



**Coles Myer Ltd.**

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## **Submission to the Productivity Commission Inquiry into National Workers Compensation and Occupational Health & Safety Frameworks**

Coles Myer Ltd (CML) welcomes the opportunity to submit a response to the Productivity Commission Inquiry into National Frameworks for Workers Compensation and Occupational Health and Safety (OHS).

As Australia's largest private employer, operating across all States and Territories, CML strongly supports the need for national consistency in Workers Compensation and OHS. The existing framework creates inefficiency through complexity and duplication of effort.

In assessing the proposed models for a National Framework, it is apparent that the success of any model depends heavily on the commitment of Commonwealth, State and Territory governments to harmonisation. In principle, CML supports any model that provides leading practice, greater efficiency and is equitable for all employees nationally. It is important to note that we would not expect efficiency savings generated under a new model to be eroded by enlarged scheme administration or benefit structures.

CML is committed to improving the safety of its employees, customers, contractors and visitors. This is demonstrated by the fact that safety is a key strategic pillar of the organisation. A nationally consistent Workers Compensation and OHS framework would complement CML's *Safety RIGHT NOW* initiative, which was developed recognising the benefits of a consistent strategic direction for safety across the whole organisation.

The following submission outlines CML's response to the Issues raised in the Productivity Commission's Issues Paper released in April 2003.

## **National Self-Insurance**

CML is a self-insurer in Victoria, New South Wales, Queensland, Western Australia and Tasmania. CML also has an application pending in South Australia whilst applications are planned for the ACT and NT.

Currently each jurisdiction has many different requirements imposed on self-insurers that are the same in principal however vary significantly in their administration. For example, a Bank Guarantee and Excess of Loss Insurance are standard requirements; however the wording and administration of these is different across jurisdictions, adding complexity and duplication in administration. The requirement for an actuarial valuation in each State multiplies the effort and cost of this activity.

The electronic data returns required of self-insurers, which range from monthly to quarterly, differ in each jurisdiction. It is hard to understand how the various Authorities compare performance when measuring against inconsistent data definitions. This also presents a problem for CML internally. In addition, changes to legislation result in the onerous and expensive task of updating software to adopt the relevant legislative changes.

The licence renewal periods in each jurisdiction vary significantly from one year to four years and the complexity of the licence renewal submissions vary enormously in their scope. The audit programs for self-insurers also vary markedly in complexity, timing, the applicable audit Standard and even in whom may conduct the audit.

CML would strongly support the introduction of a National Self-Insurance licence, allowing national consistency in the administration of self-insurance in addition to providing equal benefits to all employees.

## **The OHS Model**

As a national employer CML fully supports the continued approach to establishing an OHS regulatory framework which creates a status of national uniformity. The work of the National Occupational Health and Safety Commission (NOHSC) has been beneficial in creating consistency of approach in this regard, however its effectiveness in establishing a uniform national framework has been diminished due to differences in the way individual jurisdictions have adopted and implemented these guidelines.

The ability of individual jurisdiction's to undertake and interpret national guidelines in their own forum has not only established variation in compliance or regulatory standards, but in the implementation of such. This is particularly evident with some jurisdictions implementing a performance-based system, as opposed to others that maintain a prescriptive formula.

Under the current system, OHS regulatory requirements differ widely across jurisdictions, creating a costly, onerous and complex system of management for an employer operating across State borders. CML currently manages OHS systems in an environment that has variations to definitions (eg. plant), consultative arrangements, penalties and defences, compliance standards (eg. electrical test and tag provisions), and administrative arrangements (eg. reportable incidents), to name a few examples.

CML supports the development of nationally consistent OHS compliance regulatory requirements based on leading practice OHS standards, as developed in a cooperative framework that is equitable to all employees, and is leading practice. Uniformity should be established in areas such as: General obligations and duty of care; consultative arrangements; enforcement strategy and defences; compliance and regulatory standards.

### **Reducing the Regulatory burden and compliance costs**

Issues around regulatory compliance have been previously discussed under National Self-Insurance. An area that generates inefficiency for Workers Compensation in general is the definition of remuneration for declaration purposes. The definitions vary in each jurisdiction and also vary to the definitions for Payroll Tax declarations. CML supports the move in NSW to align Workers Compensation with Payroll Tax definitions and would support this in other jurisdictions.

### **Access and Coverage**

As a national employer CML would support consistent access to workers compensation for all of its employees. The lack of national consistency imposes a significant burden in terms of compliance and implementation for each jurisdiction and creates inequities for injured workers.

We propose that consideration be given to achieving national consistency in the following areas: -

- definitions for worker, employer, injury (with a clear link between the injury including entitlement to compensation provisions) and exclusion provisions
- access to journey/travel claims
- reporting requirements
- claim lodgement procedures and time frames
- forms and medical certificates

- access and determination of permanent impairment entitlements
- access to common law
- treatment cost regimes
- duration of entitlement

CML has nationally consistent targets, measures and incentive schemes for our businesses on workers compensation and OHS performance (eg claim costs, number of lost time injuries etc) – with inconsistent access to workers compensation, there is an unequal platform for measuring meaningful data. The differences significantly affect individual managers and business performance measures.

CML as a national company encounters some difficulty in managing workers compensation for stores in border regions. Many of the CML businesses manage operationally across State borders and therefore work under two or more different jurisdictions.

The benefits of having a nationally consistent approach would be: -

- Equal entitlement and access for all employees to Workers Compensation
- Consistent policies and procedures for all businesses across CML
- Improved business awareness by managers on Workers Compensation policies and procedures and allowing greater flexibility in managers moving interstate, without having to learn new State-based procedures.
- Ease of communication across all CML businesses nationally, with reduced contact points for operational business managers
- Reduced administration costs (especially in relation to financial costs of printing material etc)
- Increased premium stability across all CML businesses
- Equal base for reward and recognition programs nationally
- Nationally qualified/trained claims and injury specialists resulting in greater flexibility for business as they can work across more than one jurisdiction
- Ability to implement nationally consistent education and training programs for all stakeholders on OHS and Workers Compensation. This would result in a better-informed workforce and educated employers
- Better community understanding of Workers Compensation under a national system, particularly with service providers (eg medical) who only have to familiarise themselves with one system.

## **Benefit Structures**

### **1. Access to Benefits**

The standard that needs to be met by workers to receive entitlement to compensation differs across jurisdictions. CML supports a single national standard for compensation that requires the relationship between employment and a worker's injury to be clear and manifest.

### **2. Weekly Payments**

Under the different Workers Compensation systems there is significant impact on CML as a national organisation in relation to payment of weekly compensation.

The IT systems to manage different payment structures are expensive and time consuming given the complexities involved in the calculation processes and variations between jurisdictions. In addition there are constant legislative changes which impact on the payment of entitlements.

CML businesses are currently moving to national, consistent payroll processes, however cannot easily achieve equivalent efficiencies in Workers Compensation payments because of the jurisdictional differences in benefit structure. Additional costs and resources are therefore involved to ensure payments are accurate.

There is a financial disadvantage for employees within the same national company as each jurisdiction operates under a different regime in relation to entitlements paid under the relevant Workers Compensation scheme. The differences are substantial in relation to amount paid, duration of payment and step down rates.

Different entitlement payments and step down points affect participation and motivation of injured employees in the rehabilitation process affecting overall claims cost, Return to Work outcomes and duration rates.

Varying benefit structures impact significantly on overall cost of claims and hence employer premium, dependent on the jurisdiction.

### **3. Medical and Like Expenses**

The entitlement of injured workers to particular forms of treatment varies across jurisdictions. CML supports a nationally agreed suite of treatments that are focussed on recovery from injury. Furthermore, CML recommends that the providers of those treatments be remunerated at standard rates.

#### **4. Permanent Impairment Benefits**

CML considers that injured workers who have suffered permanent impairments should be able to readily access, via an administrative mechanism, a reasonable lump sum amount. The access of this lump sum would be voluntary and once received would extinguish any common law entitlement.

#### **5. Access to Common Law**

A national common law system with limited access would be advantageous for both employers and injured workers. Access to common law must be limited to employees who have suffered a severe permanent disability from work-related accidents and where there are clear cases of negligence (ie wilful and callous disregard for well being) on the part of an employer. Ideally, for access to common law, a minimum threshold must be met, eg. Agreed percentage permanent impairment figure. There should also be a maximum amount payable under this system.

Pursuit of common law by an injured worker interferes significantly with the rehabilitation and return to work process. Distractions occur for key stakeholders with an emphasis on a financial outcome rather than on achieving a successful return to work outcomes for both the worker and employer.

#### **6. Commutation / Redemption of claims**

Access or ability to redeem a claim would be advantageous on a national scale. The ability to redeem a claim differs across jurisdictions dependant on the legislation and can significantly impact overall scheme costs. It would be desirable to reduce the growing number of long-term claims within each State and Territory scheme. Redemption of a claim can be somewhat advantageous to both injured workers and employers. Criteria should be applied to potential claims and final decisions on the outcome should be determined by a third party so as not to damage the intent and integrity of the Workers Compensation scheme.

#### **7. Distribution of Entitlement**

It is the view of CML that entitlement to benefits should have limitations dependent upon the severity of injured workers' injuries and their own endeavours to regain occupational capacity. This limitation should be applied to both the period of entitlement and the amount payable.

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

CML does not believe that any conclusions can be drawn between outcomes and costs between the different jurisdictions, as the data is not comparable due to the different schemes in operation.<sup>i</sup> The fact that accurate comparison of outcomes, costs and performance cannot be made in itself indicates the need for change to more nationally comprehensive or consistent approaches.

CML supports the development of a national framework based on the recommendations from the *'Guidance Note Best Practice Rehabilitation Management of Occupational Injuries and Disease'* (1995) and the current performance of the various jurisdictions. This needs to be performed in consultation with the Commonwealth, States and Territories.

## **Dispute Resolution**

A fair and equitable dispute resolution process is vital to the effective running of Workers Compensation schemes. A national conciliation scheme with arbitration capacity would be desirable as the initial dispute resolution process. These disputes are between an injured worker and employer and the mediation could be conducted by a third party that is experienced in Workers Compensation, thereby negating the need for legal involvement at the initial stage. Should matters not be resolved then progression to court would be a logical sequence of events. CML would support the initiation of a national Workers Compensation Court.

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<sup>i</sup> The Rehabilitation Task Group formed in 1991 to develop *'Guidance Note Best Practice Rehabilitation Management of Occupational Injuries and Disease'* 1995 also documented this issue stating that *'Comparing claims duration and return to work statistics across schemes is difficult because of differing practices'*.