

11th July 2003

Mike Woods
Presiding Commissioner
National Workers' Compensation and
Occupational Health & Safety
Frameworks Inquiry
Productivity Commission
PO Box 80
Belconnen
ACT

Dear Mr Woods

Thank you for the opportunity to present Westpac Banking Corporation's submission to the Productivity Commission at the public hearing on the 24th June 2003. At this hearing additional information was requested by the Commission from Westpac, in particular our:

- experience in relation to journey claims to and from work
- considerations in relation to seeking eligibility under the Commonwealth Comcare scheme
- preferences in relation to the current models of both workers' compensation and occupational health and safety schemes

1. JOURNEY CLAIMS TO AND FROM WORK

As presented in our submission, the workers' compensation arrangements in each of the state jurisdictions vary considerably and the area of journey claims is no different. The table over the page outlines the provisions for journey claims under each of the state jurisdictions.

Jurisdiction	Legislation Reference	Provision	Compensible?
New South Wales	Workers Compensation Act (NSW) 1987	Section 10(3)(a) Covers all journeys to/from work, and from work to work related places.	Yes
Victoria	Accident Compensation Act (VIC) 1985	Section 83(1)(b) & 83(2)(a) Only covers journeys which are part of employment but does not cover journeys to/from work.	No
Queensland	WorkCover Queensland Act (Qld) 1996	Section 37(1)(a) Covers journeys, including journeys to/from work, but exclusions apply.	Yes
South Australia	Workers Rehabilitation and Compensation Act (SA) 1986	Section 30(2) and (5) Covers all journeys, including to/from work, if they arise out of employment and substantial connection with employment.	Yes
Northern Territory	Work Health Act (NT) 1986	Section (4)(1)(b) Journey claims are covered including to/from work.	Yes
Tasmania	Workers Rehabilitation and Compensation Act (Tas) 1988	Section 25(6)(a) Journey claims to/from work are covered only if there is a connection between the journey and the worker's employment. For example, if the journey takes place at the request of the employer.	Yes, in certain circumstances
Western Australia	Workers' Compensation and Rehabilitation Act (WA) 1981	Section 19(2)(a) Journey claims to/from work are not covered.	No
ACT	Workers Compensation Act (ACT) 1951	Section 8(1) Journey claims covered, including journeys to/from work.	Yes

It is Westpac's experience in NSW where journey claims to and from work are compensible that these comprise approximately 33% of total claims, which is the majority of claims.

Whilst these claims on average are not more expensive than those claims that occur in the workplace, the ability to claim for workers compensation for journey accidents to and from work does impact on the frequency of claims experienced expressed as a ratio of headcount. For example, in NSW the frequency of claims experienced as a ratio headcount is almost twice that compared to WA and Vic, where journey claims to and from work are not compensible.

2. SEEKING ELIGIBILITY UNDER THE COMMONWEALTH COMCARE SCHEME

Applicable to Westpac, the Safety Rehabilitation and Compensation Act 1988 (Cth) enables corporations to seek a declaration from the Minister to be eligible under the Comcare scheme if the corporation is carrying out business in competition with a Commonwealth Authority or with another corporation that was previously a Commonwealth Authority. As the Commonwealth Bank was previously a Commonwealth Authority it would appear that Westpac could seek a declaration from the Minister.

Last year Westpac considered seeking such a declaration and investigated the possibility of this at a high level. The Comcare scheme is attractive to national organisations such as Westpac because it would allow it to operate under a uniform legislative framework. Investigations with employers operating under this scheme however suggests that there are also disadvantages including:

- Appeal from a decision of Comcare is to the Administrative Appeals Tribunal which can be time consuming and legalistic process.
- Guidelines issued by Comcare can be prescriptive, and focus on the process of developing return to work policies and programs, the use of approved rehabilitation providers and collecting rehabilitation statistics, rather than on the desired outcome of returning employees to suitable employment. This does not give authorities and corporations sufficient flexibility in relation to the development of their own rehabilitation policies and procedures.
- Payment of normal weekly earnings up to 45 weeks provides a disincentive to effective rehabilitation.
- Authorities and corporations are required to adopt Comcare's administrative policies and procedures, thereby constraining their capacity to develop and implement management programs which are tailored to the particular circumstances of the business.
- The premium experience-rating system established under the Act is relatively unsophisticated as compared to NSW and Victoria. (see Divison 4A SRC Act)

In addition, Westpac collected anecdotal evidence that suggested that obtaining a dispensation from the Minister could be difficult, the scheme can be bureaucratic and administrative in nature, and claims tend to be of longer duration when compared to those under individual state schemes. As a result of this preliminary analysis, Westpac did not proceed to the next stage of obtaining an actuarial assessment of the cost benefit analysis of this scheme compared to the current state based schemes.

It is also important to note that even if Westpac were successful in obtaining a dispensation for eligibility under the Comcare scheme, this would only be applicable for our workers compensation function. Westpac as an organisation would still be subject to different OHS legislation in each state.

3. PREFERENCES IN RELATION TO THE CURRENT MODELS OF WORKERS COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY SCHEMES

A. WORKERS COMPENSATION

There is no existing workers compensation scheme that Westpac would favour as the operating scheme under a national system. Instead our preference would be for a “patchwork” approach of the various schemes. In providing our preferences we have:

- reviewed the Commonwealth scheme and the eastern states as the workers compensation schemes adopted in the other states are similar and/or for Westpac our claims experience is less frequent; and
- outlined only those elements of the legislation where we have a clear preference.

Application	Legislation
Injuries Covered	
Injuries defined as personal injury arising out of or in the course of employment, where employment is a significant contributing factor causing the injury	Queensland Workcover (Qld) Act 1996
Only covers journeys which are part of employment but does not cover journeys to and from work	Victoria Accident Compensation Act 1985 (“ACA”) Accident Compensation (WorkCover Insurance) Act 1993 (“ACWIA”)
Temporary absences covered during “authorised recess”	Victoria Accident Compensation Act 1985 (“ACA”) Accident Compensation (WorkCover Insurance) Act 1993 (“ACWIA”)
At the workplace and work related locations if employment is a significant contributing factor	Queensland Workcover (Qld) Act 1996
As a result of violence, if employment is a significant contributing factor and/or if at place of employment	Queensland Workcover (Qld) Act 1996
Excludes psychological injuries in some cases (reasonable discipline, transfer demote etc)	New South Wales Workers Compensation Act 1987 Workplace Injury Management and Workers Compensation Act 1998

Compensation not payable	
For a self inflicted injury	Queensland Workcover (Qld) Act 1996
For an injury which is caused by serious and wilful misconduct of the employee unless it results in death or 50% or more "Work Related Impairment"	Queensland Workcover (Qld) Act 1996
Medical Treatment	
Compensation may be sought for cost of reasonable medical treatment	New South Wales Workers Compensation Act 1987 Workplace Injury Management and Workers Compensation Act 1998
Injuries resulting in incapacity for work	
Basis for calculating weekly payments ¹	Victoria Accident Compensation Act 1985 ("ACA") Accident Compensation (WorkCover Insurance) Act 1993 ("ACWIA")
Total Incapacity	Queensland Workcover (Qld) Act 1996
Partial Incapacity	Queensland Workcover (Qld) Act 1996
Injuries resulting in permanent impairment	Commonwealth Safety, Rehabilitation and Compensation Act 1988
Commutations/Redemptions	
Weekly payments may be redeemed if the following criteria are satisfied a) the injury is stable and stationary; and b) 12 months has elapsed since the date the claim was lodged	Tasmania Workers Rehabilitation and Compensation Act 1988
Rehabilitation	
Establishment of a return to work program and the workers must participate	Queensland Workcover (Qld) Act 1996
Obligation to provide rehabilitation in the form of suitable duties	Queensland Workcover (Qld) Act 1996

¹ Regarding weekly benefits, this is an actuarial issue and an actuarial cost/benefit analysis is required to determine cost but we have determined the 'desired criteria' to calculate weekly payments based on the definitions provided in the respective legislations.

Restriction on the right to claim damages	
A worker can seek damages for an injury sustained by a worker under certain conditions	Queensland Workcover (Qld) Act 1996
Self Insurance	
The ability to apply and be eligible for self insurance	New South Wales Workers Compensation Act 1987 Workplace Injury Management and Workers Compensation Act 1998
Criteria for a licence : In determining whether to grant a licence the WorkCover Authority will examine, s211(2): <ul style="list-style-type: none"> • the suitability of the application: (a) • the financial ability of the applicant: (b) • the efficiency of the proposed system: (c) • any other matters as the Authority thinks fit. (d) Deposit must be paid to the Authority or guarantee provided: s213(1)	New South Wales Workers Compensation Act 1987 Workplace Injury Management and Workers Compensation Act 1998
Conditions of the licence with the exception that the model for OHS management systems should be in accordance with AS4801 as compared to NSW Workcover's Model for Quality OHS management systems.	New South Wales Workers Compensation Act 1987 Workplace Injury Management and Workers Compensation Act 1998

B. OCCUPATIONAL HEALTH AND SAFETY

Again, there is no existing occupational health & safety scheme that Westpac would favour as the operating scheme under a national system. The plethora of OHS legislation, regulations, codes of practice under the Commonwealth and individual state jurisdiction are such that it would be an enormous task for Westpac to go through these and express preferences in a form that would be of value to the Commission. This is beyond our ability to resource for this submission.

As a broad principle however as already stated in our submission, Westpac seeks strict "uniformity" rather than more general "consistency".

It is our opinion that uniformity could be achieved through consistent national requirements setting minimum OHS rights and duties, whether in the form of principal or subordinate legislation or, where appropriate, in national standards. This would better enable Westpac to know what its obligations are for training, management and

compliance purposes, without the need to consult different standards nation-wide. Key elements would include:

- *duty of care;*
- *available defences;*
- *committee/representative duties and powers; and*
- *compliance monitoring and enforcement of regulatory requirements.*

Voluntary codes of practice should be developed which give clear guidance as to different ways in which compliance can be achieved. This would enable Westpac to adopt or apply elements relevant to it in order to meet legislative standards. This would also encourage continuous development and innovation within Westpac in dealing with OHS issues.

SUMMARY

We would like to re-iterate our position of advocating the creation of a national, uniform (not merely consistent) scheme for both Workers Compensation and Occupational Health and Safety. It is our belief that a national scheme would have benefits not only for Westpac but also for our employees. The additional information we have provided above further supports this position.

Should you require any additional information or assistance please feel welcome to contact me.

Yours Sincerely,

Angela Geest
National Manager OHS