

Submission to the Productivity Commission National Workers Compensation and Occupational Health & Safety Frameworks.

Introduction

The National is a self insurer of its workers compensation liabilities in all states and territories except Queensland. At the time of writing The National is preparing to lodge an application with the Queensland authority to become a self insurer in Queensland. The National currently employs approximately 25,000 staff across Australia. The various issues for discussion relevant to the National are covered below. Suggested proposed changes are set out at the end of this submission.

Issues for discussion

National frameworks

The current state based systems result in The National dealing with eight different legislations which provide, eight different levels of benefits, eight different definitions of injury, eight different claim forms, eight different requirements for self insurance, eight different reporting requirements and so on. There is very little consistency between the different jurisdictions. Some states have maintained cover for employees traveling to and from work whereas others do not. Some states cover injuries during lunch breaks whereas in others it is specifically excluded.

The Heads of Workers Compensation Authorities (HOWCA) produced little to provide any consistency and states continue to amend their systems providing even less consistency. Within weeks of the first report being tabled by HOWCA in 1997 the Victorian government made numerous changes to its legislation, none of which related to national consistency. All jurisdictions since that time have made numerous changes with the only thing approaching consistency being the constant change.

National self-insurance

Similarly to the comments made above there is no consistency in the approach to allowing employers to self-insure their workers compensation liabilities. We have license renewals ranging from 12 months to 4 years. (The term license cannot be used in some states). Renewal applications that range from simple one page applications, that provide basic information, to full applications that would be required of a company that was not a self insurer, even though the information is already in the Authority's possession. Some states also require the payment of an application fee to cover their costs of the application being made. The fee is the same for new self-insurers and those self-insurers wishing to renew their arrangements.

In addition to the renewal arrangements we also have the substantial differences in ongoing requirements as a self-insurer. We are required to provide data returns ranging from quarterly to fortnightly. (New South Wales has indicated that weekly returns may be required in the near future). These returns are in the form electronic data returns as well as paper based returns. In a similar fashion to each jurisdiction changing their legislations we have ever changing data requirements. Significant changes have occurred in New South Wales, Australian Capital Territory and Western Australia over the past 12 months. Each time changes are made it is necessary to make changes to our computer system resulting in costs of several thousand dollars being paid to the software providers to upgrade the systems. There is also the additional cost of testing the new systems and the time required to collect and key the extra data. There is an enormous amount of information provided and minimal information is provided in return to self-insurers

Set out below is an indication of the current data requirements and other returns required in each state and territory.

Victoria

Quarterly electronic data return. Annual return of total remuneration. Annual return of remuneration and staff numbers by individual location. Annual return of wholly owned subsidiaries. Annual common law return. Annual self-insurer audit reports for claims, occupational health and safety and prudential requirements. Actuary's report of outstanding liabilities. External audit certificate certifying the amount of the provision in the company's accounts for workers compensation liabilities. Additionally there is also the return to work survey and the client satisfaction survey conducted by the Authority.

New South Wales

Monthly electronic data return. Annual license renewal questionnaire. Annual return of total remuneration and staff numbers. Actuary's report of outstanding liabilities. External audit certificate certifying the amount of the provision in the company's accounts for workers compensation liabilities.

South Australia

Fortnightly electronic data return. Monthly paper based returns. Annual return of total remuneration and staff numbers. Actuary's report of outstanding liabilities.

Western Australia

Monthly electronic data return. Annual paper based license renewal questionnaire. Actuary's report of outstanding liabilities.

ACT

Monthly electronic data return. Annual return of total remuneration and staff numbers.

Tasmania

Monthly electronic data return. . Annual return of total remuneration and staff numbers. Annual return of total payments and outstanding liabilities. External auditors certificate verifying the details of the return.

Northern Territory

Monthly paper based data return. Annual license return with totals of data, remuneration and staff numbers. External auditors certificate verifying the details of the return.

The above is not an exhaustive list and other information is requested from time to time.

All states and territories also require an excess of loss insurance policy, with different policy wordings in some states and different levels of retained liability. All states also require a bank guarantee with the wording differing in each state and the amount varying in each state.

The National is also required to contribute to the state and territory authorities for such items as court systems, other disputes resolution systems and ongoing costs of the state and territory systems. These figures vary greatly with the most expensive state by far being Victoria. The Victorian contributions increased in 1999 following the introduction of new regulations governing contributions by self-insurers. The regulatory impact statement at that time indicated that the self-insurers derived considerable benefit from the scheme and stated the following, that the “proposed increased contributions will reflect the cost of WorkCover services and programs provided and made available, from which self-insurers and their employees derive a benefit”. Despite requests for clarification no details have ever been received as to what those benefits may be. To put the amount of the contributions to the Victorian WorkCover Authority into perspective the National pays more to the Victorian WorkCover Authority in contributions than it pays in claims costs to injured workers. A comparison between New South Wales and Victoria reveals that although the total remuneration for the National in Victoria is approximately 3 times that of NSW (due to head office and larger staff numbers in Victoria), the amount paid to the Victorian Authority is eight times that paid to the NSW Authority. The inequities are similar with the other states when compared with Victoria. All states other than Victoria take into account the type of activity and therefore level of risk when calculating contributions. The Victorian Authority believes that such factors should be ignored. Full details can be provided upon request.

The OHS model

As a self-insurer the National is subject to OHS audits by New South Wales, Victoria and South Australia as part of its self-insurer requirements. Queensland will also be the subject of OHS audits when self-insurance is achieved and Tasmania is introducing OHS audits later this year. Each jurisdiction has different auditing tools and as such even if an OHS system was compliant in one state it may not be in the other. The National believes that one system across all states and territories based on best practice would be the most sensible approach, particularly for companies with operations in more than one state or territory. A federal legislation could be introduced to cover companies in that situation or perhaps, covering companies with federal industrial awards.

Reducing the regulatory burden and compliance costs

The differences in the various jurisdictions have been discussed earlier. One system would result in one data return and therefore significant savings in system costs, one bank guarantee, one excess of loss policy with one wording, one actuarial report instead of five, one license renewal instead of eight, at different intervals and fees and one contribution to one regulatory authority. At the present time there is no opportunity to reduce costs by having multiple arrangements as each state and territory has different requirements. We were able to save on printing costs for a short time by using the same claim form in Victoria and New South Wales as the NSW Authority accepted the Victorian wording. This was short lived, however, with the respective authorities insisting that state specific legislation be referred to on the claim forms.

Access and coverage

As the National operates in all states and territories access to benefits is not an issue. People traveling between states are covered by their state of origin. The only time a problem may arise would be employees residing in different states and working in another, such as people in border regions. This would only relate to whether they are covered by journey accidents. Other work related injuries would be covered.

Benefits and structures

The differences in benefits have been discussed previously. Due to the differences benefits are calculated manually to comply with the specific jurisdiction. The National has a make up pay clause in its industrial award meaning that staff receive their normal time salary in the first 26 weeks of incapacity irrespective of the state scheme. The compensation amount, which is less in some states, is calculated and recorded for the purpose of state specific data returns.

Early intervention, rehabilitation and return to work

The National has dedicated staff in all states for rehabilitation and early intervention strategies. This has resulted in significant reduction in time off work and as a result, reduction in workers compensation costs. As the employer, the National is familiar with its staff and the duties involved in each position. This provides valuable insight when preparing return to work plans. We have recently been informed that South Australia is planning to ban in-house rehabilitation. We have not been provided with a reason for this and cannot understand why such an approach is even contemplated.

Dispute resolution

As with all other aspects of workers compensation each jurisdiction has a different approach to dispute resolution. Most states have, however, introduced an initial level of dispute resolution involving conciliation between the parties to try to come to an agreement without having the matter determined by the courts. Some states allow legal representation whilst others do not. We do not believe that any one jurisdiction is substantially better than the other to the point where one would be recommended above the other. We do believe, however, that the two tiered system seems to work better than a multiple approach. That is to say, conciliation at the first level and then referral to the courts if all action to resolve the dispute has failed, or where there is no evidence to suggest that the original decision should be varied. States that have conciliation, then review or arbitration followed by the courts only add to costs by having a secondary appeal level. No real benefit to dispute resolution is evident.

Suggested solutions

As a national employer the National would favor one system covering all states and territories. This would provide all staff with the same level of benefits and at the same time would provide cost savings to the National. The simplest approach would appear to be the mutual recognition model allowing the National to self-insure in all jurisdictions under the scheme in which it has its head office. All staff are paid under the one federal award and one compensation scheme would make equal sense. The problems with this model at the present time are numerous. Firstly there would be resistance from the other states and territories. Secondly and perhaps more importantly from the National's point of view, is the high cost of self-insuring in Victoria. Based on the current contribution arrangement with the Victorian Authority, the cost of including the other states would make this solution far too expensive to contemplate. From that point of view alone it would be far more attractive to choose any other state, as this would provide the greatest cost savings. There is also the problem of a state specific scheme changing their legislation based on state based issues. At the present time the Victorian government is reported to have "wish list" from employee groups which will provide the basis for amendments to the legislation in the spring session. Details of the "wish list" are not

known, however, employers have not been allowed to make any comment or provide any input.

Our preferred model would therefore be a national scheme that would be developed federally with all parties being involved. This could take the form of choosing the best current state legislation and using that as a template for the national legislation. This would provide an opportunity to remove any ambiguities present in the current state legislations caused by frequent changes and what was at the outset, poor wording. A new national legislation would also remove the difficulties that would arise from the state authorities for large companies wishing to leave the state based schemes and thereby, particularly from the National's point of view in Victoria, removing significant funding.

One other suggestion in the discussion paper is an expanded Comcare model. The National does not have any experience with Comcare and as such comments as to whether this would be a viable approach are reserved.

Summary

From a national point of view (and the National's) the current system of having eight different legislations for companies who operate across borders is outdated. We have had federal industrial awards for many decades and a national workers compensation and occupational health & safety scheme makes equal sense. Indeed if a national scheme was properly drafted and implemented the states and territories would most likely copy it and benefit from it

Submitted by Glenn Mitchem for and on behalf of National Australia Bank Limited.