



National Council of Self Insurers

PRODUCTIVITY COMMISSION RESPONSE

National Workers' Compensation
and Occupational Health and Safety Frameworks

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Introduction

The National Council of Self Insurers (NCSI) welcomes this opportunity to lodge formal submissions to the Inquiry and expresses appreciation for the additional time afforded to NCSI for preparation.

NCSI considers that this Inquiry is of major importance to the administration of occupational health and safety and workers compensation in Australia.

As advised to the Productivity Commission hearings in Adelaide, NCSI has used the additional time allowed to conduct a survey of members of affiliate associations. The survey was based on relevant issues identified from the Commission's April Issues Paper, and from the Terms of Reference.

The process undertaken to conduct the survey has served to generate a great deal of discussion. This in turn has led NCSI to further develop views on specific reforms. These views are still in formation; however, indications are that the focus on problems associated with multiple jurisdictions has now moved to discussion of reform options. The survey as a result, included some questions on specific options.

This submission –

- sets out the findings of the entire survey,
- includes the comments of members, and
- proposes principles for the regulation of self insurance in Australia.

ABOUT NCSI

The NCSI is the National Council for the self-insurance associations of Australia. It comprises membership from each state self insurer association.

The NCSI is an active organisation, committed to work with each state association towards consistent national frameworks and licensing, and to be visible and accessible to state associations in respect of issues of national relevance.

Self insurers are companies or organisations that are required by the jurisdiction under which they fall to obtain workers compensation insurance for their employees. They choose to undertake this requirement through accepting the risk and costs associated with any or their employees' compensable injury. Benefits are paid according to the jurisdictional requirements of each state. Prudential requirements together with the extent of the risk mean that in most regimes, self-insurers are larger organisations.

ABOUT THE SURVEY

The survey was conducted over July and early August 2003. Opportunities to contribute were provided to self-insurers in South Australia, New South Wales, and Tasmania - 108 company representatives representing some 100 individual self-insured companies. Company representatives were asked to make responses that represented the company perspective as a whole. Just under half of these respondents stated that their company operated in more than one jurisdiction. (This survey is in addition to the survey of 37 Victorian self-insurers to which just under half responded).

Of those given access to the NCSI survey, 61 made a response to some if not all of the 70 or more positions and questions. 25 companies responded to all of the questions and up to 31 companies responded to a majority of questions. Those of the 61 that did not answer are shown as 'N/A' in the charts below. The results are given as percentages of the figure of 61.

Many companies advised that they were gathering the views of several in-house safety and workers compensation managers for consolidation in one response. Views were in some cases then ratified by senior management. The survey and the issues covered generated a great deal of discussion amongst companies and within the various associations. Several companies formally advised that they were unable to complete the survey due to time constraints, however were supportive of NCSI initiatives. At the time of writing, some companies were still seeking further time or fresh access to complete the survey.

The layout of the survey took the questions identified by the Productivity Commission, explained the significance of the issues in terms of self-insurers, and sought agreement or non-agreement as well as comment. The issue explanations were drawn from previous submissions and from views expressed at NCSI meetings held in February in Sydney; and in Adelaide in July of 2003.

SUMMARY OF VIEWS

Those surveyed consider that a stronger central agency would be preferable and that the current mechanisms are not satisfactory although they could do the job if improved; in particular NOHSC.

The perceived need for comparative data is high.

There is support for a new national regime or at least a regime that allows choice of regime, national application, external standard setting and auditing consistent minimal prudential regulation. Expanding Comcare is not favoured with the current benefits regime, however companies would self-insure under Comcare if the benefits regime was similar to other 'WorkCover' regimes with limited common law and stepped down benefits. The Comcare scheme is seen to be more generous to workers with the potential for greater cost to self-insurers. In addition the long term nature of the benefit payment arrangements is not favoured by

companies. It is seen to be potentially difficult to maintain the infrastructure for the type of long term support that such benefit arrangements require. Overall members were cautious about any changes of this nature and would require further detail.

There was a view that the different self-insurance access arrangements did indeed generate costs to the company and in some cases the fact of these costs had influenced decisions at Board level. There was support for the view that self-insurers should be able to be ‘automatically’ insured in other states if they already had self-insurance in ones state. Comments qualified this survey statement to say that the requirements to self-insurance should be shown to be met and then shown to be maintained. There was a concern that the high standards that self-insurers currently have to meet, particularly in occupational health and safety should be kept and not watered down through any central access approval.

These positions are described in more detail below.

National Frameworks

THE MAIN PROBLEMS WITH CURRENT MULTIPLE REGIMES

Multiple regimes generate an array of problems; all of which could be overcome or better managed with strong coordination that guarantees consistency. For self-insurers these problems include the following:

- Inconsistent self-insurance access criteria
- Inconsistent audit arrangements
- Inconsistent contribution (licence fee) arrangements
- Inconsistent exit arrangements
- Inconsistent insurance requirements between states (excessive loss and terrorism) and within local regimes between self-insured and insured's.
- Imbalances between the data requirements on self-insurers by regulators and the corresponding provision of data back to self-insurers by regulators
- Failures in all regimes to have any influence on scheme benefit design; despite representing significant proportions of employees and directly carrying risk.

COSTS OF MULTIPLE JURISDICTIONS

“We have businesses in several states and the cost of payment for workers compensation premiums is quite excessive. It would be more simplistic to have all under one banner since we are achieving the same ratio rationale for continuous improvement at all sites. (Refer to the Australian Financial Review 15 July 2003: \$20b Headache - Large multi national companies claim they face massive additional cost by operating under inconsistent state and territory).”

“We incur direct and significant indirect costs due to the inconsistencies across all the jurisdictions and between their statutory requirements.”

Example: *A recent review of Rehabilitation requirements was undertaken over a two month period with a direct cost of \$5k just to determine what the requirements where. The cost to implement the various obligations will be in addition to this.*

”As a self insurer in three states, and one of Australia’s top international companies, we must duplicate our claims management structure in each state. The resources established in each state cannot be used interstate when required; as their knowledge and systems are specific to their jurisdiction. Each WorkCover authority has different data requirement, requiring unique modifications to the claims management system. Updating the system is very time consuming and expensive because the date requirements of three separate states have to be accounted for.”

NOHSC AND NATIONAL CONSISTENCY

"The Canberra based National Occupational Health & Safety Commission (NOHSC) is potentially an effective mechanism to promote consistency, if given appropriate powers, authority and resources".

Companies that operate in more than one jurisdiction comment..

"It makes management of processes very difficult with trying to deal with a range of legislative requirements, where as one system would assist to make the business easier to administer".

"There should be no change on requirements from one state to another. People still get hurt and this does not vary regardless of the state they are in - only in the industry base."

And for a company that operates in all jurisdictions..

"We only operate in NSW as a self insurer due in part to the amount of resources required for self insurance nationally."

"We would strongly support a national guideline/framework for audits."

EFFECTIVENESS OF 'HEADS OF WORKERS COMPENSATION (HWSCA) AND THE WORKPLACE RELATIONS MINISTERS COUNCIL

An NCSI observation that coordination from these bodies was not evident was supported by members. A key indicator of strong coordination – the provision of national comparative data – would be highly valued if made available. This was one of the most supported propositions of the survey.

SURVEY PROPOSITIONS 1 – 4 – COORDINATION AND DATA

Effectiveness of 'Heads of Workers Compensation Authorities'(HWSCA) and the Workplace Relations Ministers Council

<ul style="list-style-type: none"> HWSCA provides no assistance to my company that I am aware of in terms of coordination of any aspect of self-insurance. 	S.Agree		35
	Agree		41
	Neutral		3
	Disagree		1
	S.Disagr		1
	Dt Kn		1
	N/A		21
<ul style="list-style-type: none"> DEWR provides no assistance to my company that I am aware of in terms of coordination of any aspect of self-insurance. 	S.Agree		32
	Agree		47
	Neutral		3
	Disagree		1
	S.Disagr		1
	Dt Kn		1
	N/A		21
<ul style="list-style-type: none"> I would value regular comparative data from any source that shows the performance of individual self-insurers against others across the national spectrum and between jurisdictions. 	S.Agree		56
	Agree		18
	Neutral		3
	Disagree		1
	S.Disagr		1
	Dt Kn		1
	N/A		24
<ul style="list-style-type: none"> Comparative data must be independently and expertly collated and presented. 	S.Agree		50
	Agree		26
	Neutral		3
	Disagree		1
	S.Disagr		1
	Dt Kn		1
	N/A		21

“The HWSCA purports to be a national forum for cooperative mechanisms between the jurisdictions; however this is currently in effective, by not adding value to the process for industry.”

Members considered that a strong independent organisation could achieve consistency through better coordinating the efforts of regimes. Existing mechanisms should be integrated rather than replaced.

SURVEY PROPOSITIONS 5-9 – IMPROVING CO-ORDINATION

<ul style="list-style-type: none"> My company would welcome cooperative mechanisms of another type, i.e not run by the Minister's Council and HWSCA - rather than a new independent organisation. 	S.Agree		15
	Agree		29
	Neutral		26
	Disagree		6
	S.Disagr		3
	Dt Kn		3
	N/A		21
<ul style="list-style-type: none"> My company would support HWSCA and the Ministers Council in a cooperative role. 	S.Agree		6
	Agree		47
	Neutral		18
	Disagree		3
	S.Disagr		3
	Dt Kn		3
	N/A		21
<ul style="list-style-type: none"> My company would support a dedicated central organisation with appropriate organisation and resources in this role. 	S.Agree		18
	Agree		50
	Neutral		12
	Disagree		3
	S.Disagr		3
	Dt Kn		3
	N/A		21
<ul style="list-style-type: none"> My company would support local workers compensation agencies playing a cooperative role in such an organisation. 	S.Agree		6
	Agree		53
	Neutral		12
	Disagree		3
	S.Disagr		3
	Dt Kn		3
	N/A		24
<ul style="list-style-type: none"> My company would support a strong independent organisation playing the coordination role to obtain consistency in both OH&S & compensation. 	S.Agree		35
	Agree		35
	Neutral		9
	Disagree		3
	S.Disagr		3
	Dt Kn		3
	N/A		21

“We would support a more effective body that includes representation from industry. It should be HWSA with industry representation.”

“If unable to secure effective arrangements within HWSA and Ministers Council - then we would support an independent organisation in this role with industry and government representation.”

“Is support considered financial and if so, a dollar value needs to be looked at prior to any agreement. We would support state and territory WorkCover authorities’ involvement.”

“We do not support local claims agents being involved however would support involvement as part of an industry group.

Unsure if all organisations would provide data if measured by an individual basis, therefore it would be more effective to have industry based data - with individual contributions aggregated upwards.”

VIEWS ON FUTURE OPTIONS AND PROPOSED MODELS

The members considered the various models below with a last model adopting aspects of each that were favoured during discussions and giving consideration to the transition process.

- A cooperative model. This would operate for workers’ compensation along the lines of the current national approach to OH&S. The Commonwealth and States could establish a national body to develop national standards or codes and carry out other functions relating to workers’ compensation, but the States would retain responsibility for implementation. Such an approach currently applies to the regulation of road transport and food safety.
- A mutual recognition model. Multi-state employers could be permitted to self-insure or pay premiums to one scheme (say where it has its head office) which is recognised by all other jurisdictions. Similarly, in OHS, multi-state employers could be permitted to choose which OHS

arrangements to operate under with this being recognised in all jurisdictions.

- An expanded Comcare model. The Commonwealth could permit employers to self-insure with (or pay premiums to) Comcare and comply with its OHS provisions - existing legislation provides for corporations to be licensed to self-insure under Comcare where they are former Commonwealth authorities or are in competition with Commonwealth authorities or former authorities. For firms to be included under Commonwealth OHS legislation, this would need to operate in a similar way to the mutual recognition model.
- A uniform template legislation model. The Commonwealth and States could pass mirror legislation to ensure uniformity for all core aspects of workers' compensation and OHS. Alternatively, such legislation could seek partial uniformity, e.g. covering only certain areas, with States deciding on other areas such as common law, premiums and rehabilitation and return to work.
- An extended financial sector regulation model. Existing Commonwealth legislation - viz, the Insurance Act and the Corporations Act - could be extended to all workers' compensation insurers. All public and private insurers in workers' compensation schemes would be subject to uniform prudential and consumer/investor protection regulation by APRA and ASIC, respectively.
- A new national regime. The Commonwealth could establish a national workers' compensation scheme and national OHS legislation via the exercise of its existing constitutional powers (e.g. corporations power and referred power from the States).
- A further model that takes favourable elements of all of the above; i.e. choice, national application, external standard setting and auditing and prudential regulation in line with mainstream Australia.















While there was support for mutual recognition and a uniform template there was greater support for a new national regime. The favourable elements model was less supported. Comcare attracted little support, however see below – *Comcare as Access option* and *Emerging models*..

SURVEY PROPOSITIONS 10-16 - FUTURE MODELS

Your Views on Future Options

• I support a cooperative model	S.Agree		3
	Agree		32
	Neutral		9
	Disagree		18
	S.Disagr		3
	Dt Kn		3
	N/A		32
• I support a mutual recognition model	S.Agree		15
	Agree		32
	Neutral		15
	Disagree		6
	S.Disagr		3
	Dt Kn		3
	N/A		32
• I support an expanded Comcare model	S.Agree		9
	Agree		21
	Neutral		18
	Disagree		18
	S.Disagr		3
	Dt Kn		3
	N/A		32
• I support a uniform template legislation model	S.Agree		15
	Agree		21
	Neutral		15
	Disagree		9
	S.Disagr		3
	Dt Kn		6
	N/A		32
• I support an extended financial sector regulation model	S.Agree		3
	Agree		9
	Neutral		24
	Disagree		15
	S.Disagr		6
	Dt Kn		6
	N/A		38

SURVEY PROPOSITIONS 10-16 - FUTURE MODELS CONT.

• I support a new national regime	S.Agree		32
	Agree		18
	Neutral		15
	Disagree		3
	S.Disagr		
	Dt Kn		3
	N/A		29
• I support a model that allows choice of regime, national application, external standard setting and auditing, and consistent minimal prudential regulation in line with mainstream Australia.	S.Agree		12
	Agree		35
	Neutral		12
	Disagree		6
	S.Disagr		
	Dt Kn		3
	N/A		32

“With the exception of choice of regime –we would strongly support this last model.”

“Some support for mutual recognition, however we would be concerned about regimes imposing additional levies/penalties.”

“It only resolves the issue of self insurance and does not address the issue of consistency of legislation.”

“A national regime is preferable as the legislative powers are centralised with the Commonwealth, and not subject to the agreement of all of the individual states. This would be a new body, replacing all existing state and federal WorkCover equivalents. Such a regime must include a consultative structure with a tri-partite body during the drafting of the initial legislation, and this body should be consulted in an ongoing review process.”

COMBINING WORKERS COMPENSATION AND OHS

NCSI members have various experiences of workcover/worksafe models and of inspectors taking a policing role or an assistance role. A clear theme is that better performing organisations should have some type of recognition through a lessening of compliance requirements. However this was tempered with the view that inspections were necessary and those OH&S obligations in particular must be supported and reinforced in all organisations.

SURVEY PROPOSITIONS 17-22 – INSPECTORS & DEEMED COMPLIANCE

Combining Workers' Compensation and OHS

<ul style="list-style-type: none"> Any new regime should combine OH&S and workers compensation. 	S.Agree		18
	Agree		15
	Neutral		15
	Disagree		15
	S.Disagr		3
	Dt Kn		
	N/A		35
<ul style="list-style-type: none"> Inspectors with the task of issuing penalties should operate within the same organisation as the compensation body dealing with insured employer claims management. 	S.Agree		3
	Agree		21
	Neutral		9
	Disagree		21
	S.Disagr		12
	Dt Kn		
	N/A		35
<ul style="list-style-type: none"> Any new regime should have its own federal inspectorate – similarly to the Federal Police in relation to federal crimes. 	S.Agree		3
	Agree		21
	Neutral		32
	Disagree		3
	S.Disagr		3
	Dt Kn		3
	N/A		35
<ul style="list-style-type: none"> State standards and state inspectors should have no power to override such a new federal inspectorate and regime. 	S.Agree		12
	Agree		29
	Neutral		18
	Disagree		3
	S.Disagr		
	Dt Kn		3
	N/A		35
<ul style="list-style-type: none"> Large companies found to have equivalent or better OH&S standards to the new national standard should be deemed to comply; and inspection minimised. 	S.Agree		18
	Agree		38
	Neutral		6
	Disagree		
	S.Disagr		
	Dt Kn		
	N/A		38

”Company size should not be a factor.”

“Automatic compliance should not apply unless there are clear and recognised methods to achieve and measure such compliance. This should be set out in the national framework for management of OHS and WRC with regard to compliance requirements.”

“The term "Deemed to Comply" needs to be further defined.”

”The current three year inspection cycle is appropriate.”

”OHS and Workers compensation should not be managed in isolation; however the functions should be separate.”

“Effective management requires holistic risk management and early prevention activities.”

”When being assessed for self insurance the whole business activities should be viewed, the organisation should be consistent in their approach regardless of claims or OHS issues.”

”Workplace inspectors should administer the Occupational Health & Safety Act and sit with the governing body of that Act.”

“Inspectors and claims management functions should remain completely separate.”

”It may be appropriate for one body to be responsible for OHS & Workers Compensation; however, they should be separated into different divisions to ensure integrity.”








Lessons from existing approaches

CHOICE OF REGIME AND ACCESS TO SELF INSURANCE

NCSI observations that competition between regimes for self-insurer business may result in less cost and less compliance were supported. Members had observed that choice and competition are valuable attributes of any system.

SURVEY PROPOSITION 23 – CHOICE AND COMPETITION

Lessons from Existing Approaches - Choice of Regime


















<ul style="list-style-type: none"> The availability of choice between regimes may drive down contribution fees and lessen regulatory burdens 	S.Agree		12
	Agree		26
	Neutral		18
	Disagree		3
	S.Disagr		
	Dt Kn		9
	N/A		32

ACHIEVING GREATER UNIFORMITY - ACCESS CRITERIA

There are costs to organisations in obtaining access to self-insurance in the various jurisdictions. For some the cost issue influences board decisions, indicating that the fees and compliance issues are not inconsequential or isolated matters to businesses.

SURVEY PROPOSITIONS 24-26 – ACCESS COSTS

Access to Self Insurance








• My company operates in more than one jurisdiction	S.Agree		38
	Agree		18
	Neutral		3
	Disagree		9
	S.Disagr		
	Dt Kn		
	N/A		32
• From time to time, these costs influence decisions at Board level.	S.Agree		15
	Agree		21
	Neutral		18
	Disagree		6
	S.Disagr		
	Dt Kn		3
	N/A		38
• Different access arrangements generate costs for my company	S.Agree		38
	Agree		9
	Neutral		12
	Disagree		3
	S.Disagr		
	Dt Kn		3
	N/A		35

COMCARE AS AN ACCESS OPTION

Comcare is the only existing regime with national coverage that could most easily become the sponsor of national self-insurance. While there was support for a national option, Comcare did not rate well above. The reasons for the lack of support for Comcare were further explored. (See *Emerging Model* below).

SURVEY PROPOSITION 27 – ACCESS VIA COMCARE

Self-Insurance Under Comcare





<ul style="list-style-type: none"> Comcare self-insurance is only desirable if the benefit regime was optional. 	S.Agree		3
	Agree		26
	Neutral		24
	Disagree		9
	S.Disagr		
	Dt Kn		9
	N/A		29

NOHSC PERFORMANCE

NCSI observed that NOHSC could build on existing strengths in disseminating safety standards. Members supported a stronger central role.

SURVEY PROPOSITIONS 28-31 – BUILDING NOHSC

NOHSC Performance

• NOHSC has an excellent record in establishing and disseminating standards.	S.Agree		
	Agree		29
	Neutral		29
	Disagree		6
	S.Disagr		1
	Dt Kn		3
	N/A		32
• NOHSC should add a practical industry focus to its academic emphasis.	S.Agree		
	Agree		29
	Neutral		21
	Disagree		3
	S.Disagr		3
	Dt Kn		3
	N/A		32
• NOHSC should report on self-insurer safety initiatives for sub-contractors	S.Agree		
	Agree		47
	Neutral		12
	Disagree		3
	S.Disagr		1
	Dt Kn		1
	N/A		29
• NOHSC should be improved, expanded and supported as the central organisation managing safety in Australia.	S.Agree		
	Agree		21
	Neutral		24
	Disagree		3
	S.Disagr		1
	Dt Kn		3
	N/A		32

“If NOHSC were to become the national body for OHS practices then their literature (e.g. standards and codes) should form the national standard for compliance. If they were the national body then industry would have representation and therefore would be directly involved in the development of these standards. This would ensure practical application within the industry.”

“Other publications such as WorkSafe guides already do this.”

”Sub contractors are a sub set of contractors - it would be more beneficial to report contractor arrangements.”






THE OHS FRAMEWORK - WHAT IS NEEDED

NCSI observed that more consistency in OH&S standards may be beneficial. Members were concerned, however, to maintain high standards through similar intensity of application of regulation.















Recognition of the emerging disaggregated labour market and in particular the role that self-insurers play in insisting on high OH&S standards for contractors, despite insurance with the regimes. The highest costs of multiple regimes in OH&S were attributed to multiple regulations.

SURVEY PROPOSITIONS 33-36 - CENTRALISATION, CONTRACTORS & COSTS

The OHS Framework - What is needed

• A new legislative framework is required	S.Agree		15
	Agree		35
	Neutral		12
	Disagree		3
	S.Disagr		
	Dt Kn		
	N/A		35
• Central control of regulations is needed and existing standards adopted. (Australian Standards - 4801).	S.Agree		26
	Agree		26
	Neutral		9
	Disagree		3
	S.Disagr		
	Dt Kn		
	N/A		35
• Self insurers should receive greater recognition for materially influencing the safety practices of sub-contractors insured under the workers compensation regime.	S.Agree		24
	Agree		29
	Neutral		3
	Disagree		6
	S.Disagr		
	Dt Kn		
	N/A		38
• The greatest costs are generated by inconsistency in legislation	S.Agree		9
	Agree		29
	Neutral		18
	Disagree		3
	S.Disagr		
	Dt Kn		6
	N/A		35
• The greatest costs are generated by inconsistency in regulation	S.Agree		12
	Agree		38
	Neutral		6
	Disagree		3
	S.Disagr		
	Dt Kn		6
	N/A		35

SURVEY PROPOSITIONS 37-38 COSTS CONT.

<ul style="list-style-type: none"> The greatest costs are generated by inconsistency in standards & codes 	S.Agree		9
	Agree		29
	Neutral		15
	Disagree		3
	S.Disagr		
	Dt Kn		6
	N/A		38
<ul style="list-style-type: none"> The greatest costs are generated by inconsistency in implementation between jurisdictions 	S.Agree		15
	Agree		26
	Neutral		9
	Disagree		6
	S.Disagr		
	Dt Kn		6
	N/A		38

“Australian Standards are developed and managed through Standards Australia, some of which become mandatory through reference in regulations or Acts.”

“The requirements and specifications for a national (overarching) sets of standards for management and compliance (auditing) of OHS and WRC systems would need to be determined in a consultative process with industry and the governing body (e.g. NOSCH) and then ratified nationally. Such standards would take into account existing systems and form a bench mark for performance, measurement and reporting.”

“Self insurers still need to be regulated and those not performing should be re assessed on a more stringent basis.”

“Some departments have been granted self insurance and do less than others who have to work harder to get into the system.”

“Once self insurance is granted it must be fair & consistent in its management & structure. This will help to drive the standard higher for all organisations, but it will at least be equitable.”

”Standards & codes need to be written in a manner that is easily understood & cannot be subjective based on who is reading them.”

Reducing the regulatory burden and compliance costs

AUDITS AND CONTRIBUTION FEES

Regulatory burdens on self-insurers can be modified in the following areas; audit, contribution fee, & business location. Vast improvements can be achieved with the introduction of regulatory accountability and efficiency on the part of the regulators. Arrangements where the onus was on the regulator to justify the efficiency of any new or existing regulation and to also mitigate the commercial impact on businesses are supported.

Member associations have experience of differing audit regimes. These differences appear not to be justified and cause considerable cost. All audit regimes are generally duplicative; particularly as most self-insurers will audit claims using their own actuaries for their own viability purposes. The additional workers compensation agency audit can be duplicative and disruptive. One view is that self-audit schemes may be less onerous and the concerns of Government met if independently accredited auditors are used.

Audit periods are thought to be too short and the current annual audits could be extended to cover two or three years. In some states, fresh audits are required in the same year for the renewal of self-insurance status.

Self-insurers pay fees to the various regimes to cover the regulatory costs of self-insurance. These fees are a source of concern in some state and as in the case of access requirements have occasioned Board level consideration. Members also took the view that the regulatory requirements for self –insurance (as against those for OH&S) may be moderated and rationalised.

SURVEY PROPOSITION 39-43 AUDITS & CONTRIBUTION FEES

Reducing the Regulatory Burden and Compliance Costs

• Audits are unnecessarily duplicative.	S.Agree		18
	Agree		32
	Neutral		6
	Disagree		9
	S.Disagr		
	Dt Kn		6
	N/A		29
• Audit costs including our costs range from 30,000 to 60,000 more than other states annually	S.Agree		6
	Agree		9
	Neutral		15
	Disagree		3
	S.Disagr		3
	Dt Kn		35
	N/A		29
• My company would use private accredited auditors if there was a choice.	S.Agree		15
	Agree		38
	Neutral		12
	Disagree		
	S.Disagr		3
	Dt Kn		3
	N/A		29
• My business's Board and senior management has included the self-insurance contribution fee as one factor in location decisions.	S.Agree		
	Agree		21
	Neutral		9
	Disagree		24
	S.Disagr		3
	Dt Kn		15
	N/A		29
• Regulatory requirements are intrusive and excessive	S.Agree		18
	Agree		21
	Neutral		15
	Disagree		15
	S.Disagr		
	Dt Kn		
	N/A		32

“Audits are necessary in effective management of progress and in maintaining continuous improvement.”

“If audits are conducted on a regular basis there is less likelihood of the organisation slipping behind in their OHS systems.”

“We believe that audits are a necessary and important component of the governance.”

“Internal audits by organisations should be aligned and consistent with the objectives of the authority, therefore it should be a matter of verification and validation of the audit process. If this happens there would no duplication as we believe there is a requirement for organisations to conduct their own internal audits and these should be validated by the authority (not duplicated by a separate audit process).”

“We would use private accredited auditors if they part of a ratified national framework for management of OHS and WC. .Where organisation have gone to the expense of using a existing body such as Jazans Accreditation, the authority,(regime) should make a concerted effort to formally understand and recognise this arrangement. For example: The NSW Workcover Authority have formally recognised and accredited training organisation (RTO's) to delivery certain aspects of training, such as consultation training (committee).”

“I respect the knowledge and experience of the auditors I have dealt with in most states (no experience in VIC). I do not consider that a "private" auditor would prove beneficial. If anything, it may cause more issues.”

“Audits can be particularly intrusive and excessive.”

“Requirements need to be discussed with organisations for their impact. Some will always be affected more than others & it is important to obtain effective & objective information from organisations by polling them individually.”

“There has to be a stronger focus on getting this information out to businesses affected or likely to be affected.”

”Policy decision making by Government is founded on sound ideology that considers both the well being of disadvantage workers and the commercial impacts of regulatory requirements on business - the key is getting the right balance/process.”






















“We believe the key issue here is the process used by the current regime holding at the time of change and whether or not they take due consideration of recommendations put forward by all key stakeholders. For example the Stanley Inquiry in SA, sought input from the community in what appears to be an open communication forum, however it would appear that many decisions were made before the process began, and in fact, some issues were presented that seemed to be outside the discussion paper. It is a political process rather than a true consultative process. This occurs some of the time. Often this is as a result of the union influence on the government of the time.”

VALUE ADD – REGULATORY TRANSPARENCY

NCSI observed that the impact of regulations should be assessed prior to implementation. In the best of circumstances value should be provided to business as well as to Government for the resources expended.

SURVEY PROPOSITIONS 44-46 REGULATORY EFFICIENCY

Achieving Uniformity - Regulatory Efficiency

<ul style="list-style-type: none"> Regulations should be maintained only if it can be shown that they add value to the business as well as meeting the regulators requirement. They must also be directed to measurable outcomes rather than to controlling the practices and procedures in companies. (Outputs not inputs). 	S. Agree		24
	Agree		41
	Neutral		
	Disagree		3
	S. Disagr		
	Dt Kn		3
	N/A		29
<ul style="list-style-type: none"> Regulatory requirements do not receive proper attention from Government and are issued and changed with no regard for commercial impact 	S. Agree		12
	Agree		35
	Neutral		9
	Disagree		6
	S. Disagr		
	Dt Kn		3
	N/A		35
<ul style="list-style-type: none"> Regulatory requirements must be justified on a value-add basis, be transparent and be subject to external scrutiny 	S. Agree		18
	Agree		44
	Neutral		9
	Disagree		
	S. Disagr		
	Dt Kn		
	N/A		29

“Value add to who - regulations in some cases must be imposed to protect the people that do not have the bargaining power/authority to protect themselves or stand up for what would normally be considered basic human rights.”

ACCESS TO SELF-INSURANCE – NATIONAL OPTIONS

NCSI developed draft principles for access to self-insurance, which are set out below. Members agreed that national options should apply with some variation on the nature of threshold requirements of either prudential regulation or bank guarantee. Again, there was concern that requirements should be appropriate and not reduced inappropriately.

SURVEY PROPOSITIONS 47-51 - SELF- INSURANCE CRITERIA

Achieving Greater Uniformity - Access Criteria That Should Apply

<ul style="list-style-type: none"> Self insurance access should be accelerated or automatic if the company is already self-insured in other states 	S.Agree		29
	Agree		29
	Neutral		
	Disagree		
	S.Disagr		6
	Dt Kn		
	N/A		35
<ul style="list-style-type: none"> My company supports the minimum requirements from the least regulatory state regime being made uniform across Australia. 	S.Agree		15
	Agree		12
	Neutral		18
	Disagree		15
	S.Disagr		3
	Dt Kn		3
	N/A		35
<ul style="list-style-type: none"> Access should be managed at a national level 	S.Agree		24
	Agree		29
	Neutral		9
	Disagree		
	S.Disagr		
	Dt Kn		
	N/A		38
<ul style="list-style-type: none"> My association or company supports a single access criterion – capacity to self insure as evidenced via an independent uniform prudential standard 	S.Agree		26
	Agree		32
	Neutral		3
	Disagree		
	S.Disagr		
	Dt Kn		
	N/A		38
<ul style="list-style-type: none"> My association or company supports a single access criterion – capacity to self insure as evidenced by a bank guarantee. 	S.Agree		15
	Agree		24
	Neutral		9
	Disagree		3
	S.Disagr		6
	Dt Kn		
	N/A		44

“It is reasonable to expect that the state authority audit against the 'requirements'. There should be nothing automatic about self insurance.”

”Presuming there are uniform standards, this should be automatic.”

”We should be looking at the most effective regulatory requirements. There does not need to be a lot of regulations providing they are easily understood, consistent and suit the needs of organisations nationally.”

You will find that WA model is the preferred option. A more sensible approach would be for a gap analysis to be done with a view of identifying areas of major inconsistencies and similarities. Once done, the Australian Standards could be a reference guide in deciding the most appropriate system.”

”A reduction in the "level of requirements" should not be the goal of nationalising self-insurance. The appropriate pre-conditions should be determined and set by an appropriate body. The important factor is that these requirements become universal. Self-insurance should remain a privilege available only to those companies capable of providing claims and risk management services superior to an insurer.”

NCSI PROPOSED PRINCIPLES FOR ACCESS TO SELF-INSURANCE






















1. Capacity to self insure must be available in any regime
2. Financial coverage should be guaranteed only to the extent that there is no threat to the regime fund in the event of failure.

3. The administrative capacity test must be discarded altogether and the requirement on numbers specifically dropped.
4. Bank guarantee should be the only access requirement and the requirement to contribute to a fund as exists in SA should be optional.
5. The right to choose to self-insure and to continue to do so must be available to and retained by the employer as a commercial decision.
6. OH&S standard compliance should be otherwise evidenced by existing Australian Standards and by existing OH&S regime frameworks that would apply in any event.
7. Access should be an accelerated process if the organisation is self-insured elsewhere with at least mutual recognition.
8. The grounds for access should be consistent between states, however self-insurers should have a choice of where they wish to self-insure.

BENEFITS OF SELF-INSURANCE

NCSI observed that the high cost of regime premiums was not the main motivation for companies to seek self-insurance. Members supported the view that the capacity to directly influence and obtain higher safety and injury management standards, which in turn improved company performance, was more important.

SURVEY PROPOSITIONS 52-54 - BENEFITS OF SELF-INSURANCE




<ul style="list-style-type: none"> The main benefit of self-insurance is that it allows greater control over both risk management and injury management. 	S.Agree		44
	Agree		18
	Neutral		3
	Disagree		
	S.Disagr		
	Dt Kn		
	N/A		35
<ul style="list-style-type: none"> The control allowed by self-insurance is more important than any cost savings in premium. 	S.Agree		18
	Agree		35
	Neutral		3
	Disagree		9
	S.Disagr		
	Dt Kn		
	N/A		35
<ul style="list-style-type: none"> My company considers that compliance with OH&S standards is a necessary pre-condition and that the onus should be left with companies to first satisfy it, before self-insurance is sought. 	S.Agree		29
	Agree		21
	Neutral		3
	Disagree		
	S.Disagr		9
	Dt Kn		
	N/A		38

FAILING SELF-INSURERS

NCSI observed that there were few instances of companies that had failed and left workers without injury cover either for past injuries or those that might emerge afterwards. In South Australia, SISA had developed a fund, managed by WorkCover, to which contributions are made annually. Other states require a bank guarantee. Of the two options the bank guarantee drew most support.

SURVEY PROPOSITIONS 55-57 - SAFETY NETS & BANK GUARANTEES

Failing Self-Insurers

<ul style="list-style-type: none"> Self insurers should contribute to a safety net fund for failing self-insurers. 	S.Agree		3
	Agree		18
	Neutral		6
	Disagree		35
	S.Disagr		9
	Dt Kn		3
	N/A		26
<ul style="list-style-type: none"> Individual bank guarantees are sufficient to guard against failing self-insurers 	S.Agree		6
	Agree		41
	Neutral		12
	Disagree		9
	S.Disagr		3
	Dt Kn		3
	N/A		26
<ul style="list-style-type: none"> Bank guarantees are based on actuarial estimates that may or may not prove to be accurate - in these circumstances a safety net fund is appropriate. 	S.Agree		3
	Agree		18
	Neutral		18
	Disagree		21
	S.Disagr		9
	Dt Kn		6
	N/A		26








Coverage

COVERAGE - LIMITED TO EXTENT OF EMPLOYER CONTROL

There is general support for efforts to standardise the rules concerning benefits coverage between the states. Employers however should only be held responsible for injuries over which they have reasonable control. There may not be support for models that hold employers responsible for injuries such as Motor Vehicle Accidents or heart attacks and strokes etc. at work. The definition of injury should clearly link injury to the work tasks.

SURVEY PROPOSITION 58 – EMPLOYER CONTROL

Access & Coverage - Limited to Extent of Employer Control

<ul style="list-style-type: none"> Access to any national scheme should be contingent on coverage that is limited to employer-controlled situations. 	S. Agree		38
	Agree		26
	Neutral		3
	Disagree		
	S. Disagr		
	Dt Kn		
	N/A		32

Benefit structures (including access to common law)

REDEMPTIONS

Redemption options are favoured by most associations. The purpose is to remove workers and companies from long-term ongoing commitments. If worker entitlements are managed and protected by financial companies (similar to superannuation), this objective might be achieved without involving the company or seeing the worker waste the amount. In states where common law exists, costs are high; particularly legal costs. In addition efforts at rehabilitation largely fail while litigation is on foot.

SURVEY PROPOSITIONS 59-62 REDEMPTIONS & LEGAL COSTS

Benefit Structures (including access to common law)

<ul style="list-style-type: none"> Redemptions should be available in any regime for self-insurers 	S.Agree		44
	Agree		18
	Neutral		
	Disagree		
	S.Disagr		
	Dt Kn		
	N/A		3
<ul style="list-style-type: none"> Limited common law access with injury thresholds similar to NSW and Victoria; together with tight litigation management arrangements are preferred if common law is included in any new model. 	S.Agree		26
	Agree		29
	Neutral		6
	Disagree		3
	S.Disagr		
	Dt Kn		
	N/A		35
<ul style="list-style-type: none"> The availability of common law materially interferes with rehabilitation and return to work programs. 	S.Agree		24
	Agree		32
	Neutral		3
	Disagree		6
	S.Disagr		
	Dt Kn		
	N/A		35
<ul style="list-style-type: none"> Common law legal costs are at least 20% of common law awards in my business. 	S.Agree		9
	Agree		15
	Neutral		9
	Disagree		9
	S.Disagr		3
	Dt Kn		21
	N/A		35

"I do not consider that access to lump sums should be determined by who you are employed by."

"Employees have a right to access what they should. There should be no interference in the rehabilitation process by employees accessing common law. It is up to companies to assist where they can to ensure employees feel secure enough to apply for common law and still maintain their position."

"I partly blame the length of time it takes for the matter to go to hearing."

COST SHIFTING AND MEDICAL TREATMENT

Members are concerned that they can retain the right to immediately direct workers to medical treaters, irrespective of Medicare implications. Any new framework needs to take this into account. Alternatively most schemes could vastly improve treating doctor accountability via training programs, increased pay scales etc.

SURVEY PROPOSITIONS 63-65 - TREATING DOCTORS

Cost Shifting and Medical Treatment

• Companies should have the right to immediately direct medical treatment for injured workers.	S.Agree		32
	Agree		21
	Neutral		9
	Disagree		3
	S.Disagr		
	Dt Kn		
	N/A		35
• Any regime should make treating doctors more accountable.	S.Agree		44
	Agree		21
	Neutral		
	Disagree		
	S.Disagr		
	Dt Kn		
	N/A		35
• Doctor shopping needs to be controlled in any new scheme.	S.Agree		41
	Agree		18
	Neutral		6
	Disagree		
	S.Disagr		
	Dt Kn		
	N/A		35

“We pay and coordinate treatment whilst a decision on liability is being made. We value our employees and the main aim is for the employee to become a productive member of the workforce and community after sustaining an injury.”

“We do not use Medicare, but pay out of company funds.”

”Doctors should be held more accountable for trying to encourage employees back to work instead of asking them how much time they want off. They often hinder the rehabilitation process and since they tend to not be overly responsive to understanding the business activities, it makes rehabilitation more onerous for organisations.”

”This would be great but how can this be stopped when it is so difficult to get the doctors to do what is required in the first instance.”

“The doctors should be advising employees that they need to go back & see the original treating doctor not taking over because employees do not get what they want from the first doctor.”

Early intervention, rehabilitation and return to work

REHABILITATION CHOICE

Self-insurers place high importance on having excellent ‘return to work’ mechanisms available in the event of injury. Various approaches to rehabilitation may include direct referral to pre-approved private rehabilitation companies or in-house qualified rehabilitation employees.

Rehabilitation Providers are regulated by regimes. Interference with the licensing or the work practices of these companies through regime sponsored accreditation policy and pricing restrictions can cause problems for self-insurers. The capacity to freely choose rehabilitation providers and to purchase competitive high quality services is important to managing risk.

SURVEY PROPOSITIONS 67 – REHABILITATION CHOICE

Early Intervention, Rehabilitation and Return to Work

• Choice of rehabilitation provider is important	S.Agree		32
	Agree		18
	Neutral		6
	Disagree		3
	S.Disagr		3
	Dt Kn		3
	N/A		38

“Currently we manage our own rehabilitation which works better than outsourcing. The choice of rehab providers is crucial in maintaining sound principles in rehabilitation.”

“These providers should be held measurable & accountable for the provision of rehabilitation and organisations & or employees should have the right to dismiss them if they are not effective.”

“An employer should use a Rehabilitation Provider that is experienced in the employers industry and has a working knowledge of the employer's work sites.”

”This is one of the most beneficial and important rights of self insurers in facilitating the rapid return to work of injured employees.”

“Early reporting and early intervention with the right to choose the rehabilitation provider that understands our industry, contributes significantly to reducing lost time due to injury.”















Dispute resolution

ADR & LEGAL COSTS

In the past member associations have largely supported alternative dispute resolution as a cost effective alternative to litigation. Conciliation systems should be retained. However, recourse to specialist arbitrators is also needed for the difficult cases that self-insurers are unlikely to settle themselves. For self-insurers, most cases that can be resolved are resolved early. Members are mostly involved in defensible cases where the intervention of a decision-maker rather than a facilitative mediator or conciliator is required to achieve settlement.

SURVEY PROPOSITIONS 68-69 LEGAL ACTIVITY & CONCILIATION

Dispute Resolution

<ul style="list-style-type: none"> My company has varying legal expenditure in the states in which we operate that is entirely driven by the design of the local dispute system. 	S.Agree		18
	Agree		18
	Neutral		18
	Disagree		6
	S.Disagr		
	Dt Kn		6
	N/A		35
<ul style="list-style-type: none"> Conciliation models are supported with access to decision-making where necessary. 	S.Agree		15
	Agree		41
	Neutral		9
	Disagree		
	S.Disagr		
	Dt Kn		
	N/A		35








“Legal costs are at least 20%, considering both Plaintiff and Defendant legal costs.”

Premium setting - parity with contribution

In the past, representative associations have supported parity between premium setting and contributions. The principles of transparency and equity with appropriate incentives and disincentives - are principles that should also be applied to self-insurer contributions.

SURVEY PROPOSITION 70 – EQUITY & TRANSPARENCY

Premium Setting - Parity with Contribution








<ul style="list-style-type: none"> Contributions and premiums should be governed by the same principles. 	S.Agree		18
	Agree		35
	Neutral		12
	Disagree		
	S.Disagr		
	Dt Kn		
	N/A		35

The role of private insurers in workers' compensation schemes

While not a major issue for self-insurers, SA is notable in using self management of claims as an intermediate step to self-insurance. This is done through a private insurer in some instances. Most members would see that giving control of claims to any outside agency may have the problems associated with any outsourcing of core functions. However, the option to do so may be advantageous in some circumstances; particularly if best practices were offered. Brokers already undertake these services for some self-insurers.

SURVEY PROPOSITIONS 71 – OUTSOURCING CLAIMS MANAGEMENT

The Role of Private Insurers in Workers' Compensation Schemes

<ul style="list-style-type: none"> My company would consider outsourcing claims management to an insurer. 	S.Agree		3
	Agree		12
	Neutral		15
	Disagree		24
	S.Disagr		15
	Dt Kn		1
	N/A		32

“Compensation is better managed internally in order that the organisation has a direct line of access for employees.”

“Management needs to run their own businesses not outsource what are their problems.”

Preferred framework – Emerging model

COMCARE CHANGES

As noted above, further NCSI member discussions indicate that there is support for a central administrator of workers compensation and also for a central administrator of occupational health and safety. It appears that the PC sees some of this occurring through changes to the Comcare system.

The Chairman of the Inquiry commented to NCSI representatives in Victoria on 26 June that submissions on the '5 or 6 fundamental changes to Comcare' that would be necessary to attract self-insurers should be made. NCSI was also requested to describe a pathway to a national framework.

The survey included the following example.

NOHSC's role could be expanded to capture the functions and tasks that are currently performed by state organisations. The workers compensation agency could operate under the auspices of the SRC legislation and be regulated by the same Commission that regulates Telstra and other ex commonwealth agencies. A 'Comcare private' scheme could include a benefits regime similar to existing WorkCover schemes with some access to common law. In direct competition with state regimes, any self insured or insured employer could take national insurance and obtain national coverage. Equally state schemes might be able to offer insurance in other states.

In this example also, a third central body could proactively collect data and benchmark schemes. It would promote consistency between the schemes by providing information direct to the COAG process for inclusion as a factor in funding deliberations.









Taking the model of the federal and state police, inspections could be conducted by parallel inspectorates. Alternatively, local inspectors could conduct inspections at a cost through to the NOHSC agency. Similarly,

local dispute resolution services should be able to offer services at a cost. A further development may include private contractors taking up worker policies and contributing to industry based or union based schemes. These would also fall under scrutiny and be subject to prudential controls.

Members were asked about specific Comcare changes that would bring benefits in line with the larger states. While supportive, the results indicated a degree of caution. Further details would need to be provided.

SURVEY PROPOSITIONS 72-73 - NEW COMCARE MODEL

Preferred Frameworks - Emerging Model

<ul style="list-style-type: none"> Would your company self-insure under Comcare if the benefits structure was altered and other changes were made. 	Yes		29
	No		6
	Dt Kn		32
	N/A		32
<ul style="list-style-type: none"> Would you support a Comcare benefits structure that was similar to that of existing workcover schemes - that is limited common law and stepped down benefits? 	Yes		41
	No		9
	Dt Kn		18
	N/A		32

“Depends upon the benefit structure, cost, dispute resolution process, and whether it addresses the national consistency issues raised previously.”