



Productivity Commission

Interim Report
National Workers Compensation and OHS Frameworks

WorkCover NSW Response

January 2004

Introduction

WorkCover NSW notes the Productivity Commissions Interim Report on National Workers Compensation and Occupation Health and Safety Frameworks and the recommendations contained within the Report and further notes the Productivity Commissions call for submissions on the Interim Report's recommendations. WorkCover NSW is pleased to provide the following comments on the Interim Report recommendations.

WorkCover NSW is providing specific comment on seven of the recommendation areas. These

National Frameworks for Occupational Health and Safety
National Frameworks for Workers Compensation Defining
Access and Coverage
Common Law Access
Premium Setting
The Role of Private Insurers
Self-Insurance

are:

1. 2.
3. **4.** 5. 6.
7.

Comments on Specific Recommendation Areas

National Frameworks for occupational health and safety

- 1.1 The NSW Government is committed to continuing its work with other States and Territories through relevant forums (including the National Occupational Health and Safety Commission and the Workplace Relations Minister's Council) in order to achieve national consistency in legislative requirements and promote a competitive regulatory environment conducive to investment and jobs growth.

Whilst the NSW Government supports national consistency, it wants the State of NSW to retain its ability to tailor any national frameworks to suit local conditions and protect the socioeconomic interests of NSW employers and workers. It is noted that having this flexibility has allowed NSW to advance its legislative framework for OHS ahead of national developments. **For these reasons NSW does not support the recommendation that WRMC-approved template legislation, regulations and codes should be adopted by jurisdictions without variation.**

- 1.2 It is unclear how the proposed removal of employee and employer representatives from NOHSC would overcome any perceived deficiencies. NSW supports the maintenance of effective tripartite consultative arrangements to promote best practice and national consistency in occupational health and safety.
- 1.3 NSW does not consider that jurisdictions should be required to share funding for NOHSC given the considerable effort and 'in-kind' assistance already provided.

2. National frameworks for workers compensation

- 2.1 NSW reiterates the principles put forward in its original submission to the Productivity Commission's Inquiry on National Frameworks for Workers compensation and Occupational Health and Safety regarding the design of an "ideal" workers compensation scheme. That is, it should be fair, efficient and affordable, and based on the following objectives:
- injury prevention should be the ultimate goal and injured workers (especially seriously injured workers) and their families should be the focus of workers compensation arrangements;
 - injured workers should get optimum treatment to enable them to return to sustainable employment as quickly and safely as possible;
 - employer costs should match the inherent risks of their industry and reflect their performance in injury prevention and management; and
 - the scheme must be efficient to ensure the viability of business in a competitive world market. Any reforms to workers compensation must be tested to ensure they meet these objectives.
- 2.2 The NSW Government is committed to continuing its work with other States, Territories and the Commonwealth through relevant forums (including the Heads of Workers Compensation Authorities (HWCA) and the Workplace Relations Minister's Council) in order to achieve national consistency in legislative requirements including those related to self-insurance and to promote a competitive regulatory environment conducive to investment and jobs growth.
- The HWCA has been an effective body for jurisdictions to discuss and agree on consistent approaches to workers compensation arrangements. The establishment of a new body to oversight workers compensation, with funding shared by jurisdictions, is not supported on the basis that it would simply add another level of bureaucracy without any evidence of improved outcomes for either injured workers or employers.
- 2.3 The Productivity Commission has not provided any evidence that a national workers compensation scheme would improve outcomes for either injured workers or employers. The

recommendation will simply increase the level of complexity in workers' compensation and does nothing to tackle the core issue of having a co-operative approach between all players of reducing the frequency and level of severity of workplace injuries.

It is noted that the majority of employers are small to medium sized and a national scheme would be of little benefit to these employers. A national workers compensation scheme would mainly benefit large employers.

NSW remains committed to ensuring that NSW benefits and other entitlements for injured workers are retained for workers in NSW. Under the proposal from the Productivity Commission the rights and benefits of NSW workers will differ depending on whether their employer remains in the NSW workers' compensation system or moves to the Commonwealth. NSW is also concerned that an increased level of complexity through the introduction of another workers compensation system may create confusion and impede the delivery of effective injury management for an injured worker.

- 2.4 Harmonisation of self-insurance arrangements, such as capital requirements, between the States would reduce administrative costs for self-insuring employers and minimise transitional costs, while ensuring workers' rights and benefits are left untouched for workers in NSW.

3. Defining access and coverage

- 3.1 NSW notes that coverage for journeys is provided under the NSW workers compensation legislation as is coverage for all recess breaks. The retention of these entitlements is supported.

4. Common law access

- 4.1 The NSW Government supports the retention of common law access for the most seriously injured workers but for economic loss only. NSW does not support access to common law for non-economic matters. This is because of the inherent difficulties in courts assessing levels of impairment and that the open-ended nature of such claims put funding pressures on compensation schemes. (*Sheahan Inquiry Report, 2001.*)

NSW believes that non-economic losses should be adequately compensated through the statutory scheme with the level of impairment assessed based on a consistent guide such as that published by the American Medical Association.

5. Premium setting

- 5.1 NSW notes that the gradual phasing out of premium cross-subsidisation began in NSW in the 2001/02 premium policy year. However, for equitable premium setting to occur the premium pool for an industry needs to be of sufficient size in terms of wages covered and premium levied to allow for normal fluctuations in claims levels to provide premium stability to employers. In some cases this will require industries to be grouped together to enable a statistically valid premium pool.

While experience rating is supported, the level of claims experience for even a large employer needs to reflect a degree of industry claims experience to allow for claims cost development, claims incurred but not yet reported including injuries/diseases of long onset and assist with premium stability for the employer.

It is noted that a review of the method of calculating premiums is currently underway in NSW.

- 5.2 In NSW, independent actuarial advice is received on appropriate industry premium rates. It is not considered that independent monitoring of premium rates would add any value.

6. The role of private insurers

- 6.1 In publicly underwritten schemes outsourcing to service providers through the use of contracts should be accompanied by appropriate remuneration measures linked directly to scheme outcomes. This will allow transparency of outcomes so employers can more easily judge the relative performance of providers.
- 6.2 Under NSW workers compensation legislation NSW has already established an Insurance Guarantee Fund and therefore does not believe that an additional fund is needed for this jurisdiction.
- 6.3 In Australia reports from the Industry Commission and the HWCA indicate that there is no particular scheme structure that is critical to good scheme performance. A range of factors affecting the system dynamics have been identified as important to effective performance, including reinforcement of the relationship between prevention, compensation, return to work and claims administration. As McKinsey&Company note in their 2003 report on the NSW WorkCover Scheme, private underwriting, per se, does not necessarily improve performance.

Private underwriting of workers compensation would not be considered by NSW until the NSW WorkCover Scheme is fully funded and viable. In addition, insurers would need to demonstrate consistent high performance over a lengthy period.

NSW notes the desirability of any scheme, whether publicly or privately underwritten, having the capacity to allow specialists, for example specialist claims managers and asset managers, and not just insurers to provide services to the scheme.

7. Self-insurance

- 7.1 Harmonisation of self-insurance arrangements, such as capital requirements, between the States would reduce administrative costs for self-insuring employers and minimise transitional costs, while ensuring workers' rights and benefits are left untouched for workers in NSW.