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## Council of Small Business Organisations of Australia Ltd.

ABN 43 008 597 304

9 April 2003

Attention: Mike Woods  
Commissioner  
Productivity Commission

[Email: wcohs@pc.gov.au](mailto:wcohs@pc.gov.au)

Dear Mike,

I appreciate the time you, Herb Plunkett and Rob Preston spent with me reviewing the scope of your inquiry assessing possible models for establishing national frameworks in workers compensation and OH&S arrangements on April 3, 2003.

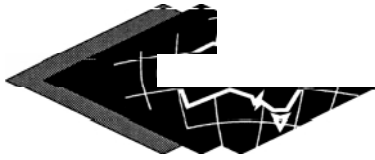
1. The comments I advised against your questions a to 1 is attached.
2. The Council of Small Business Organisations of Australia Ltd (COSBOA) comments to the Standing Committee on Employment and Workplace Relations 'inquiry into Aspects of Australian Workers Compensation' is attached as per your request.
3. In addition to the above comments I would like to stress three key points for small business that is vital for effective workers compensation and OH&S in small business:
  - (i) Reduce costs of premiums and compliance for small business by insuring the business and its site rather than the nature of its industry or employee work in assessing the real risk that exists in the business premises. This may mean reverting to real site inspections of business premises to assess the real risk for workers under OH&S and workers compensation. This will lead to lower premiums for small business as lower risks are assessed.
  - (ii) Effective OH&S and workers compensation in small business is about educating the small business to establish a culture of safety in the workplace and developing a sense of personal 'duty of care' by all employees in the small business. safety practiced daily prevents accidents. Safety manuals and procedures are only guides it is the culture of the workforce that believes in safety that prevents accidents and leads to safe working conditions.
  - (iii) Small business objects to settlements being made by insurance companies that appear to make economic sense to workers compensation providers knowing that the small business will pick up the cost in further premium increases at a later date when they are not satisfied that the claim was warranted in the first place.

Small business needs to be assured that a system is in place that verifies accurately claims being made at the time the claim is made as it relates to back and stress injuries. The suggestion being that these types of claims are seen by insurance companies expert medical personnel immediately to verify the injury.

If you require any further information please do not hesitate to contact me.

Yours sincerely

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CEO



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The Secretary  
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### **Inquiry into aspects of Australian Workers Compensation**

Workers compensation fraud has a direct impact on all employers as it increases the cost of funding the workers compensation system. Insurance companies pass on the cost of fraudulent claims to employers by increasing premiums. The loss of revenue to the workers compensation system as a result of individual employers fraudulently minimising their premiums results in increased premiums to employers. Fraud places an unfair burden on employers who comply with the system and places them at a competitive disadvantage. Fraud means less money is available to those workers who need it.

In addition to fraud by non-payment of premiums fraud also occurs through fraudulent claims made by employees. This is where an injury occurs that may not be visible by a witness but is alleged to have taken place either at the workplace or on their way to or from work. The frustration for small business is that often these types of claims are accepted by the insurance companies and as a result the premium to the small business is increased to cover the payout of the claim where the small business person has no say in the settlement of the claim. In many instances the small business person would dispute it.

Small business can be disadvantaged by the rating that applies to different types of businesses and industry groups whereby one individual employee doing a specific task can increase the rate of premium for the establishment as a whole because the rate for that individual is higher than the rate for the other staff members. Small business would like to see a rating on the individual business not by the type of work that is being carried out by individual employees within the business but for the insurance company to assess risk based on how the business is set up and operates rewarding small business that have good OH&S practices and no claims. Most ratings are based on past claims by industry and work areas, this does not always reflect how small business operates because what causes these claims may not always exist in the type of work being conducted in the small business but the small business is penalised by the rating assigned to it based on high risk due to different types of work practices.

I have been advised by an insolvency practitioner that he has seen an abnormal proportion of liquidations appointed by the court at the application of the Workers Compensation Insurers. This is both a symptom and a cure of delinquent non-payers. Quite often the company which is wound up

has few creditors and no assets. Regularly the company has not traded for many years. The legal cost to the Workers Compensation Insurers to have the company wound up may be \$4,000 and above. The liquidator appointed by the court is regularly unpaid for his fees to conduct the liquidation. Often times the directors have disappeared and cannot be located.

If the company were trading and not paying its normal trade creditors, experience shows that ninety nine times out of one hundred the company is wound up at another creditors or the directors instigation ie well before workers compensation commenced action. Sometimes a trading company is wound up by a workers compensation insurer but this is normally typical of a director who has ignored workers compensation paperwork and demands while paying other accounts. This is the exception that proves the rule.

The practitioner understands that under the workers compensation legislation the workers compensation insurer cannot cease insuring the company until the company has notified the insurer that it no longer employs. In the absence of notification the workers compensation insurer must continue to cover the company until such time as the company is wound up. Hence with delinquent payers the insurer has no real option other than to liquidate the company at its cost - a cost that is recovered through higher premiums from those who do pay.

Work related injury or illness costs millions of dollars every year. Poor health and safety practices can result in unexpected costs which may affect the profitability or even the future of small business.

The number of people working in the small business sector is vital when taking into account the size and nature of OH&S problems and the approach needed for the successful delivery of OH&S information to that group.

44.5% of the Australian workforce (based on ABS statistics) work in businesses that have 20 or less employees. These businesses are spread over 1,140,000 separate businesses throughout Australia. The remaining 55.5% work in businesses with 20 or more employees spread over 52,000 separate businesses throughout Australia. Therefore it can be seen that reaching the businesses with less than 20 employees requires a lot more effort than that required to reach the rest of the workforce.

Small business has concerns regarding workers compensation:

1. Simpler and clearer guidelines for OH&S that is related to small businesses of less than 20 employees would assist in improving work safety;
2. Simpler paperwork requirements for processing OH&S claims;
3. More effective management of claims by insurance companies that reduce the premium to small business taking into account previous no claim history and getting the employee back to work on a more timely basis (many insurance companies are now doing this);
4. Small business is concerned about rising costs in the workers compensation area. Small business tries to ensure a safe workplace but is concerned that the burden of any claim is billed in future premium increases. Most small businesses feel that their past no claim history should cover the cost of the future claim however workers compensation insurance has been burdened by large claims and lack of reserves that is now causing the rise of premiums when a claim is made.

In management of claims the small business operator would like to see minor injuries being covered by the employees own doctor or local hospital without the increased cost of these procedures being processed as a workers compensation claim (the cost is higher by a local doctor when he sees it as a workers compensation claim than normal visit). The procedure of notifying the insurance company should continue in a simple method that confirms the nature of the injury in order to protect the employee in the event the minor injury becomes long term or of a more serious nature. This would reduce the cost of processing this type of claim than what occurs at present. Payment at doctors and hospitals should be on a bulk bill basis with any gap being paid by the employer and reimbursed directly by the insurance company. This may bring savings to the processing cost of workers compensation claims.

Small business operators do not generally keep detailed records that show lost production time as a cost in relationship to an accident or injury in their workplace. They accept the reality that the employee will be lost to them until they return often causing the small business person to take over the role.

In summary small business would like to have reduced cost of premium for their workers compensation, to maintain a safe workplace, train their staff in operating safely, and being mindful of their duty of care. When an injury occurs they would like to see their employee return to work as quickly as possible and where the injury prevents the worker from doing the same job to have some method of pooling that employee to other small business who can offer employment that this employee can now do that may not be available in his present employment thus reducing the workers compensation claim.

If you require any further comments regarding this submission please contact:

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## **Scope of the Inquiry**

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. 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;

1. identify definitions by State Workers Compensation schemes to define the definition of employer, employee within sole traders, incorporated entities, partnerships and trusts
2. review workplace definitions by State for commonality
3. standardise on definitions for work related injuries/illnesses and fatalities based on workers compensation and OH&S standards across Australia
4. the original definition for workers compensation was for injuries incurred at the workplace. This should return by eliminating journey claims as injury occurred coming or going to work has nothing to do with the employer, this again has caused increases in premium and costs to workers comp schemes

b. a consistent benefits structures that provides adequate levels of compensation, including income replacement and medical and related costs, for injured workers and their families;

1. review standard disability and income protection insurance policies that are used by self-employed persons to create a standard that could be incorporated under workers compensation claims for income replacement.
2. with regard to medical and related costs this would have to be defined by experts who are familiar with medical and related costs for various types of injuries that can occur in the workplace

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

- I. the cost of meeting claims as a result of litigation is causing a review of common law damages because the awards being settled by juries and/or judges have been inconsistent and unrealistic causing the business community to have increased costs in their workers comp premium and workers comp providers being under funded to meet these claims
2. the object should be to provide the injured party with the appropriate remedy to meet their life needs not a life-style that the worker would

never have been able to obtain if injury did not occur and these pay-outs should not be just lump sum but should be based on payment system as per salary eg fortnightly

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;

1. injury management should take place immediately the claim is made to verify whether the claim is valid or fraudulent
2. a study of early intervention and rehabilitation programmes should be made to identify the successful programmes to be used across the nation. The ability to return workers on light duties as soon as possible is both good for the worker and the employer providing the employer has the ability to offer light duties. In the case where light duties are not available in current employment there should be a pool of employers who could take up this work opportunity at no detriment under other IR regulations. The psychological impact on workers with injuries who are able to work on light duties but unable to get a job creates unseen damage

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

- i. encourage the development of internal dispute resolution processes by employers;  
create a culture within organisations that allows dispute resolution methods to operate without fear or favour (eliminate us and them mentality)
- ii encourage the involvement of the employer, the employee, and insurers/schemes;  
small business is most discouraged when they are eliminated from the decisions being made by insurance companies on the claim made by their workers. It would appear the decisions made by the insurance companies to settle is often at odds with the employers view of the situation. As soon as a settlement is made the cost is then borne by the employer and this is the real issue that bugs them
- iii encourage the use of alternative dispute resolution including mediation and conciliation; and

supportive of this approach  
iv retain an appropriate appellate structure for employers and employees.  
Supportive of this approach

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;

1. current structure is flawed because it looks at employees duties not at company operations which encompasses all employees duties. If a few employees are in a high risk area (based on. industry groupings) then the company is subject to a higher premium.
2. new system should be a company rated system that encompasses all employees at a singular rate for the company based on companies over all risk and occupational health and safety issues
3. reward should be given with lower premium for those companies that have a no claim record
4. to create a program that provides incentives that requires analysis will have too much red tape and there would be no cost benefit

g. a regulatory framework which would allow suitably qualified employers to obtain national self-insurance coverage that is recognised by all schemes;  
the self insurance question would only benefit very large organisations and /or government entities. The burden on the rest of the employers as a result of these large bodies being removed from workers comp schemes may end up costing small organisations a higher premium.

h. a regulatory framework which 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;  
a universal workers comp coverage Australia wide rather than individual coverage by State/Territory seems to be a sensible solution for those companies that operate across the nation. Such licence insurers should be able to provide such universal coverage which would lead to lower cost, however State government income would have to be adjusted.



i. 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;

paper work and the regulatory burden in managing workers comp needs to be improved. Australia is too small to have different systems in each State and Territory, there should be one method nation wide that is user friendly and with minimum paperwork that allows safety in the workplace to be maintained and provides immediate action for employees who are injured to be taken care of

j. 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;

1. the notion of 'personal duty of care' needs to be restored in the workplace so that the concept that if anything happens to me I will be covered by workers comp policy needs to be removed. The burden of cost of workers comp coverage falls on the employer. This causes employers to employ less people and encourages work to be completed on contracts.  
a national disability and income protection policy for employees may be an alternative to workers comp

k. 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

This issue can only be resolved when Federal and State politicians agree on whose financial pot these payments would come out of.

1. the national and State and Territory infrastructure and relative costs necessary to support the models identified in establishing national frameworks for workers' compensation and OHS.

To have a national framework for workers comp and OH&S requires a fully funded, reduced compliance cost and simple to claim system and eliminating issues not relevant to workers comp and OH&S.