Productivity Commission

National Workers' Compensation and Occupational Health and Safety Frameworks

SUBMISSION ON INTERIM REPORT

BY

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Introduction

BDS Recruit Pty Ltd is a national labour company operating in all states supplying both casual and permanent personnel to a variety of industries. The head office, situated in Brisbane, operates with a National Workplace Health and Safety Manager overseeing the OH&S, Workers Compensations and Rehabilitation of all our employees Australia wide.

BDS Recruit has multi tariff workers compensation insurance in each state, except Victoria with only the 1 employer number.

General Comments.

Having missed the first submissions it was of great interest to read the comments, issues and recommendations in the interim report. The complexities of workers compensation, rather than workplace health and safety, were highlighted in a number of cases and BSD Recruit is in agreement with both comments and recommendations in many cases.

BDS Recruit feels however that if there is to be a national framework then some of the smaller "mechanics" of the system need to also be addressed. Some of these are existing problems in all systems and have not been addressed or changed since these systems were introduced. It would appear to be a waste not to address these issue now during a time of change for the better.

Submission

Sect 3.2 Current OHS arrangements.

OHS representatives and committees. As stated in the interim report provisions for OHS representatives and committees vary markedly between jurisdictions. The training of these people can also vary greatly from no formal training required through to 2 to 5 day courses.

Queensland requires that all companies with 30 or more employees in a workplace required the employment of a certified Workplace Health and Safety Officer. This WH&SO must be certified with the department of Workplace Health and Safety and qualify every 5 years for continued certification. The duties of the WH&SO are defined under the Queensland Workplace Health and Safety Legislations.

NSW requires a safety committee for workplaces with 20 or more employees. Safety representatives are not required unless asked for by the employees or required by Workcover. The employer is required to pay for training of these employees in the course accredited by workcover and by an accredited provider.

Victoria presents a complicated model of designated work groups and safety representatives from these groups ONLY if the employees ask to have them. The representatives only have training IF they request it.

Recommendation

BDS Recruit request that the commission give consideration to including the Queensland requirement for the employment of WH&SO that are both qualified and certified, by the suitable authority, in any national model that is adopted in the future. The number of employees a company must have before one of these offices is employed may need suitable consideration. Further consideration may be required for smaller companies to allow them or compel them to have an accredited person engaged on an hourly basis to assist in meeting their OH&S obligations.

It is felt that this will affect an overall similarity in the approach to Workplace Health and Safety of those companies employing or engaging these accredited offices.

This will not remove the need for safety committees to represent the employees when dealing with safety issues but the number off both shop floor employees and senior management may be reduced to allow businesses to get on with their main work of producing. In many companies these offices double up as Workplace Rehabilitation Coordinators, again removing the need for separate members doing this function. These Coordinators are also accredited with the Workcover authority and can reduce the cost of workers compensation claims by removing the need to appoint separate Rehabilitation companies, as is the practice in all other state systems.

Sect 5.1 Employer and employee.

Current approach. As a national labour hire company, based in Queensland, BDS Recruit addressed the issue of who were our employees two and a half years ago. When addressing the issue we were forced to look at it first from an OH&S definition and secondly from a Workers Compensation definition. Under current legislation it was easy to determine who were our employees by applying the "results test" (page 115 Interim Report) to all our casuals. This resulted in some of our employees, those with ABNs, being informed we could no longer treat them as companies but rather as employees for compensation purposes. We have continued to follow this path and as yet have faced few problems. The one major problem we and most labour hire companies face is in supplying suitable return to work duties as we have no workplace as such other than an office. This will be further addressed in the injury management section.

The definition of an employer/employee relationship with regard to OH&S presented a different problem to be faced.

All OH&S legislation places obligation for workplace safety on employers. One problem this imposed on labour hire companies is that while we are employers, as defined, we lack any great control over the workplace and what happens in it. The relationship between the labour hire company (employer) and the client (host company) is like any sales relationship one of goods (casual workers) for money. If the labour hire company does not keep the client happy the client will move on to another company.

To meet our OH&S obligations in all states meant BDS Recruit, and all other compliant labour hire companies, conducted full safety audits of host companies to:

- Ensure their compliance with state OH&S legislation.
- Conduct hazard identification on the work site.
- Inform our employees (Casual Workers) of these hazards.
- Not supply or withdraw our employees from sites that did not comply or changed their procedures until we could reassess them.

This has led in some cases to our company losing business and clients because we do the right thing.

In recent years labour hire companies have been correspondents in a number of WHS prosecutions and have received fines up 40% of the total for failure to meet OH&S obligations at host companies' workplaces.

While not wishing simply to avoid fines and obligations it is hard to justify fining a company that does not have full control over the workplace. This is the same argument that is applied within this report with regard to travel claims for worker compensation when the employer does not have full control over the employees travel to and from work.

One submission before the current Victorian OHS Act Review recommends that " Where contraction occurs through a labour hire provider the OHS obligations fall to the labour hire company." This would then allow for the labour hire company to come in and change the entire workplace to suit it's idea of a safe workplace. What company would allow that?

A more reasonable solution would be that the person "in control of the work place has the OHS obligations and labour hire companies should be compelled to us an audit tool such as safety map to audit host companies prior to placement of casual employees.

Recommendations

BDS Recruit recommends that the definitions of Employee and Employee are not defined in common terms for both OH&S and Workers Compensation. Rather clear definition for employer and employee is given for each of the two situations.

Further the obligations for OH&S in the workplace be investigated and defined for each situation I.E. traditional workplace situation (employment by owner at a workplace), principle contractor and subcontractors at a work site, labour hire companies with no control of a worksite and owners of a worksite (High rise or commercial building) where contactors may construct, repair or maintain equipment or plant.

Provisions to be included in these definitions for labour hire companies to meet their obligations for safety at a host workplace by the use of an audit tool such as safety map in conjunction with workplace inspection prior to placement and employee feed back following placement.

Sect 5.2 Workplace and work-related fatality, injury and illness.

Contribution of employment. Further to the comments made regarding the "work relatedness of an injury" another issue arise that is currently a problem that we find in similar to each jurisdiction. Who determines if an injury, diseases were well handled in the report, is work related?

Currently BDS Recruit is in dispute in three states over injuries that have been termed as work related. In each case the injury was never reported to either the host employer or BDS Recruit. In each case it was a number of weeks before any report was made. In one case BDS Recruit had several witnesses stating one injury happened at the claimants home, over a weekend.
When BDS Recruit challenged these cases one common theme emerged from each of the insurers and in one case Workcover. They stated that they were work related because the treating doctor said they were.

I have no doubt about any doctors' ability to determine an injury to a patient, I do challenge that a doctor would know if it was work related other than being told this by the patient. Yet if an employer even produces statements indicating it was not work related and the employee has not reported the incident, the claims are still accepted. (see also Dispute Section)

BDS Recruit has had several cases where treating doctors have referred claimants to specialists for consultation. Following the specialist review and declaration that the claimant is fit work the claimant have gone back to their treating doctor and being issued with medical certificates stating they are not fit for work. In each case the insurers have informed use that the treating doctors certificate has priority. This seems a reversal of hierarchy of the medical profession and has resulted in drawn out battles that have had added $1000s to the cost of claims. (see Also Dispute Section) section)

Most states' Health and Safety Acts and Regulations put an obligation on workers to ensure their own safety and that of their fellow workers. To this end it could be argued that a failure to report an injury at the time of occurrence could be seen as a breech of this obligation as the injury could get worse over a period of days, weeks or months.(see also Dispute Section)

While all workers compensation system speak of being "Blameless" the employer is in fact blamed and then victimised by a system that they pay for.

Recommendations.

BDS Recruit request that while reviewing the frame work the commission review the requirements to report all injuries at the time of it occurring, even if a claim in not submitted, to ensure that employers have a fair chance to investigate the cause, rectify the problem and reduce the possibility of further injury to employees and reduce claims costs. It may also help reduce false claims been submitted. Further to this a general inclusion in the framework that failure on the part of employees to report an injury may result in limited access to workers compensation. Similarly, failure on the part of an employer to act on a report may result in action against them.

That doctors be required to contact the employer at the time an employee reports a work related injury to confirm that it may have happened at work. This does occur in the larger clinics that specialise in work related injuries. It is felt that this will reduce the number of disputes over whether an injury occurred at work or not.

That the legislation of any future model include allowances that if the initial treating doctor refers a claimant to a specialist for a single injury than the opinion of the specialist be regarded as the governing opinion regarding suitability for return to work.

Sect 6 Injury management

As stated in the interim report the emphasis of all injury management schemes is the 'timely, safe and durable return to work for workers following workplace injuries.'

The successful and economic running of any workers compensation system depends on all parties involved with the system, employers, employees, doctors, insurers, other providers and the authority that administers the system all work for the goal of returning any worker with a workplace injury back to pre-injury duties. To this end all participants must be educated in the system and how it operates. Each party must have an understanding of the role of the other parties especially doctors who have very little understanding other than their patient, who pays for the service, has an injury that may or may not be work related

Under the QLD Compensation and Rehabilitation Act 2003 all employers who employ more than 30 people must appoint a certified Rehabilitation Coordinator to the workplace. The Act details what these coordinators should do in the case of a workplace injury. The employer should also implement a Rehabilitation policy and management plan that is submitted to Workcover for approval and certification. This allows for the early intervention and injury management of any workplace injury by the employer using a coworker of the injured worker in house. Various other jurisdictions have other allowances for rehabilitation coordinator from in house without the requirement for costly outside intervention. Coordinators can seek out side assistance if required at any time.

This model allows both the injured worker and the employer to be a first party participant in the injury management of the worker.

Suitable Duties. The provision of suitable duties often depends on the type of company an injured worker is employed by.

In the labour hire industry the employer, the agency, in most cases cannot provide suitable duties as they may only have an office with limited duties. The host company, controller of the work place has no obligations under current legislation to participate in any way in the injury management system. This results in:

- The injured worker having limited access to suitable duties.
- The introduction of a 3rd party to try and find suitable duties for the worker, adding to the cost of the claim.
- The job the worker was in being filled by another casual worker as the host company has no obligation to keep it open for the injured worker.
- The injured worker staying on compensation because there is no work to return to.

Recommendations

That any new model or adoption of an existing model include in depth training for all participants of the scheme including a requirement for employers to inform employees of their right to workers compensation under a given scheme.

Employers with a given number of employees are required to appoint certified rehabilitation coordinators and to submit Rehabilitation Policies and injury management plans for approval and certification to the scheme authority.

That consideration be given to addressing the roles of host employers in the injury management for casual workers of labour hire agencies injured at their workplace.

12. Disputes

On too many occasions disputes have resulted from a lack of understanding of the system and the role of each participant plays. Each participant should also understand the role others have in the system.

Currently we are in dispute in 3 states with 3 of our long-term injuries 1 in QLD, 1 in NSW and 1 in WA. None were reported at the time of occurrence. The claims were all accepted because the insurers and WorkCover QLD said the treating doctor said they happened at work. In one case the injury occurred at home over a weekend and we were able to produce 3 witnesses to this, this case is not settled. In another the claimant had a congenital outer ear infection and was twice cleared to return to

full duties by a specialist that the treating doctor referred to. The treating doctor then would not sign the return to work plan as the claimant said he could not do the work.

Doctors in many cases fail to appreciate that a small number of claimants can and do manipulate the system. Simply because a claimant states that an injury occurred at work this may not be the case. The treating doctor should be required to contact the employer at the time of the initial consultation to confirm that the injury has been reported and in fact happened at work. Many might regard this a step back into the past when this was required but the pendulum has swung too far in the other direction now to a point that an employer cannot prove an injury did not happen at work because of the simple fact that the employees states it did. It is the reporting of the injury to the employer by the employee that should be addressed.

To this end any new model should involve education for all would be participants in the scheme. Further all participants in the scheme, employees, doctors and employers, should be treated with equal respect for their unique understanding of their part in the team effort.

Another area that we find causes disputes is the failure by workers to report injuries. We have had a number of cases where soft tissue injuries were not reported to us. They show up six months later, after they have finished assignments with us. The claims for compensation are accepted and again we pay for claims that are long term, claimants have claimed and received back payments, for an injury that we were not able to control from the time that it happened.

Recommendations

Again, all participants in the scheme are trained in its operation and the roles of all people involved in that injury management.

That all doctors be required to confirm with employers at the initial consultation that injuries may have happened at work.

Compel workers to report injuries at the time they occur, even minor ones, so employers can start to manage them before they result in major claims. Limit claims to the date they are reported for claims made after 3 month from the date they occur.

Limit any back payment of compensation to the date the claim was made and investigate any damage that may have occurred because the injury was not reported at the time it occurred.

Conclusion

BDS Recruit regrets that we do not more resources to allocate to this submission but we feel that the smaller points we touched on, if addressed, can and will improve any new model for OH&S and more urgently Workers Compensation across Australia.

It is hope that the situation that labour hire companies are will also be addressed and that they will be included in all further Federal and State OH&S and Workers Compensation Legislation.

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BDS Recruit Pty Ltd