Productivity Commission

National Workers' Compensation & Occupational Health & Safety Frameworks

Submission by CSR Limited

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Executive Summary

CSR Limited [CSR] generally supports the submissions made by the National Council of Self-Insurers and those made by State based Self-Insurer Associations.

CSR makes the following submissions:

- The current regime of self-insurance licensing duplicates efforts of both national employers seeking to self-insure for workers compensation purposes and of workers compensation regulatory authorities assessing the licence applications.
- There is a waste of resources by individual state regulatory authorities in reviewing national employers' performance as self-insurers.
- Scarce resources can be better used to work with scheme employers especially small to medium enterprises to improve their OH&S performance, for the benefit of the whole community.
- Single licensing, single reporting, centralised claims management and a single system of workers compensation would improve the competitiveness of national employers.
- The State based HWCA organisation has failed to live up to the expectations it created in the late 1990's and should be replaced by a Federal body willing and able to implement change.

National Frameworks

Self-Insurance – single licence

Self-insurance is clearly the most effective incentive for the prevention of work-related injury and illness and must be promoted. The ability for a national employer to self-insure for workers compensation under one licence and one regulatory umbrella, instead of having to obtain a multitude (potentially up to 8, currently) of licences from corresponding regulatory bodies, would enhance competitiveness.

The extra costs of multi-jurisdictional licensing are outlined below.

Self-Insurance – single regulator

A National framework may best be administered by APRA, although Comcare or the Safety Rehabilitation and Compensation Commission may have different views.

The administering body most likely already exists so major costs will not be incurred by having to create a whole new body to administer it.

Self-Insurance – simple entry criteria

The National framework should be simple and examine those criteria fundamental to claims management and payment of compensation.

There should be no discrimination between insurers and self-insurers in relation to the licensing benchmarks used.

The ability to manage claims and prudential financial benchmarks are the ONLY criteria that are relevant to the issue of a licence. ALL other criteria are irrelevant to granting of the licence.

Self-insurance – Remove the OH&S criterion for entry

The inclusion of a requirement for the workers compensation regulator to assess fitness for a claims management and financing role by way of OH&S audits is irrelevant. It is just bad public policy.

OH&S Acts are the means to regulate **all** employers.

It is opportunistic and wasteful of public and private funds to include OH&S as a criterion for self-insurer licensing.

Fund managers, claims agents and insurers who administer workers compensation legislation on behalf of governments (WorkCover) are judged only on their perceived ability to manage, administer and finance claim payments when seeking a licence to act as a workers compensation claims agent/funds manager.

That is exactly what a self-insurer seeks to do, but for its own employees. To impose restrictions or conditions more onerous than those imposed on fund managers, claims agents and insurers is inequitable and inefficient.

In addition, those companies self-insuring already have enough incentive to have an effective OH&S policy. It is uncertain whether the OHS requirements were imposed to encourage self-insurers to be committed to OH&S. If this is the case, it is totally unnecessary as the financial gains of self-insurance are enough to promote such a commitment to OH&S.

Inefficiency of OH&S criterion

The funds spent by the workers compensation regulator are badly spent. The reasons are self-evident:

- Funds are spent on those employers that do not affect the scheme funding in any way.
- **These** funds are **not** spent on "bad" performers in the insured scheme
- The requirement that potential and existing self-insurers meet accepted criteria for OH&S means that they are already "best" practice employers. Spending scarce funds on such employers to try to achieve marginal improvements is bad public policy. The law of diminishing returns [80-20 rule] demands that efficient expenditure should be directed to where it does most good and yields the highest return.
- The driving force behind self-insurance provides sufficient impetus for a self-insured employer to maintain and improve its OH&S performance.

We are not aware that there has been any public evidence produced by a regulator that the OH&S audits conducted on self-insurers are effective in reducing accidents. It would not be surprising to find that the costs far outweigh the benefits. CSR's safety performance in Western Australia is as good as or better than all other states despite the absence of OHS auditing criteria in the WA licence renewal process.

CSR submits that Western Australia has the best system for the granting and regulation of self-insurance licences. In Western Australia potential self-insurers are judged on their financial capabilities as well as their capability to administer claims.

The OH&S Acts are there for the express purpose of setting and policing the safety performance of employers. The money spent in this regard should be spent where it is needed. This is by targeted selection of the worst employers or group of employers for assistance (and policing).

If a self-insurer fits the criteria for this attention, so be it.

The so-called fitness test to become what so many regulators describe as a "privileged" self-insurer is flawed in its operation as it denies scarce resources being spent on businesses that should really benefit from them.

Every dollar spent by a self-insurer on workers compensation benefits is capable of being sheeted home to an individual accident. The diffusing and "comforting" effect of insurance is avoided. Each accident bears its unique costs and in the best system is borne by the manager in charge of the injured worker at the time of the incident that caused the injury.

If one were to seek to improve the overall efficiency of the insured scheme, regulators should be encouraging bad performers to leave their scheme. The driving force for improvement will become transparently obvious to the particular employer.

The Cost burden to a self-insurer of managing the OH&S criterion

CSR spends in excess of $350,000 pa on carrying out specific audits using external auditors over and above "normal" OH&S audits required for prudent OH&S management.

In addition to these there is the actual "formal" audit cost. For example, the cost of a NSW WorkCover OH&S audit, conducted every three years can be readily quantified. It costs CSR more than $80,000.

The cost to WorkCover of a Lead auditor plus three others for at least 6 days could be estimated to cost no less than $10,000.

About 20 self-insurers are audited in NSW each year.

Self-insurance - Remove "number of employees" criterion for entry

Access to self-insurance should be available to any employer in Australia with sufficient, demonstrated capacity to meet its projected liability obligations for its entire Australian workforce no matter what numbers of employees there are in each state. A national self-insurance licence should automatically cover all worksites in Australia and all wholly owned subsidiary companies and other controlled entities.

The judgement as to the correct size of business to sustain self-insured operations including financial viability and operability (e.g. ability to provide suitable selected duties) should be a matter for the potential licensee, not the regulator.

WC Scheme design

Single National Scheme

No matter what state is looked at, all workers compensations schemes are "no fault" systems and aim to deliver medical benefits, weekly payments and lump sum compensation benefits to injured workers. The only difference between the states is the process by which these benefits are delivered. Most states allow workers access to common law damages however all states have, at some point, have expressed dissatisfaction with the common law aspect for workers compensation.

As all schemes aim to deliver the same benefits to injured workers, there is no reason why all states should not operate under a single procedure for administering claims.

CSR supports a **single national scheme** of workers compensation and benefit delivery. This would be a distinct advantage to national employers, and should also be advantageous to workers if designed well.

Such a scheme, would allow application of one set of procedures and administrative processes to be implemented by employers across the entire country. Workers and employers would be treated in the same manner across Australia and not treated differently because they work on different sides of a somewhat arbitrary line marking a state border.

The "best" scheme

The "best" aspects of each current scheme should be taken into account in framing the legislation for a new scheme.

The challenge is in determining what is meant by "best", but this should not deter us from the effort in carrying out the task.

CSR supports a definition of "best" as being that which provides the simplest and most efficient way to return injured workers to the workplace whilst delivering reasonable benefits to them for a reasonable time. It is certainly not a combination of the most onerous provisions of every current Act.

The model should incorporate self-insurance to provide a benchmark for the scheme.

Is there a "best" scheme currently?

As a national self-insurer, CSR believes that the Queensland system provides the greatest certainty for both employers and workers.

The opportunity to cease a claim when an injury is deemed to be stable and stationary by the assessment and payment of compensation for permanent impairment is a simple and well-understood concept. The ability to sue an employer at common law provides a safety net for those badly injured.

The legislation in NSW and Victoria is technically difficult to understand and provides no finality to a claim for either employer or worker.

South Australia is the most beneficial to workers but does allow finality through the redemption process.

Simply put, the "best" system lies somewhere close to the Queensland system but with some streamlining being made to the Act.

National Self-Insurance

Costs of multi-jurisdictional licensing

To a national employer, viz. an employer in more than one state, the ability to obtain one licence to self-insure in all jurisdictions would be more cost effective. There are more than 30 national employers that are currently self-insured.

Multiple jurisdictional-based regimes throughout Australia produce duplication of effort in obtaining and maintaining licences.

As an example, during last year, CSR Limited made application for 7 licences in 6 different jurisdictions.

Five were new licences caused by the demerger of CSR Limited in forming a separate entity, Rinker Group Limited. Two were renewals of existing licences.

The estimated total cost of applications for the 5 new licences was in excess of $310,000.

The estimated total cost of renewal of the two licences was in excess of $150,000.

The ongoing cost to CSR of maintaining and renewing 5 self-insurance licences is estimated to cost over $700,000 pa.

Cost savings of maintaining a single licence

The estimated ongoing cost to CSR of maintaining and renewing 1 self-insurance licence is estimated to cost only $200,000 pa, a saving of $500,000 pa. The savings are achieved by:

- Reduction in administration staff
- Reduction in administration fees
- Reduction in reporting costs

A component of this is removing the necessity to report at different times in different formats to different regulators. The extra cost of reporting to five different regulators is estimated for CSR Limited at in excess of $60,000 per annum.

Cost savings in self-insurer claims management via single licence/single scheme

The ability to centralise workers compensation claims management rather than being constrained to provide a dedicated claims advisor in each state would reduce costs, but not detract from proper claims management. Queensland, Victoria and Western Australia mandate that a person located in those states must conduct claims management in those jurisdictions.

Given the modern communication techniques currently available this represents outmoded thinking. After all a claims manager located in Townsville is no closer to Brisbane than a claims manager located in Sydney is to Melbourne or Brisbane!

A self-insurer has the capability and techniques to put in place a personalised process so that any injured worker can make a claim to a centralised claims management office without realising its remoteness.

Representation at dispute conferences would not be affected.

It is in the interests of the self-insurer to put in place the most efficient operation possible suited to its own structure. This should not be the business of the regulator.

Cost savings to CSR of implementing an effective single scheme, single licence claims management service is estimated at $150,000 pa.

[These savings are in addition to those estimated for licence administration]

Cost savings – Operating Procedures

Each state regulator expects that a self-insurer will write and maintain a set of self-insurer operating procedures.

CSR Limited has about 30 operational procedures of which ten are common to all states. The remaining 20 are continually updated to take account of both the legislation and the changes in regulator guidelines for self-insurers.

The extra cost to CSR of making changes to more than one set of procedures is estimated to be $30,000 per annum.

The cost to the 5 regulators reviewing these changes and approving them is probably of the order of $50,000 per annum.

The OHS model

No comment

Reducing the regulatory burden and compliance costs

Those relevant to a self-insurer are outlined above.

Access and coverage

A workers compensation policy of insurance taken out in one state should enable coverage in all states. The policy should be taken out in the state where the greatest numbers of employees work. Although there have been current moves to allow this to happen, it is not a speedy process and requires mirror legislation in all states.

A national scheme would enable this to happen by definition.

Benefit Structures (including access to common law)

CSR submits that the Queensland benefit structures are the best in Australia, providing a clearly defined cut-off via the permanent impairment assessment, which may lead the worker to take common law proceedings. CSR does not see this as the great “undesirable” that others may see.

The greatest danger to compensation is to allow enormous payments in the no-fault system by denying workers the right to obtain proper compensation at common law.

Suitable hurdles and a properly codified definition of “fault” would eliminate most of the opportunists wishing to gain from a lax system.

Finality is a magic cure for many work related conditions, as it is with other human processes. It is not the "Lourdes" effect, but rather that of an ordinary worker waiting for "justice" after the employer has taken away some part of the worker's physical or mental well being.

CSR submits that there are inequities in the system whereby it is too easy for a slightly injured person to obtain relatively high benefits whilst it is too hard for a badly injured worker to obtain a satisfactorily high benefit.

Cost sharing and cost shifting

CSR submits that cost shifting of workers compensation to the Australian taxpayer is a reasonable outcome for both employers and workers.

Employers are taxpayers. In the same way that a non-work related injury might lead to sickness benefits being paid by the Australian taxpayer, the Australian taxpayer should also pay for work-related injuries, after a reasonable period (say four years). The insurer's liability would then be capped.

Workers would be relieved of the burden of coping with the uncertainty of the workers compensation system.

Early intervention, rehabilitation and return to work

CSR supports the concept of early intervention as the key injury management process in lessening the burden of workers compensation.

It is necessary however to first overcome the tendency for managers to want to delay intervention whilst they look to guard their own position.

There are many varied forces working against the early intervention process, which must be overcome for successful outcomes.

These include

- Safety programs delivering a monetary prize to workers for a nil injury performance;
- Bonuses paid to managers for achieving better than set injury targets;
- Reduced salary rises paid to managers not achieving set injury targets;
- Disciplinary action taken against workers having accidents.

Hidden injuries do not remain hidden forever and inevitably cost more when they come to light.

Dispute resolution

No comment.

Premium setting

No comment

The Role of private insurers in workers' compensation schemes

No comment