Australia Meat Holdings Pty Limited

16 June 2003

Workers' Compensation and OHS

Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Ms Irvine

Attached is the submission to the Commission' inquiry into National Frameworks for Workers' Compensation and Occupational Health and Safety (OHS).

Australia Meat Holdings Pty Limited (AMH) is the largest meat processor in Australia. We employ 4800 people across all mainland states. Our business activities cover areas such as meat and meat based food processing, feedlots, distribution, and administration.

Our operations span all state boundaries and are covered by various workers' compensation systems. This places both a financial and administrative burden on our business.

In Queensland we operate as a self insurer, whilst in other states under different arrangements.

The self insurer status offers us the ability to manage our business risks.

Though there are issues in the Queensland Worker's Compensation system which we contend require improvement (e.g.: method for calculation of self insurer's licence), overall we believe it offers the best model for a national system based upon the following:

1. That the Queensland model of separating OHS from Workers Compensation is a better model.
   - This is because this model concentrates on injury prevention without clouding it with the issues of compensation.
   - There is more chance of a working relationship occurring between employers and the regulators in the OHS field.

2. That the Queensland Workers Compensation model is better as there is a finite limit to the amount of time a claim will last.

3. That the Queensland model of having one all encompassing database for all claims, including self insurance claims is a valuable tool in providing a reliable data model
    - For general claims management (Both WorkCover policy holders and self insurers claims officers can see the "history" of any claimant)
    - For actuarial assessment purposes
    - For benchmarking initiatives
    - For premium setting purposes

4. The Queensland model of having Q-COMP be the regulator of the scheme separate to the insurer WorkCover is more appropriate.

5. The model of a monopoly insurer in Queensland, WorkCover for non self-insured employers is better than agency based insurers who do not carry the liability. The duplication of resources is an extra cost.

In addition to the specific issues in relation to the Queensland workers compensation system and its application as a national model, there are two further issues which are of importance:

- That there be more effort within States to create a level playing field for policy holders by eliminating multi company policies being held at one work site for what are related bodies corporate.

- That there be more effort put in deterring premium avoidance through either multi company policy structures, "Phoenix" type policy changes (Where a company with a high premium is liquidated and another company incurring smaller premiums takes over)

Any further information that may be required on this submission can be obtained from Neville Tame, General Manager, Human Resources on telephone (07) 3810 2291.

Yours Sincerely,

John K Berry
General Manager, Corporate Affairs.

About this issues paper

This issues paper aims to help you prepare a submission to the Commission's inquiry into National Frameworks for Workers' Compensation and Occupational Health & Safety. The paper briefly describes what the inquiry is about and identifies some issues for consideration. You need not address all the issues raised and you may comment on any other issues that you consider relevant to the terms of reference.

Making a submission

Anybody can make a submission. It can comprise anything from a short note outlining views on a few aspects to a more substantial document covering a wide range of issues. Where possible, submissions should draw on data or other factual information.

To facilitate public discussion of the issues, submissions will be made available for others to read and comment on. However, in limited circumstances, the Commission will accept, on a confidential basis, material that is commercially sensitive. Such material should be provided under separate cover and clearly marked COMMERCIAL-IN-CONFIDENCE.

As the Commission intends to make all public submissions available on its web site, it would prefer to receive submissions in electronic form, either by email (see email address below) or on diskette (see postal address below). Alternatively, printed submissions may be mailed or faxed to the Commission as shown below.

The Commission proposes to hold public hearings before issuing an interim report and then hold further hearings before completing its final report. To ensure full consideration of your views in the preparation of the interim report, **an initial submission should be lodged by close of business on 9 June 2003.**

The accompanying circular provides further information about the inquiry process and timetable.

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Terms of reference

I, IAN CAMPBELL, Parliamentary Secretary to the Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, hereby refer Workers' Compensation and Occupational Health and Safety (OHS) Frameworks to the Commission for inquiry and report by 30 November 2003 or within 12 months of receipt of the reference, whichever is the later.

Background

2. In 1994 and 1995, the then Industry Commission conducted comprehensive inquiries into Australia's workers' compensation and OHS arrangements — Report No. 36 *Workers' Compensation in Australia* (4 February 1994) and Report No. 47 *Work, Health and Safety* (11 September 1995). In doing so, the Commission made a number of recommendations addressing national arrangements for both workers' compensation and OHS.

3. Since the Industry Commission inquiries there have been a number of developments bearing on Australia's workers' compensation and OHS programmes. Most States and Territories (States) have made a significant number of legislative and operational changes to their programmes that have primarily focused on local conditions. The coverage of employees under workers' compensation and OHS programmes appears to have declined due to changes in the composition of the workforce and working arrangements.

4. There have also been a number of other developments that relate to, or may have a direct impact on, future workers' compensation and OHS arrangements, including:

- the House of Representatives Standing Committee on Employment and Workplace Relations inquiry into Aspects of Workers' Compensation is expected to report in early 2003;
- the HIH Royal Commission, scheduled to report in 2003, is expected to, inter alia, report on the adequacy and appropriateness of arrangements for the regulation and prudential supervision of general insurance, including workers' compensation;
- the response by governments to the report by joint Commonwealth and States panel on the law of negligence (the Ipp Report) and the Australian Health Ministers' Advisory Council work on legal process reform;
- the response by governments to the withdrawal of reinsurance for injuries resulting from terrorist attacks; and
- the Royal Commission into the Building and Construction Industry scheduled to report in 2003 is expected to, inter alia, report on OHS in that industry.

5. Workplace injury and illness impose significant social and economic costs on injured workers and their families, employers and the wider community. The lack of a nationally consistent approach appears to have imposed significant compliance costs on business and may have lead to inequities for injured workers in terms of benefits payable and entitlement to benefits.

6. There is a need to examine whether the establishment of national frameworks can deliver comprehensive and consistent workers' compensation and OHS programmes across Australia. More broadly, there is a need to consider whether any alternative systems to the

existing arrangements may be appropriate to support employees and others who may suffer a workplace injury or disease. The frameworks/models should also deliver better outcomes for businesses of different sizes, employees and the general community, while recognising the differing economic characteristics of the States.

7. A key goal of any new model would be to facilitate improved workplace safety and provide adequate compensation to injured employees while offering a more effective continuum of early intervention, rehabilitation and return to work assistance for those injured in the workplace.

8. Ideally, a national framework for workers' compensation and OHS would encompass a cooperative approach between the Commonwealth and State governments while still leaving primary responsibility for these systems with the States. Moreover, any national frameworks would provide the States with adequate flexibility to address local conditions, encourage competition and facilitate competitive neutrality.

Scope of the Inquiry

9. Drawing on the Industry Commission recommendations in Report No. 36 and No. 47, the Commission should assess possible models for establishing national frameworks for workers' compensation and OHS arrangements. In doing so, the Commission should identify and report on, but not be limited to the following:

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

(b) a consistent benefits structure that provides adequate levels of compensation, including income replacement and medical and related costs, for injured workers and their families;

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

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

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

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

  (ii) encourage the involvement of the employer, the employee, and insurers/schemes;

  (iii) encourage the use of alternative dispute resolution including mediation and conciliation; and

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

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

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

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

(i) options to reduce the regulatory burden and compliance costs imposed on businesses of different sizes across Australia by the existing legislative structures for workers' compensation and OHS, within the context of the national objective to improve the workplace health and safety of workers. In doing so, the Commission should examine the interrelation between the workers' compensation and OHS legislative frameworks with other statutory regimes in place;

(j) the appropriate boundaries of responsibility for the cost of work-related injury/illness and fatalities between the employer, employees and the community. In doing so, the Commission is asked to report on the current level of employee coverage by the workers' compensation schemes and the current sharing of costs and to identify under any national framework model for workers' compensation, an appropriate sharing of costs for work-related injury/illness and fatalities;

(k) the costs to the community of complementing or supplementing the coverage of existing workers' compensation arrangements, such as income support and Medicare benefits that may be paid to injured persons; and

(l) the national and State and Territory infrastructure and relative costs necessary to support the models identified in establishing national frameworks for workers' compensation and OHS.

10. The Commission should take into account any substantive studies/or inquiries undertaken elsewhere. It should also take into account such policy and legislative changes in the Commonwealth and States in the areas of general insurance, public liability, common law negligence, and the calculation of damages and settlements that may assist it to provide advice on this Reference.

11. In undertaking the inquiry, the Commission is to advertise nationally inviting submissions, hold public hearings, consult with key interest groups and affected parties, and produce an interim report for consultative purposes and a final report by 30 November 2003 or within 12 months of receipt of the reference, whichever is the later.

12. The Commonwealth Government will consider the Commission's recommendations, and the Government's response will be announced, as soon as possible after the receipt of the Commission's report.

IAN CAMPBELL
13 March 2003

What is the inquiry about?

The Commonwealth Government has asked the Commission to assess possible models for establishing national frameworks for workers' compensation and occupational health & safety (OHS) arrangements.

The Commission is to provide an interim report for consultative purposes, followed by its final report to the Government by 13 March 2004.

Background to the inquiry

Work-related injury and illness are serious problems, resulting in significant human suffering in addition to imposing economic costs on workers and their families, on employers, on the wider community and the economy.

The Commonwealth, State and Territory Governments have responsibility for workers' compensation and OHS arrangements within their own jurisdictions. As a result, Australia's regulatory environment is characterised by a variety of schemes and arrangements.

Past efforts to achieve greater national consistency in approaches to workers' compensation and OHS have seen specific forums charged with advancing such consistency — eg the Labour Ministers' Council, the Heads of Workers' Compensation Authorities and the National Occupational Health and Safety Commission — and have included Industry Commission inquiries in 1994 and 1995. In addition, the past decade has seen most jurisdictions undertake reviews of their workers' compensation and OHS arrangements and introduce changes aimed at improving the efficiency, effectiveness and equity of their operations.

Despite some progress to national consistency in OHS, both workers' compensation and OHS in Australia are still characterised by multiple regimes that produce potential inequities between workers in different jurisdictions and added costs for firms operating in more than one jurisdiction. In addition, changes to the composition of the workforce and workplace arrangements appear to have resulted in a significant fall in the proportion of the workforce effectively covered by workers' compensation arrangements. Present arrangements for workers' compensation continue to raise concerns that incentives for appropriate prevention, adequate compensation and effective rehabilitation, are distorted as a result of cost shifting. Present arrangements may also limit innovation in work arrangements, lowering growth and living standards more generally.

As well, the prudential regulation of insurers (including workers' compensation insurers), specific aspects of workers' compensation, the public liability system and OHS in the building and construction industry have recently been subject to governmental reviews. The results of these reviews have the potential to affect the operation of workers' compensation and OHS arrangements.

Against this background, the Commission has been asked to examine whether the establishment of national frameworks could deliver comprehensive and consistent workers' compensation and OHS programs across Australia and what possible models those frameworks might follow. The terms of reference envisage that, ideally, a national framework for workers' compensation and OHS would encompass a cooperative approach between the Commonwealth and State Governments while leaving primary responsibility for the implementation of those systems with the States. Moreover, any national framework should also ideally provide the States with adequate flexibility to address local conditions, encourage competition and facilitate competitive neutrality between government and private business activities.

While the focus of the inquiry is on the scope for national frameworks, developing appropriate models will require the Commission to have an understanding of the strengths and weaknesses of existing Commonwealth, State or Territory workers' compensation and OHS arrangements. The Commission will also need to consider whether the gains from such consistency outweigh the costs of moving to greater consistency.

In framing this issues paper and pursuing its inquiry, the Commission appreciates the multiple objectives pursued in any successful workers' compensation and OHS arrangements, viz:

- appropriate incentives for the prevention of work-related injury and illness;
- adequate and appropriate compensation;
- effective rehabilitation and return to work;
- affordability and equity of any schemes;
- appropriate sharing of costs between employers, employees and government social security and medical/health support services; and
- cost-effective delivery.

Issues for discussion

This section of the paper raises some particular questions for you to consider. The list is intended to be neither prescriptive nor exhaustive. You need not address all of the issues raised below, and you are invited to comment on other matters that you consider relevant to the inquiry.

National frameworks

The terms of reference ask whether the establishment of national frameworks could deliver comprehensive and consistent workers' compensation and OHS arrangements across Australia.

What are the main problems arising from having multiple jurisdiction-based regimes throughout Australia? Is there a need for national frameworks to address perceived deficiencies in comprehensiveness and consistency between arrangements across Australia for workers' compensation and OHS? Would such frameworks need to encompass all aspects of those arrangements? Are there deficiencies in existing coordinating mechanisms (viz, the Workplace Relations Ministers' Council and Heads of Workplace Safety and Compensation Authorities) and, if so, how might these be addressed? Can the perceived problems arising from the current multiplicity of arrangements be adequately addressed by alternative measures? If so, how might this occur?

- **To keep abreast of *multiple jurisdiction-based regimes throughout Australia*, involves higher costs for employers.**
- **The existence of *multiple jurisdiction-based regimes* leads to confusion and increased risk of non-compliance.**
- **One of the major problems of the *multiple jurisdiction-based regimes* is the fact that there are inconsistent and incompatible data collection regimes. There needs to be a uniform injury reporting system across Australia to enable meaningful performance comparisons to be made. This applies to employers who operate in multiple jurisdictions as well as for jurisdictional comparisons.**

The terms of reference suggest any national frameworks for workers' compensation and OHS should embody a cooperative approach among the jurisdictions. In preliminary discussions with various parties, it is apparent that there is a number of possible models including (but not confined to):

- A cooperative model for workers' compensation along the lines of the current national approach to OHS. 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.

The idea of a cooperative model for workers' compensation has merit, <u>providing</u> that the national legislation only lays the foundation principles and that state legislation is maintained.

- 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.

We would support a mutual recognition model only if self-insurance is an <u>OPTION</u> for an employer. Multi-state employers should not be compelled to self-insure in a jurisdiction. e.g. An employer may be satisfied to just self-insure in Qld but not in other states in which it operates.

- 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.

- **We are definitely not in favour of an expanded Comcare model whereby employers would be governed by the Comcare legislation. Many employers would be disadvantaged by such a move.**

- 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, eg covering only certain areas, with States deciding on other areas such as common law, premiums and rehabilitation and return to work.

- **A uniform template legislation model is unrealistic and unlikely to get uniform support. Previous attempts at this have occurred on individual issues (e.g. cross-border workers) and State**

governments have shown great hesitation to pass the necessary legislation despite agreeing in principle to do so.

- **Each State should be allowed to remain in jurisdictional control of most legislative issues such as benefit structures, definitions, decision-making, auditing and prosecutions.**

- 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.

- **WorkCover regulators are not good regulators of prudential, financial, and corporate structure issues of self-insurance. They have demonstrated a lack of awareness of contemporary corporate financial transactions and structures. They also appear to lack awareness of the corporate regulatory environment in which companies operate.**
- **We would support a regulatory model where a more appropriate body regulated the prudential aspects of workers compensation insurer licensing.**

- 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 (eg corporations power and referred power from the States).

- **We are vehemently opposed to the Commonwealth establishing a national workers' compensation scheme – unless the federal scheme adopts the Queensland legislation.**
- **Queensland employers will be disadvantaged if forced into a scheme which is like that of any other jurisdiction.**

What lessons, if any, do the existing approaches provide for the development of alternative national frameworks for workers' compensation and OHS?

What models of national frameworks are considered to be workable for workers' compensation and OHS? What are the benefits and costs of the models (including implications for productivity improvements)? If cooperative national frameworks are preferred, what would be the key elements incorporated into those frameworks (eg definitions, benefit structures, prudential requirements of private insurers or self-insurers)? What national and State and Territory infrastructure (legislative, policy, administrative) would be necessary to support any such models? What might

be the consequences for State-based schemes if an alternative, national, scheme were available? Should funding or financial incentives/disincentives for State and Territory Governments be components of such models?

- **We would only support a national framework if it is based on Queensland's scheme.**
- **However, we do not believe that a national framework should interfere with micro issues such as benefit structures, definitions, and decision-making provisions. These should be allowed to remain in state control to enable economic competition between states and to allow for differences in the composition and economic conditions of each economy.**

Should the two areas of workers' compensation and OHS be combined in one framework, or are separate frameworks more appropriate?

- **We do not support the merging of OHS and workers compensation into one framework. Workers compensation insurance provides employers with performance analysis opportunities either as a self-insurer or through an insurer. If the insurance role is combined with the OHS regulatory role, the problems identified could lead to prosecution whereas the employer may have been quite willing to remove the risks, once identified.**

National self-insurance

Access to self-insurance is available under most schemes, but the conditions of access are not uniform. For example, conditions for eligibility as a self-insurer — such as minimum number of employees or prudential control — differ markedly between schemes.

To what extent are these differing approaches to self-insurance a source of significant additional administrative or compliance costs for firms wishing to self-insure their workers' compensation liabilities in more than one jurisdiction?

How might greater uniformity in self-insurance arrangements be best achieved between jurisdictions? What regulatory frameworks might support suitably qualified employers to obtain self-insurance that is recognised in all jurisdictions? What features should self-insurance embody to protect the entitlements of

employees of self-insured firms and to guard against a self-insured company failing and being unable to meet its workers' compensation liabilities?

- **Once an employer has obtained one licence under a national framework, it should have the option of invoking the option offered by that licence in any state that it chooses.**
- **Criteria for self-insuring should not vary state to state. If an employer is fit and proper and meets prudential requirements, this would apply to it nationally. Corporations are regulated on a national level and it does not make sense that they be regulated for self-insurance licensing requirements on a state level.**
- **However, an employer can be monitored in each state on micro issues; e.g. claims and rehabilitation auditing.**
- **Qld self-insurance is over-regulated with too much focus on the *Process* used by self-insurers, instead of the *Outcomes* achieved.**
- **Regulatory staff dealing with claims issues should be employed on the basis of claims handling experience. Many staff in regulatory or review roles have no workers compensation claims handling or decision-making experience, yet are employed in positions where they are ruling on the decisions of experienced and competent insurer claims staff.**

Would allowing firms to self-insure under the umbrella of the Comcare scheme provide a suitable avenue for firms to avoid the additional costs of self-insuring in many jurisdictions? If so, under what conditions should such access be provided? What are the implications of a broadly available national self-insurance scheme for State-based OHS monitoring and enforcement?

The OHS model

Occupational health and safety has an established mechanism through the National Occupational Health and Safety Commission (NOHSC) to promote a greater level of consistency across jurisdictions in OHS arrangements.

How effective have these arrangements been in promoting greater consistency? Can this be improved, and if so how? Such things could include the composition of NOHSC, its work priorities, level of funding, and the willingness of individual jurisdictions to adopt, and consistently apply, guidelines developed by NOHSC.

- **In Queensland and possibly other states, Self-insured employers are subject to OHS standards that other employers do not have to meet; e.g. The "Tri-Safe" auditing regime. This is discriminatory and adds unnecessary costs to self-insured employers.**
- **Self-insured employers place a greater emphasis on OHS due to the "bottom-line" implications of workplace injuries. Self-insurance therefore provides incentives to manage the cost of injuries beyond the insurance issues – it also encourages injury prevention.**
- **However, employers who are not self-insured should take an equally responsible approach to injury prevention, even though the financial impact of injuries is not as obvious as it is for self-insured employers.**
- **There needs to be greater emphasis on the obligations of workers and persons whom the legislation is trying to protect, not just employers and occupiers of premises. All people should take responsibility for their actions and not just employers.**
- **Workers should also be liable for prosecution for safety breaches, not just employers. OHS regulators need to investigate possible breaches by workers just as vigorously as they investigate possible breaches by employers.**

A national framework can cover a range of aspects of OHS regulation, including:

- the legislative framework — eg common wording, coverage, definitions and penalties;
- common national standards and codes of practice; and
- best practice implementation — eg enforcement practices; information collection and dissemination.

What are the areas in OHS regulation and implementation where differences between the jurisdictions impose the most cost? Is it in the wording of the legislation; differences in regulations; differences in standards and codes of practice; or differences in implementation between jurisdictions?

What would be the features of a national OHS framework that would generate the greatest benefits?

- **The differences between different State OHS requirements are not significant. If a national OHS framework was used, we would be able to comply without any great impost. However, we believe OHS regulation should remain in State control.**

Occupational health and safety is continuously evolving. There is a continuing balance that needs to be struck between performance-based regulation (based on the duty of care) and more detailed regulation embodied in a range of mandatory standards. In addition, there are areas where knowledge is limited and the boundaries of responsibility uncertain — eg diseases of long latency. While the primary focus of this inquiry is to look at national frameworks for OHS, it is reasonable to ask whether some areas are better addressed at the sub-national level.

Reducing the regulatory burden and compliance costs

Workers' compensation and OHS arrangements in the first instance add to the regulatory burden and compliance costs facing firms in all jurisdictions. However, the multiplicity of differing workers' compensation schemes and OHS arrangements in Australia means that firms operating in more than one jurisdiction can face added costs in administering or complying with the relevant regulations.

How significant are such additional administration or compliance costs (any quantification of such costs would be useful)? Does the size or kind of activity of the business or its location matter in terms of the impact of those costs? Are there particular elements of those different workers' compensation or OHS arrangements that generate most of these additional costs?

Within the context of maintaining or improving work-related health and safety outcomes, what options exist for reducing the regulatory burden imposed on businesses (employers, insurers, rehabilitation providers etc) by the existing multiple arrangements?

Access and coverage

The array of workers' compensation schemes and OHS arrangements operating in Australia employ various definitions for employer, employee and work-related injury and illness. As a result, particular workers are covered in some jurisdictions but not in others. Although some groups within the workforce (eg the self employed) are excluded to a greater or lesser degree (particularly from workers'

compensation schemes), they may rely on other arrangements (such as income protection and private health insurance). This issue is assuming greater significance with the growth of non-traditional employment, particularly contractors and labour hire companies. Similarly, some injuries or illnesses might fall within the ambit of workers' compensation in some schemes, but not in others.

How material are any such differences to determining who or what falls within the ambit of workers' compensation or OHS arrangements? To what extent do these differences impede the collection of meaningful data for the purpose of making business or policy decisions? How material are these differences in adding to administration and compliance costs for firms operating in more than one jurisdiction? Where significant differences exist, is it practical to move to nationally consistent definitions (i.e. what are the costs and benefits of doing so) and what might these definitions be?

- **Under the definition of "worker" in various workers compensation statutes, "Contractors" and self-employed persons are in many cases permitted to claim workers compensation against their "employer". These "Contractors" and self-employed persons usually receive higher remuneration for their labour. This compensates them for taking on their own business costs. The employer is therefore faced with a dual burden– the high cost of the contract labour and the cost of the claim. This factor discourages employers from entering into flexible and often more productive labour arrangements.**
- **"Journey" claims and "Recess away from work" claims should not be allowed under the legislation. If employees want cover for these circumstances, they could be given the option of arranging their own insurance for this. However, it makes no sense that an employer is liable for injuries on journeys to and from work and during recess away from work. In some states, these claims are not covered.**

To what extent has the changing nature of production activities and workplace arrangements affected the number and proportion of workers covered under workers' compensation arrangements? Is this a matter for concern and, if so, why? How might the definition of worker or employee be changed to address these concerns? How might such changes be best introduced? Should alternative arrangements apply to address this situation and, if so, what might they be? What

might the implications be of changing the definitions of a 'worker' on other regimes for which governments are responsible eg payroll tax?

- **Employers desperately need clarity in definition of "worker" in workers compensation statutes so they can enter into contract and employment arrangements with full understanding of the obligations, costs and liabilities.**
- **There are differences in the "worker" definitions between different state legislations and also between workers compensation and various tax legislations. These differences need to be resolved to provide clarity to employers and businesses.**
- **Different definitions for different purposes and jurisdictions cause confusion and a lack of clarity when entering into labour arrangements.**

Are existing OHS arrangements able to deliver appropriate levels of work health and safety even where workers' compensation coverage does not apply? If not, what measures might be introduced to address any deficiency?

Benefit structures (including access to common law)

The benefit (i.e. compensation) structures embodied within the various workers' compensation schemes exhibit marked differences between jurisdictions (eg in the proportion and duration of income replacement, in the timing of step-downs, in eligibility criteria for lump sum payments and in maximum payments).

What are the effects on firms and employees of having different benefit structures? To what extent do differences in compensation structures add to the costs of operating in more than one jurisdiction? Are there any differences that are particularly significant in this regard and might be priority candidates for change? Can separate arrangements (such as make up pay in negotiated workplace agreements or individuals taking additional private insurance) address any inequities between workers or perceived deficiencies in income replacement or medical benefits?

- **Any workers' compensation legislation MUST provide a financial incentive for workers to return to work. The rate of pay on workers compensation MUST be less than the normal pay for the worker. Furthermore, an injured worker who is absent from work does not incur the usual costs of going to work (e.g. travel costs to and from**

work; laundry of work clothes). Therefore, if their workers compensation rate of income is equivalent to their normal income, then they would in fact be better in a better financial position than if they had not been injured.

- **Private "top-up" insurance which makes up the difference between workers compensation and normal pay provides a disincentive for workers to return to work. The adequacy of workers compensation pay rates is decided by the legislators and should not be circumvented by other insurance schemes. Workers' compensation legislation should not permit such dual-insurance situations.**

Is there any one compensation structure for providing income replacement and meeting medical and related costs among the various Australian schemes that is clearly superior? What principles should guide the design of a compensation structure for any national frameworks? How might greater uniformity of the compensation structure (or elements of it) between jurisdictions be achieved?

- **There must be return-to-work incentives built in to any legislative benefit structure.**
- **Under the Queensland scheme, many workers can get 100% of their pre-injury pay rate. In other jurisdictions, it is usually a percentage.**
- **Rehabilitation must be mandatory and immediate**
- **Payment of benefits should be linked to the timely lodgement of medical certificates. A delay in lodging certificates means that the worker still gets paid (possibly in retrospect) but can sometimes avoid the proactive action of the insurer/employer for the period of the certificate because the certificate was not in their possession to act upon.**
- **Back-dating of certificates should not be permitted (i.e. where the period of incapacity pre-dates the date the doctor first examined the worker for the injury).**

Access to common law damages and the conditions of such access are not uniform among workers' compensation schemes in Australia.

Should access to common law damages be part of any national workers' compensation framework? What are the implications of including, limiting or removing access to common law damages (on incentives for prevention of work-related injury and illness; on obtaining appropriate compensation; on facilitating effective rehabilitation; and for doing so in a cost-effective and equitable manner)?

The courts have shown a great deal of generosity in granting unmeritorious extensions to the limitation period for the instituting of legal proceedings. There appears to be no regard given to the effect of such decisions on companies. These decisions can create liabilities on companies that are no longer accounted for. Stricter time limits should be imposed and enforced on persons bringing legal proceedings. This could be achieved though legislation.

Cost sharing and cost shifting

Differences in access, coverage and the structure of compensation across the various workers' compensation schemes have the potential to affect the way in which the costs of injury and illness sustained by workers are shared among employers, employees and their families and governments. A challenge facing the design of national workers' compensation and OHS frameworks is to ensure that the interaction of workers' compensation and other government programs provides for an appropriate sharing of those costs. For example, if the medical costs of a work-related injury are paid by Medicare rather than via workers' compensation, the cost of such an injury is borne by the wider community rather than those involved in the individual activity in which the injury occurred. This in turn may lessen the incentives for preventing such incidents and for the effective rehabilitation of injured workers.

What consequences has the changing nature of the workforce had for the sharing of costs of work-related injury/illness between employees and their families, employers and government providers of income and medical/health support? To the extent that the current coverage of workers under the various workers' compensation schemes results in work-related costs being borne by other government programs, are changes required? If required, how might these be introduced?

Are there aspects of benefit structures (including their tax treatment) that exacerbate the problem of work-related costs being shifted to other government programs? If so, how might these be best addressed? What changes in access arrangements for government income and medical/health support might contribute to a more appropriate and equitable sharing of the costs of work-related injury and illness? What might be the cost implications of complementing or supplementing the existing compensation arrangements in this manner?

- **Medical fees for work-related treatment are generally higher than the fees set by Medicare.**
- **There should be no difference between the cost of medical treatment for workers compensation and that of Medicare, other than for any additional time involved in rehabilitation related documentation and communication.**
- **Medicare regulates the medical treatment costs in Australia. Therefore, there should be no need for insurance schemes to incur a higher level of costs for medical treatment. Any issues regarding the adequacy of schedules of fees should be addressed to the federal regulator, Medicare, or the federal government. There are no separate philosophical arguments for insurance schemes to have different schedules of fees, other than for additional time involved in rehabilitation related documentation and communication.**
- **The higher level of cost of medical treatment for workers' compensation is a burden on industry and the economy.**
- **If practitioners want to charge more than the regulated fee, they should make it clear to the patients, who can make their own choice as to whether to pay the "gap".**
- **The regulated cost of medical treatment should be the same regardless of the cause of the injury.**

Early intervention, rehabilitation and return to work

Early and effective rehabilitation is generally accepted as a crucial element in reducing the human and economic cost of work-related injury and illness once it has occurred.

Are the differences in the approaches taken by the various jurisdictions delivering significantly different outcomes and costs? To the extent this occurs, does this

suggest a need for more comprehensive or consistent approaches? How might national frameworks be established to provide for greater consistency in early intervention, rehabilitation and return to work in all jurisdictions? What features should such frameworks embody to best provide incentives to achieve early intervention and effective rehabilitation to injured or ill workers and to care for the long-term and permanently incapacitated?

- **Rehabilitation should be driven by employers and/or insurers. There is too much provider-driven rehabilitation within many schemes. This adds a cost to claims without necessarily achieving a corresponding reduction in the overall cost of the claims. Providers have a place in the rehabilitation process, as shown in sporting injuries, but they should not be given "free-rein" to manage cases. Insurers and employers should never hand over responsibility for rehabilitation to providers.**
- **Workers should be compelled to participate in rehabilitation. Lack of "teeth" in most workers compensation statutes allows injured workers to prolong periods of absence from work without fulfilling their mitigation responsibilities.**
- **Most statutes have some mechanisms for dealing with uncooperative workers and uncooperative doctors in rehabilitation, but the process is too protracted and in the meantime, the worker continues on benefits**
- **Many disputes over whether rehabilitation is appropriate and whether a worker should return to work take too long to resolve and in the meantime the worker stays on benefits**
- **Steps should be taken to stop the litigation culture that hinders the rehabilitation culture that should exist. Injured workers must have incentives to participate in rehabilitation. In some cases, workers have reduced interest in improving their work capacity as it may decrease their "payout".**
- **Solicitors should not be permitted to insist on communications being directed to them in the statutory claims process or the rehabilitation process.**
- **There needs to be incentives or compulsion on treating doctors to participate in the rehabilitation process. Often they do not return**

phone calls or sign rehabilitation plans thus hindering the process and often delaying return to work. Perhaps employers should be given the option of bypassing the treating doctor if cooperation is not forthcoming within say, 24 hours. However, we do agree doctors should be entitled to charge additional fees for participating in the rehab process.

- **There are insufficient mechanisms in some states to bring long-term claims to a close. We have four long-term claims in Victoria for injuries that occurred at over 7 years ago at a workplace that is now closed that involve injuries where a return to work in some capacity should have been possible years ago. Some or all of these workers have resisted re-training, rehab and medical reviews for various excuses. Similar scenarios exist for injured workers from closed workplaces in NSW. These claims do no longer cost us directly but did affect us in the first three years and do affect the overall scheme cost to employers. The scheme is lacking mandatory mechanisms to deal with these situations**.

Dispute resolution

Dispute resolution procedures have an important part to play in the efficient and effective operation of any workers' compensation arrangements. As with most other aspects of the workers' compensation arrangements in Australia, dispute resolution procedures differ markedly between schemes.

Do these differences give rise to significantly different outcomes? Is there compelling evidence that particular dispute resolution practices are demonstrably superior in this regard? What changes are required to introduce such best practice to all schemes? How might a national framework be introduced to deliver increased national consistency in this regard?

To what extent do differing dispute resolution arrangements among the various schemes add to the costs of firms operating in more than one jurisdiction? Do such costs indicate a need for more uniform arrangements governing dispute resolution among schemes, or do the benefits of having different systems outweigh such costs?

For any national frameworks, what features are required to achieve an effective dispute resolution mechanism that: encourages the development of internal dispute resolution processes by employers; encourages the use of alternative dispute resolution, including mediation and conciliation; retains an appropriate appellate

structure for employers and employees; and minimises costs for preferred outcomes?

- **Employers need the right of natural justice. There is too much opportunity for workers to make unsubstantiated allegations that are often taken at face values by tribunals and review mechanisms.**
- **In Qld, Medical Assessment Tribunals (MAT's) and the Review Unit cannot take submissions from employers but the worker is entitled to appear before these bodies to put their story. This is against the principles of natural justice.**
- **In Queensland, if the Review Unit overturns a decision of an insurer, the insurer is compelled to pay the compensation as if it were their decision. If the insurer/employer appeals and is successful, it cannot recover the amount paid. This is a gross injustice and probably the most unfair and inequitable provision in the Queensland legislation.**
- **In other schemes such as NSW, the claim must be accepted unless exceptional circumstances apply and if the employer disputes the matter, the paid compensation cannot be recovered. This encourages a compensation culture.**
- **Employers do not begrudge paying compensation for genuine injuries but cannot afford to pay for those workers who abuse the system with little fear of any ramification from such action.**
- **"Internal" dispute resolution should be examined in a cautious manner. Considerations should include: the cost to employers; industrial disputation; and diminished employee relations. An independent body can overcome most of these risks as long as the injured worker and the insurer/employer is/are given a fair opportunity to present their case.**

Premium setting

As far as practicable, premiums should be reflective of the costs that activities potentially bring to the system. Australia's workers' compensation schemes employ a variety of premium setting arrangements to this end — industry rating, experience rating, discounts for safety initiatives etc. However, some schemes have at times

seen fit to cap rates for particular industries or activities. This degree of premium regulation may be related to whether underwriting is provided by public or private insurers.

What principles should guide premium setting policy for workers' compensation under a national framework? Should caps on premiums be imposed and, if so, how might they apply? How effective are the existing premium setting arrangements in providing incentives for employers to reduce the incidence of work-related injury or illness and facilitate rehabilitation and return to work? Does the current interaction with OHS arrangements provide an appropriate mix of incentives to reduce the incidence of work-related injury or illness?

- **In every other form of insurance, the underwriter assesses the risk, charges the premium in advance for the insurance period (usually one year) and if the liability incurred exceeds or is below the premium paid, there is no adjustment to the premium already paid. In other words, the underwriter bears the risk. In compensation, the underwriter is on a "no lose" situation because they adjust the premium at the end of the year to reflect the liability that arose during the year. This provides no incentive for insurers to manage claims proactively. Employers are the only ones bearing the risk.**
- **Workers compensation insurance should be like other insurances and there should be no premium adjustment at the end of the year, other than for wages differences. This would mean underwriters would have an incentive to minimise the cost of claims within legislative provisions. They would also listen more to the concerns of their policyholders – the employers – something that is often lacking now. End of year adjustments also make it hard for employers to budget – the premium should be paid at the beginning of the year and the only adjustment should be for unpredicted increases/decreases in wages paid.**
- **The current premium formulas often mean that claims result is premium increases for employers which exceed the cost of the claim**.
- **The estimating guidelines (e.g. in NSW) are too rigid and do not take into consideration the proactive actions that can occur to reduce the life or cost of a claim.**

- **For interstate competitiveness, it is ok to have different premium RATES, but the premium formulas and methods should be identical to enable valid comparisons to be made by employers as well as better forecasting and budgeting**

Is the variety of premium setting arrangements a significant source of additional administrative or compliance costs for firms operating in more than one jurisdiction? Do different premium setting arrangements lead to a diversion of activities between jurisdictions? Are there significant benefits to be derived from allowing a variety of arrangements? If the differences generate significant net additional costs, how might greater uniformity in premium setting arrangements be achieved between jurisdictions?

The role of private insurers in workers' compensation schemes

The role of private insurers varies across jurisdictions from none at all, through to handling claims management on an agency basis, to the full provision of all insurance functions such as risk underwriting and claims management.

What have been the effects of the different levels of private sector involvement? What benefits for employees, employers and the wider community (eg in terms of reduced costs to employers or improved services to employers and workers' compensation claimants) might derive from extending the role of private insurers to a scheme accessible in all jurisdictions? What potential costs might such a move bring to workers' compensation arrangements and how might these be avoided? Would existing competitive neutrality policy provisions provide an appropriate environment in which private providers could compete on a comparable basis to government provision of workers' compensation under a national framework? Is there a public benefit case for government provision of workers' compensation insurance under a national framework?

What regulatory features would be required to allow licensed insurers to provide universal coverage under a national framework? What features would be required to ensure their presence was not accompanied by undesirable outcomes for the operation of those schemes (eg unsustainable discounting of premiums)?

- **As agents of WorkCover in many states, the private insurers' primary customer is WorkCover and not the policyholder paying the premiums – the employer.**

- **Therefore there is a lack of incentive for these insurers to perform.**
- **We have not observed any real performance superiority by private insurers over government insurers such as WorkCover Qld.**
- **Self-insurance is the most cost-effective insurance method, generally speaking.**
- **The premium collected must meet prudential requirements on an employer by employer basis and be sustainable; i.e. over time, employers should pay enough to cover their liabilities incurred and premium discounting should not impose a burden on the premium pool generally and cross-subsidisation should be minimised.**

Other Points

- **The disclosure provisions imposed on employers and insurers in the litigation phase (especially in common law) are one-sided. Employers have to disclose almost all their evidence and records yet the workers can claim poor memory or lack of records. A greater onus needs to be placed on the workers to provide access to their records including their medical history. Alternatively, employers and insurers should be permitted to withhold evidence until trial.**

- **There is a high propensity for doctors to issue certificates without conducting appropriate tests and investigations regarding the diagnosis and/or work relationship of an injury. Doctors, especially GP's, are reluctant to give medical reports because of the time factor, yet readily issue certificates for non-specific injuries or incomplete diagnoses. They should satisfy themselves of the work relationship and diagnosis before issuing a certificate.**

- **Workers often delay lodging claims but are still within the legislative timeframes. This can detract from the ability to investigate the claim or to manage the injury in a proactive manner. Legislative requirements for earlier lodgement of claims are required.**

- **Workers do not have to report injuries to their employer to be compensated. This can detract from the ability to investigate the claim or to manage the injury in a proactive manner. Tougher rules governing this are needed in workers comp and / or OHS legislation.**