers and their families;***

Comment

- The Northern Territory supports workers’ compensation benefits which strike a fair balance between the interests of employers and employees with a strong emphasis on providing support to injured workers to return to work as soon as is possible.
- The Territory’s long-term benefits system truly reflects the “no fault” basis of the Northern Territory’s workers compensation

scheme where the principal objective of the scheme is to encourage return to work outcomes by mutual employer and employee obligation to concentrate on strategies focussed on assisting injured workers to return to work rather than reliance upon claim finalisation by “cashing up” the claimant.

- Income replacement, benefit step down provisions after 26 weeks, and all reasonable medical, surgical hospital services including rehabilitation/vocational support services to underpin the return to work objectives of the Northern Territory workers compensation scheme are all features which encourage injured employees and employers to cooperate and undertake mutual obligations to assist the earliest possible return to work.
- These arrangements need to be assessed against the scheme’s experience where in excess of 90% of injured workers return to work within four weeks of a work related injury and less than 6% of injured workers remain on income replacement benefits for periods beyond 26 weeks.
- A move to a nationally consistent benefits structure is unlikely to have a financial imposition on the Territory’s scheme as we are amongst the three most generous in terms of statutory benefits. However, any move that would include common law access would have significant financial implications.

(c) *The implications of retaining, limiting or removing access to common law damages for work-related injuries/illness and fatalities on the models identified;*

Comment:

- The Northern Territory moved from a workers’ compensation system based upon “common law” access principles to a “no fault” scheme underpinned by a reasonable injury benefits structure in 1987. Regular reviews of the Northern Territory Workers Compensation scheme and its elements since that time has resulted in 35 pieces of amending legislation to the *Work Health Act* and Regulations for the period 1989 to 2003.
- The Northern Territory is satisfied that periodic reviews of the workers’ compensation provisions of the *Work Health Act* have reflected balanced outcomes for employers and employees whilst retaining the essential principles of the Act to support injured workers medically, vocationally and financially with a strong return to work focus.
- There is no intention by the Northern Territory to revert to common law access.

- To achieve a nationally consistent framework of benefits, access (or otherwise) to common law, needs to also be nationally consistent.
- Jurisdictions such as NT and SA that have no common law access and Comcare, with very limited access to common law have relatively generous long-term statutory benefit structures in comparison to those jurisdictions that retain common law access.

(d) *The most appropriate workplace based injury management approaches and/or incentives to achieve early intervention, rehabilitation and return to work assistance to injured workers and to care for the long-term and permanently incapacitated, including the opportunities for re-employment or new employment of people with a compensable injury, and the incentives and disincentives for employers with regard to the employment of workers who have suffered a compensable injury;*

Comment:

- All schemes already appear to be working towards these principles. Although common law access is at odds with early intervention.
- The provision of incentives to employers to take on injured employees including those employees who have been injured whilst working with different employers, are available within the Northern Territory under the *Work Health Act*. In this regard section 75A of the Work Health Act provides monetary indemnity and penalty incentives for employers and provides suitable work for injured workers. The take up rates of incentives to provide alternate employment opportunities for injured workers is, however, problematic for small businesses and the Territory as a whole where small businesses represent more than 90% of all NT businesses an employee between one and fifteen employees.

(e) *Effective mechanisms to manage and resolve disputes in workers' compensation matters that:*

(i) *Encourage the development of internal dispute resolution processes by employers;*

- Greater attention by industry to provide such internal dispute mechanisms, particularly where approved insurers and legal representatives are not encouraged to engage with attempts by the employer, the employer and their representatives to attempt, at least initially, to effectively resolve work related disputes at the workplace are supported "in-principle".
- This reluctance by employers to resolve workers compensation claims issues is not as evident in self-insured agencies such as

the NT Public Sector, with its emphasis on early intervention/ injury management and return to work.

- It should be recognised that access to dispute resolution processes for employees engaged in either the small business sector or in regional and remote centres is problematic, with matters such as distance and cost inhibiting employee, and at times employer, access to effective mediation and conciliation processes.
- Employees whose first, second or other languages are those other than English, particularly those employees who do not have access to accredited interpreters are further disadvantaged, particularly when they work and reside in remote areas as is the case within a large part of the Northern Territory. Indigenous Australian employees from remote parts of the Northern Territory are included within this broad description

(ii) Encourage the involvement of the employer, the employee, and insurers/scheme;

Comment

- Such processes are in place under the *Work Health Act*. However, the effectiveness of the mediation process in the context of resolving disputed compensation claims is arguable from an employee perspective. The mandatory requirement for employees to participate in mediation before a matter can be referred to the Work Health Court is often followed for reasons of process by the parties rather than using mediation in a genuine attempt to resolve the dispute.
- The Office of Work Health is aware that a number of representatives from the legal profession resent the compulsory nature of mediation required for workers' compensation related dispute resolution under the *Work Health Act*. Some claim that mediation under the *Work Health Act* provides a perceived bias that protects the position of approved insurers and their decisions on individual claims matters, and that mediation just delays the matter from proceeding to court.

(iii) Encourage the use of alternative dispute resolution including mediation and conciliations; and

- The existing dispute resolution processes under the *Work Health Act* provide for compulsory mediation before an application to court can be made. Conciliation is provided for in the preliminary stages of the Work Health Court process.

(iv) Retain an appropriate appellate structure for employers and employees.

Comment:

- Under the NT scheme the employer subrogates their decision-making powers to the insurer hence part (i) of this point is not readily achievable.
- The NT currently agrees and endeavours to implement dispute resolution along the lines of parts (ii), (iii) and (iv).

(f) ***The premium setting principles necessary to maintain fully funded schemes while delivering to employer's equity, stability and simplicity. In doing so, the Commission is asked to identify models that provide incentives for employers to reduce the incidence of injury and improve safety in the workplace;***

Comment:

- The NT has a multiple private insurer scheme, where premium setting is left to market forces. Hence, the Government has no direct ability to link premium incentives to improved safety in the work place.
- However, insurers do generally load premiums for poor claims experience and on industry performance ratings. The small business nature of many employers within the Northern Territory, most of whom employ from one to ten employees, more often results in higher workers' compensation premiums and less financial incentives by way of competitive premiums.
- Self insured employers have few financial incentives, other than those that are self imposed. Public sector agency safety performance may be improved by:
 - Linking OHS and workers' compensation performance directly to the performance of Chief Executive Officers. (In the NT Public Sector financial management is linked thus).
 - Providing independent benchmarked quarterly comparison reports through a central body such as the Office of the Commissioner for Public Employment.
 - The definition of "worker" for workers' compensation purposes since the early 1990s to the present, under the *Work Health Act*, has relied on the taxation status of the worker as opposed to the contract of employment or contract of services definitions.
 - The taxation related definition of "worker" for access to workers' compensation provisions under the *Work Health Act* which have applied since 1992 (ie PAYE and ABN) have promoted a culture in some industries within the NT of avoidance of compensation coverage.

- Anecdotal evidence suggests that some businesses have been able to demand declarations of taxation status from employees which have shifted insurance obligations from the employer to individuals who have in the past needed to secure Prescribed Payments Scheme (contractors' taxation arrangements) or, since the introduction of the new tax system, ABN status.
- These outcomes have been evident within the road transport, building and construction, cleaning and aviation industries.
- Recognition of the above has resulted in the impetus for the current review of the definition of "worker" for workers' compensation purposes under the *Work Health Act*.

(g) *A regulatory framework, which would allow suitably qualified employers to obtain national self-insurance coverage that is recognised by all schemes;*

Comment:

If the NT was to take part in a national self-insurance framework there is a concern that they could result in increased numbers of self-insured companies to the extent that the insured sector in the Territory's relatively small scheme could become unviable.

(h) *A regulatory framework, which would allow licensed insurers to provide coverage under all schemes. In doing so, the Commission should identify and assess the likely impact on employers, employees and the wider community from the introduction of competition, including on the level of premiums;*

Comment:

Supported, as the NT scheme is operated by licensed insurers, and subject to competition through market forces. The resultant competition which might arise from such a proposal could provide a more competitive premium environment nationally.

A national scheme could lead to a situation where there is little or no local presence of insurers, thus making it increasingly difficult to resolve claims.

However, it may well be necessary for individual jurisdictions to insist on insurers physically managing claims within their particular jurisdictions to ensure timely claims management.

(i) *Options to reduce the regulatory burden and compliance costs imposed on businesses of different sizes across Australia by the existing legislative structures for workers' compensation and OH&S, within the context of the national objective to improve the workplace health and safety of workers. In doing so, the*

Commission should examine the interrelation between the workers' compensation and OH&S legislative frameworks with other statutory regimes in place;

Comment:

All workers' compensation jurisdictions are working towards nationally consistent cross border arrangements to reduce regulatory and compliance burdens on employers.

The environment to adopt nationally consistent approaches to OH&S regulation is also supported. The adoption of a National OH&S Strategy and targets for the decade 2002-2012 by all jurisdictions in May 2002 encourages support for nationally consistent arrangements across the jurisdictions.

The role of the National Occupational Health and Safety Commission with the support of the jurisdictions in seeking the implementation of national cooperation and consistency in relation to OH&S and workers compensation arrangements is vital.

- (j) The appropriate boundaries of responsibility for the cost of work-related injury/illness and fatalities between the employer, employees and the community. In doing so, the Commission is asked to report on the current level of employee coverage by the workers' compensation schemes and the current sharing of costs and to identify under any national framework model for workers' compensation, an appropriate sharing of costs for work-related injury/illness and fatalities;***
- (k) The costs to the community of complementing or supplementing the coverage of existing workers' compensation arrangements, such as income support and Medicare benefits that may be paid to injured persons; and***

Comment: (j) and (k)

As mentioned for points (b) and (c) the NT statutory workers' compensation scheme is amongst the most generous in terms of long-term benefit structure and medical expenses, therefore there is little cost shifting.

Although this might be offset to some extent by the comparatively narrow definition of "worker" which has resulted in access concerns for workers' who exclude themselves from access to workers' compensation provisions of the *Work Health Act* on the basis of their income taxation status (the provision of an ABN in writing to an employer).

- (l) The national and State and Territory infrastructure and relative costs necessary to support the models identified in establishing national frameworks for workers' compensation and OH&S.***

Comment:

No comment at this point in time.

7. ISSUES FOR DISCUSSION

7.1 National Framework Model

- (a) **A Cooperative Model whereby the Commonwealth, States and Territories establish a national body to develop national standards which each jurisdiction would retain responsibility for implementation**

Comment:

A cooperative approach, which involves all jurisdictions in the process of developing nationally consistent workers' compensation standards appears reasonable. However, given the variety of workers' compensation schemes across jurisdictions, achieving consensus would be difficult and as such, would require substantial commitment by all jurisdictions. The Territory is committed to working towards nationally consistent standards where achievable and appropriate.

- (b) **A Mutual Recognition Model whereby all jurisdictions recognise each others' schemes**

Comment:

Given the existing industry structure in the NT, the Territory is of the view that a mutual recognition model would seriously disadvantage Territorians. Head offices are extremely limited in the Territory. Dealing with a multiplicity of different workers' compensation and OH&S schemes would be unwieldy. Another possible outcome may be that multi-state employers would be encouraged to move their head office to the jurisdiction with the most competitive premiums.

- (c) **An Expanded Comcare Model**

Comment:

Likely to be premium driven, ie where Comcare rates are competitive, employers would insure with them. However this may leave jurisdictions such as the NT at the high risk end of the market and therefore adversely affect the viability of the scheme. Ultimately, the possible collapse of State and Territory schemes could result in the Comcare model becoming a de-facto national scheme.

- (d) **Uniform/Mirror legislation Model which would ensure uniformity of all core aspects of workers compensation and OH&S**

Comment:

Such an approach would require wide and lengthy consultation at Ministerial Council, industry and community level as can be evidenced by the push for national complementary cross border legislation, negotiations for which have been in progress for over 10 years.

This could only work if there was the political will (by all jurisdictions) and that will was then enduring. Otherwise if jurisdictions were to obtain uniformity they would in time drift apart as local issues demanded.

If the political will existed for an enduring mirror legislation model, then that same will would likely to be there for a national scheme.

- (e) ***An Extended Financial Sector Regulation Model – existing Commonwealth Insurance act and Corporations Act could be extended to all workers compensation insurers and therefore subject to uniform prudential and consumer protection via APRA and ASIC***

Comment:

Supported “in-principle”. Would make the market more nationally equitable.

- (f) ***A New National Scheme whereby the Commonwealth could establish a national workers’ compensation scheme and national OH&S legislation***

Comment:

The Territory reserves its position on any referral of powers to the Commonwealth. However, the NT is prepared to consider any detailed proposals by the Commonwealth but not at the expense of diminishing return to work objectives, including benefits, medical and vocational support or coverage for workers’ compensation purposes.

It is noted however that the House of Representatives’ Employment and Workplace Relations Committee Report recommends that the schemes should be streamlined rather than be replaced with one national scheme.

In relation to OH&S regulation and standards the Northern Territory is also prepared to consider any Commonwealth proposals that improve OH&S compliance and promote OH&S preventative activity with an objective of improved industry OH&S performance.

- (g) ***Should there be separate frameworks for workers compensation and OH&S?***

Comment:

There should be linkages between the two functions so as to inform and report on business and strategic planning, data management and reporting processes in the various jurisdictions. For the smaller jurisdictions there is a need to recognise the efficiencies that result from combining the two functions as well as the corporate support resulting from synergies by positioning the regulatory body within a larger government agency.

In terms of managing OH&S issues at the workplace level there are obvious advantages in co-locating OH&S and workers compensation operatives. For example in the public sector, a greater general awareness by OH&S operatives of the incidents that cause the high volume and serious injury claims has resulted in an improved focus on risk control strategies.

7.2 National Self-Insurance

(a) *Introduction of uniform eligibility criteria for self-insurers, eg minimum number of employees and prudential controls*

Comment:

Note ‘in-principle’ support is qualified by the potential adverse impact of growing the self insured sector at the expense of the relatively small insured sector within the Northern Territory.

(b) *Access to Comcare for self-insurers*

Comment:

Prepared to consider detailed proposal and rationale by the Commonwealth but note that the Commonwealth is not the employer of many businesses who self-insure. Please note the Territory’s earlier comments about the impact of growth in the self insurer market and the potential to adversely impact upon our insured sector and its future viability.

(c) *Desirability of a national self-insurance scheme for individual jurisdictional monitoring and enforcement*

Comment:

Please note Northern Territory’s concerns about the viability of our workers’ compensation scheme if growth in the self-insured sector is encouraged in the NT. Otherwise support the proposal “in-principle”.

7.3 OH&S Model

(a) *How effective has NOH&SC been in promoting greater consistency between jurisdictions?*

Comment:

The Northern Territory, through the Office of Work Health, plays an active role within NOH&SC and its committees: the Director of the Office of Work Health (OWH) is a NOH&SC Commissioner; the Manager of the OW&H is a Deputy Commissioner; the Manager Rehabilitation and Compensation participates actively on the Heads of Workers' Compensation Authorities Working Group and several OW&H staff actively participate in a variety of NOH&SC working parties.

The strategic and business plans of the Office of Work Health are closely aligned to the National OH&S Strategy. Targeted industry plans based on OH&S performance have been developed and implemented in the Northern Territory which align to the proposed OH&S outcomes for the decade 2002-2012.

The national Comparative Performance Monitoring publications in the workers' compensation and OH&S areas are valued publications, providing advice and support to the Northern Territory Government and industry in key areas of targeting and monitoring the impact of prevention activity and policy development.

(b) *What features of a national OH&S framework would generate the greatest benefits?*

Comment:

Agreed national OH&S Priority Action Plans which promote national standards and industry OH&S codes will greatly benefit industry and OH&S regulators. The consistent application of an OH&S regulatory regime would assist all jurisdictions. Improved OH&S information sharing and research will also assist jurisdictions.

7.4 Reducing the Regulatory Burden and Compliance costs

(a) *What options exist for reducing these for firms operating in more than one jurisdiction? Does the size, nature of business or location impact significantly on these cost?*

Comment:

The Northern Territory supports a nationally consistent approach to OH&S standards and OH&S performance of industry.

We are concerned that some examples of departure from nationally agreed OH&S standards exist in some national businesses operating in the NT. However, where inadequate OH&S performance is identified through national safety officers of those businesses, prompt action is always taken to ensure regulatory compliance.

Some examples which the OWH has experienced over the past 12 months include:

- Large supermarkets in the retail sector where storage and manual handling issues are of a lower standard in some NT

based stores than would be acceptable to the same companies in other jurisdictions. The OWH acknowledges that where such examples have been raised with the relevant National Safety Managers of these companies, actions have been taken locally to remediate such OH&S concerns in the NT. The intervention of interstate officers should not be required.

- An example of similar concerns of unacceptable OH&S management was when a fast food outlet at Casuarina required intervention by an interstate OHS manager to rectify concerns identified locally, but which were not being effectively addressed by local managers.
- Scaffolding companies attempting to save customers' money by encouraging non compliant scaffolding on some work sites in the Northern Territory are currently being experienced. There has been debate between interpretations of Australian Standards amongst some employees and from at least three local construction companies and the OWH over the interpretation of Australian Standards. These matters are being progressively addressed.

Compliance costs for industry can encourage greater risk management, greater risk taking and risk aversion actions by employers or major contractors and sub contractors in some industries.

For example, the costs to the construction industry for complying with Australian Standards for scaffolding and fencing has resulted in some protracted disagreement between the OWH and several large construction/scaffolding companies.

Many small construction companies also rely on inconsistent or irregular workplace visits by Work Health Officers as a means of avoiding compliance costs by implementing scaffold and fencing standards inferior to the relevant Australian Standard.

Further examples of non compliance supported by many employers rather than paying for safe work systems and equipment exist in relation to:

- fall and edge protection
- the provision of personal protective equipment to employees
- electrical testing and tagging and ensuring safe electrical installations
- traffic management
- safety signage
- failure to maintain equipment in a safe operating condition

- general site tidiness and housekeeping

7.5 Access and Coverage

- (a) ***Is it practical to move to nationally consistent definitions of employer, employee and work-related injury and illness? What would be the impact on payroll tax?***

Comment:

A consistent definition of “worker” would improve workers’ compensation and OHS arrangements and discourage the practice of forum shopping to minimise cost or to avoid workers compensation obligations, as is the case for many bona fide employers, at least in the Northern Territory.

Standardisation of cross border coverage for workers’ compensation purposes could provide more equitable outcomes for employees who, due to the legislative provisions in some jurisdictions, are left without workers’ compensation cover.

- An interesting current example for a Northern Territory resident who, at the time worked for a South Australian transport company and was injured in South Australia, was excluded from coverage under the provisions of the South Australian workers’ compensation system on the basis that he was a Northern Territory resident. The fact was that the injured employee was working in South Australia for a South Australian company and was conducting business for that company in South Australia. On this basis the injured employee was also excluded from coverage under the *Work Health Act* in the Northern Territory. The claim has been rejected by the approved insurer in the Northern Territory and is currently the subject of dispute in the Work Health Court.

The 1995 failed attempt at national consistency as well as great difficulties experienced in trying to achieve national cross border complementary legislation, points to the only real solution to the issue of a national framework in workers’ compensation and OH&S being a national scheme for both.

- (b) ***To what extent has the changing nature of production activities and workplace arrangements eg growth of non-traditional employment, particularly contractors and labour hire companies – affected the number and proportion of workers’ covered under workers compensation arrangements?***

Comment:

Whilst referred to earlier in the submission, the most obvious arrangement which has facilitated the lack of access to workers’ compensation provisions under the *Work Health Act* for such persons, has been the current definition of “worker” under the Act whereby a

person who provides an employer with an ABN in writing excludes themselves from access to workers' compensation arrangements in the NT. It is anticipated that the outcome of the current review of the definition of "worker" under the *Work Health Act* may result in broader coverage which will be inclusive of persons in non traditional employment arrangements.

7.6 Benefit Structures (including access to common law)

- (a) ***How might the differences in compensation structures, eg in the proportion and duration of income replacement, in the timing of step-downs, in eligibility criteria for lump sum payments, in maximum payments and in access to common law damages add to the costs of firms operating in more than one jurisdiction? How can greater uniformity be achieved?***

Comment:

Market driven and government regulated premium setting arrangements differ between jurisdictions and therefore would be impacted upon in differing ways.

Step down provisions, income replacement and periods of same, as well as eligibility for lump sum payments also differ across jurisdictions. A threshold position of "no detriment" will require initial agreement between the jurisdictions, beyond which a phase in of new consistent future arrangements may be achievable, subject to the agreement of the jurisdictions.

Significant public debate and a degree of acrimony, particularly from the legal profession, trade unions and others opposed to reform on the scale that could be proposed to implement a truly consistent national framework for workers' compensation and OHS arrangements, would occur in all jurisdictions.

- (b) ***What principles should guide the design of a compensation structure for any national framework?***

Comment:

A fair, affordable, commercially viable and equitable, nationally consistent workers' compensation system which provided access to consistent benefits, medical, pharmaceutical, hospital, rehabilitation support, death benefits, with consistent grievance and administrative appeal provisions for injured employees are the principles which should guide the design of any national framework.

The system would need to balance the interests of employers and employees as the key stakeholders in the workplace partnership and would need to ensure that viable systems operated across jurisdictions supported by governments and the insurance industry with an emphasis

upon shifting the cost of workers' compensation and injury prevention to industry and further away from the community.

7.7 Cost Sharing and Cost Shifting

- (a) ***What consequences has the changing nature of the workforce had for the sharing of costs of work-related injury/illness between employees and their families, employers and government providers of income and medical/health support?***

Comment:

Jurisdictions having differing benefit regimes, including differing step down provisions or benefit cessation arrangements have differing cost shifting arrangements for the impact of work related injury. Suffice to say, the loss of employment and income due to work related injury results in differing levels of family and community support being required to assist those who depart the workforce as a consequence of work related injury.

For example, in the Northern Territory some elements of the employment contract are not included in some benefit arrangements for injured employees. Superannuation benefits are not included in the compensable injury benefits, unless prescribed in relevant industrial awards or agreements.

Access to recreation and long service leave or airfare entitlements (where appropriate), as well as the accrual of work related entitlements during periods of absence due to work related injury, does not form part of the compensable benefits package for injured employees within the Northern Territory.

Work related medical certificates, GP consultations and hospitalisation costs are often more expensive than for persons who have not been injured at work, are not in receipt of compensable injury benefits, but require similar services.

A number of studies in various jurisdictions and overseas have shown that workers' compensation patients, on average, take longer and cost more to recover from an injury than do persons who cannot access compensation for their injury.

- (b) ***Are there aspects of benefit structures (including their tax treatment) that exacerbate the problem of work-related costs being shifted to other government programs, eg Medicare?***

Comment:

Refer to comments at 7.6 above. Current tax arrangements for commutation benefits are an attractive feature of the current NT workers' compensation system for injured employees.

The current NT commutation arrangements provide for claim settlement for partially incapacitated workers in that it provides closure and encouragement for some long term injured employees to get on with their lives.

The commutation benefit however is currently under threat from the Australian Taxation Office which has announced an intention to tax such payments as income.

7.8 Early Intervention, Rehabilitation and Return to Work

(a) *What features should a national framework embody to provide for greater consistency in this area across jurisdictions?*

Comments:

An emphasis upon return to work processes and opportunities should form a key objective within any national framework. Close case management and support as well as connectivity with the workplace is required to encourage injured employees to retain dignity and self esteem and inclusiveness within both the work environment and within the broader community.

It does not assist the return to work prospects for injured employees if a culture of blame rather than support is evident. Consistency in return to work (RTW) and closer case management for improved RTW outcomes is required across all jurisdictions. Many injuries do not mean that an injured employee is unable to participate in some forms of work.

Mutual obligation between the employer, the injured employee and government should also be linked to benefit levels to promote RTW outcomes.

7.9 Dispute Resolution

(a) *For any national framework, what features are required to achieve an effective dispute resolution mechanism that: encourages the development of internal dispute resolution processes by employers, encourages the use of alternate dispute resolution, including mediation and conciliation, retains an appropriate appellate structure for employers and employees; and minimises the costs for preferred outcomes?*

Comment:

There should be greater attention by industry to develop internal dispute resolution mechanisms. Approved insurers and legal representatives are not encouraged to engage with the employer, employee and their representatives to resolve work related disputes at the workplace.

With the exception of self-insured agencies, the insurer has full rights of subrogation over the employer, therefore workers' compensation disputes are generally not resolved directly between the employee and the employer.

A further impediment is the perceived preference of the legal profession for an adversarial approach to dispute resolution.

When balanced against the cost of pursuing legal remedies to settle such disputes, alternate dispute resolution processes may deliver more cost effective outcomes for the parties.

In most cases where disputes are mediated/settled outside of the court environment, it is usual for both the employer and the employee to seek legal representation.

7.10 Premium Setting

(a) *Should caps on premiums be imposed?*

Comment:

In market driven premiums systems, premium caps are unlikely. However, a consequence of maintaining such an approach is the possibility of some employers facing the prospect of, what may appear to be, unreasonably excessive premiums. This in turn may lead to premium avoidance. Although anecdotal evidence does not support that premium avoidance, for this reason, is occurring in the Northern Territory.

As advised earlier in the submission, the Northern Territory does not regulate premiums in the existing NT workers' compensation system.

(b) *How effectively are existing premium-setting arrangements in providing incentives for employers to reduce the incidence of work-related injury and illness and facilitate rehabilitation and return to work?*

Comment:

Due to the size of the system within the NT and the prevalence of a large small business sector characterised by most employers engaging less than 10 employees, approved insurers provide little incentive in their premiums to encourage improved OH&S systems, including in reducing claims performance or in promoting rehabilitation or return to work objectives.

The same is not the case for larger employers who generally enjoy greater resources and improved flexibility in terms of focussing on such matters as well as more relevant premium incentives for improved OH&S management and performance.

(c) *Does the current interaction with OH&S arrangements provide an appropriate mix of incentives to reduce the incidence of work-related injury or illness?*

Comment:

This matter is arguable and observations would be that larger enterprises are more capable and better able to manage their OH&S performance than many smaller enterprises.

In the NT, because of the ABN based definition of a worker, enterprises in some industries do not have a premium incentive for OH&S performance because workers compensation is not applicable (ie a significant proportion of the building and transport industries)

7.11 Role of Private Insurers in Workers' Compensation Schemes

- (a) *What benefits, if any, for employers, employees and the wider community would derive from extending the role of private insurers?***

Comment:

Improved competition in the premium setting market would need to be balanced against high and unsustainable premium setting for higher risk occupations and industries.

Government regulated premium setting needs to be balanced against economic and political considerations which in turn require the striking of a balance between scheme viability, flexibility, coverage, industry incentives for improved OH&S performance, premium affordability and the mix of cost shifting between industry and the community to support the system.

- (b) *Would existing competitive neutrality policy provisions provide an appropriate environment in which private providers could compete on a comparable basis with government to provide workers' compensation under a national framework?***

Comment:

It is doubtful, as government run insurance schemes are not subject to Australian Prudential Regulatory Authority (APRA) and Australian Securities Investment Commission (ASIC) prudential constraints.

- (c) *Is there a public benefit case for government provision of workers compensation insurance under a national framework?***

Comment:

Yes. The question could well be posed is it an appropriate role for government, particularly since a viable private market for workers' compensation exists in the Northern Territory and other jurisdictions. Notwithstanding, Queensland represents an example of a government insured scheme that appears to be financially successful in that it has the lowest average premium of all Australian jurisdictions.

However, this should perhaps be considered in light of that scheme's cost shifting to the community and taxpayer resulting from its limited

statutory benefit provisions which flow from the time (one can remain on benefits) and dollar (costs) limits of the scheme.

MARK CROSSIN
Director Office of Work Health

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