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Jill Irvine
Workers' Compensation and OHS
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Ms Irvine

National Workers' Compensation and OH&S Frameworks

Attached please find a submission from the Australian Medical Association to the current Productivity Commission inquiry into National Workers' Compensation and Occupational Health and Safety Frameworks.

Please do not hesitate to contact me if you require any further information.

Yours sincerely

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Director, Workplace Policy
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Enclosure: 1

AMA Submission to Productivity Commission Inquiry - National Workers' Compensation and Occupational Health and Safety Frameworks

The submission below does not address all the issues raised in the Productivity Commission's Terms of Reference or Issues Paper for this Inquiry. The submission does, however, follow the order of matters raised in the issues paper released by the Productivity Commission in April 2003.

National Frameworks

Issue

Possible frameworks for improving national coordination on workers compensation and occupational health and safety range from a "cooperative model" reflecting the current approach taken in OH&S through to a single national workers compensation scheme. What model is considered the most workable?

AMA Position

The AMA would favour a "cooperative model" in relation to any national approach to workers compensation –based on the approach used in occupational health and safety. The National Occupational Health and Safety Commission serves as a national coordinating body in the OH&S model. Its board includes State and Commonwealth Government representation as well as representation from the ACTU and ACCI and sets nationally agreed strategies and priorities endorsed by the Workplace Relations Ministers Council.

The application of a similar model in workers compensation would ensure agreed national priorities and strategies are developed having regard to input from each jurisdiction and are endorsed by the relevant ministerial council. Individual jurisdictions would be free to approach the strategies and priorities in the most effective way relevant within their jurisdiction, with the role of the national body focussing on performance assessment against the nationally agreed priorities and strategies.

This model would facilitate alternative approaches by the various jurisdictions to meet the key objectives and strategies agreed and would enable the national body, through its performance assessment role in relation to the various jurisdictions, to identify and promote best practice approaches.

The OH&S Model

Issue

Is the National Occupational Health and Safety Commission model successful in promoting greater consistency? Are there benefits to common national legislation, standards and enforceable national codes of practice etc?

AMA Position

While supporting the NOHSC model (see above), the AMA sees benefit in a stronger national role in setting enforceable standards and codes on occupational health and safety issues common across all jurisdictions. Such standards would be performance based and provide adequate scope for adaptation at the jurisdictional level. The scope for making enforceable national codes of practice should be strengthened.

Access and Coverage

Issue

Should the scope of persons covered by workers compensation and OH&S legislation be standardised across Australia? Should this include self-employed and independent contractors? Similarly, should there be a common definition of "injury" and "illness" that is covered by workers compensation arrangements?

AMA Position

Defining what constitutes an employee, contractor or employer has been complicated by the multitude of definitions for the purposes of superannuation, taxation and industrial law. This has resulted in people being defined as an employee for one purpose and an independent contractor for another. These differences make the comparison of performance between jurisdictions in workers compensation and OH&S difficult.

There is merit in moving towards a consistent national definition of "worker" for workers' compensation and OH&S legislation. This definition should include non-employees who are dependant contractors, whether incorporated or otherwise, and other sole-traders or partnerships where these bodies are deriving a personal service income from predominantly one organisation. Provisions do need to exist, however, to exclude persons who are employees of their own company and who can prove that they have adequate disability cover. For similar reasons, a consistent definition of "injury" is supported.

Such consistent definitions for "worker" and "injury" would facilitate research that enables valid comparisons to be made of the effectiveness of the various jurisdictional approaches to meeting the objectives and benchmarks set at a national level.

Benefit Structures

Issue

Benefit structures, including income replacement other payment issues as well as access to common law, vary across jurisdictions. Are there benefits to be derived from taking a consistent national approach?

AMA Position

The issue of employee benefits would generally fall outside of the AMA's purview. The AMA would be concerned, however, if seriously injured workers' benefits were reduced. Compensation benefits, income replacement and funding for medical treatment and

rehabilitation should be structured to provide the greatest incentive for an early return to work.

The AMA sees some value in national consistency in the process for medical assessment and certification of a workers capacity to work. This would ensure that valid comparisons can be made between jurisdictions on the success of alternative approaches in relation to return to work rates and other performance measures in the context of a nationally agreed performance framework.

Cost Sharing and Cost Shifting

Issue

How should costs be shared between employers, injured workers, their families, state and federal Government programs and the community generally for injuries and illness sustained by workers in the course of their employment?

AMA Position

While this issue is one generally outside of the AMA's purview, it will be important to ensure that the total resources available to workers for treatment and rehabilitation, income replacement and compensation are adequate to ensure that best practice principles are applied to ensure an early return to work.

In the medical and treatment area, reliance on the Medicare system to fund the costs of medical treatment for injuries and illness covered by workers compensation would not be supported. This spreading of the cost of occupational injury and illness across the community would act as a disincentive for employers to take the necessary action to ensure best practice principles are applied in relation to workplace safety, claims management and return to work.

Early Intervention, Rehabilitation and Return to Work

Issue

Should there be greater national consistency in early intervention, rehabilitation and return to work processes across all jurisdictions?

AMA Position

A fundamental principle that needs to be recognised is the right of the individual worker to be treated by the medical practitioner of his or her choice, subject to the right of the employer to obtain a second opinion. There must be financial incentives built into the system of payment for the provision of medical services to ensure early intervention, diagnosis, treatment and, where appropriate, to refer to allied health and vocational rehabilitation services.

This, however, does not require absolute national consistency in the specific processes. While broad national strategies, priorities and principles could be established in this area, jurisdictions should remain free to choose the approach best suited to their circumstances to achieve these objectives.

Again, if consistent definitions of “worker” and “injury” are adopted across jurisdictions, the opportunity exists for valid comparisons to be made on the effectiveness of different models of intervention, rehabilitation and return to work.

Critical to such an approach is the maintenance of a constructive relationship between each jurisdiction and the medical profession. This relationship should be based on nationally consistent principles. These principles should ensure the clinical independence of the treating medical practitioner, freedom of choice of doctor by the worker and the primacy of the patient/doctor relationship. The opportunities for doctor shopping by either employers or employees should also be minimised.

Workers’ compensation patients should retain the status of a private patient. Information should be available to treating medical practitioners regarding overall clinical service patterns for specific work related injuries and illnesses as well as data in relation to their own case mix, similar to the prescriber feedback system operating alongside the Pharmaceutical Benefits Scheme. This would enable medical practitioners to assess their own treatment approaches in the context of an appreciation of the broader outcomes in relation to similar injuries.

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