

FINAL SUBMISSIONS TO PRODUCTIVITY COMMISSION CONCERNING A NATIONAL FRAMEWORK FOR WORKERS' COMPENSATION AND OHS.

AUSTRALIAN MEAT INDUSTRY COUNCIL (FORMERLY NAMED 'NATIONAL MEAT ASSOCIATION OF AUSTRALIA').

When this organisation filed earlier submissions and presented evidence in Brisbane and Sydney before the Commission it was under the title banner of the National Meat Association of Australia or 'NMAA'. Since that time the organisation has altered its name following a merger and we are now called the Australian Meat Industry Council or 'AMIC'. We are now, more than ever, the voice of the meat industry in terms of the processing, smallgoods, wholesale and retail sectors.

This brief final submission is both a supplement and refinement of our earlier submissions having regard to the Interim Recommendations of the Commission.

As the Commission will appreciate AMIC is an organisation of diverse employers around Australia. This diversity in size and scope is especially evident when considering the fairly contentious, albeit supremely important, views on subjects concerning the future operation of Workers' Compensation and OHS in Australia. Without the benefit of legislative and regulatory proposals it is difficult for some members to envisage that a national system will not, eventually, head down the same path as many of the present state systems.

We wish to emphasize some further following matters.

Present meat industry claims in the state systems.

The Commission should take note:

- (i) Over the past decade the meat industry has severely rationalized;
- (ii) The rationalization has affected all sectors;
- (iii) The Victorian Workcover Authority database attempts to pinpoint the number of organisations in the meat industry that had claims against them in the five (5) years to end of 1/02;
- (iv) Of the total number of organisations referred to in (iii) nearly 50 per cent were non-operational during the 5 year period;
- (v) Of the total number of claims paid in the 3 years to 1/02 by the Victorian Authority at least 1/3rd had no operational employer;
- (vi) In other words, there could be no effective management of the rehabilitation program within the system and no effective management of the claims.

This position is not limited to Victoria. It extends to New South Wales where the meat processing sector of the industry is developing the possibility of self-regulation by means of self-insurance as a group. The stumbling block, at the moment is the tail of the claims in the system totaling over \$20 million. Some of these claims are from non-operational entities in the industry.

A similar story exists in Queensland.

The effects of the examples just outlined continually affect the industry class premium base for the meat sectors. These are claims from employers no longer operational and are not properly managed - how can they be when they are in the hands of insurers and Workcover with no effective employer.

This situation needs to be considered in great detail should it be decided to depart from the present inefficient systems.

Skepticism and goodwill

We should say that there are members of AMIC skeptical that a federal Workers' Compensation system could deliver significant benefits given:

- (i) the range of vested interest groups feeding off the present state systems;
- (ii) that each system is a bureaucratic nightmare, and
- (iii) that many employers will not be operational during the claims period because of economic or other circumstances.

We feel obliged to point these views to the Commission even though this organisation, as a whole, has views on the Commission's Interim Recommendations. A national system will not succeed without the goodwill of all the major parties.

Present Self-insurers

There are a handful of AMIC members self-insured at the moment in the various schemes. . Obviously, they are the larger employers in the meat industry who have met the prudential and other requirements in the present state systems. This group sees value in being able to self-insure across state borders. A number hold reservations as under the previous headings although this may be because of their ability to be more successful in managing claims and because of uncertainty as to any final future system.

The overall objective

We pointed out to the Commission earlier that if the exercise is simply 'taking the best of the best' so far as employee benefits are concerned the end result will be disastrous. In saying this we realise there needs to be a proper balance and consensus. Without full consensus it will probably fail. Without recognising that managing claims and rehabilitation is the key it certainly will fail.

We now turn to the specific recommendations of the Commission.

A. Workers' Compensation

1. National Framework.

Recommendation

The Commission recommends that the Commonwealth should develop a national workers' compensation scheme to operate in conjunction with existing State and Territory schemes.

Comments

AMIC supports this concept in principle and the steps recommended.

2. The 3 steps in the proposed national framework.

Recommendation

- step 1 - immediately encourage self-insurance applications from employers who meet certain strict tests;
- step 2 - in the medium term, establish a national self-insurance scheme for all employers who meet prudential and other relevant criteria;
- step 3 - in the long term, establish a broad-based national insurance scheme for all employers, underwritten by private insurers.

Comments

AMIC supports this concept in principle.

3. Establishment of a new national body for WC of the Commonwealth and States.

Recommendation

Simply a recommendation to establish, independent of a national framework, a Commonwealth/State body to develop standards, collect data and report on performance of workers' compensation arrangements.

Comments

AMIC strongly supports this proposition believing there is a need for such a body and that present systems are deficient on these aspects.

4. Private versus public underwriting.

Recommendation

Any national framework for workers' compensation should be underwritten by private insurers. In a privately underwritten scheme it should be sufficient for insurer licensing based on APRA requirements. In a publicly underwritten scheme, competitive outsourcing to skilled and resourced providers.

Comments

AMIC agrees with these concepts in principle.

5. Premium setting.

Recommendation

- *No cross subsidisation between employers through premiums;*
- *Premiums for large employers should be on experience rating;*
- *Premiums on small to medium-sized employers should be on industry class rating;*
- *Premiums should be set so as to achieve full funding.*

Comments

AMIC generally agrees with these matters in principle. However, there would need to be a careful consideration concerning the definition of a larger employer and a cost-benefit analysis completed concerning small to medium sized business.

We have the ludicrous situation in some of the present systems where smaller employers without claims for years have an enormous increase in premiums on the basis of one claim in one year.

Our earlier comments concerning non-operational units needs to be considered.

6. Self-insurance.

Recommendation

- Self- insurers should demonstrate appropriate prudential and claims management requirements;
- Prudential requirements should be based on financial capability;
- No minimum employee requirements;
- Present self-insurers under the present state systems would withdraw.

Comments

AMIC agrees generally with these recommendations in principle.

7. Defining employees under any national framework.

Recommendation

The Commission recommended that the common law principle concerning 'degree of control' be the method of defining workers for any scheme. This should involve certainty and clarity, administrative simplicity, consistency with other legislation and durability and flexibility.

Comment

There has to be certainty in relation to such a recommendation being implemented. We would envisage down the road something equivalent to an ATO Ruling released in the public arena as to what is constituted definitively by the test - what is within and what is not.

8. Defining work related injury

Recommendation

- The definition of work-relatedness should be in terms of 'arising out of or in the course of employment';
- The benchmark of attribution should be 'a significant contributing factor';
- Comprehensive coverage should include aggravation, acceleration, deterioration, exacerbation and recurrence;
- Coverage of journeys to and from work should not be included;
- Coverage of recess breaks and work-related events restricted.

Comments

This issue is also critical and needs to be approached with certainty having regard to the methods whereby individuals, tribunals and courts in the past have interpreted various matters in the past and extended coverage based upon novel interpretation.

AMIC generally supports in principle the test of work-relatedness as being 'arising out of or in the course of employment'. Having regard to the Queensland experience AMIC thinks it would be disastrous to benchmark the test of attribution as 'a significant contributing factor' rather than 'the significant contributing factor'.

9. Access to common law.

Recommendation

The Commission regards the common law as a flawed mechanism for providing workers' compensation in most circumstances. It should not be included in any national framework and if it was, then it should only be to the most seriously injured workers.

Comments

Our submissions on this matter have been well documented. We agree with the recommendation in principle subject to a completely proper mechanism relating to the management of claims and a rehabilitation process that can be concluded so that a worker is not able to remain on the system forever.

10. Injury management.

Recommendation

The overall principle in any scheme should be durable return to work. What is therefore needed is early intervention, workplace based rehabilitation and return to work programs based on a committed partnership of employer, employee, treating doctor and rehabilitation provider.

Comments

AMIC strongly supports these matters in principle and submits there are complete breakdowns existing under the present schemes.

Specific situations need to be addressed where employees refuse to participate in rehabilitation. The position of members of the medical profession must be addressed in specific terms.

11. Statutory benefits

Recommendation

Incentives should be necessary to reduce the incidence of work related fatalities, injuries and illnesses. They should encourage early intervention. They should provide adequate benefits and minimise cost shifting.

Comments

The benefits vary widely under each of the current schemes. If access to common law claims is abolished it may have some effect on the level of benefits. However, there needs to be an eradication of the practice where employees receiving workers' compensation payments for a prolonged period actually earn more away from the workplace than at work. This proposition concerns a number of industries of which the meat industry is one. Industrial tribunals and those administering industrial instruments should be able to set proper safety nets for those returning to work on light duties under any return to work scheme.

12. Dispute resolution.

Recommendation

Complete support by claims handling methods that minimise the likelihood of disputes.

Comment

AMIC strongly supports this recommendation in principle especially a meaningful mediation process.

OCCUPATIONAL HEALTH AND SAFETY SCHEMES

Recommendation

The Commission recommended the development of a greatly enhanced national scheme. The Commonwealth revamp legislation establishing the body known as the National Occupational Health and Safety Commission. There be a clear specification in the revamped legislation of achieving uniform national OHS legislation and regulation. There be an agreement between the Commonwealth, State and Territory jurisdictions to adopt, by way of template legislation, the acts, legislation, regulations and codes decided without variation.

Comment

AMIC strongly supports this recommendation.

AMIC believes that every subject matter of the Interim Recommendations is interrelated. For example:

- without proper injury management rehabilitation fails;
- without proper dispute resolution the problems compound;
- if dispute resolution and rehabilitation fail the employee and employer are disadvantaged;
- this eventually effects the size of the claim;
- this eventually effects premiums for the industry;
- if benefits are set too high incentives are missing.
