

**Optus Submission to
Productivity Commission Inquiry into
National Frameworks for Workers'
Compensation and Occupational Health and
Safety**

June 2003

Overview

Optus welcomes the opportunity to provide this submission to the Productivity Commission Inquiry into National Frameworks for Workers' Compensation and Occupational Health and Safety (OHS).

This inquiry is timely as Optus has recently reapplied to the Commonwealth for a Class B licence under the Commonwealth *Safety, Rehabilitation and Compensation Act 1988* to become a self-insurer under Comcare, after its first application was refused by the Government. A confidential copy of Optus' most recent application together with a copy of the Government's reasons for refusing Optus' initial application is provided at Appendix 1. Optus is awaiting the Government's response to its most recent application.

This application outlines Optus' approach to workers' compensation and OHS, and highlights the additional costs and inefficiencies Optus suffers from operating under eight different schemes. Optus' goal is to be responsible for independently managing workers' compensation and OHS under recognised national standards. If Optus can also implement workers' compensation self-insurance, the best outcomes for employees will be ensured by the application of consistent, cost effective OHS measures, injury prevention and claims management. In all it will ensure Optus and its employees get the best out of Optus workers' compensation and OHS expenditure.

The main difficulties with the current multi-jurisdiction arrangements are that they are cumbersome and inefficient, not only because they are more costly to administer, but also because they:

- make it difficult for Optus to obtain clear early warnings about problems with OHS or workers' compensation issues. Optus' ability to be responsive to employee needs and manage the arrangements effectively is therefore constrained
- are structured in a way that they do not provide employers with choice. Employers cannot choose the arrangements that best suit their employees and their business needs.

In this submission, Optus responds to the Inquiry Terms of Reference. These responses support and explain Optus' key position on workers' compensation and OHS. It makes the overall point that there is a need for more consistent and efficient arrangements that operate in the best interest of employees and the economy more generally. Optus position on these issues is summarised below.

Workers' Compensation

Optus would like to be able to self-insure to manage its own workers' compensation arrangements. Optus' clear preference is to obtain a single national licence to be self-insured and currently the only option to do this is under the Commonwealth workers' compensation scheme. (If other options were made available Optus would be keen to review them.)

Reasons in support of this position is Optus' desire to:

- be on a level playing field with Telstra so we can achieve the same competitive advantages as Telstra by being subject to the same, more efficient, workers' compensation arrangements
- more efficiently administer its workers' compensation arrangements via lower costs and avoiding having to deal with eight jurisdictions
- ensure staff receive the same level of cover and service irrespective of where they work in Australia through access to the same entitlements.

OHS

Optus would like to comply with national OHS standards to remove the inefficiencies and inconsistencies associated with developing and providing OHS systems and training to staff to comply with eight different state and territory regulations and codes of practice. Optus is agnostic about whether this is implemented by all jurisdictions having to comply with a national scheme or all the states cooperatively moving to a more uniform set of arrangements.

The importance of low cost effective workers' compensation and OHS arrangements

Optus prides itself in what it has been able to achieve in OHS and workers' compensation. As a relatively new company it has had the benefit of being able to design arrangements that suit the business it is in and that differentiates Optus as an employer for attracting quality staff. Optus has not had to face the constraints of legacy arrangements that are difficult to manage and change.

Consequently, Optus has worked hard to obtain the best from its OHS and workers' compensation arrangements. It is, however, at a point where further efficiencies and greater effectiveness cannot be achieved without structural changes that ensure consistency and choice for employers when meeting their obligations and employee entitlements.

Optus is also facing a tide of change where states and territories are seeking to financially make up for their unfunded liabilities. It is arguable that these unfunded liabilities are a symptom of the current inefficient and cumbersome arrangements. Premiums in NSW and most likely other states are on the increase. Changes to funding models in NSW are expected to result in premium increases of over 20%. Optus is factoring these increases into its business costs.

To Optus such large premium increases signal a crisis that needs to be addressed through reforms. These reforms are important as workers' compensation costs are a direct cost to business and while these costs are high they undermine the ability of Australian business to compete in the market place.

This Inquiry provides the opportunity for the Commission to recommend reform and measures for more consistent and competitive workers' compensation and OHS arrangements.

1. Response to Scope of the Inquiry (terms of reference)

Drawing on the Industry Commission recommendations in Report No. 36 and No. 47, the Commission should assess possible models for establishing national frameworks for workers' compensation and OHS arrangements. In doing so, the Commission should identify and report on, but not be limited to the following:

- (a) consistent definition of employer, employee, workplace and work-related injury/illness and fatalities relevant to both workers' compensation and OHS that could be adopted consistently across Australia;**

Optus' response

- 1.1 Optus would prefer nationally consistent definitions for all terminology relevant to workers' compensation and OHS across Australia. This will assist with claims assessment and management and improve administration.

- (b) a consistent benefits structure that provides adequate levels of compensation, including income replacement and medical and related costs, for injured workers' and their families;**

Optus' response

- 1.2 Consistent workers' compensation benefits for all employees are important to Optus. Under its Employee Partnership Agreement (EPA) (the Optus Enterprise Agreement) Optus employees receive the same entitlements regardless of the state or territory in which they work and the workers' compensation arrangements in that jurisdiction.
- 1.3 All employees are entitled to up to 52 weeks paid leave if they suffer a workrelated injury (or non-work injury or illness). This means that employees receive the relevant entitlement under each state and territory scheme and Optus contributes the difference so staff receive fully paid leave for up to 52 weeks.
- 1.4 In addition, Optus provides its employees with the same entitlement to medical and related services and injury management. Generally Optus assumes the highest level of entitlements available and applies these nationally.
- 1.5 Optus' consistent benefits structure extends to where an employee is unable to return to work. Optus offers its employees Total and Permanent Disability Insurance as part of the Optus Superannuation Plan for employees who are not able to return to work for medical and health reasons.
- 1.6 Optus' desire to provide national uniform workers compensation entitlements creates additional claims administration. When administering a workers' compensation claim, Optus has to monitor the relevant state or territory entitlements so it can apply for the relevant state or territory compensation. It

also needs to continually work out the difference between these entitlements and the Optus EPA to determine an employee's full entitlements. This applies to income replacement and all medical and related costs.

- 1.7 An example of the inconsistencies in entitlements between certain states is the journey and recess provisions. The NSW Workers' Compensation Act 1987 provides for all NSW employees to be entitled to workers' compensation for injuries sustained while travelling between home and work and during authorised breaks, for example lunch breaks. This provision does not apply in states such as Victoria and South Australia.
- 1.8 The wage benefits also differ across the states. For example in NSW once an employee has reached 26 weeks of total incapacity, the entitlements are reduced to a base statutory rate of pay that is \$310.90 (valid from 1 April 2003). In Victoria the reduction in weekly benefits occurs at 13 weeks of total incapacity with the amount payable being 75% of pre-injury earnings with a statutory maximum of \$976.00 (valid from 1 July 2002). As mentioned above, to overcome these differences, Optus makes up the difference consistent with the Optus EPA.
- 1.9 There are also inconsistencies regarding treatment modalities that are accepted under the respective work cover authority guidelines across the states and territories. An example of this is the provision of pilates as a treatment modality in NSW however this is not reimbursed in Victoria.

(c) the implications of retaining, limiting or removing access to common law damages for work-related injuries/illness and fatalities on the models identified;

Optus' response

- 1.10 Optus believes that access to common law damages:
 - (a) increases the potential for disputes between employers and employees
 - (b) can reduce the incentive for some workers' to participate positively in return to work programs
 - (c) significantly increases costs of workers' compensation arising from legal costs and increased cost of administration.
- 1.11 If there is a requirement to maintain employee access to damages under common law the access should be limited. Capping employee claims could be done in a way that is consistent with government moves to cap public liability, professional indemnity and medical malpractice claims etc.
- 1.12 Most jurisdictions cap claims, whereas the Commonwealth places no limit on common law claims. Despite this, Optus would still prefer to comply with a national workers' compensation system because of the uniformity and cost savings that make it easier to control future liabilities.
- 1.13 Currently Optus has minimal common law applicants. Even though the national (Comcare) scheme does not cap common law claims that would minimise business risks, this does not outweigh the other tangible benefits of a national workers' compensation scheme.

- (d) the most appropriate workplace based injury management approaches and/or incentives to achieve early intervention, rehabilitation and return to work assistance to injured workers and to care for the long-term and permanently incapacitated, including the opportunities for re-employment or new employment of people with a compensable injury, and the incentives and disincentives for employers with regard to the employment of workers' who have suffered a compensable injury;**

Optus' response

- 1.14 Optus has a policy of managing its injury prevention and claims management arrangements itself, drawing on the advice and expertise of suitable consultants where necessary. The Optus Injury Management & Rehabilitation Program has three key goals to:
- (a) minimise the impact of injuries on employees and the workplace
 - (b) provide timely and appropriate intervention at each stage of the recovery and rehabilitation process
 - (c) implement policy and practice which are consistent with legislation and best practice.
- 1.15 To achieve these goals, Optus encourages early reporting of injuries, early intervention with injured employees resuming suitable duties as early as possible. Optus has in place return to work coordinators on site for key business areas to facilitate this process. To assist injured employees return to work, Optus also supports redeployment should returning to the pre-injury employment not be a medically suitable option.
- 1.16 The result is that Optus operates what it considers are very effective workers' compensation and OHS arrangements. There are clear feedback mechanisms about what is working well and what aspects of the arrangements need modification. The close liaison between Optus injured workers', their managers and workers' compensation specialists, ensures any problems with the claims become obvious and are dealt with quickly. Optus endeavours to avoid relying on third parties to manage claims that could reduce its ability to respond quickly and effectively to problems that arise.
- 1.17 The Optus workers' compensation arrangements are underpinned by effective OHS arrangements. The OHS team are able to drive early intervention programs across all states by centralizing injury prevention and injury management, thus ensuring timely and effective return to work rates. The Optus workers' compensation and rehabilitation program is co-ordinated inhouse with a small team of workers' compensation and injury management consultants employed nationally. Close liaison is maintained with Optus' insurer and rehabilitation provider networks to ensure early return to work to suitable duties and ongoing development and review of return to work plans. To date Optus has enjoyed a highly effective injury management program.
- 1.18 The different state and territory workers' compensation legislation results in delays in some jurisdictions due to different claims reporting requirements and claims management requirements. In some jurisdictions the claims agent

approach to injury management and workers' compensation are not consistent with Optus' commitment to early intervention.

1.19 An example of this is in Queensland where delays in managing claims are often experienced because of the intervention of the workers' compensation authority to determine claims. These delays impact Optus' ability to initiate early intervention and organise rehabilitation assistance and for the employee to access required treatment. They also mean that the employee is further disadvantaged by having to continue paying for their treatment until their claim is fully assessed by the worker compensation authority. Optus currently addresses this by commencing its own injury compensation entitlements and medical and related treatment as well as an appropriate return to work programs for injured workers' irrespective of the claim determination.

(e) effective mechanisms to manage and resolve disputes in workers' compensation matters that:

(i) encourage the development of internal dispute resolution processes by employers;

(ii) encourage the involvement of the employer, the employee, and insurers/schemes;

(iii) encourage the use of alternative dispute resolution including mediation and conciliation; and

(iv) retain an appropriate appellate structure for employers and employees. Optus'

response

1.20 Optus' preferred model is to have a consistent approach to dispute resolution, with active employer and employee involvement so as to reduce the waiting time for conciliating claims disputes. The various dispute resolution models across jurisdictions do not always allow for employer participation in the conciliation process. This means that Optus is reliant on the insurers to determine claim disputes that may not always be in Optus' or the employees' best interests.

1.21 Optus' EPA adopts an internal dispute resolution mechanism that encourages communication between employee and employer. The advantage of this approach is that it gives the employer another incentive to ensure its workers' compensation processes are efficiently and effectively managed to the benefit of employees while operating within standard commercial constraints.

- (f) the premium setting principles necessary to maintain fully funded schemes while delivering to employers' equity, stability and simplicity. In doing so, the Commission is asked to identify models that provide incentives for employers to reduce the incidence of injury and improve safety in the workplace;**

Optus' response

- 1.22 For workers' compensation, Optus considers the best model is self-insurance at the national (Comcare) level.
- 1.23 Self-insurance is only appropriate for companies that have adequate financial resources to fund the risks of major claims. Another key benefit of selfinsurance is that it will ensure funded schemes are competitive and employers are appropriately charged by making sure they pay according to their risk and are not cross subsidised by companies with excellent claims experience.
- 1.24 To date Optus has not applied for self-insurance in any of the state and territory jurisdictions as we have aimed to obtain cover at the national level by applying for a national Comcare licence. If there is no potential for us to enter a national scheme we will need to review self-insurance on a jurisdiction-byjurisdiction basis.
- 1.25 An employer having the choice to move to self-insurance improves the stability of the workers' compensation arrangements by helping to make the state and territory schemes more efficient and more sustainable. The current arrangements are becoming costly, with premiums increasing and in Optus' view are not sustainable.
- 1.26 A number of workers' compensation schemes are under financial pressure because their premiums do not sufficiently fund their claims. These funds are increasing their premiums. Employers with a track record of effective claims management and relatively lower overall claims are seeing their premiums rise.
- 1.27 The costs of the state and territory-based workers' compensation schemes are becoming expensive for these employers. Optus expects to pay over \$6 million in workers' compensation premiums in 2003/04. This is approximately 0.9% of its wages costs.
- 1.28 State and territory workers' compensation authorities normally do not advise of premium rates for each financial year until a few days before the start of the new financial year. This makes budgeting impossible and requires companies to ensure that they assume worst-case scenarios for workers' compensation costs to build into their costing models. Although we do not have final rates we expect the rates per state to vary between 0.42% and 4.3% of remuneration costs (however defined). These rates do not take into account the expected large NSW increase.
- 1.29 Approximate workers' compensation rates (as a percentage of remuneration) per state for Optus in 2002/2003:
- | | |
|-----|-------|
| ACT | 1.32% |
| NSW | 0.9% |

NT 2.4% Qld

0.42% SA 0.86%

Tas 4.3% Vic

1.5% WA 1.32%

(g) a regulatory framework that would allow suitably qualified employers to obtain national self-insurance coverage that is recognised by all schemes;

Optus' response

- 1.30 Optus would like to see a regulatory framework for suitably qualified employers to obtain national self-insurance coverage that means the employer does not have to also comply with state and territory schemes.
- 1.31 The process to move to the national scheme also needs to be fully transparent and consistently applied based on an independent assessment against clear criteria. This could be done by either one national scheme or one in which each state and territory agrees to a common regulatory framework which would allow licensed insurers to provide coverage under all schemes.

(h) a regulatory framework that would allow licensed insurers to provide coverage under all schemes. In doing so, the Commission should identify and assess the likely impact on employers, employees and the wider community from the introduction of competition, including on the level of premiums;

Optus' response

- 1.32 With employers having the choice to choose self-insurance, the multi-state and territory workers compensation authorities would face competition. Larger organisations can make the decision to self-insure and manage their workers' compensation arrangements themselves based on what is in the best interest of their employees and their business requirements.
- 1.33 This competition would stimulate each workers' compensation authority to improve their claims management arrangements for employees, reduce their costs and ensure workers' compensation premiums reflect true value to companies to encourage them to remain in their scheme.
- 1.34 This is contrasted with the current arrangements where companies generally have to comply with monopoly workers' compensation arrangements in each state and territory. Employers not only have no choice, but are also not guaranteed that the schemes with which they have to comply are the most efficient and cost effective.

(j) options to reduce the regulatory burden and compliance costs imposed on businesses of different sizes across Australia by the existing legislative structures for workers' compensation and OHS, within the context of the

national objective to improve the workplace health and safety of workers'. In doing so, the Commission should examine the interrelation between the workers' compensation and OHS legislative frameworks with other statutory regimes in place;

Optus' response

- 1.35 The regulatory burden and high compliance costs come from employers having to comply with differing workers compensation and OHS arrangements in the states and territories. This regulatory burden will be overcome if employers can move to more efficient and effective workers' compensation schemes and consistent OHS arrangements.
- 1.36 Workplace health and safety and workers' compensation are linked. Effective OHS arrangements reduce workers' compensation claims and liabilities. Therefore if OHS can move to a more nationally applied consistent set of standards, measures to minimise workplace injury will be on a better footing.
- 1.37 For OHS, Optus is also subject to significant variations in complexity and costs to comply with different OHS standards. As a national operator we adopt a strategy of complying with the most stringent regulation to ensure consistency and so we can train staff to common standards across Australia. Optus has to monitor and keep abreast of all the changes to OHS codes and standards across all the states and territories, rather than dealing with one national or national coordinating body. This adds cost and complexity when making sure employees comply with the most current and highest standard of safety. Reducing the costs and complexity means resources can better focus on achieving outcomes than managing the inconsistencies.
- 1.38 An example of the inconsistencies is the Victorian manual handling code of practice that Optus has adopted nationally for Optus' construction induction training, which has been developed through the Optus College and approved by WorkCover NSW. This training has been specially designed to accommodate OHS legislation in each state and territory (as have all the core Optus OHS training modules).
- 1.39 Workers' compensation schemes need to be more consistent in making sure that their premiums accurately reflect the risks posed by the various industry and company profiles. This will provide a strong incentive for companies to improve their workplace safety so they can reduce their premiums and compliance costs. With clear price signals from premiums, workers are likely to see better workplace safety and claims management arrangements.
- 1.40 To explain the workers' compensation costs mentioned above, Optus expects its workers' compensation costs for 2003/2004 to be in excess of \$6 million across Australia. This figure takes into account the foreshadowed increases in New South Wales that are likely to flow through into premiums in other states and territories, and in Victoria in particular.
- 1.41 If Optus received a national licence to become a self-insurer at or before 1 July 2003, the savings to Optus would be minimal in year one. In this year Optus would need to fully provide for claims received plus potential injuries incurred but not reported as well as provide for a prudential margin. The margin would ensure that Optus had no financial exposure if it suffered unexpected adverse

claims. However, after year one Optus would expect savings of some \$2 million per annum.

- (k) the appropriate boundaries of responsibility for the cost of work-related injury/illness and fatalities between the employer, employees and the community. In doing so, the Commission is asked to report on the current level of employee coverage by the workers' compensation schemes and the current sharing of costs and to identify under any national framework model for workers' compensation, an appropriate sharing of costs for work-related injury/illness and fatalities;**

Optus' response

1.42 Optus' commitment is to facilitate a return to pre-injury employment. To achieve this it carries the cost differences between state and territory entitlements and in achieving this outcome providing generous sick leave of up to 52 weeks. Optus aims to achieve early return to work, firstly, through early reporting and intervention. Secondly, Optus also ensures that in cases where the claim is declined or has run out it provides generous sick leave under the Optus EPA to support those employees as necessary.

- (1) the costs to the community of complementing or supplementing the coverage of existing workers' compensation arrangements, such as income support and Medicare benefits that may be paid to injured persons; and**

Optus' response

1.43 It is Optus' policy to take appropriate responsibility for all work related injuries and to ensure that all associated costs are managed in line with state and territory work workers' compensation legislation and the relevant work cover guidelines. Currently employees make the choice to claim under workers' compensation or Medicare. The choice of which benefit is utilized by an Optus employee is at the discretion of the individual as per legislative requirements.

1.44 Ultimately the social costs of workplace injury will be reduced if employers are subject to consistent benchmark standards and are subject to financial incentives to operate effective workers' compensation and OHS arrangements that benefit their employees and minimise costs.

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