

Commissioner Woods
National Workers' Compensation and OHS Inquiry
Productivity Commission
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ACT 2616

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Dear Commissioner Woods

re Interim Report on National Workers Compensation and Occupational Health and Safety Frameworks

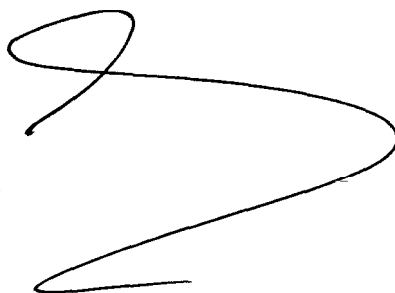
The AMWU would like to take the opportunity to respond to the Interim Report at the public hearings in Sydney.

The AMWU does not support the various options proposed for national frameworks for health and safety or workers compensation. This is not because the AMWU has an in principle objection to national uniformity/consistency, rather, our opposition is based upon the outcome we predict would occur given the reasoning and evidence used in the Interim Report in reaching the proposed options.

We have attached a brief response to the options proposed for National Workers Compensation Frameworks. More comprehensive comment will be submitted to the Interim Report by the end of January 2004.

We also wish to indicate our support for the submission being made by the Australian Council of Trade Unions.
Mike Nicolaides

Yours sincerely i



Assistant National Secretary

on behalf of

Doug Cameron National
Secretary

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AMWU Comment on the Interim Report of the Productivity Commission

"National Workers Compensation Occupational Health and Safety Frameworks"

1. At this stage, the AMWU will not provide specific comment on particular conclusions or assertions made in the Interim Report. Rather our response will deal with the substantive thrust of the Interim Report's options on a National Framework for workers compensation outlined in Chapter 4.
2. With regard to recommendations and discussions on health and safety, the AMWU is in agreement with the comments made by the ACTU. We would like to reaffirm the comment made by the ACTU that it is particularly disappointing that there is a lack of recommendations on action to reduce death, injury and disease. Additionally, the Interim Report has an emphasis on the costs to employers, at the exclusion of any commentary on the costs borne by injured/ill employees and their families (Terms of Reference 9 j).
3. The AMWU does not support the options for a national workers compensation framework proposed in the Interim Report. This is not because the AMWU has an in principle objection to national uniformity/consistency; rather, our opposition is based upon the outcome we predict would occur given the reasoning and evidence used in the Interim Report in reaching the proposed options.
4. A fundamental objective of workers compensation systems needs to be an equitable, fair and just system of income protection and access to medical treatment for workers with work related injuries and illness;
5. The Interim Report's extensive discussion regarding national self-insurance arrangements focuses on the costs/ benefits for larger/multistate employers. The discussion, in both the body of the report and the relevant Appendices, refers to administration and compliance costs, claimed workplace relations benefits for employers and costs of meeting OHS requirements under current arrangements for self insurers.
6. There is an acknowledgement that the current SRCC Act would allow a limited number of employers who meet the competition test to self-insure under the Comcare scheme (Interim Report page 86). Some employers indicate that the reason this option is not taken up is because of a lack of support for the current Comcare benefit structures (Interim Report pp 91 to 94).
7. The Interim Report alleges there would be benefits in a national self-insurance scheme. Given the reluctance of those multistate employers who are eligible to access the Comcare scheme, the AMWU is far from convinced about the alleged costs of multiple scheme for employers.

8. From the evidence provided by the Commission, it is clear that employers are supportive of a national self-insurance scheme, as long as its benefit levels and scheme structures **are less** than those under the current Comcare scheme.
9. As the Interim Report gives little time or discussion to benefit levels and support arrangements that provide incentives for injured or ill employees via "benefit step downs and caps", the AMWU assumes that the Commission itself is supportive of a benefit structure that would not see a replication of the current "comparatively high level of income replacement" under Comcare.
10. The AMWU represents employees who are currently covered by the Comcare scheme. We have many difficulties with the administration of this scheme; however we will not support processes that advantage large employers who wish to self-insure by reducing the benefits currently paid to our ill/injured members covered by the Comcare scheme.
11. The AMWU is bemused by assertions from many who gave evidence that an injured workers return to work can be delayed by the lack of step downs in benefit structures. This would appear to be inconsistent with the evidence provided in the Australasian Return to Work Monitor. Comcare has a good return to work rate.
12. The AMWU supports the ACTU position that self-insurance is a privilege not a right. Employers wishing to become or remain as such must earn that privilege by bringing to workers compensation systems a superior performance in all areas of injury prevention, claims management and occupational health and safety standards. In fact, this is the proposition often argued by both employers and others (e.g. see Appendix B).
13. Unfortunately, it is the experience of the injured members of the AMWU that selfinsurers do not have a superior performance when compared to other employers. The AMWU submission to the House of Representatives Standing Committee on Employment and Workplace Relations Inquiry into Aspects of Australian Workers Compensation and our submission to this inquiry discuss some of these problems.
14. The Victorian WorkCover Authority is conducting a review of self-insurance. The AMWU would draw the Commission's attention to the submissions made by the Victorian Trades Hall Council (see attached), the National Union of Workers and ourselves. These submissions highlight areas of significant concern and challenge many of the assumptions made about the performance of self-insurers.

15. The Victorian Self Insurers Return to Work Monitor (VWA, May 2003) showed that:

- a. in Victoria, a high return to work rate is ***not associated*** with self insurance and
- b. a higher proportion of injured workers reported being pressured to return to work by their employer or insurer.

So, although the self insured employers pressure their workers more, they do *not* have a better return to work rate.

16. The Self Insurers Contribution Methodology Discussion paper by the VWA concluded that:

"indicative results show that self insurers may be "under contributing" to the Authority operations". So, it would appear that self insurers are acting as a drain on the system.

17. AMWU member surveys indicate that self insurers have a very variable performance record in meeting the requirements of the workers compensation scheme. For example:

- a. processing of claims is no quicker with self insurers than under the legislative requirements. The claim of improved administrative procedures and efficiencies by self insurers is not reflected in any efficiencies for the injured/ill worker;
- b. payment for medical and like expenses is variable across the self insurers. Again the efficiencies can only be for the employer not for the injured worker;
- c. some self insurers oppose an injured worker's right to be treated by a doctor of their own choice. This is a fundamental right, that only the courts can remove;
- d. there is commonly a lack of ability to seek independent advice regarding claims processes. Injured/ill workers employed by self-insurers are therefore further disadvantaged by the lack of independent assistance.

18. The emphasis of the Interim Report on reducing costs to companies by offering the option of self-insurance is apparent also in its discussion of the proposed financial underpinnings of self-insurance. The prudential requirements that are proposed to apply to self-insurers appear to be set at a minimum.

In addition, as the Interim Report readily acknowledges else where - true costs (as distinct from actuarial estimates of cost) can take a number of years to manifest. It is also difficult to see how a post-event *levy*, as proposed by the Royal Commission Inquiry into the Collapse of HIH in relation to large insurance companies, actually overcomes the risks of mismanagement of either insurance companies or selfinsurers. In this respect, the AMWU favours strong regulation to prevent and avoid both the costs to the community and the costs placed on workers that occur as a consequence of corporate irresponsibility.

19. The AMWU supports a broad definition of worker being adopted under any national scheme of workers' compensation. The OH&S obligation to provide a safe system of work is a broad obligation. When there are failures to comply with this obligation, the employer is most commonly the responsible party or apportioned the larger part of responsibility in cases which go to court.

The obligation to compensate in the event of work-related injury or disease is a counterpart obligation and attempts to distinguish between one worker employed on one basis and another worker employed on another basis is relying on artificial distinctions when the primary issue is who bears the responsibility and therefore who bears the cost?

This is most apparent in the labour hire situation where workers work alongside each other and perform the same work but one may be eligible under the workers' compensation scheme and the other is not. The Interim Report recommends the use of employer control combined with the common law concept as the method to determine access to the national scheme but it is unclear if this would include labour hire workers.

20. As a national organisation, the AMWU **opposes any moves** to increase the density of self insurers because the evidence to date is that the alleged benefits of self insurance are restricted to issues of reduction of costs, for the employer, and of **no benefit to the injured workers** (see conclusion VTHC submission to VWA Self Insurance Review).
21. This is clearly expressed by the National Union of Workers (Victorian Branch) in their submission to the VWA review: i.e. " self insurance should only be possible when the scheme's stakeholders, the injured workers, are significantly better off. Conversely self insurance must not weaken the scheme for those who are not employed by a self insurer" (page 3 NUW submission, see attached).
22. The discussion and evidence produced in the Interim Report pays scant attention to reducing the burden of work-related injury and disease, whilst extolling the virtues of self insurance without considering **what, if any, benefits** a move to a national self insurance scheme would offer employees with work-related disease and injury.