



NATIONAL WORKERS COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY FRAMEWORKS

August 2003

**Australian Business Limited submission to the Productivity
Commission Public Inquiry**

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1. EXECUTIVE SUMMARY

Occupational Health and Safety (OHS) and Workers Compensation are the workplace compliance issues about which businesses are most concerned. This concern arises from the desire to minimise workplace accidents but to do so in a way that is appropriate to the skills and resources of businesses large and small.

While the objective of national consistency is an important one in improving certainty and reducing costs for those operating across State and Territory boundaries, the matter of most concern to business is the 'content' of frameworks, be they State or national.

National frameworks incorporating poor principles or entrenching existing approaches that are not evidence-based and targetted at improving performance are not worth pursuing. A national strategy would deliver best results if its overarching premise was to provide the resources and knowledge for employers and employees to exercise personal responsibility rather than to lead by black-letter law enforcement and prosecution.

Specific recommendations by Australian Business Limited (ABL) are summarised below with page references –

OCCUPATIONAL HEALTH AND SAFETY (OHS) FRAMEWORK

The following issues should be addressed to assist industry in reducing workplace injuries and disease and in coping with new regulatory frameworks

Co-operation – foster greater cooperation and consultation between relevant parties associated with the improvement of OHS outcomes.

Awareness Evaluation – develop an accepted methodology that accurately measures the impact of awareness and information activities.

Cost Benefits – consider ways to provide information on the costs and benefits of investing in OHS that will be easily understood by industry.

Partnerships – pursue greater opportunities for partnership arrangements

Government Agencies – Government agencies to lead by example

Consultation – increase meaningful consultation with industry to develop laws and supporting plain English guidance materials that are easy to comprehend, consistent with a national approach and reflect changing work practices. (p.9)

Consideration should now be given to the development of a national package for the existing OHS standards that would include -

- Model Regulation and Code of Practice***
- suite of industry sector risk/hazard guidance materials.***

To develop this material the National Occupational Health and Safety Council (NOHSC) should draw on the substantial amount of work already completed by the jurisdictions and modify it to suit a national model that could be applied within state regulatory frameworks. (p.10)

ABL supports the development of a national regulatory framework that is adopted consistently by the nine jurisdictions through nationally adopted standards, supported by 'national codes of practice' and underpinned by guidance materials.

The framework would be further improved where the jurisdictions regulate OHS matters through only one recognised agency in each of the States/Territories. For example in the case of chemicals a number of agencies is involved in their regulation.

The nationally consistent regulatory framework should also include international strategies and programs designed to move towards global harmonisation where global developments are in the best interests of Australian industry, for example, in such areas as the manufacture, importation and regulation of chemicals. (p.11)

The encouragement of a culture of working together and of mutual responsibility is seen by industry as one of the core principles in achieving successful outcomes in OHS precluding it from being relegated to use in an industrial relations context. (p.12)

Jurisdictions should develop a more balanced performance and evidence based approach to education and compliance.

New requirements in legislation, particularly for small business, should be practically tested in the workplaces they will affect prior to gazettal. This would ensure better safety outcomes by creating tasks and systems that are practical, cost effective and meaningful. (p.13)

Jurisdictional authorities that have responsibility for OHS legislation should change direction to a clearly defined and demonstrated focus on prevention, while pursuing the aims and objectives and particularly the targets of the National OHS Strategy. In this context prosecution should be the last option. (p.13)

The 'duty of care' principle as embodied in OHS legislation should be applied to both employers and employees and qualified so as to include some recognition of 'reasonableness'. (p.14)

WORKERS COMPENSATION FRAMEWORK

ABL supports the objective of greater consistency between workers compensation systems and believes this will be best achieved by an evolutionary process based on co-operation between the jurisdictions.

ABL does not support the introduction or imposition of a single national workers compensation system. (p.14)

The adoption of nationally consistent key definitions would be a major step towards harmonising workers compensation systems. (p.15)

Given the limitations on the pricing mechanism as an influence on behaviour, workers compensation schemes should be focussed and equipped to provide employers and injured workers with effective post-accident management support and assistance. (p.16)

The primary objective of workers compensation systems should be the earliest possible return to work for the injured worker, consistent with the nature of the injury or illness.

Benefit arrangements need to be supportive of that objective including penalties where injured workers ignore or frustrate a reasonable return to work process. (p.16)

Where schemes are publicly underwritten, participation in the delivery of scheme services need not and should not be limited to insurers. (p.17)

A set of agreed criteria should be developed across jurisdictions based on such things as size and financial viability to enable multi-State employers, who so wish, to provide workers compensation coverage through a single arrangement even though it may not otherwise meet requirements in all jurisdictions. (p.18)

To be really effective Rehabilitation and Return to Work initiatives need to recognise and accommodate the needs of most, i.e. smaller, business. They need to be accessible, relevant and cost-contained within the premium paid by the business. (p.18)

Dispute resolution mechanisms need to be structured with the interest of the principals, not service providers, at their core. (p.19)

Funding arrangements for workers compensation schemes need to take into account cyclical fluctuations within schemes and be pursued in a way that effectively manages both the frequency and amplitude of those cycles. (p.20)

2. INTRODUCTION

Australian Business Limited (ABL) is a long-standing employer organisation providing broad-based business improvement support to members and clients.

ABL's 17,000 members are predominantly small and medium enterprises engaged in a range of business activity across NSW and ACT. Membership services are delivered through affiliation with the Illawarra and Hunter Business Chambers and includes:

- Policy development and lobbying activity on behalf of our members on both Federal and State business issues.
- International Trade and Business Solutions helping businesses to access international markets and capital for growth.
- Industry-specific interest groups including Textile Clothing & Footwear Innovation, Food and Beverage, Defence and Information & Communications Technology.
- Entry level and existing worker skill development programs through ABEN (New Apprenticeships Centre) and Small Business Training Company.
- Member advice on employment and Human Resource issues, and performance improvement support on Workers Compensation and Occupational Health & Safety.
- Australian Business Industrial (ABI) is the Industrial Relations Affiliate of ABL and on behalf of members is a party to a range of NSW State awards with Peak Council status.
- Australian Business Lawyers who provide legal services for workplace related legal issues.

ABL is a founding member of the Australian Chamber of Commerce and Industry (ACCI), the peak council of Australian business associations, which helps represent ABL members' interests on a Federal and international level.

The Australian Business Foundation, an independent research think tank of which ABL is the major sponsor, has recently produced a body of work focusing on innovation, new forms of business competitiveness, opportunities in a knowledge-based economy and collaborative business models.

OH&S and Workers Compensation Policy development

All important Federal and NSW Workers Compensation and OHS matters are considered by members through the ABL Council, its OH&S Policy Committee and the Council of ABL. Members of the Councils and Committee represent a wide range of industries including large, medium and small business.

ABL Role in Government OHS decisions

ABL actively participates in Federal and NSW advisory bodies. These include the National Occupational Health and Safety Commission and the NSW Workers Compensation and Workplace Occupational Health and Safety Advisory Council. ABL also supports the development of ACCI OH&S and Workers Compensation policy through its active membership in relevant deliberative groups.

OHS and Workers Compensation linked

Most businesspeople recognise that the key long-term way in which they can improve the affordability of workers compensation premiums is to minimise the cost of claims on the fund – that is, to minimise the number and severity of injuries in the workplace.

There are many other factors influencing the cost of operating workers compensation schemes including the speed with which injured employees return to work, the role of the medical and legal professions, the operating efficiency of the scheme and the level of benefits. However, it is the level of safety in actual workplaces and the management techniques used to obtain safe workplaces – occupational health and safety processes – that are essential prerequisites.

3. ISSUES OF CONCERN TO ABL MEMBERS

In the lead-up to the 2003 NSW election ABL surveyed 400 businesses in NSW to prioritise State-based issues of concern to them.

Workers compensation and OH&S compliance issues were near the top of the list of priority issues for both businesses in general and ABL membership in particular as is evident from the following extracts from the survey results –

Top Issues for Business Operation in NSW

1. A Skilled Workforce
2. *Workers' Compensation Premiums*
3. Rising Cost of Liability Insurance Premiums
4. *OH & S Compliance Requirements*
5. Workers' Compensation Reporting & Rehabilitation Compliance Requirements

Top Issues for ABL Members

1. Rising Cost of Liability Insurance Premiums
2. A Skilled Workforce
3. *Workers' Compensation Premiums*
4. *OH & S Compliance Requirements*
5. *Workers' Compensation Reporting & Rehabilitation Requirements*

Results for other sectors included -

Top Issues for Manufacturing

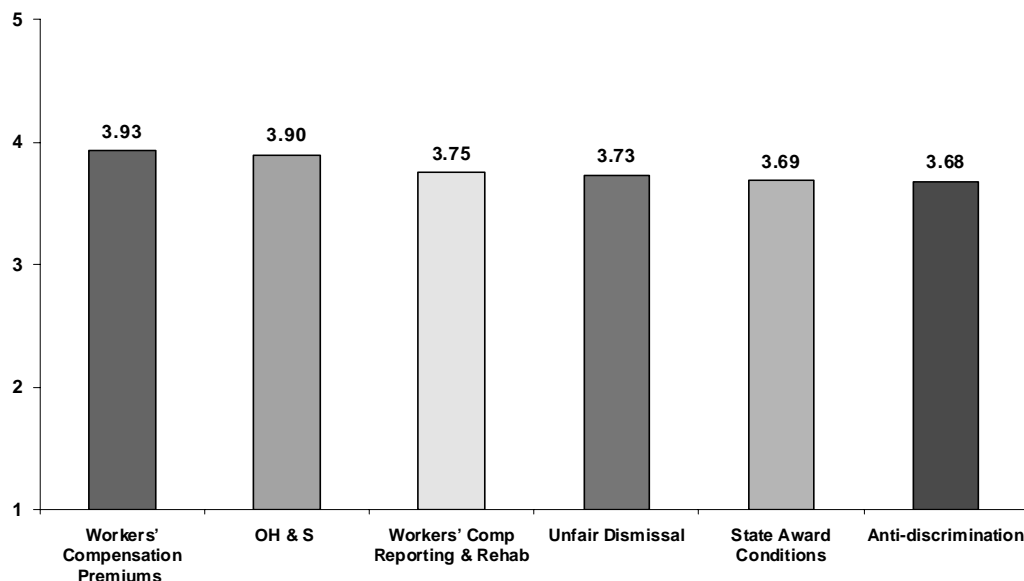
1. *Workers' Compensation Premiums*
2. Rising Cost of Liability Insurance
3. *OH & S - Compliance*
4. *Workers' Compensation Reporting & Rehabilitation Requirements*
5. Skilled Workforce

Top Issues for Retail / Wholesale Trade

1. Rising Cost of Liability Insurance
2. Skilled Workforce
3. *OH & S - Compliance*
4. *Workers' Compensation Premiums*
5. Unfair Dismissal - Compliance
6. State Award Conditions - Compliance
7. *Workers' Compensation Reporting & Rehabilitation Requirements*

The following graph shows the level of concern by members about a range of workplace compliance issues. The top three concerns are OHS and Workers Compensation related.

NSW Business Priorities 2003 – Workplace Compliance issues level of concern



Four hundred businesses were surveyed in February 2002. The full results can be viewed at <http://www.australianbusiness.com.au/policy>

4. OCCUPATIONAL HEALTH AND SAFETY FRAMEWORK

ABL Policy

Australian Business (ABL) is committed to achievement of an Occupational Health and Safety (OHS) outcome in workplaces where every person has the right to a safe place of work and safe method of working.

ABL OHS Policy endorsed by members states “Employers have both moral and legal obligations to provide a safe working environment that complies with legislation”. While recognising employers’ responsibilities we also recognise the responsibilities of employees and state “Employees also have a responsibility to comply with safety directives, maintain safe work practices and work with employers to achieve a safe work environment”.

The changing workplace

Rapid changes now affecting Australian workplaces include -

- growth in the service sector
- growth in self-employment and small business
- growth in clerical, professional and managerial occupations
- relative decline in labour intensive large manufacturing plants
- relative decline in skilled manual operations
- rapid technological developments enabling distance work, eg: teleworking, home based work and 24 hour service operation
- an increased proportion of casual employees in the workplace
- an increasing trend to part time and job sharing
- changes in the demographics in the workforce
- emergence of new occupational health and safety hazards and a wider recognition of the impact of work on health.

The significance of new technology, globalisation and more sophisticated mechanisation has meant that many workplaces have to learn new skills and adjust to new patterns of work and emerging changes in employer/employee relationships.

As a result, a range of new work hazards has emerged and the causes of workplace injuries have changed. These changes have produced significant challenges for those involved in occupational safety and health, whether as employers, employees, experts, consultants or government regulatory or advisory agencies.

The challenge faced by OH&S regulators into the 21st century is to ensure that OH&S regulatory frameworks remain relevant in light of the significant technological, economic and societal changes. These important work-related trends create the need to reassess OHS issues and the strategies designed to address them.

ABL believes the following issues must be addressed to assist industry in reducing workplace injuries and disease and coping with new regulatory frameworks -

Co-operation – foster greater cooperation and consultation between relevant parties associated with the improvement of OHS outcomes.

Awareness Evaluation – develop an accepted methodology that accurately measures the impact of awareness and information activities.

Cost Benefits – consider ways to provide information on the costs and benefits of investing in OHS that will be easily understood by industry.

Partnerships – pursue greater opportunities for partnership arrangements

Government Agencies – Government agencies to lead by example

Consultation – increase meaningful consultation with industry to develop laws and supporting plain English guidance materials that are easy to comprehend, consistent with a national approach and reflect changing work practices. Too often regulation and guidance material is made without sufficient recognition of the complexity and size of industries that will be required to comply.

The National OHS Framework

ABL through its membership of The Australian Chamber of Commerce and Industry (ACCI) has been actively involved in discussions that occur at the tri-partite National Occupational Health and Safety Commission (NOHSC) since its inception in 1985. Since January 2001 ABL, as a representative of ACCI, has held a position as an active member of the Commission.

The development by NOHSC of the National OHS Framework followed closely by endorsement of the National OHS Strategy has strengthened the working partnership of the NOHSC stakeholders.

NOHSC is now recognised by the stakeholders as having a central role to play in the implementation of a nationally consistent OHS framework through the development of a package of national standards and codes of practice underpinned by guidance materials endorsed by the Workplace Relations Minister's Council (WRMC).

Endorsement of National standards packages at WRMC is now supported by a requirement for an annual report on the implementation, monitoring and status of adoption by the jurisdictions.

Whilst this reporting on the adoption of national standards is a step forward towards national consistency there are still issues of inconsistent adoption. A mechanism to hold the jurisdictions to account is required.

The commitment to the National OHS Strategy by governments, industry and unions is seen as a catalyst for such a mechanism.

NOHSC now has the opportunity to use the WRMC-endorsed National OHS Strategy to provide greater national leadership and coordination of national OHS resources through the jurisdictions, leading to improved national consistency and improved national OHS performance.

NOHSC has developed National Standards that have been supported by the parties after considerable consultation.

ABL recommends that consideration now be given to the development of a national package for the existing standards that would include -

- ***Model Regulation and Code of Practice***
- ***suite of industry sector risk/hazard guidance materials.***

To develop this material NOHSC should draw on the substantial amount of work already completed by the jurisdictions and modify it to suit a national model that could be applied within state regulatory frameworks.

Reduction of OHS injuries and fatalities

The National OHS Strategy has set a number of action priorities and targets including -

- reduction in work-related fatalities of at least 20% by 30 June 2012 with 10% to be achieved by 30 June 2007
- reduction of workplace injury by at least 40% by 30 June 2012 with 20% to be achieved by 30 June 2007.

The National Strategy has the commitment of government, ACCI and the ACTU and it is anticipated that through co-operation, with all the parties working together, that these targets will be met. However, a considerable amount of work at both the national and state level needs to be undertaken to realise these targets. This work includes -

Nationally consistent regulatory framework

ABL supports the development of a national regulatory framework that is adopted consistently by the nine (9) jurisdictions through nationally adopted standards, supported by 'national codes of practice' and underpinned by guidance materials.

This material must be such that it encourages compliance through reduced costs. This will lead to improved OHS performance. It is the cost of compliance that is of particular concern to our members.

The framework would be further improved where the jurisdictions regulate OHS matters through only one recognised agency in each of the States/Territories. For example in the case of chemicals a number of agencies is involved in their regulation.

The nationally consistent regulatory framework should also include international strategies and programs designed to move towards Global Harmonisation where global developments are in the best interests of Australian industry, for example, in such areas as the manufacture, importation and regulation of chemicals.

Nationally consistent application in the workplace

National consistency through national adoption of standards, regulation, guidelines and compliance strategies leading to a level playing field for industry in all states and territories across Australia will result in a range of benefits to industry including -

- improved understanding of basic OHS principles leading to improved compliance
- reduced complexity of regulatory requirements for companies operating nationally
- reduced compliance costs.

Effective evaluation of the practical effect of new legislative instruments or guidance material is seldom undertaken in a valid and meaningful way. It is usually considered 'impossible to do' due to the range and size of industries that are affected by both broad based and detailed legislative requirements. Our comment applies to both 'national model regulations' and the ensuing state interpretation of that model which is subsequently used as a guide for inclusion in their individual OHS regulatory frameworks.

Regulatory Impact Statements that are required for new legislation are frequently rejected by industry as being incomplete, inappropriate, biased towards the legislation and not covering all sectors of industry that will need to comply.

OHS Regulation - Fair, Reasonable and Practicable

One of the basic principles required to improve OHS is a culture of working together based on the core issues of what is fair and reasonable and at the same time affordable and practicable. An understanding of the different workplace culture in different industries should be better reflected in government expectations of the application of their legislative requirements.

An increased understanding of the application of legislation by the jurisdictions would assist in developing and improving the uptake of regulatory requirements in the workplace.

For example, application of the OHS 'duty of care' in a balanced and equitable manner, while recognising that employers cannot predict or control every activity or event in the workplace, would assist in redressing the current imbalance.

A culture of mutual responsibility whereby government, employers and employees work co-operatively in an environment of shared responsibility to ensure a safe and healthy workplace must also be accepted. This shared responsibility must also be reflected in the courts by the implementation of the philosophy of 'contributory negligence' in the settlement of OHS prosecutions.

At government level, a culture which recognises compliance through prosecution as their key role dismisses the reality that often workplaces are unable to comply due to the complexity and lack of real guidance for industry that is practical and readily available at minimum cost. This attitude does little to engage industry in meeting the aims of the national OHS targets within the National OHS Strategy.

The encouragement of a culture of working together and of mutual responsibility is seen by industry as one of the core principles in achieving successful outcomes in OHS precluding it from being relegated to use in an industrial relations context.

Education and Compliance

A review of the compliance and enforcement data available through ACCI research reveals there has been an increase in the issue of improvement and prohibition notices in most jurisdictions with a resultant increase in prosecutions, convictions and fines awarded by the courts. This trend over the past four years has not been matched by a similar improvement in OHS performance.

Current strategies clearly demonstrate that the jurisdictional focus is on regulation, compliance and enforcement. The value of this strategy has not been supported by hard evidence-based research

NSW has undergone a continual re-writing of its OHS Regulations and associated Acts throughout the past 5 years. The result is a consolidated set of regulations based on a risk assessment framework. Overlaying the continual revision of this framework has been the dramatic effect of the changing workplace as noted earlier in this submission. We contend that while regulations may appear appropriate on paper it is the 'changing workplace environment' that is not often recognised in the practical application of compliance requirements.

ABL recommends that jurisdictions develop a more balanced performance and evidence based approach to education and compliance.

ABL is encouraged by recent discussions with WorkCover NSW in which the need for an outcomes focus has been agreed. This means the adoption of a compliance approach that tailors education and compliance strategies to the level of resources and sophistication of different businesses, especially small business.

ABL recommends that, particularly for small business, new requirements in legislation be practically tested in the workplaces they will affect prior to gazettal. This would ensure better safety outcomes by creating tasks and systems that are practical, cost effective and meaningful.

Focus on Prevention

ABL is seeking a change of focus and direction by the jurisdictional authorities that have responsibility for OHS legislation to a clearly defined and demonstrated focus on prevention, while pursuing the aims and objectives and particularly the targets of the National OHS Strategy. In this context we believe that prosecution should be a last option.

We recognise that government regulatory authorities will need to undergo substantial change to their prosecution strategies for this to occur.

It continues to concern us that often the main aim of the inspectorates within OHS agencies is frequently to prosecute. This perception alienates industry when often businesses would benefit from constructive advice on how to make improvements to preclude future accidents or incidents. As mentioned above, a prosecutions focus is not necessarily one that leads to improved safety outcomes.

Duty of Care

This one-sided and targeted approach does not meet the principles of 'no fault' or 'reasonably practicable' which are both key elements of Occupational Health & Safety legislative approaches. Employers are required to predict safety problems even though compliance with standards/code of practice has been achieved. Even where an

employer has complied with the regulations but has not predicted an event resulting in an injury, the employer has been prosecuted for not meeting 'duty of care' obligations.

In the cases of stress, bullying and fatigue employers have no knowledge of the employee's personal life style, circumstances or activities that may have given rise to such claims. Despite this, the employer is deemed to have breached 'duty of care' requirements having not foreseen the effect on the employee.

In addition to a change in the regulatory approach taken by jurisdictions there is a need for a legal framework that acknowledges and enforces 'contributory negligence' before the courts or the tribunals based on the concept of 'mutual responsibility'.

ABL recommends that the 'duty of care' principle as embodied in OHS legislation be applied to both employers and employees and qualified so as to include some recognition of 'reasonableness'.

5. WORKERS COMPENSATION FRAMEWORK

ABL is a member of Australian Chamber of Commerce and Industry (ACCI) and generally supports its comments on workers compensation.

The following comments bring forward issues which are of particular concern to ABL members and are informed by our experience in New South Wales where over the last eight years there have been multiple interventions aimed at making the NSW WorkCover Scheme fair and affordable.

National Consistency

ABL supports the objective of greater consistency between workers compensation systems and believes this will be best achieved by an evolutionary process based on co-operation between the jurisdictions.

ABL does not support the introduction or imposition of a single national workers compensation system.

While the idea may be appealing at first glance it is not, in our view, a realistically achievable goal in the foreseeable future. Pursuit of such an objective may well divert attention from less 'global' but more achievable and important changes.

For example, New South Wales, Queensland and Victoria have struck agreements which enable employers to provide workers compensation coverage for employees who are not permanently based in another State under the "home" State policy.

It is also instructive to consider that most, if not all, Australian workers compensation systems have had difficulties at some time in the past decade. Fixing those problems has not always proved to be easy at the State level, and it is not unreasonable to expect those complexities will be increased exponentially if the scheme were to cover the nation.

Nationally Consistent Definitions

The adoption of nationally consistent key definitions would be a major step towards harmonising workers compensation systems.

However this issue in itself demonstrates the difficulties that would be faced in pursuing a national scheme.

Definitions such as ‘injury’ and ‘worker’ have a fundamental impact on the eligibility of injured persons to access workers compensation coverage and as a consequence scheme costs.

Jurisdictions facing the prospect of expanded definitions may well be reluctant to participate because of the likelihood of higher premiums.

With respect to the issue of the link between an injury or illness, ABL’s position is that employment must be shown to be at least a significant contributing factor in the development of the injury or illness.

As the range of medical and/or psychological conditions accommodated by workers compensation schemes expands, the need for a clear and substantial link between the condition and employment grows.

When workers compensation was mainly about traumatic injury the causal relationship was not difficult to establish. This is no longer the case and employers feel aggrieved that they are being required to carry the cost/burden of outcomes which are not, or only tenuously, related to the workplace.

Journey claims remain a major area of employer dissatisfaction. While it may be argued that the cost to the schemes of journey accidents, to and from work, are not large when compared to other scheme costs, employers do not believe it fair that they be held accountable for incidents where they have absolutely no control. The NSW scheme partially accommodates this situation by excluding journey claims from the experience rating of employers. Consequently the cost of journey claims are carried within the scheme and by all employers. While this may be a way of funding a social objective it is in the eyes of employers, inequitable and unjust.

Premium Setting

A laudable goal for premium arrangements is to reflect claims experience and as a consequence more fairly allocate scheme costs acting as an incentive for improved workplace safety and rewarding those employers whose cost to the workers compensation system is low. Unfortunately it is at odds with the circumstances faced by most businesses in Australia.

In NSW approximately 75% of all workers compensation policies are below the threshold for experience rating (\$3,000 p.a.). Only a small percentage, probably not more than in the order of 10% pay premiums in excess of \$25,000 p.a.

It is difficult, if not impossible to apply experience rating systems to small businesses in any meaningful way that also protects the business from catastrophic gyrations in workers compensation premiums.

Although cross subsidisation is inherent within workers compensation systems, the aim must be to try to limit the level of cross-subsidisation between industry sectors and inter-generationally.

Most businesses do not have a sufficiently large employment base to realistically true-risk rate the enterprise except over time. To do otherwise would be to expose the business to high premium volatility. Employers are looking for premium arrangements that are generally predictable and where there is low premium volatility.

Given the limitations on the pricing mechanism as an influence on behaviour, ABL recommends that workers compensation schemes need to be focussed, and equipped to provide employers and injured workers with effective post-accident management support and assistance.

The New South Wales experience shows that improved workplace safety does not necessarily lead to reduced system costs if scheme arrangements are not conducive to early and sustainable return to work. This situation has continued in an environment where premiums have been rising.

Benefit Structures

The primary objective of workers compensation systems should be the earliest possible return to work for the injured worker, consistent with the nature of the injury or illness.

Benefit arrangements need to be supportive of that objective including penalties where injured workers ignore or frustrate a reasonable return to work process.

It is proper that injured workers be compensated where there is permanent total or partial impairment arising from the injury, however that assessment also needs to take into account the normal process of ageing.

Common Law – Lump Sums

Common Law is anathema to a “no fault” arrangement. However, provided there are appropriate and meaningful thresholds it can be argued common law remedies do provide means by which atypically serious injuries may be addressed and can reduce the pressure on statutory arrangements to contemplate all circumstances.

NSW’s experience also suggests that where common law remedies are available care has to be taken that thresholds do not degrade over time and that the financial compensation attaching to a particular injury does not also grow at rates beyond normal inflation.

Perhaps the greater concern with respect to lump sum payment, is the extent to which the achievement of a lump sum payment influences the behaviour of the injured worker.

There seems to be good reason to believe that the possibility of a lump sum payment does, at times act as a disincentive for injured workers to pursue a return to work.

The concern arising from this situation is the final outcome may not be the best for the injured worker medically, socially and even financially and the cost to the scheme may well be higher than it need be. In short, a more expensive but less satisfactory result.

Insurance Regulation

While ABL agrees that the private insurance industry should be allowed to participate in workers compensation, ***ABL recommends that where schemes are publicly underwritten, participation in the delivery of scheme services need not and should not be limited to insurers.***

It is our view that where it is possible scheme performance is likely to be enhanced by the introduction of new skills and approaches to injury management. Services to both employers and injured workers would be improved by increased and varied competition.

Licensing Arrangements for National Companies

ABL supports the development of arrangements whereby National or multi-State employers, who have met the necessary criteria, can more readily self-insure across the State boundaries.

Self-insurance arrangements unnecessarily vary by jurisdiction.

A set of agreed criteria should be developed across jurisdictions based on such things as size and financial viability to enable multi-State employers, who so wish, to provide workers compensation coverage through a single arrangement even though it may not otherwise meet requirements in all jurisdictions.

Rehabilitation and Return to Work

There is widespread agreement that the best medical, social and economic outcomes for injured workers, employers and the community are more likely to be achieved by early intervention and appropriate post-accident management strategies.

The challenge is to turn the theory into practice.

For most employers and workers an industrial injury is an unusual event.

Most employers have not and will never have the resources, skills and expertise to manage the post-accident situation.

It is insufficient in ABL's view to rely solely on policy positions, even when they are embodied in statute and/or regulation to bring about the necessary level of post-accident management to achieve better return to work outcomes.

To be really effective Rehabilitation and Return to Work initiatives need to recognise and accommodate the needs of most, i.e. smaller, business. They need to be accessible, relevant and cost contained within the premium paid by the business.

Dispute Resolution

Early New South Wales experience with the introduction of the Workers Compensation Commission suggests that faster and less costly dispute resolution is achievable.

We would note however that the effectiveness of a particular dispute resolution mechanism cannot be seen in isolation from the environment in which it operates.

For example, in New South Wales the introduction of provisional liability has reduced the number of disputed claims, the enhanced benefits regime combined with higher

common law thresholds has, no doubt, resulted in common law being a less “attractive” option for plaintiffs.

The New South Wales system does not prevent plaintiffs from being legally represented. The removal of legal representation is not necessarily a precondition for cheaper, faster and fairer dispute resolutions, rather it is the way in which the system is designed which is important.

Dispute resolution mechanisms need to be structured with the interest of the principals, not service providers at their core.

Funding Arrangements

Workers compensation schemes inevitably face fluctuations in their financial performance.

Some of these fluctuations are internal and relate to the operational performance of the scheme while others are external such as investment performance.

Full funding is a principle that needs to be embraced, but over time.

For planning purposes, employers look for a stable and predictable premium environment, bearing in mind there will be changes at the individual employer level depending on claims experience.

Funding arrangements for workers compensation schemes need to take into account cyclical fluctuations within schemes and be pursued in a way that effectively manages both the frequency and amplitude of those cycles.