

Scanned copy of submission

NSW 27/12/03

Productivity Commission
Cc Prime Minister of Australia
Cc All Premiers
Cc Chairman Public Accounts Committee
Cc Prime Minister UK Cc President USA
Cc Secretary General UN
Cc Editor The Leadership Challenge
Cc Editor BRW

Dear Commissioner,

Please find enclosed my final submission on the workers compensation enquiry which deals with the main issues as your interim report was an excellent piece of research (as was the 1994 report only nobody could understand it). You have a copy of my Business Report into the Annual Report of the Health Departments of Australia which your office kindly acknowledged. . In view of the fact that it was awarded excellent marks for research and it was the result of an academic course it should be very interesting to see how you handle your final report as overseas readers take a dim view of plagiarism. This is something which of course is rife within Australian Universities and nobody as yet has woken up to the implications. It was gratifying to note that your interim report was in plain English no doubt taking the lead from my Business Report which itself should provide guidance for future studies

I have given my submission a wide circulation as others will be interested in a professional publication and whether credit is given where credit is due. The Heades of state will also be interested in view of its world wide implications. You no doubt will argue we are professional men with an academic qualification from an Australian University(none of which are in the top 100) and you are of no significance when compared to an Australian. You are only an insignificant migrant internal auditor on a DSP because no Australian company will employ you. The fact that you gave Australia and of course the World the only chance it had is irrelevant. WE of course are all men of status and not a single person will believe we used another mans ability to further our own interest except of course the readers of my Business Report. I would point out however that an honest opinion is not the same as a professional opinion and the person who can give both is very rare and you along with the other readers might like to think of the implications. This difference was of course was lost on Australians in 1983 who thought I was only giving an honest opinion and in the circumstances I must have been simple minded and who was expendable in the greater glory of Australia. From what I read I suspect the difference still isn't appreciated

I of course are fully aware of the fact that the system in Australia is moving heaven on Earth to ensure that I never get to court because then it would become official that Australia's problem is that she lacks leaders particularly at the political level. I appreciate that the ordinary Australians think that Australia is resource rich and they are under some delusion they will escape the coming energy crisis. The delude themselves just as her leaders delude themselves the term global village means just

that with everybody being interdependent and this will increase as the years advance. It is the basic reason why Australia has one of the lowest levels of Foreign Aid and why the developing nations have cut ties with Australia re Agriculture ie Australians are not team players and wants to keep all her wealth to herself which is only due to the fact she is resource rich and not the sweat of the brow. Maggie Thatcher summed it up nicely when she said "Australians consume too much of the Earth's resources" ie the greed of the Australians is well known amongst the nations

Sincerely

P A Sandilands

Workers Compensation and OHS Enquiry

1 Introduction

This submission is an overview of previous submissions, my knowledge of my report in 1983 as well as the Commissions Interim report. It expands my oral presentation 4/12/03 and takes into account those submissions made at that public enquiry. It is not intended to be the final and only answer rather the purpose is to clarify certain issues, which the commission should take into account in preparing its final report, as they understand the national perspective

2 Review of Workers Compensation reports 1983

2.1 Workers Compensation

In my original report it was stated that the ratio of workers compensation to gross salary should always remain stable except over a long period of time due to social change. There were two reasons for this statement

Background reading, which was comprehensive and related mainly but not exclusively to my time in the UK public sector, combined with considerable practical experience as an auditor

Normally one would expect from a statistical aspect that accidents in an organisation would be basically stable one year to the next. . The larger the organisation the less the variation and at the level of a country no change. As an aside it is pointed out that the only difference between countries would be due to their industrial structure. In addition from my research it was established that there had been no change in legislation for the period under review and I went back as far as the mid 1970's The exception to this statement was the Transport Authorities Act which effected the buses and SRA because of the then conditions and in general terms provided higher benefits than the general legislation. Consequently from a national perspective the only reason could be due to employees maximising their benefits, which they were perfectly entitled to do so. The reason was quickly established as being due to unemployment i.e. social change and this relationship was confirmed by EPAC in the mid 80's. In so far as the buses and SRA it was quickly established we were talking about the merit principle thus confirming Peter Wilenski's report Direction for Future Change in which he stated that the problem of the public sector related was due to a lack of graduates and traced the problem back to World War 2. It quickly became apparent that since we were talking about a young public service and there was a need for graduates all of who must start at the bottom (or as one public servant remarked "the grass roots" the only realistic solution to the problems of the public service was automation. However this required a very long term solution as all countries public services were effected and the decision was to go down the economic route or competition

The current situation as far as workers compensation is concerned can be summarised as follows. Australia's high ratio of workers compensation to gross salary is due to social change resulting from economic pressures (unemployment), which is resulting in increased anxiety in the community. This leads to increased financial insecurity resulting in various individuals trying to maximise their benefits, which they are perfectly entitled to do so under the current legislation and the proliferation of rules and regulations as recommended by the "experts". The correct approach is to simplify the system however overall this could lead to a reduction in benefits to the injured worker and increased industrial pressure The answer here is to vary the benefits and pick the eyes out of best practice in each state rather than lowest common

denominator which most people would expect from a national scheme. This would require the commitment of the states to change, as this would have to be done by negotiation. Consequently what are required are a commitment to change and an "in principle" decision, which makes your final report very important. I do not think this should be very difficult as currently the injured worker only gets 50% of the premium paid. I do not think to many people are aware of the implications of the ageing of the population and collapsed birth rate as it effects the professions (medical and legal) but I noticed an article recently which made the point that the average age of the medical profession is just over 47 years (skewed). I suspect it is the same for the legal profession

It maybe argued that Australia has a low level of unemployment but when one takes into account people on disability support pension and discouraged workers the actual unemployment is very much higher. It is also pointed out that this will vary between the states

In their evidence to a recent Parliamentary enquiry the insurance industry claimed that they could prove that 1% of all claims are fraudulent yet they knew that 10% were fraudulent. This is a very sweeping statement to make so let us consider it on a factual basis. As you are aware in any large data set (economic or social) pareto's principle (sometimes known as the 20/80 rule) will always apply. With this in mind does the insurance industry claim relate to those 20% covering 80% of the cost or the 80% covering 20% of the cost and the distinction is important More importantly does the 10% relate to the balance Since the large claims will relate to serious and in most instance obvious accidents confirmed by the medical profession then in a material way the claim by the insurance industry can only relate to the 80% which relate to 20% of cost. I suggest that whilst fraud is occurring in this area it is not material and as stated above the real problem is the legislation and the proliferation of rules and regulations as recommended by the safety "experts" Attention is drawn to my submission relating to Japan where in the 80's there was full and lifetime employment with all that implies

In summary what we are talking about is a social issue and it should not be confused with safety which is an economic issue

2.2 Injury management (rehabilitation)

The reasons given for rehabilitation in 1983 were as follows

The employee gains in that he gets back into the workforce as soon as possible

The employer gains in that he retains an experienced worker and does not incur the training costs associated with new employees

Society as a whole gains in that there is more cohesion in the family particularly as it effects the children

These reasons still hold true although the implications may vary as a result of the changing structure of Australian industry. The way to apply the above was drawn from an example of Mitsubishi in SA (BRW article Workers Compensation). In this particular instance the company concerned sent the employee to the company doctor on the basis that he was aware of the rehabilitation scheme ran by that company This seems to confirm the evidence submitted to your enquiry in that the treating doctor must be involved. I would also point out that the NSW Health department in their current annual report stated that all injured employees were sent to internal doctors. This involvement of those closest to the accident is not so very different from the claims by Queensland relating to Common law in that the legal profession work very closely with Workcover in that [state. AS](#) an aside in the research done in 1983 it was

established that the legal profession in Australia in the 1960's worked very closely with each other to settle claims. I believe from this that it can be stated that rehabilitation depends on the close involvement of the interested parties whose aim is to get the injured worker back to work as soon as possible. In any case the evidence in your interim report (chapter 6) confirms that in all studies with the exception of comcare that the economic benefits are substantial with the same being said for benefits to the community. In summation it can be said that the benefits of rehabilitation as stated in 1983 have been confirmed with the only question being how. This is of course important in a small country with small organisations as it can be a burden on these employers who because of their size do not have the resources to run their own internal rehabilitation. It will become even more important with the ageing of the population.

2.3 Common Law v No fault

This was dealt with your interim report as well as by submissions by the Queensland Law society as well as the Australian law society in relation to lump sum. The views of the legal profession should not be dismissed lightly. However in the 80's Neville Wran who was a barrister and a social reformer established a LAW Reform Commission composed of lawyers. One of the issues tackled by this commission was in fact "no fault" in relation to road accidents. It was the recommendation of this commission supported by costing provided by actuaries (Knights one of the top firms in Sydney) that the way to go was "no fault". The Knights report was based on NZ data and that country's experience. In view of my report on Workers compensation I was asked to comment on this submission for the benefit of the then cabinet which I did. In view of my knowledge of the world which in those days was considerable I was of the view one should go ahead. However I was not the decision maker who were in fact laymen and based on their knowledge of the world the scheme was open ended (the claim made by Queensland) with the information presented being inadequate for any decision to be made. The submission was not proceeded with and to this day the labour movement has not touched "no fault". It was Milton Keynes who said when the facts change I change my mind and the facts and technology has changed since that decision 20 years ago. In this instance the current facts are as follows. Technology has improved and the ideas I raised 20 years ago about safety can be implemented with appropriate savings (see below).

It has been identified that the injured worker only gets 50% of premium paid meaning that there is plenty of fat within the system.

The professions (medical and Legal) are ageing and I don't think anybody has yet appreciated the implications.

Whilst the views of the legal profession are perfectly valid the implications of the above mean that a decision in principle can be made to reform the system rather than tinkering at the edges which happens presently with no effect. It may very well be that sometime in the distant future there will be an unfunded liability as happened in the NZ scheme. However this was dealt with by NZ at the time the problem arose. This problem of unfunded liability was in fact dealt with in 1983. There is no real problem of an unfunded liability just as long as it is actuarial. The benefits to which a worker is entitled is contained within the legislation and in a democracy the legislation can always be changed by varying the benefit. The government of the day has to justify that variation to its constituents and if it is unable to do so it may lose an election. The views of the purists do not hold up in a political environment with the reasons being stated in my report on the Health departments of Australia. If I may

and salary and that is not a criticism as it is normal behavior. Consequently to break this down what is required is that I take the appropriate legal action to ensure that it is recognised supplemented by the fact that the final report also recognise the reality as above

3. Performance v prescription

This issue was raised in the submission 4/12/03 and it is as well to explain some history. The principle of performance (duty of care) was raised by Lord Robens in his 1972 Safety report in the UK. This was due to the then complexity of legislation in that country relating to safety. This was allied by the fact that at the time the UK was going through economic change and it was difficult for the authorities to keep up with the then changes which were necessary. The concept of duty of care was to throw the onus back on the businessman and simplify everything (and of course save costs in administering safety). The issue I have raised in 2.4 above in point of fact emphasises performance by highlighting to the business the economic costs of individual accidents and allows normal business decisions. This can be supplemented by prescription where the rules and regulations are kept to a minimum consistent with safety and the whole thrust of the safety thrown towards prevention consistent with normal business decisions. This is a far more effective way of dealing with safety and whilst applicable to any country has particular relevance in a small country such as Australia with many small organisations. In this regard I noted that South Africa has recently adopted Duty of care and the above thoughts would also be applicable to that country.

The views of Laing in his WA OHS are important" whilst on the surface it might appear that there has been a substantial movement towards performance based regulation of OHS at a fundamental level this is not the case. In fact the body of law relating to OHS is actually increasing and the inherently desirable aspects of self regulation are gradually being lost" (Laing 2002 p221) interim report p42. This view is not so different from the views expressed by the current Prime Minister in relation to CAP in Europe ie when people have to justify their jobs they will do so. 4 A Typical approach

I personally do not think that the establishment of a national OHS should be very difficult just as long as the participants are aware of the fact that it is not as difficult as first thought and some of the following comments should assist in clarifying the issues.

In a recent TV announcement a death was announced of a young employee in the construction industry due to lack of a safety harness. The approach in this instance would be as follows:

If the construction company did not supply a safety harness then the full weight of the law would be brought to bear. However if one was supplied the problem is not so clear cut.

When a young employee first joins a company he should be given immediately appropriate training regarding hazards particularly if it is a high risk industry. Such training would be given by an experienced employee (eg shop steward) and a record kept that such training was given.

If there is still a death it is probably due to poor supervision but to correct that is very long term. In this case the company concerned will have the cost of accidents as outlined above and will be in a better position to take corrective managerial action eg if a supervisor has a spate of accidents then it maybe he is a poor employee and it would be in a company's interest to consider termination of employment.

This type of approach is supported by the Coles Royal Commission RCBC2002p2 "Most experts of regularity theory now agree that the answer to the persuade or punish debate lies in a judicious mix of the two approaches. The challenge is to develop strategies that punish the worst offenders whilst at the same time helping employees to voluntarily comply (Attributed to enforcement OHS statutes Issues and future directions Richard Johnstone 2001

5 Other

5.1 Long term trends

As I review your interim report and the views of many of the submissions 4/12/03 it appears to me considering long term trends one has to take into account, movement away from the common law, effect of technological change in ensuring that the cost of accidents get back to employer as well as ageing of the population and collapsed birth rate effecting all countries. Your report in its final format must consider all these implications and I hope I have clarified some of the issues. At this stage I may point out that various other people have raised similar issues to myself and your task is to bring everything to together which wont be easy

5.2 Dust disease

It is noted on p106 that there be a national approach to the catastrophically injured. A similar approach appears desirable in relation to the above and was so mentioned in your approach. I have already mentioned James Hardie above in relation to asbestos. However in relation to this product I note that Orica as well as BATs are also involved in legal cases. Since from an article I read that the liability is not expected to peak until 2012 this is a growing issue and it appears to me a national approach is desirable. As mentioned above the actuarial liability is irrelevant with the government excepting its responsibilities which in my view it would probably have to if the issue was taken to the High court

5.3 Benefits (workers Compensation)

The benefits in terms of mix have an effect on the costs of a scheme but so does social behavior as mentioned above. It appears to me that the general rule should be such as to provide the injured worker with adequate benefits whilst recovering from an injury (which makes rehabilitation important) However the benefit should not be such that the worker thinks he is on a good thing and at the end of the day it is a matter of political judgement what these benefits should be. The differences between the states are a result of history and will not be easily resolved However even I know that the states manipulate workers compensation premiums (and thus benefits) to attract investments to their states. This point is mentioned in relation to the claims of the Queensland Law society regarding the performance of the scheme in that state Based on my report on the Annual reports of the Health departments of Australia data provided by such reports is anything but reliable

In so far as lump sum is concerned I advocated this 20 years ago for the same basic reason as the Law Society but the question then and still is "double dipping". In a litigious society due to social change as mentioned above this can be very expensive. To be fair simplification of the legislation and all the rules and regulation may minimise this problem however as someone who actually understands human behavior because of my experience as an auditor it is my observation that where money is concerned the greed of the average person has no bounds if the opportunity arises

5.4 Private v public

From your interim report the evidence is inconclusive as to which is the most effective and this is supported by research in the USA. From practical experience as

an auditor who has worked both in the private as well as public sector I hold similar views and it all depends on the people and how things are organised. It is my personal opinion that in Australia the way to go would be public. This is due to the need to recognise workers compensation as a social cost. however there is also the point of the relevant scheme working closely with the provision of cost data regarding accidents which in practical terms can only be done by a public body. No doubt others could argue this could be done by the private sector but from a long term point of view I do not think so

5.5 Self Insurance

In 1983 the two organisations examined were in fact self insurers which is why I was able to obtain so much information. As a general rule only self insurers will have the accounting/information systems which allow a close and detailed dissection of costs. However if the system moved towards providing the cost of an accident this advantage of self insurers would in the long term decline