Interim report on the National Workers' Compensation & Occupational health & Safety Frameworks

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Comment by Julie Armour of Working Armour

It was with great interest I reviewed the report produced by the Commissioners. I was very please with many of the overall recommendations for a National Approach to both Occupational Health and Safety (OHS) and Workers compensation (WC). The concept is what is needed and has been well argued in the report. I would however like to make further comment on specific prevention areas outlined in the report.

National Standards have been set in this country since the early nineties and no doubt raised the awareness of high risk areas such as manual handling, noise, confined spaces, plant etc. These standards developed by the National Occupational health & Safety Commission (NOHSC) were the first attempt to try and gain a national approach to OHS in Australia. What we need to consider however is how these standards were implemented by each jurisdiction and whether they have been effective in reducing risk and claim incidence. In addition, when proposing different workers compensation models one must be aware if proven effectiveness exist for any of these models where they currently exist. For example if we use the argument that common law access should be abolished due to inadequate incentives for accident reduction it is necessary to show that there actually has been effective accident reduction in jurisdictions that do not have access to common law. Looking at the incident statistics in such jurisdictions the evidence is far from proven. In addition if we are to suggest that any statutory system must have benefit structures which apply incentives to reduce the incidence of work related fatality, injury and illness, we need to be able to show that where such incentives exist today there has been more effective claims reduction. Again this is not evident in jurisdictions such as SA and NSW where such incentive systems exist i.e. there has been no direct link proven between such incentive systems and overall sustainable reduction of claims or, more importantly, risk. Also, if we are to allow access to self insurance we need to ensure that the insurance system is not only more efficient but that incidents are actually prevented in workplaces.

My basic argument here is under any of these proposed systems the emphasis is on the injury management not their prevention. Companies that self insure will place emphasis on keeping costs down which does not necessarily equate in their accountants views to spending on prevention. Many high risk industries such as the mining industry are currently paying for the "sins of their fathers" in that the majority of claims relate to an aging workforce and those who have worked in a hostile environment with ineffective incident prevention practices up until recent times. If such companies in such an industry are to self insure they will need to demonstrate they are able to pay for the sins of the past. As very eloquently pointed out in the interim report, many high risk industries/organisations blame their insurers for high premiums with an inability to show that they are effectively reducing the liabilities associated with combination of high risk operations and an aging workforce.

A good case in point here is with manual handling. The National Standard & Code of Practice for Manual Handling was introduced in 1990 and many jurisdictions incorporated this standard into their OHS regulations from 1991 onwards. In 1990-91 when this National Standard was released sprains and strains associated with body stressing/manual handling made up 62% of all workers compensation claims (excluding Vic, ACT, QLD & Tas) with a total of 41 771 claims. Back in 1986-87 sprains and strains made up 54% of injuries with a total of 93 258 claims (excluding Commonwealth & NT claims). These variations may be more related to access to claims data from a greater number of jurisdictions in 1986-87 rather than an effective decrease in the claims. Overexertion or body stressing claims (66 808) made up 39% of all claims in 86-87 whilst made up 34% (31 425) in 1991-92[1]. Over a decade later (when all jurisdiction data is recorded) in 2001-02, we have still a similar proportion of sprain and strain injuries (54%) with body stressing comprising 41% of all injuries[2]. The actual numbers of sprains and strains reported in 2001-02 was 74 590 claims which made up 65% of all claims. Body stressing comprised 57 000 claims which was 41% of all claims. The majority of these claims were related to muscular stress while lifting or carrying. So although there are variations in actual claims numbers which are perhaps more of a reflection

[1] Industry Commission; Worker Compensation in Australia, Report #36, AGPS, Canberra, 1994
[2] NOHSC; Compendium of National Workers Compensation Statistics, AGPS, Canberra, 2003

data reporting variations, the proportions of these injuries as a percentage of total claims has remained constant.

As previously mentioned over this same period, the National Standard in Manual Handling was incorporated into many jurisdictional OHS regulations. If we review prosecutions from these jurisdictions there is little evidence that the patterns of prosecutions reflect the injury risk posed by manual handling or body stressing. In addition in industries with high body stressing claims histories little attempt has been made to comply with the requirements of the standard. In other words we have a known high risk, we have a standard to address this high risk but industry is not implementing it and regulators are not regulating it to meet the degree of injury risk posed. Having been employed to provide expert opinion in approximately 2-300 body stressing cases (both civil and statute) over the past 10 years there would have been perhaps two or three were I was able to comment that the employer had complied with the requirements to provide a safe system of work by adequately addressing the foreseeable body stressing risks.

To complicate this issue further interest bodies have begun to blame the standard. The way NOHSC was originally set up did require tripartite agreement and processes to be in place. The criticism that often emerges is that standards developed by committee a process reflects the lobbying abilities of members of that committee as opposed to the degree of risk of posed by a specific hazard. In the same way that insurers can not be solely blamed for high workers compensation premiums, the incidence of body stressing injuries can not be solely the result of a National Standard developed by a committee. The problem is that the standard as a tool has not and is still not being implemented in Australian workplaces. The important issue here is that the costs of not effectively implementing this standard on our aging workforce is an increase in compensation premiums. This increased cost has not resulted in better body stressing risk reduction. In other words the motivation to reduce premium costs by preventing body stressing injuries has not occurred. Employers are not complying with the requirements of the standard and the regulators are not enforcing those requirements. So we try to blame the standard for high body stressing rates and then we try to blame the insurers for charging us for not minimising our liability.

NOHSC has suggested we should revise the standard when there is not real evidence that the standard has been the problem but rather its implementation. So rather than consulting potential users of the standard- the employers, we consult a number of academics to identify necessary changes. These people are do not have a specific interest in how a standard is implemented and in many cases are vested in interests that serve their own purpose. Yes it is of note that we change terminology to be in line with international standards and we can also change the format to make it more user friendly but at the end of the day these minor semantic changes will not make a more effective tool if it is not used. No matter what fine tuning is done the problem is not in the tool but in its implementation. It doesn't matter if we develop the perfect tool to address the body stressing risks in Australian workplaces, if it is not used it will not work!

So if we are to recommend we have a national OHS and WC framework I can have no argument. My only argument is that we are not dealing with outcomes and we are not matching our risk reduction approaches with the degree of risk posed. WC in itself will not motivate companies to manage risk even though it will directly force them to manage injuries once they occur. Many years ago it was argued that as OHS penalties were so low it as cheaper to cop a fine than prevent the risk, I would argue that the proposed system is one that in the short term will only encourage more effective injury management practices and not effective risk minimisation practices. We already know that existing WC arrangements (no matter how expensive they are) have not been sufficient motivation to improve prevention, why do we think that abolishing common law, providing incentives for prevention activities and producing national standards and regulations will be any more effective at reducing risk when huge premiums have not worked!