



AUSTRALIAN PHYSIOTHERAPY ASSOCIATION

# **SUBMISSION ON NATIONAL WORKERS' COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY FRAMEWORKS**

Presented to

**The Productivity Commission**

Prepared by the

**Australian Physiotherapy Association**

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# **INTRODUCTION**

Physiotherapists have significant involvement in a variety of aspects of the workers' compensation and occupational health and safety (OHS) systems. The Australian Physiotherapy Association (APA) represents physiotherapists throughout Australia in public and private practice, with a membership of over 9,000. This submission is on behalf of APA members who: treat injured workers; conduct research in ergonomics and OHS; provide advice and assessments in ergonomics and OHS; operate private practices employing staff; and have responsibility for OHS in public sector positions.

The submission specifically draws attention to strong evidence that physiotherapy helps workers return to work faster – the latest review indicates that 45 sick days per year can be saved in the management of back injury.

## **A NATIONAL OR NATIONALLY CONSISTENT FRAMEWORK**

The APA supports either a National or nationally consistent approach to workers' compensation and OHS arrangements in Australia. A National approach is preferred but a nationally consistent approach with common legislation, regulations, codes of practice, enforcement, premiums and rehabilitation and return to work structures would also be suitable.

The physiotherapy workforce is mobile. Members do not necessarily practice in one State or Territory for their entire career. The difference between the systems makes it more difficult than it should be for members to re-establish themselves in another jurisdiction.

Differences also result in differential outcomes for injured workers: workers with the same injury in different jurisdictions can be entitled to different treatment and compensation. The APA contends that this system is inequitable and unsustainable.

At a policy level the different systems do not encourage the development of consistent, evidence based OHS standards or practices. In practice development and research activities are duplicated and resources are wasted.

At a National level, the APA could make a greater contribution to policy development and practice advice in relation to safe work practices, ergonomics, rehabilitation and worker education. Physiotherapists possess expertise in all these fields and in a National framework the APA could effectively facilitate their

involvement. The APA does not have the resources to make such a contribution in each State and Territory, although its Branches currently do what they can to contribute to local workers' compensation and OHS systems.

## EDUCATION

APA members report that many of the injured workers they treat do not understand the compensation system: a fact that leads to frustration and errors. Much effort has been spent on educating workers about OHS issues. This is an important and ongoing process and the APA recommends that education campaigns be expanded to promote understanding of the compensation scheme.

If a National or nationally consistent compensation scheme is introduced then a National OHS and workers' compensation education strategy could be implemented.

The APA encourages responsible authorities to build an injury prevention education component into the workers' compensation and OHS framework.

## INDUSTRY COMMISSION REPORTS

The APA broadly supports the recommendations contained within Industry Commission Reports Numbers 36 and 47.

We note, however, that the recommendations do not generally refer to the role of academic evidence and experts. For example, in recommendation 10 in report 47, the Industry Commission calls for the involvement of employers and employees and their organisations in the development of enterprise safety systems. The recommendation goes further to suggest that the implementation of such systems should be granted as *prima facie* evidence that care has been exercised.

The APA acknowledges that workers and employers have special knowledge of their workplaces but contends that they do not necessarily have all the knowledge or expertise needed to identify and implement evidence-based, best practice solutions. If enterprise safety systems are to receive automatic legal recognition then the participation of experts, such as physiotherapists and ergonomists, ought to be mandated. We acknowledge that the recommendation is primarily about ensuring consultation, but the APA strongly advises that expert involvement in the development of enterprise safety systems be included in final recommendations.

Recommendations 11 and 13 should also require expert involvement.

Again referring to report 47, the APA is generally supportive of recommendation 27 but would seek to add to it. The recommendation refers to what OHS template legislation ought to cover. The APA supports an OHS philosophy that focuses first on hazard removal and only where the hazard cannot be removed, on risk reduction and management. This philosophy recognises that some practices and goods are inherently dangerous and seeks to eliminate them in the first instance. Where they cannot be eliminated, controls and practices must be implemented but, acknowledging the fallibility of human beings, it is preferable to remove the hazard rather than rely on the system.

The template legislation should also encourage physical activity and exercise programs to prevent injury. There are extensive data supporting the social and economic benefit of targeted exercise. Work hardening programs seem to be the major physical activity associated with OHS and workers' compensation but these programs are instituted too late, that is as rehabilitation programs. The APA contends that governments ought to take every opportunity to promote physical activity for injury prevention and for healthy lifestyle. It would be appropriate to refer to the importance of physical activity in injury prevention either in the preamble of the template legislation or at least the explanatory notes. A reference to the importance of general fitness in injury prevention may also be appropriate.

In relation to report 36, the APA strongly supports the view that all medical and related expenses should be covered by the compensation system. If the required physiotherapy services are not covered then many workers simply will not be able to access the services they need. State funded hospital and community physiotherapy is very difficult to access and there is often no government funded alternative (ie physiotherapy is not covered by Medicare and many workers will be ineligible under various subsidised schemes). If patients do not receive appropriate rehabilitation they run the risk of re-injury or enduring pain and suffering that could otherwise be alleviated.

## **TERMS OF REFERENCE, ITEM 9(D)**

New South Wales WorkCover has produced a comprehensive literature review examining work hardening/work conditioning programs. It clearly demonstrates the value of these programs for the treatment of injuries that do not require surgical intervention and are unrelated to other pathologies, and shows the importance of physiotherapists in these programs. The paper is available at:

[http://www.workcover.nsw.gov.au/html/pdf/work\\_conditioning\\_report.pdf](http://www.workcover.nsw.gov.au/html/pdf/work_conditioning_report.pdf)  
Michael K Nicholas. Work Hardening/ Conditioning,  
Functional Restoration and Pain Management Programs for Injured  
Workers with No 'Red Flag' Conditions. June 2002

The APA also draws attention to a systematic review recently completed by APA member, Eva Schonstein. The review provides level one evidence of the efficacy of work hardening programs and the conditions under which such programs are optimal. The review is part of the Cochrane Database and its reference is listed below.

Schonstein, E; Kenny, DT; Keating, J; Koes, BW. Work conditioning, work hardening and functional restoration for workers with back and neck pain. *The Cochrane Database of Systematic Reviews*, The Cochrane Library, Copyright 2003, The Cochrane Collaboration.

The review provides high-level evidence that physiotherapy gets injured workers back to work faster. Workers with back pain participating in properly designed work conditioning programs involving a physiotherapist have an average of 45 days less sick leave than those without an appropriate conditioning program. Appropriate physiotherapy at the right time saves money for insurers and provides better outcomes for injured workers.

## ISSUES PAPER: QUESTIONS

Addressed below are the questions contained within the *Issues Paper 2003*. Where a question is not listed the APA has no position on that matter.

### National Frameworks

*What are the main problems arising from having multiple jurisdiction-based regimes throughout Australia? Is there a need for national frameworks to address perceived deficiencies in comprehensiveness and consistency between arrangements across Australia for workers' compensation and OHS? Would such frameworks need to encompass all aspects of those arrangements?*

As discussed above, the APA strongly supports a National Framework to promote consistency, simplicity and fairness. The framework should be as extensive as possible and should ideally be achieved in consultation with governments, workers, experts and health professionals. Assuming costs were covered, the APA would be pleased to nominate a representative to participate in the process.

*Should the two areas of workers' compensation and OHS be combined in one framework, or are separate frameworks more appropriate?*

The APA supports integration into a single framework, and calls for that framework to incorporate both educational and research components.

## National self-insurance

Some members report that self-insurance companies have significant power over claimants and that this can exacerbate the injury rather than facilitating healing. Delays in patients' accessing treatment are commonly linked to less favourable outcomes. Reducing the autonomy of the employee in the management of their own condition (by mechanisms such as denying the patient's choice of health professional) can lead to additional stress and can hinder recovery.

The APA calls for an evaluation of the performance of self-insurers comparative with independent insurers across a range of parameters, in particular the health outcomes for claimants. Such an evaluation should canvass the opinions of all health professions providing care under self-insurance schemes, as well as a representative group of injured workers.

## The OHS Model

*How effective have these arrangements been in promoting greater consistency? Can this be improved, and if so how? Such things could include the composition of NOHSC, its work priorities, level of funding, and the willingness of individual jurisdictions to adopt, and consistently apply, guidelines developed by NOHSC.*

*What would be the features of a national OHS framework that would generate the greatest benefits?*

To the extent that arrangements remain inconsistent, the current model has not been highly effective. There still exist a range of codes of practice in different states, some of which are not informed by the latest available evidence or best practice. A national expert committee charged with responsibility for developing evidence based national codes would address at least this aspect of the inconsistency. Governments should be asked to commit to the guidelines before they are produced: the guidelines should be based on good science and practice not bureaucratic politics. Arrangements also need to be made for the consistent application and enforcement of those guidelines.

## Reducing the regulatory burden and compliance costs

*How significant are such additional administration or compliance costs (any quantification of such costs would be useful)? Does the size or kind of activity of the business or its location matter in terms of the impact of those costs? Are there particular elements of those different workers' compensation or OHS arrangements that generate most of these additional costs? Within the context of maintaining or improving work-related health and safety outcomes, what options exist for reducing the regulatory burden imposed on businesses (employers, insurers, rehabilitation providers etc) by the existing multiple arrangements?*

Ultimately the whole community pays the costs of a workers' injury - whether by taxes, insurance premiums or prices of products or services. There should be an effort to contain the costs as much as possible to those who benefit most directly from the employees' labour, that is the employer. This approach also places the burden with those who are (in many instances) able to prevent the injury.

Where a small employer has no claims history, their premiums are based on industry rating, which does not reflect their claims experience. An existing employer with minimal claims has little potential to affect their premiums so the incentive to invest in injury prevention is minimal.

## Access and Coverage

*How material are any such differences to determining who or what falls within the ambit of workers' compensation or OHS arrangements? To what extent do these differences impede the collection of meaningful data for the purpose of making business or policy decisions?*

It has been reported to the APA that data collected by the Victorian WorkCover organization is not collected in a way that allows groups of employers to readily determine how a change in OHS management might impact their claims duration or cost.

It is also of limited value in determining the nature and mechanism of injury. Specifically, the cause of the injury is taken from the first medical certificate, at a time when the ability to differentiate the injury is poor and the capacity to determine its cause is limited both by the expertise of the practitioner initially consulted and the recency of the injury. These data are subsequently interpreted by non-medical personnel and coded based on the National Data Set (it must be acknowledged that a nationally consistent data set is a step in the right direction). Data are not altered despite new information, which may demonstrate a different

mechanism of injury. This results in large categories, such as 'sprains and strains' that lack meaning and impede progressive business or policy decisions.

The method for injury data collection and recording should be revised considering that good data are essential to the prevention of future injuries.

*How material are these differences in adding to administration and compliance costs for firms operating in more than one jurisdiction? Where significant differences exist, is it practical to move to nationally consistent definitions (ie what are the costs and benefits of doing so) and what might these definitions be? To what extent has the changing nature of production activities and workplace arrangements affected the number and proportion of workers covered under workers' compensation arrangements? Is this a matter for concern and, if so, why? How might the definition of worker or employee be changed to address these concerns? How might such changes be best introduced? Should alternative arrangements apply to address this situation and, if so, what might they be? What might the implications be of changing the definitions of a 'worker' on other regimes for which governments are responsible eg payroll tax? Are existing OHS arrangements able to deliver appropriate levels of work health and safety even where workers' compensation coverage does not apply? If not, what measures might be introduced to address any deficiency?*

A national definition of worker should be adopted to promote fairness and equity, and to simplify cases where the worker is working outside their own State or Territory.

The APA supports the inclusion of contractors in the definition of worker for the purpose of responsibility for safety and compensation. This facilitates the process of risk control by retaining the responsibility for control at the site at which the risk exists, rather than via a third party.

## **Benefit Structure**

*What are the effects on firms and employees of having different benefit structures?*

The effect on employees is inequity in the level of treatment to which they are entitled and the varying complexity of treatment they receive.

*Should access to common law damages be part of any national workers' compensation framework?*

Access to common law should remain only in the circumstance where treatment expenses cannot (due to the extenuating or unusual nature of the claim) be

covered by the compensation scheme, the worker out of pocket in respect of wages or earnings or the employer's negligence has been criminal. The system should adequately compensate injured workers without need to resort to the adversarial system.

## **Early intervention, rehabilitation and return to work**

*Are the differences in the approaches taken by the various jurisdictions delivering significantly different outcomes and costs? To the extent this occurs, does this suggest a need for more comprehensive or consistent approaches? How might national frameworks be established to provide for greater consistency in early intervention, rehabilitation and return to work in all jurisdictions? What features should such frameworks embody to best provide incentives to achieve early intervention and effective rehabilitation to injured or ill workers and to care for the long-term and permanently incapacitated?*

There is evidence that early intervention leads not only to better outcomes, but also to faster rehabilitation and therefore return to work. Some state workers' compensation authorities have investigated the evidence and a literature review has been conducted (at least) in Victoria. Auditing, documenting and evaluating the work of state authorities may provide sufficient evidence for the parties involved to promote and encourage early intervention. A further review may be necessary but it is possible that an audit of existing resources will prove adequate.

In South Australia some companies have onsite physiotherapy services. APA members report that these companies generally have much earlier intervention programs, with better outcomes, than companies without onsite physiotherapy services. Where services are not located onsite, the worker regularly has to wait until claims have been processed before being able to access services. The APA believes that in reviewing National workers' compensation and OHS arrangements, consideration ought to be given to speeding up access to initial physiotherapy intervention, possibly by recommending that companies have onsite physiotherapy services.

## Dispute resolution

*For any national frameworks, what features are required to achieve an effective dispute resolution mechanism that: encourages the development of internal dispute resolution processes by employers; encourages the use of alternative dispute resolution, including mediation and conciliation; retains an appropriate appellate structure for employers and employees; and minimises costs for preferred outcomes?*

Any dispute resolution process should be independent of the compensation authority and allow all parties equal access. It should have the power (and resources) to conciliate, investigate and arbitrate. It should deal with all complaints from lack of responsiveness by the insurer to allegations of falsification of documents. Appeals should be to the relevant administrative appeals tribunal.