Supplementary comment from the AMWU

on the Interim Report of the Productivity Commission
"National Workers Compensation Occupational Health and Safety Frameworks"

30/01/04

1. Definition of employee:
   The AMWU has considered the Inquiry's invitation to comment on the Queensland legislation's formulation of the common law tests for determining if a person is an employee. To the best of our knowledge, this formulation has not been considered by the courts or the State Industrial Relations Commission. The legislation has been in place for approximately 6 months and therefore its impact is not possible to assess. It is expected that the release of the next annual figures under the Queensland workers compensation scheme will provide an indication of its actual effect. We reserve our opinion on the applicability of this formulation to the area of workers compensation at this stage. The AMWU does support legislation which uncovers sham arrangements designed to avoid employer obligations.

2. Health and Safety Data collection: as indicated in our earlier response the reliance by health and safety authorities and the NOHSC on the National Data Set of workers compensation claims of greater than 5 days duration, as an indicator of health and safety performance is intellectually dishonest.

3. Whilst it is acknowledged that the collection of comprehensive data is difficult the refusal of this nation to expand and coordinate our data collection will retard any efforts to actually decrease the workplace injury and disease toll.

4. According to the ILO, it is estimated that the toll from accidents is 1/4 of ALL workplace related illhealth. [1] Using the same methodology as Finnish research he estimates that the real Australian toll is close to 7,000 deaths per year. Mr. Tukaala also noted that maybe 32% of all work related deaths are due to occupational cancer e.g. exposures to asbestos, passive smoking, radiation etc.. no doubt these figures will be seen by many as contestable, but in the absence of any Australian work, what else can we use?

[1] Mr. Jukka Tukala, International Labout Organisation speaking at NOHSC Conference 'Australian OHS Regulation for the 21st Century ', Queensland, July 2003. Note: the ILO is a tripartite organisation.

5. The NOHSC and all governments refuse to act on well recognised problems in the national collection of data e.g. Industry Commission Report Work Health and Safety Volume II pages 544 to 554.

6. The NOHSC sporadically commissions work or analysis of certain data e.g. ABS Statistics, Coronial reports, the Beach Report, but both the national and state bodies do not use any of this data in any way to inform their activities, targets or strategy.

7. Previous federal governments have periodically conducted the Australian Workplace Industrial Relations Surveys. The last of these was conducted in 1995. These surveys included some questions on health and safety. The government department and Minister responsible have not replaced this data collection with any other similar work. Therefore, we do not have a national picture of the structural arrangements around health and safety e.g. health and safety committees, existence of health and safety policy. Research work indicates that the existence of these structures is likely to improve health and safety performance. As a nation we refuse to *look for* the information, never mind use it in determining our programs and activities.

8. The trade union movement has proposed in many national forums the use of data collection strategies that are used in other OECD countries as way forward. The European Foundation for the Improvement of Living and Working Conditions[2] collects data from five yearly survey work and in Sweden the *12th* Work Related Health Problems Survey has been reported upon (see attached extract). Both of these examples are used in conjunction with other tools to build a picture of work related illhealth.

9. European surveys are conducted under the auspices of a *tripartite board* and despite vigorous debate around some of the issues, other European countries outside of the original 15, are now requesting assistance for similar national surveys.[3]

10. Australia reportedly has a high prevalence of asthma but we do not have a national system of data collection that would give us any indication of the contribution that work gives to this clinical picture. US data suggests up to 18% of adult onset asthma is occupational.

11. All states are not involved in the voluntary respiratory physicians reporting system SWORD. In the UK, the HSE has conducted survey work and then identified key problem areas for prevention activity to decrease the incidence of occupational

[2]Dr. Pascal Paoli, European Foundation for the Improvement of Living and Working Conditions, speaking at the NOHSC Conference 'Australian OHS Regulation for the 21st Century', Queensland, July 2003

[3]ibid

asthma. No such program exist in Australia, partly because occupational asthma will only rarely appear in any workers compensation data base.

12. NOHSC structure: the NOHSC is continually hamstrung by the lack of funding (see ACTU Submission) and in recent times by continual staff turnover, particularly since the move to Canberra and the lack of internal expertise in various areas.

13. The NOHSC is not a true tripartite structure as the social partners only have a voice but a full voting partner ship around the NOHSC table. However, much of the difficulties arise because the jurisdictional representatives doe not represent their own tripartite health and safety bodies, rather they tend to represent the statutory authorities perspective. This has been made very clear in the example of the Demolition Standard. The proposal for a national standard was supported by employers and trade unions, but opposed by all the jurisdictions (and the NOHSC office). However, despite its shortcomings, any diminishing of the tripartite approach will only retard rather than enhance health and safety improvements. It is not possible to get constructive change if the players are not engaged or involved in decisions or working towards consensus around issues.

13. Comcare: Comparative to other workers compensation systems , AMWU members covered by the Comcare system (Federal government employees e.g. Department of Defence) are generally treated more fairly and equitably. However, this is not necessarily the position of employees covered by self insurers under the Comcare system. The AMWU has required to be extremely active in supporting our injured members in those circumstances. With one of our large employers, union officials have been involved in negotiating arrangements additional to the provisions of the Act. As indicated in our earlier submission, the presence of an industrial agreement / policy on how claims are to be managed appears to be an essential factor in improving the claims management behaviour of self insurers.

14. Difficulties do arise with Comcare due to the lack of statutory time limits on the decision makers. Injured / ill workers have 30 days for reconsideration with internal review process and 60 days for an application to the external review process. No such time limits exist for the insurer, which is very unfair for those who are waiting for a determination on acceptance of liability. Financial hardship can be significant as workers use all their sick, annual or long service before having to rely on Centrelink payments. The system could be made more efficient by the introduction of time frames for the decision making processes.

15. The Safety Rehabilitation Compensation Commission overseeing Comcare is not a true tripartite structure. Employee representatives are limited to two and they are often hamstrung in their ability to consult with their constituencies because of the confidentiality constraints imposed on them by the SRCC. The AMWU does not

support these current constraints and cannot support an extension of this lack of transparency and accountability to any more workplaces than is currently the case.

16. Comcare as the OHS regulator: the trade union movement has consistently complained about the lack of a well resourced dedicated Commonwealth inspectorate and the strong preference, by the Commonwealth, for educative and guidance role as a health and safety regulator. Despite overseas evidence that an active inspectorate that uses its full range of penalties improves employer health and safety behaviour [4], the Commonwealth refuses to take heed of this wisdom.

17. In summary, with regard to the basic proposals for extension of self insurance arrangements, the AMWU ***opposes any moves*** to increase the density of self insurers. The Interim Report and evidence given by those supporting such a move, fail to indicate any clear ***benefits to the injured workers.*** As injured / ill workers are the major stakeholder in any workers compensation system, any change that does not improve their outcomes cannot be supported.

[4] Mr. John Merritt , CEO WorkSafe Victoria, presentations at Occupational Health and Safety Working Group meetings at Worksafe Victoria, during Health and Safety Week in 2003 and 2002. (copy of power point presentation available on request)