Australasian Meat Industry Employees Union

Submission to the

Productivity Commission

Inquiry into

National Workers' Compensation, and Occupational Health & Safety Frameworks

June 2003

The Australasian Meat Industry Employees Union (AMIEU) makes this response to the call for public submissions on the *National Workers' Compensation and Occupational Health and Safety Frameworks: Issues Paper April 2003* issued by the Productivity Commission. We appreciate the opportunity to make this response, but we wish to express deep concern about the timetabling for written and oral submissions. The AMIEU does not consider that there has been sufficient time to prepare our response. We are also concerned about the framing of the terms of reference.

Background

The meat industry has been built over many years and has continued from generation to generation. Work in meatworks and associated workplaces has always been physically hard, dangerous and skilful. Without the strength of organized labour, the AMIEU, it would undoubtedly be more dangerous and have stayed poorly paid as well. The meat industry is a significant employer in Australia. Australia is the world's largest exporter of meat, with meat exports increasing significantly.

As this data suggests, poor OH&S performance is a major inhibitor of industry economic performance and threatens the viability of many enterprises. Worse, the poor OH&S performance is a threat to the health of workers in the industry.

Occupational health and safety (OH&S), workers' compensation and rehabilitation are fundamental and longstanding pursuits of the AMIEU on behalf of its members. There has been a full time compensation officer for more than 30 years. The Victorian Branch of the AMIEU established a medical centre in the 1960s because of the need for medical practitioners who were capable of recognising zoonotic infections and other work related conditions suffered by workers in the meat industry and providing proper treatment. Representatives of the AMIEU are regular participants in tripartite and government bodies associated with workers' compensation and health and safety.

This submission was developed through discussion and consultation with the AMIEU's officers around Australia who are knowledgeable about the operations of their respective State systems and their impact on our members.

AMIEU members, their families and their communities stand to be both directly and indirectly affected by the outcomes of this Inquiry. The AMIEU therefore values the opportunity to make written submissions to the Inquiry on these issues and will make further submissions in response to the Interim Report foreshadowed as part of the Inquiry.

National frameworks

The Issues Paper asks if there are problems in having multiple jurisdiction-based regimes and sets out a range of possible models for establishing more coherent national frameworks:

- A cooperative model for workers' compensation along the lines of the current national approach to OHS;
- A mutual recognition model;
- An expanded Comcare model;
- A uniform legislation template model;
- An extended financial sector regulation model; and
- A new national regime.

The Commonwealth's legislative power to implement these different models has not been elaborated in the Issues Paper and we reserve comments on these respective models at this stage of the Inquiry. In evaluating different workers compensation models the Inquiry should look at the success of Canadian system which is entirely publicly owned and underwritten.

The choice of framework is a secondary issue to the social and economic objectives that form the basis of any regulatory system.

The primary objectives of both OH&S and workers' compensation systems must be:

- To prevent the occurrence if work related injury, illness and death;
- To rehabilitate the victim of any work-related injury that occurs;
- To compensate the victim.

These objectives provide the core rationale of any system of regulation of OH&S and workers' compensation. The ongoing occurrence and impact of work-related injury and death are the major issues in this area that any review of existing arrangements must address. The statistics speak for themselves: The number of workers' compensation claims reported during 1994/95 implies that a worker in the Meat Processing industry class has almost 1 chance in 5 of experiencing a serious (that is, entailing a fatality, permanent disability, or temporary disability resulting in 5 days or more time lost from work), compensated, work-related injury/disease over the course of a working year.

Assuming a worker spends his/her whole working life in this industry, on the basis of probability, he/she is almost certain (99.96%) to experience a serious, compensated work-related injury/disease over the course of his/her working life. (Probability will depend on the occupation and age of a worker and while some workers will actually avoid an injury/disease over the course of their working lives, others will experience more than one).

National statistics indicate that the meat processing industry is the worst performing industry with respect to occupational health and safety. For example in Victoria:

- Highest claims frequency rate - 3.65 claims per $1 m remuneration;
- Second highest claims cost rate - $101,593 per $1m remuneration;
- Meat is 1.8% of the manufacturing industry, yet accounts for 7.5% of all claims and 8.5% of all costs;
- In 2000/2001 the industry paid $22m in premium while VWA paid out $35m claims costs;
- Some meat industry enterprises are paying premium rates approaching half their payroll.

As this data suggests, poor OHS performance is a major inhibitor of industry economic performance and threatens the viability of many enterprises. As well as the consequences for the workers' compensation scheme as a whole, the current and potential consequences for rural communities are serious.

The actual extent of work related ill health is not understood in Australia. The Australian Bureau of Statistics Injury survey and the BEACH project data give quite different results i.e. from 5% (477,800 new persons per year, to 1.1 million new problems annually. In both surveys workers' compensation payments were not paid in at least half of the reported work related problems.

One clear example of the under-representation of recognition of the extent of work related illness is recent statistics in which 28 workers from one abattoir suffered from the zoonotic disease Q Fever in the past year, but only 7 claims for WorkCover were lodged by workers who were placed in that abattoir.

However, the terms of reference of the Inquiry do not embrace the prevention of work-related injury or death as the primary focus and therefore the strategies which might better suit a preventionbased framework for regulating OH&S and workers' compensation. This is a serious omission from the terms of reference of the Inquiry.

Displacing the core objectives with secondary objectives such as the reduction of costs loses sight of the ways these other areas can have a significant impact on the effectiveness of any regulatory system. Again, these other areas do not feature in either the terms of reference or the Issues Paper. These results in serious limitations in the scope of the Inquiry in terms of considering what might contribute to improving and enhancing the achievement of the core objectives of the existing systems.

Our preliminary response to the Issues Paper is to set out the essential features of a national workers' compensation system that is comprehensive and provides good benefit and rehabilitation structures for workers.

Recommendation The AMIEU proposes the formation of a national body that includes all stakeholders similar in composition to the National Occupational Health and Safety Commission. Such a body would allow a discussion at a national level between the key stakeholders who would be able to work towards greater cooperation between the state schemes. We do not consider that the current arrangements of national discussion between the Heads of Workplace Safety and' Compensation Authorities to be sufficient as there is no method for the discussion to allow for the participation of the stakeholders.

Whilst a nationally consistent workers' compensation system may be desirable in theoretical terms it would require such a major rethinking of the insurance system that there are many political, constitutional, access and equity issues that would need to be resolved before such whole scale change should even be considered. The first step would require the development of core standards that compensation systems need to adopt.

Any National Standards would need to be based on the "best standards" and not achieved through adoption of national minima or a "levelling out" of existing provisions. This is essential given that the current systems do not provide workers' compensation coverage for a wide range of workers in so called precarious employment. [8] Evidence indicates that workers in precarious employment, an increasing section of the labour force, are uncertain of their eligibility for workers' compensation and many, legitimately, fear for the consequences if a claim [9] is made.

A solution proposed by DEWR, of insurance arrangements of income support and disability support arrangements, is not supported by the AMIEU. Individual insurance arrangements are only applicable where the persons are truly self employed or an employer themselves.

Any reform of coverage of access to workers' compensation cannot be conducted without reference to current inequitable employment contract arrangements. A recent New South Wales workers' compensation case has highlighted the difficulties that may be encountered in the current employment law arrangements.

A worker on an Australian Workplace Agreement (A.W.A.) was being paid less than his normal hourly rate because the employer decided that as he was not being productive he should be significantly less whilst off on total incapacity payments. The AWA paid $22 per hour when the employee was productive (at work) but only $14 per hour when he went on a public holiday, annual leave, sick leave or on Work Cover payments. It was the State governments workers' compensation laws that allowed the worker to appeal his low level of workers' compensation payments. The Office of the Employee Advocate is charged with overseeing that no employee is disadvantaged by conditions in the AWA. This review process failed this worker and as there is no public scrutiny of AWAs, it is unknown how many cases of such injustices occur to injured workers on AWAs.

National standards

National standards for workers' compensation must be based on a comprehensive definition of "injury" including illnesses and including injuries incurred travelling to and from work, a wide definition of "worker" and weekly payments at the level of pre-injury earnings.

National standards should also provide for a consistent approach to rehabilitation based on:

- Early intervention;
- Employee choice of treating practitioners and approved rehabilitation provider;
- An obligation on the employer not to sack injured workers, to provide suitable employment or pay full costs of the injury;
- A focus on industry based redeployment;
- Retraining being made when needed and directed to actual rather than theoretical employment options.

One objective of National Standards should be the institution of standard costs for procedures and reports. More doctors should be encouraged to specialise in industrial medicine (through sponsoring of this in tertiary institutions) in order to improve the quality of medical services and the choice of consumers. Such specialisation would also enable the development of preferred provider arrangements with employers and unions.

As briefly discussed above, any national cooperation must not disenfranchise the ever-increasing group of workers that are not in "traditional" employment relationships.

The AMIEU is not going to attempt to provide the definitive list of key principles in this submission but rather provide a number of very basic standards that are currently not met by most of the workers' compensation systems.

1. Links to OHS

As the responsibility for workplace safety and for injured workers lies with the employer, then, at the workplace level, health and safety, workers' compensation and rehabilitation should be integrated.

To enhance the workplace link between workers' compensation and OHS performance there should be a set minimum percentage of the revenue raised for workers' compensation premiums/levies should go to the development of workplace injury prevention strategies. Premiums should be offset against major health and safety investments. Because of the fact that 60% of injuries in the meat industry are cumulative, the employer who invests in improving health and safety, and employs workers on an ongoing basis, should have prevention investment offset against premiums.

Currently, in most States, the way to ensure that premiums will go down in the short term is by sacking all the staff and starting with new workers, particularly using labour hire, and turning over young trainees. Good employers who do not throw injured workers on to the scrap heap and who make health and safety improvements should be rewarded.

Benefit structures

Workers' compensation insurance is a system that has its origins as social legislation to compensate workers for their loss of earning capacity as a result of injury/illness arising out of their employment. The no fault approach of eligibility for workers' compensation payments arises from a recognition that:

- Workers do not voluntarily accept risk; Employers have more information and ability to control for risk than workers.

Benefit structures for workers should be such that there is no financial penalty for being injured or made ill through the course of employment. Unfortunately, as the pressures from insurers is for maintenance of profit margins, from employers for lower premiums, the level of benefits paid to workers is regularly lowered for overall scheme financial viability reasons.

There is a large variability in the weekly payment made to workers e.g. from the South Australian example of 100% of pre injury weekly earnings for 12 months & 80% thereafter. This includes all shift loadings and regular overtime. Whereas the Victorian system only provides 75% of pre injury

average earnings (including penalties etc.) for the first 26 weeks of total incapacity and excluding penalties after that. It is bizarre that such variability in income support should exist between a worker who works at Portland in Victoria and one who works in Mount Gambier, in South Australia.

Duration of weekly payments

The hope of any workers' compensation scheme is to return the workers who are injured to work. The scheme needs to be designed to give adequate income protection, rehabilitation services and, if needs be, vocational services to achieve these aims. Most schemes appear to particularly fail in the latter areas. For example in South Australia after 2 years a decision is made to determine the workers residual capacity (to work) which equates to your earning ability and the insurers are allowed to take into account what the person is physically and mentally able to do. However there is no obligation on the insurer show that there is a job available in real terms rather than hypothetically.

Principle: There should be common and broad definitions of "employer" and "employee". In particular, there is a need to ensure coverage of sub-contractors, casual workers, people on work experience, outworkers and others who may be at the fringes of a traditional employee/employer relationship.

The sub-contracting of jobs to workers who are forced to apply for the jobs that were previously classed as permanent direct employment should not be a way to transfer costs of compensation. A boner or butcher who does not advertise their services, does not control the processes, works for one employer and is formed into a company to obtain the work should be covered by the definition of "worker". Under the workers' compensation laws in Victoria such a person is deemed to be a worker, but in NSW is not. These workers should be covered by workers' compensation law.

The recently released Future of Work report clearly outlines the significant changes in the labour market over the past 20 years. These changes are important as

1. Those groups of workers who are not permanent and fulltime record poorer health and safety experience i.e. more injuries;

2. Have decreased access to workers' compensation payment;

and by implication are likely to use the Medicare system for treatment without any income replacement for work related ill health.

Research in Victoria clearly shows that, in the same industries, injury rates for labour hire workers are higher than for permanent workers. In comparison to permanent, direct hire employees, the injuries to labour hire workers

- occur more often;
- occur early on in the placement with the host employer; are more severe; and
- the labour hire worker is off work longer.

There has also been an increase in the numbers of employees claiming compensation for work stress related illnesses, for example in NSW stress claims rose from 5% of all claims to 19% in 1998. The response by workers' compensation schemes is then to change the criteria for work related illnesses and thus control the number of claims. This does not reduce the numbers of workers who are being made ill as a consequence of their work e.g. the rising number of claims for stress in the Commonwealth led to limitation on the type of injuries for which compensation could be claimed.

Principle: Weekly compensation payments should be based on pre-injury earnings including overtime, penalty rates and other work related allowances. Payment should continue while the person is unable to return to work.

The compensation law in Victoria was amended by the liberal government to transfer costs to the Social Security system. After 104 weeks of weekly payments, workers who are not capable of returning to pre-injury duties but who, have a theoretical capacity to perform some kind (any kind) of work do not receive weekly compensation payments. A meatworker who may have limited literacy, has worked in the industry since he or she was **a** teenager, may have limited English skills and has no capacity for physically demanding work because of the injuries finds themself on the scrap heap. These people have weekly compensation terminated and ends up on sickness pensions (if they don't have a partner who earns income).

Principle: Claims should be determined within a prescribed time limit with provisions for speedy and effective dispute resolution processes. Interim payments should be available pending the determination of a claim, and ongoing weekly payments made in the case of a claim which has been accepted but subsequently challenged until the review process has been concluded.

Workers should not be disadvantaged because the employer/insurer fails to process or make timely decisions regarding acceptance of the claim.

It is not an uncommon experience that workers making claims can be left in limbo, without a decision or income because despite legal provisions indicating when a decision must be made e.g. in SA 15 days, there can be delays up to 3 months for claims such as psychological injuries. In Victoria, employers delay their submission of the claim to the insurer, thus delaying acceptance or denial of the claims. Despite the fact that the WorkCover Authority indicates that half of the employers are in breach of the time frame (meaning that workers are left in limbo) there have only been 2 prosecutions in more than ten years.

The system recently introduced in NSW where income maintenance is automatically paid should be a feature of all systems.

Employers should be required to continue a rehabilitation program for injured workers even when the claim is disputed. It is the experience of for example the Victorian system that whilst the employer/insurer disputes a claim the worker is not provided with access to rehabilitation services.

Principle: Where a decision is made to terminate payments, payments should continue pending the outcome of any appeal process. The onus of proof should be on the person seeking to terminate benefits. Payment should not fall below 100% of pre-injury earnings unless a review conducted 12 months after payment commenced establishes that payment should be reduced.

The review should follow an agreed process and be conducted by an agreed assessor taking into account:

Degree of incapacity;

Participation in rehabilitation;

The availability of suitable employment;

Other socio-economic factors.

Principle: There should be a legislative requirement for employers to make suitable job offers to recovered and partially recovered injured workers. The onus should be on the employer to prove that he/she has no suitable employment available. Penalties for failure to rehabilitate or to offer suitable employment should be imposed through the bonus and penalty system. .

The workers' compensation system grossly under performs in regard to the provision of suitable duties for employees. Although many laws have the provision of penalties on employers for failure to provide suitable duties these have rarely been enforced. In Victoria, for example, there has

never been a prosecution of an employer who does not make any attempt to provide suitable alternative employment.

South Australia, through sections 58B and 58C, pressures employers to provide suitable duties and provides some protection from dismissal. However the effectiveness of these sanctions is entirely dependent on the political will of the government of the day.

Principle: If an employer is genuinely unable to provide suitable employment, vocational retraining and redeployment must be considered as part of the injured workers' rehabilitation. In order to provide incentives for employers to take on workers with previous claims there should be fund responsibility for redeployment costs and "second injury" schemes.

Participation in rehabilitation and redeployment should not prejudice a worker's right to workers' compensation payments should a relapse occur to ongoing employment where rehabilitation involves "work trials".

Principle: Employers should be required to maintain superannuation contributions for workers who are on compensation. For example, in Queensland the calculation of normal weekly earnings does not cover contributions to superannuation. In Victoria this is also the case despite the fact that superannuation payments are included in remuneration for establishing premiums. This is inequitable and means that just because an employee is injured at work they will have their future income negatively affected.

The AMIEU also opposes the DSS/ Centrelink practice of treating workers' compensation benefits as income, including the assessment of lump sum payments as "income" even where they are for non-economic loss. Precluding workers from the benefits of social security has not improved the performance of workers' compensation schemes, but has simply transferred the cost of disability to the worker and his/her family.

Workers' Compensation/Social Security/Tax/Superannuation

It is important that people do not "fall through the gaps" and that as part of developing national standards a common and consistent definition of disability/incapacity is applied by both workers' compensation and social security and that this definition includes socio-economic factors as well as medical assessment.

There is an urgent need to look at schemes designed to transfer cost away from workers' compensation onto the social security system and those which are designed to manipulate the tax system

The needs of workers with long term disabilities should also be considered in the context of the extension of industry superannuation and retirement from the workforce for disability reasons.

Principle: A major issue for injured workers is the cost and time involved in contesting a decision to deny compensation. Systems for conciliation and determination of disputed claims should be accessible and understandable. Process should be speedy, cheap and as far as possible non-adversarial.

The process of disputation and appeal processes vary considerably throughout jurisdictions, often designed is such a way as to ensure that workers are disadvantaged if liability is not accepted for the claim. As the Victorian VWA report *The Case for Change* noted there are large numbers of claims which are submitted late (12,000 in a scheme that has about 35,000 claims per year). The union has examples where employers fail to pass the claims to the insurer, fail to submit a claim at all and pay the worker from other entitlements (e.g. sick leave or income protection insurance). When an insurer has failed to accept liability and appeals processes are taking their time, workers can be without a source of income.

Common Law

Unions have in the past, recognised that common law is often inadequate in the case of long term serious disability. We have been prepared to "trade off" access to common law for improved weekly benefits and statutory lump sum payments for permanent disability. However, in some jurisdictions there has been such a reduction in weekly benefit levels and an absolute failure of health and safety legislation to act as a deterrent that any such arrangement has been unacceptable. There has also been no State legislature (and the Federal Minister responsible for the NOHSC has actively opposed) any legislative provisions that would put criminal sanctions or jail terms on negligent employers. In the context of extremely low prosecution rates for breaches of occupational health and safety law, it is not For example

Any system which limits claims to "serious" injuries is not supported. A narrow definition of "serious" precludes many claims where employer negligence could be established. This is increasingly a problem with the illegitimate use by Australian jurisdictions of the American Medical Associations Impairment Guide

A feature of workers' compensation regimes over the last few years **has** been the erosion of the access by workers to common law claims. One justification for this restriction has been the claim that other avenues for the "punishment" of employers who fail to provide **a** safe work environment are available. The existence of occupational health and safety legislation has not been successful in deterring employers from endangering the safety of their employees. There are many reasons for this.

Prosecution for breach of health and safety legislation, even where employees have been killed or .seriously injured, have not been numerous. In some cases this is because only the statutory authority can prosecute and they have not shown **a** willingness to do so. Where the employee or union can initiate an action they have been reluctant to do so either because of fear of retribution or because costs, where the standard of proof is **a** criminal not civil one, can be prohibitive.
Apart from the need to substantially increase the level of such fines the victims should receive part of the penalty by way of compensation and that **part** of the fine should go to a fund made available for rehabilitation and retraining injured workers.

Industrial manslaughter laws are necessary.

Reducing the regulatory burden and compliance costs

The Issues Paper presents OH&S and workers' compensation as a regulatory burden that imposes compliance-related costs on employers and corporations which may be further compounded by the multiplicity of jurisdictions.

The AMIEU rejects this approach to OH&S and workers' compensation that trivialises the social responsibilities of employers and corporations to provide safe systems of work for their employees. It also fails to recognise that there are regulatory burdens and compliance costs placed on others under these systems. First and foremost, the burden placed on injured workers under these systems e.g. the requirement to make a written claim instead of accepting telephone claims in most jurisdictions. The lack of income is **a** significant burden placed on injured workers during poorly designed and inadequately resourced appeals processes.

The level of paperwork required of medical practitioners for a workers' compensation claim stands in stark contrast to a Medicare claim, especially if the claim relates to only a few days off work. This may result occasionally in cost shifting to the Medicare system if it is simpler to process the cost through Medicare than through the relevant workers' compensation scheme. Hendrie and Driscoll note that work-related injuries and diseases are **a** small but important component of medical general practice. In their analysis of the **BEACH** study (Bettering the Evaluation and Care of Health) in relation to work-related injuries **and** diseases, they highlight that the two most common reasons for not making a workers' compensation claim were that the person was self-employed or

thought that he/she was not covered by his/her employer (36%) or that the condition was not considered serious enough (22%).

Labour hire

Labour hire workers are covered by workers' compensation law but raises issues of attempts to transfer responsibility of health and safety and attempts to reduce workers' compensation premiums as well as attempts to reduce union membership.

Recent Victorian government research by Elsa Underhill, in Victoria labour hire employees are overlooked with regard to injury prevention by both labour hire companies and host employers. The research proves that workers employed by labour hire agencies are:

- More likely to be injured than direct hire workers;
- More likely to suffer severe injuries; and
- More likely to suffer muscular strain injuries.

The trend that is occurring in the meat industry is for employers to use labour hire. This can be in the form of the company setting up a labour hire company, who only provide workers to the one company. Premiums for labour hire companies are lower than premiums for the meat industry.

In the meat industry the trend is for the company to sack the entire permanent workforce and contract a labour hire company to provide the entire workforce permanently but the workers are "casual" with none of the rights of permanent employees.

The AMIEU believes that if an employer transfers from a permanent workforce to labour hire the concept of succession should apply and the labour hire company should have to pay the premiums inherited from the host company.

One of the impacts of the use of labour hire staff in the place of permanent employees is the pressure on the workers not to claim compensation to which there is no question of their legal entitlement. Because the injured worker is only able to perform restricted duties, they are unable to compete successfully on the open labour market and the host employer avoids all responsibility for placement of the workers that they have injured. These workers know that having claimed compensation will reduce the likelihood of placement and so they do not lodge a claim. The AMIEU does not think that it is a coincidence that only 7 of the 28 workers who developed Q Fever from one abattoir but did not claim compensation were employed by a labour hire company.

Injured labour hire employees remain dependent on the scheme for longer than workers who retain their employment. This increases the cost to the scheme and causing the worker serious disadvantage. It is not reasonable for employers to dump their injured - they have a moral responsibility to help them recover and return to work.

The role of self insurance in workers' compensation

Self insurance is regulated poorly. The requirements differ from state to state. There is, in all cases, a commercial focus rather than social legislation emphasis. In Victoria self insurers do not consider themselves as having to meet the same procedures and interpretation as the WorkCover Claims Agents. In NSW there are procedures for reporting non compliance by self insurers. The identified purpose of this is that a self insurer who does not recognise the rights of employees who are injured should have the right to self insure withdrawn.

At the very least, the request by a company to self insure should have the support of the workers' industrial body and the policies and procedures should be negotiated and agreed by the employer and the unions. Licenses must have to be applied for on a regular basis.

The only companies who are licensed self insurers must have total commitment to constantly improving health and safety. It is not sufficient to have commitment to OH&S paper exercises. Evidence of commitment to health and safety must be available. These employers should be subject to state OH&S audits as all other employers. In particular, evidence that the OH&S is not

being maintained should result in the withdrawal of the license to operate as a self insurer. Workplace deaths should result in immediate withdrawal. Unfortunately there are employers who have a record of deaths who are still operating as self insurers.

One of the major disadvantages of allowing self insurance is that it can be detrimental to the whole scheme, take out the good performers (the self-insurance) and leaves the compensation system with less money. By definition they are large employers, because there are no premiums this removes a lot of money from the system making it more likely for the increased costs of insurance for medium and smaller employers.

National Occupational Health and Safety

Unfortunately it is impossible to address the range of the terms of the Inquiry in the time that is available. Whilst the prevention of injury and illness is the priority of the AMIEU, we are concerned that it does not appear to be the primary focus of the Inquiry and we are not able to address the issue of OH&S to the extent we would like in this submission.

In the recent years most of the states have reviewed their OH&S legislation and there are ways in which there has been convergences that have occurred. For example, in New South Wales the legislation has now established workers' health and safety representatives as well as OH&S Committees. All states except Victoria have tripartite bodies that steer OH&S, but Victoria is about to review their legislation. Unfortunately, since the Industry Commission in 1995 the National Occupational Health and Safety Commission has suffered from gutting by the Federal Government.

National Occupational Health and Safety Commission (NOHSC)

The National Occupational Health and Safety Commission Act 1985 requires NOHSC to provide:
"a forum by which representatives of the Government of the Commonwealth, the Governments of the States and of employers and employees may consult together in, and participate in the development and formulation of policies and strategies relating to, occupational health and safety matters"; and

"a national focus for activities relating to occupational health and safety matters".

(National Occupational Health and Safety Commission Act 1985 - S.7)
NOHSC should be properly funded by the Federal Government. The Federal Government reduced its funding for NOHSC, despite our scandalous levels of work-related death, injury and disease.

After the election of the Liberal/National Coalition in 1996, the Federal Government decided that:

the NOHSC budget must be cut by $5.9 million each year;

in addition, a further 5% cut was imposed across the board; and

redundancies had to be covered from within the NOHSC budget.

This represented a cut of $6.6 million (35-40%) to the NOHSC annual budget.

The ACTU opposed these severe cuts. The AMIEU totally supported the ACTU's opposition

The Federal Government should restore the funding of NOHSC so that it can play the role for which it was established.

Key elements for OH&S Legislation

Peak OHS body

Provide for a tripartite OHS body under the *Occupational Health and Safety Act* specifically to advise and make recommendations to the Minister in respect to legislation, standards, national and international development and the establishment of pubic enquiries and legislative reviews. This body should also have responsibility for developing a long term, at least ten years, strategic plan for improving workplace health and safety.

This body is to be separate from any body with responsibilities in the area of workers' compensation.

Employer responsibilities
There must be employer responsibility to provide workplaces, work processes, work environments, plant, substances and amenities that are without risk to health and safety of workers, contractors and members of the public. Employers must provide all information on health and safety to workers.

Employers must recognise rights of workers' health and safety representatives.
Employers must consult with workers through workers' H&S representatives and delegates on all issues that may affect health, safety and welfare. Employers must recognise the role of unions as representatives on health and safety. Host employers must recognise the rights of H&S representatives of workers who are employed by labour hire companies.

Employers must identify, assess and control all risks to health, safety and welfare. All

controls must be applied according to the hierarchy of controls. **Designers,**

Manufacturers and Suppliers
Designers, Manufacturers and Suppliers of workplaces, plant and substances have responsibility to provide workplaces, work environments, plant and substances that are without risk to health and safety of workers, contractors and members of the public.

Workers' H&S Representatives
Workers' H&S representatives are elected by workers to represent workers. They do not inherit any of the employer responsibilities. They must have rights to all information on OH&S. They must have the right to inspect workplaces. They must have the right to represent individual workers on all matters relevant to health and safety. They must have the right to release on paid time for approved H&S training of their choice. They must have the right to issue Provisional Improvement Notices and Provisional Prohibition Notices. They have the right to perform all of the functions of H&S representatives on paid time.

Right of entry to be extended to "roving" worker representatives to cover working arrangement in small or medium enterprises for mobile, flexible and/or small or medium enterprises.

Workers
Workers must take reasonable care for their own health and safety to the extent that they are capable.

Unions
Unions can represent workers of their coverage on matters of health and safety. Unions should have the authority to be able to prosecute to be extended to union officials similar to NSW provisions with provisions for costs to be awarded to the union (Section 106 of the NSW Act). Unions should have the right to enter places of work where their members or persons eligible to be members work to be adopted similar to provisions of Section 76 to Section 81 of the NSW Act.

Finally

These are not all of the issues that need coverage in occupational health and safety laws but are indicative of the issues that the AMIEU considers essential. The AMIEU appreciates the opportunity to make this submission and hope to be able to elaborate on these issues in the further deliberation of the Inquiry.