NATIONAL INSURANCE BROKERS ASSOCIATION

The Secretary
Workers' Compensation and OHS Frameworks Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

Dear Sir

In this submission The National Insurance Brokers Association of Australia (NIBA) strongly supports the idea of Australia moving from completely State based systems for workers' compensation and OH&S to a more competitive system with a national framework.

The need for a national approach has been clear for some time. The case for a national framework is well documented by the Industry Commission in its 1984 Report on Workers' Compensation in Australia. More recently a Parliamentary Committee of Inquiry and the HIH Royal Commission have supported a national approach.

The current State based system not only involves gaps and has inconsistencies, it is proving costly and inefficient. In moving to a national framework the many weaknesses in the current State based systems need to be addressed.

Problems inherent in the State systems that need to be overcome include:

- A lack of stakeholder ownership. Employers and employees have little opportunity to influence outcomes.
- A lack of financial incentives. Insurers and employers have only limited incentives to implement best practice.
- Heavy regulation stifles innovation.
- Conflicting roles for WorkCover Authorites prevents effective administration.
- There are generally insufficient incentives for early settlement of disputes.
- Premium systems do not provide sufficient incentive for introducing sound risk management practices.
- Many employers have a very limited understanding of how the schemes work or of their responsibilities within the schemes.
- There is a general lack of integration of the workers' compensation and OH&S systems into overall risk management strategies.
- Workers compensation legislation is seen as stand alone legislation having little regard to other legislation and general compensation arrangements.

NIBA is also concerned that the valuable assistance that insurance brokers provide to employers in relation to workers' compensation and OH&S matters is not generally well understood or recognised by the various workcover authorities. Insurance brokers represent employers and not insurance companies. Insurance brokers are well-trained professionals and it is not surprising that employers seek their guidance and assistance in relation to almost all issues relating to workers' compensation and OH&S.

The attached submission focuses on the matters raised in the Issues Paper that was released by the Commission in April 2003 and it provides some information about NIBA and the services that insurance brokers provide. NIBA trusts that it will assist you in your deliberations.

Yours sincerely

Noel Pettersen
Chief Executive
June 2003

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Submission

By

The National Insurance

Brokers Association of Australia

To The Review of Workers Compensation And OH&S Frameworks

June 2003

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Introduction

NIBA welcomes the Productivity Commission Inquiry into National Workers' Compensation and Occupational Health & Safety Frameworks. The current Sate based systems not only leave employers exposed through gaps and inconsistencies they are costly and the arrangements are inefficient. The case for a national approach has been well supported by no less than a House of Representatives Committee and the Report of the HIH Royal Commission.

In this submission NIBA provides information about NIBA and the role insurance brokers play in workers' compensation and OH&S and it focuses on the matters raised by the Commission in the issues paper that released in April 2003.

Insurance brokers are a valuable asset to any Workers' Compensation or OH&S system. Brokers inform employers of their obligations and responsibilities, help employers to select the most suitable insurer/claims manager for them, and assist employers to reduce premiums by adopting appropriate risk management practices.

NIBA strongly believes that all employers should have the right to select their own underwriter and service providers for workers' compensation and in making the relevant choices employers should be advised by competent and well-trained professional insurance brokers.

With increased focus on Injury Management Programs and the need for employers to demonstrate safe work practices and ensure a safe working environment, the expertise and resources provided by NIBA insurance brokers to employers are essential for the ongoing efficiency and viability of workers compensation arrangements.

NIBA

NIBA, the National Insurance Brokers Association of Australia, is the voice of the insurance broking industry in Australia Established in 1982, following the amalgamation of earlier broker associations, NIBA represents 500 member firms and 2000 individual Qualified Practising Insurance Brokers (QPIBs) throughout Australia. Significantly, members handle approximately 90% of premium transacted by all insurance brokers nationally.

To ensure the highest possible standards, members of NIBA are bound by a **Code of Conduct** and are required to undertake continuing professional development through various accreditation programs.

A few years ago NIBA launched a national workers compensation accreditation course (accredited by the NSW Vocational and Training Board). The course provides NIBA members with the knowledge and skills needed to understand and actively participate and fulfil a meaningful role within the workers' compensation system.

In recent times the insurance broker's role in workers' compensation insurance has changed considerably, with the greater emphasis now being placed on risk management and effective claims and injury management services.

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Broker Services

The range of services provided by insurance brokers is far beyond that of the simple placement of workers compensation insurance. For instance, insurance brokers will: -

- Assess risks in terms of frequency and severity.
- Find ways to reduce risks.
- Identify and implement injury management, safety and accident prevention programs.
- Demonstrate to employers the significant effect that injury management and prevention has on minimising premium costs.
- Advise on occupational health and safety, rehabilitation including the implementation of best practice injury management systems.
- Help select appropriate insurers and negotiate premiums and services.
- Check policies and premium calculations, negotiate renewal terms including completion of workers compensation annual declarations.
- Provide clients with information and knowledge about trends and improvements being made within the insurance industry.
- Monitor claims, review estimates and advise on corrective action.
- Provide advice to employers about injury management.
- Assist with claims recoveries.
- Provide independent advice on all aspects of insurance (particularly relevant to small business where their workers' compensation expertise is usually very limited).
- Have an appreciation of the risks, philosophy and needs of employers.
- Collate all relevant information for reviews of employers workers compensation/injury management/rehabilitation programs.
- Encourage and assist employers to complete and review all claim forms in a timely manner.
- Assist employers in achieving prompt settlement of claims with insurers.
- Attend conciliation reviews and informal hearings with employers.
- Assist in the co-ordination of rehabilitation programs with employers, in order to expedite the return of injured employees to the workforce.
- Assess the reasonableness of claims cost estimates.
- Review medical reports, rehabilitation reports and legal reports so as to monitor the medical management of the injured employee, including the assessment of any physical incapacity of the injured employee.
- Co-ordinate rehabilitation programs, including the availability and suitability of alternative duties.

The important role of Brokers in workers compensation was recognised in the 1997 Grellman Report into the NSW workers compensation system. The Report stated that Insurance Brokers can provide: -

> "a *useful intermediary role between employers and insurers in respect of both:*
> - *the provision of workers compensation insurance to employers; and*
> - *advice to employers regarding compliance to legislation, relevant guidelines and risk management in the workplace."*

Furthermore the Insurance Council of Australia (ICA) has also recognised the role: -

> "*Brokers are in the unique position of being able to demonstrate to employers the benefits of private sector risk transfer, competition and service…. Brokers also have a special opportunity to deliver solutions to smaller employers in particular and to add value in areas crucial to the success of the workers compensation risk prevention, early intervention and injury management and return to work programs."* (Alan Mason, ICA Executive Director, Insurance Broker Journal, February 1998).

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Delivery of Services to Employers in Remote Areas

All major approved workers compensation insurers recognise and openly acknowledge that their workers' compensation premiums would increase substantially were it not for the role played by insurance brokers. Without insurance brokers insurers would need to employ, train and deploy an extensive field staff to deliver a reasonable degree of service to employers. This is particularly relevant in regional areas, where the trend by insurers over the last five years has been to rationalise operations, resulting in the continued closure of offices in regional and country centres. Conversely, NIBA brokers are located in and or regularly visit all regional areas in Australia, and are able to provide the necessary services to employers in these regions.

Insurance Brokers are Professionals

Insurance Brokers are currently regulated by the **Insurance (Agents and Brokers) Act 1984**, which is soon to be replaced by the **Financial Services Reform Act**. NBIA encourages all insurance brokers to participate in their Qualified Practicing Insurance Brokers (QPIB) Educational Program. QPIB status represents a commitment to quality and continued Professional Development and is fast becoming a benchmark of achievement, recognised across the whole profession in Australia and increasingly overseas. NIBA maintains close contact with the Federal Government to ensure its professional qualifications are in line with national educational standards.

In 1998 NIBA introduced a formal course in workers' compensation accreditation, which is approved by the Australian National Training Authority and, as such, is listed on the National Training Register and conforms to National Training Standards.

Already, in excess of 500 brokers have committed to the accreditation course. The program was developed to raise industry standards and provide employers with a quality benchmark when looking for brokers to assist in the area of workers' compensation.

The course, which includes a formal assessment, covers the following topics: -

- Different State Systems and Legislation.
- Occupational Health and Safety and Rehabilitation Procedures and Policies and how they relate to premium levels.
- Claims Processing and Management.
- Occupational Health and Safety and Insurance Law relating to workers compensation.
- Return to work programs.

Whilst it is not compulsory for NIBA members to undertake the workers' compensation accreditation program, NIBA actively promotes the benefits of such courses to its members.

The expertise and resources developed by insurance brokers over a long period of time is recognised by the importance and value that employers place upon the role of insurance brokers in the workers compensation system. In summary, NIBA brokers promote: -

- Competition and innovation for the benefit of employers and employees within the workers' compensation system.
- The development of specialist expertise to assist employers within the workers' compensation system.
- Speciality services for the benefit of employers and employees.
- A cost effective mechanism for distributing workers' compensation insurance.
- Compliance with the statutory requirements.

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NIBA's Comments on the matters raised in the Issues Paper

NIBA's comments on each of the matters raised in the Issues Paper released by the Commission in April 2003 follow.

1. Multiple jurisdiction-based regimes throughout Australia.

A major disadvantage to employers and employees is the lack of consistency across the federal, state and territory jurisdictions. The federal scheme, which could provide national coverage, denies access to employers and their employees, unless the Minister for Employment and Industrial Relations declares each to be an eligible corporation. Such declarations are bound by restrictive definitions that are based in comparisons with the federal public service system. Those few corporations that can avail themselves of this option gain a competitive advantage, through reduced administrative costs for a single scheme and consistency of benefits for employees, regardless of geographical location.

The states' schemes are a concoction of government monopolies, government licences and free-market for commercial insurers. The cost structures to employers are many and are above free-market costs, where government monopolies and government-licensed schemes add additional premiums to claw back unfunded liabilities from previous years. Employers in the government-monopolies schemes are stripped of choice, become subjects to bureaucratic, not free-market, performances and make payments into schemes that are devoid of employer or employee representations. This is possibly the only commercial overhead that is entirely devoid of choice and devoid of performance management by the financial contributor.

The territorial schemes are reflections of the states' government licensing scheme and they inherit similar problems to that already described.

Comment:

One way Australian employers can contribute to gross domestic product is to reduce the financial inputs into manufacturing, services and supplies. At present the financial input associated with workers' compensation is far from consistent.

Its value varies across the continent; the values are unstable due to frequent changes in government requirements and hence insurers costs. These costs are not solely determined by employer performance but include the vagaries of various bureaucratic performances.

A single workers' compensation scheme, available by choice to all employers, through a competitive free-market consisting of government agencies and commercial insurers would deliver consistency for employers and employees and contribute to an improved value in the gross domestic product, all other things being equal.

2. Cooperative framework

There are two ways of establishing a beneficially consistent national scheme. One is through cooperative arrangements at the Ministerial Council level. History and past performances indicate this council experiences division due to party politics and power politics, depending on electoral cycles and other government business being negotiated, such as trade-off opportunities. While the Ministerial Council could be the genesis of a national scheme it is suspected that its delivery would be measured in decades.

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A second way of establishing a national scheme would be to utilise the existing federal scheme by altering the restrictive membership requirements that are now enshrined in legislation, but reflect a retrospective view of previous relationships with the federal bureaucracy. If membership was set to encourage a national scheme for the future, based on free-market choice and opportunities, then employers would be advantaged through consistent management of financial inputs and employees would be advantaged through consistent benefits set to a national economic framework.

Comment:

There is a national medical scheme that applies consistency of benefits for non-work related injuries and disease. Benefits structures are national and have a national economic rationale to their values. What is the rationale for not having a national scheme for work-related injuries and diseases? The answer lies in the levels of cooperation between federal, states and territorial governments and the political will to improve the current fragmented system of workers' compensation.

3. State-based schemes

The various models of state-based schemes have been identified previously. For employers, the cost is amplified by discrepancies between the various models in terms of regulation, compliance, benefits, appeals mechanisms and insurance options. For employees, the cost is amplified by discrepancies in benefits for similar injuries or diseases, different appeals mechanisms and various limits to geographical coverage. As for the price of life, it takes on different values for the surviving family, including any dependent children. The result of this complexity is higher derived costs across all schemes as employers, employees and insurers all engage legal counsel to establish levels of liabilities, opportunities for recoveries from third parties and appropriate durations for benefits. The same can be said of the medical professions not directly involved in the treatment of a condition, but in opinions around the condition. In the end the costs of the legal and medical opinions flow into the schemes with different effects, but ultimately at cost to the employer.

Inherent in all state-based schemes at present is the direct relationship between the regulator and the insurer. There is a structural and managerial dichotomy in this arrangement. Should the regulator make determinations that diminish the operational efficiency of the insurer, but would enhance the operational efficiency of the employer? This is particularly important when the regulator becomes the determining authority for an appeal by an employer against the government insurer. To agree with the employer is to diminish its partner, the insurer, both in level of authority and probably financially as well. This is a basis for conflict-of-interest decisions. It is particular relevant in the New South Wales scheme at present.

Comment:

The disparate state-based schemes add financial burdens for employers, employees and insurers. The additional costs of advisory professions is testimony to the inherent complexities faced by participants in the schemes, at additional cost that ultimately flows back into their payments to a regulator/manager duopoly that is isolated from the financial consequences of their decisions.

4. Access to self-insurance

Self-insurance across the federal, states and territory jurisdictions is an example of inconsistencies in regulation, inconsistencies in compliance requirements and denial of cross-border applications for a common business purpose. Eligibility requirements differ markedly across all jurisdictions. Some have employee numbers embedded in eligibility tests; some do not. Most have financial ratios as requirements, but they are either not defined or left to the discretion of the regulator as to which are considered of importance. There is a diversity if prudential requirements across jurisdictions so that self-insurance in some jurisdictions is easier, financially, than in others. Access to self-insurance is an ill-defined process to a national corporation that seeks to have an option of insurance risk retention for workers' compensation.

Comments:

Previous comments have clearly indicated a bias towards a national scheme based on free-market opportunities for government agencies and insurers alike. Similar arguments apply to those corporations that have a scale of operations that allow them to manage their own insurance risk profiles. Such corporations already decide their own risk-cover/risk-retention ratios for all other types of business insurance eg. business interruption, professional indemnity, assets, property, etc.. Workers' compensation insurance needs to be granted the same freedom of choice as other insurances.

The viability of a corporation to maintain its status as a self-insurer is paramount to any scheme. At present the range of prudential requirements adds uncertainty to the process. An obvious regulator for prudential requirements is APRA and its standards should be applied to all self-insurers, commercial insurers and government agency insurers. It is understood that most of the state-based workers' compensation schemes could not meet these requirements. Why should a corporation that could meet APRA's requirements be denied a self-insurance licence because it has 1,950 employees, not 2,000 as required by the Queensland regulator? Is it because the regulator is protecting the size of the government insurance pool? If so, then this is a substantial reason for having a single national scheme, one large insurance pool, which would not be unduly affected by a single corporation becoming a self-insurer.

5. Regulatory burden and compliance costs

Inconsistent regulation and differing compliance requirements have been highlighted previously. Inconsistencies across jurisdictions mean that corporations that are active in different jurisdictions are faced with a number of mandatory requirements, systematic and administrative. It is obvious that such burdens have a negative financial impact on such corporations.

Comment:

Employers are captives of the performances of the various regulators and insurers, as they exist across all jurisdictions. Employers fund these various operations but they are not always able to influence or even contribute towards regulatory or compliance requirements. An example would be the composition of the Safety, Rehabilitation and Compensation Commission in the federal jurisdiction. It has corporations as self-insurers in the scheme but there is no corporate representative in the commission. They have always been represented by a member of a federal government business enterprise, which has a business acumen completely different from that of a commercial corporation. Isolation of the commercial corporations from direct contributions towards regulations and compliance requirements is a

double imposition. They bear the costs and their business intellect is neglected by non-business regulators.

6. Access and coverage

The main barrier to access and coverage is inconsistent definitions across jurisdictions. Employees are different entities across different jurisdictions. Contractors have different status with principals, depending on which jurisdiction is being referenced. Therefore, access into one scheme does not necessarily imply acceptance into another. Such passive or active discrimination distorts all efforts towards national consistency and hence directly affects coverage and access to benefits.

Comment:

As mentioned previously, the non-workplace injury and disease scheme is based on social equity, which has been a public issue recently promoted in the media. Currently, workplace injuries and diseases are subject to social inequities arising from inconsistent access and coverage. The requirement for national definitions to eliminate scheme discriminations should be a primary outcome of this inquiry.

7. Common law

The issue of common law, or damages in the Queensland scheme, is one that will draw considerable attention. However, there is one particular point to recognise that often is hidden due to common misconceptions. There are considerable accolades given to workers' compensation being a no-fault legislation. When subjected to scrutiny this proposition is seen to be false. If 'no fault' is a reality then why does an employee have access to common law against an employer, but an employer does not have similar rights against an employee? In addition, most workers' compensation legislation that includes common law provisions also includes opportunities for employees to press for common law in tort outside of the workers' compensation scheme. This redundancy calls into question any rationale for having common law enshrined into any workers' compensation legislation.

Comment:

The existence of inequitable common law provisions, employee prosecutions of employers but not vice versa, in workers' compensation legislation is based on discriminatory opportunities for the employee. However, these opportunities concurrently exist in tort and employees often use this approach. Access to common law from within a workers' compensation scheme is redundant and it needs to be removed. Common law provision are not only inequitable they promote an adversarial system between employees and employers that stifles cooperative solutions to return-to-work (RTW) plans. They often result in lump-sum payments rather than distributed payments. The latter would be more consistent with the workers' compensation philosophy of benefits due to an inability to work during a normal working life.

It would be appropriate at this point to raise the issue of multiple payments arsing from a single workplace injury or disease. There are cases on record where an employee has received a lump-sum payment as common law settlement under workers' compensation, a lump-sum payment for a qualifying level of impairment and then the employee applies for and receives benefits under superannuation insurance for having a permanent disability. This duplication of accessibility to two separate benefit structures for the same injury increases the premium payments for an employer in both schemes, workers' compensation and superannuation. Such

duplicity needs to be eliminated to prevent employees from having an employer paying twice for a single injury or disease.

8. Early intervention, rehabilitation and RTW

Across the federal, states and territory jurisdictions there are various models for rehabilitation. Where government licensed insurers are engaged there is a propensity for the employer to be shut out of the model, except for providing the workplace for a returning employee and then carrying the cost. The insurer controls the model, organises the employee and rehabilitation providers and then charges the employer through the premium system. Such insurers are committed to meeting the regulator's performance indicators while at the same time the employers have to subsequently pay for plans over which they have no control. Such schemes need to include employers as active participants in developing RTW plans; not have employers as passive payers of employee rehabilitation.

Comment:

There is much emphasis placed upon the workers' compensation benefit structure being a motivator for employees to return to work. The reduction in benefits at defined intervals is often quoted as being one such motivator. In recent times this worthwhile proposition has been eroded through industrial actions and agreements outside of the workers' compensation jurisdictions. There are in existence enterprise bargaining agreements (EBAs) that stipulate employers have to provide salary continuance insurance for employees. The effect of such EBAs is to devalue rehabilitation incentives as, if an employee reaches a point of reduced benefits under the workers' compensation scheme the salary continuance insurance pays the employee the difference between the workers' compensation benefit and the normal level of wages. The employee is not financially disadvantaged and hence the incentive to return to work diminishes greatly. Early intervention, rehabilitation and RTW plans become secondary considerations for an injured employee having access to salary continuance insurance benefits. It is important for employees to have access to salary continuance benefits for non-work related absences but it should not apply to absences arising from work-related injuries or diseases.

9. Premium setting

Inequity of premium settings across federal, states and territory schemes is the order of the day. Each jurisdiction has its own premium model with various elements, such as claims history, having different weights in different schemes. Some premium models concentrate on being financially viable to meet current and expected costs of claims. Others include additional elements to claw back past deficiencies and raise costs to employers to cover current unfunded liabilities. A national scheme with a single premium model would assist employers in managing inputs to production, services and supplies.

Comment:

Part of the current problem of having various models arises from the jurisdictional pools being too small. The inherent risks are spread across too few participants, the employers. A single national scheme would have an expanded pool to share the risks and hence there would be greater stability in such a scheme. The current outstanding liabilities of the existing schemes could be tendered out to various insurers to manage over a five-year period. Take NSW as an example, the state currently has unfunded outstanding liabilities of some $23b. The state could tender insurers to manage those claims for $20b,save $3b in the process and if the insurers could settle all claims for $18b then they have benefited by $2b. The values in this example could be subject to comment but the principal is already used in the Victorian

and Queensland jurisdictions when a new self-insurer is required to manage its pre-licence claims after receiving its licence. A single national premium model can be achieved if there is a political will.

10. Private and licensed insurers

Private and licensed insurers exist in all jurisdictions, either as government agencies or as self-insurers.

Comment:

Much has been said previously about the various roles that private insurers can take. For workers' compensation to become an efficient service to employees and employers there must be free-market competition between insurers, including government agencies that now operate a monopoly. There must be a level field for all parties, including the need for participants to meet APRA requirements for insurers. A single national scheme that diminishes the values of private and licensed insurers is one that will add costs to employers and hence dull any competitive edge from Australian production.

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Conclusion:

There is little doubt that a national approach to workers' compensation and OH&S is needed in Australian. We can no longer afford a multitude of different state based regulations with the resultant inconsistencies and complexities.

The model for a national framework can no doubt be widely debated. Change however is needed. The parameters of a suitable national framework for workers' compensation should include:

- Operation in accordance with National Competition Policy.
- Price to be determined by the market rather than set by price control.
- All underwriting participants to conform to APRA regulations be they private or public organisations.
- The model's ability to set long-term goals, at least ten years, that can be continually worked towards.
- The model's providing employers with a variety of options to choose between in terms of premium payments and claims managements.
- The model being outcomes based and not focused on processes.
- A Ministerial Council along the lines of that recommended by the HIH Royal Commission (Recommendation 54) being established to oversee the arrangements.
- Workers' Compensation and OH&S being administered separately.

NIBA trusts that its comments greatly assists the review to understand the significance role insurance brokers can play in the implementation of effective national frameworks for workers' compensation and OH&S.

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