

**The Australian Workers Union Greater South Australian Branch
Submission to:**

The productivity commission Review on:

***Workers Compensation and Occupational
Health and Safety Frameworks***

Introduction

The AWU represent a very broad cross section of workers in Australia from Council employees, oil and gas, manufacturing, mining, steel construction and Pastoral industries just to name a few.

We intend to address the following points:

- National versus State schemes
- Access to compensation
- Common Law
- Rehabilitation if injured workers and early intervention
- Dispute Resolution process
- The role of exempt employers
- The role of private insurers
- Premium setting

The views contained in this submission are the views of the Greater South Australian Branch of The Australian Workers Union

National versus State Scheme

The Australian Workers Union greater South Australian Branch would certainly if there was to be a National scheme, prefer the South Australian model be adopted, as the National Model.

Having had the benefit of listening to the submission held in Adelaide there was some suggestion about adapting Comcare as the National framework.

We would see then this as a retrograde step in the delivery of adequate levels of compensation to injured workers and their families.

There would have to be significant amendments to the Comcare legislation for the AWU to consider the Comcare model, the change we would consider necessary but not limited to would be

- ◆ Benefit structure
- ◆ Average weekly earnings calculations
- ◆ Step downs in weekly payments
- ◆ The ability to offset Superannuation in payments against weekly payments
- ◆ Access to economic adjustments
- ◆ Removal of or reduction on threshold, i.e. 20% loss of hearing before you can access a lump sum 10% threshold for other injuries.

Just to name a few.

Access to Compensation

Definition of employee, submission to the Stanley Enquiry and in particular the submission of Professor Stewart recommended changes to the definition of employment and a change to the definition of the contract of employment has been recommended.

Since the completion of the review decision concerning labor hire employees was handed down (2003 SA WCT 57 Country Metropolitan Agency Contracting Service Pty Ltd vs Slater, Irene

The decision redefines the definition of an employee under the existing arrangements for the purpose of Workers Compensation.

We now turn other issues on access to compensation.

- Not all the states provide access to professional Jockeys
- The emerging changes away from full time employment to casualisation of the workforce.
- Access to compensation weekly payments for workers who are now increasingly encouraged by the Federal Government to work beyond the retirement age, therefore requiring the retirement age under Workers Compensation arrangements to be increased to 70 years of age.

Common Law

The Australian Workers Union Greater South Australian Branch does not have a strong view on Common Law, but wishes to submit that:

- Any reduction in the existing benefit structure that currently exists in South Australia would be resisted.
- The only threshold on lump sum payments in South Australia is 5% for hearing loss, Comcare 20%.
- In the event of a National Scheme that would see a benefit reduction in any form to our members and workers generally in South Australia we would support Common Law.

Rehabilitation and Return to Work

Issues

There is a clear need in our view to be a more focused early medical, intervention strategy rather than a process that is merely a control mechanism on what is expected of the injured worker and their responsibilities to report to the employer and the rehabilitation provider.

- Living needs assessments to severely injured workers need to be given a higher priority than they are currently given.
- Restoration to the workplace/workforce is given a higher emphasis than that of restoration to the community for the more severely injured workers.
- Injured workers of exempt employers must have the right to choose an independent Rehabilitation provider.
- A requirement for Exempt employer to use the prescribed forms when drawing up Rehabilitation Programmes and they must be lodged with the State/Commonwealth Workers Compensation authority.
- Prompt identification of the injured workers long term prognosis and re-training requirements.
- Rehabilitation of injured workers needs to start from day one, the issue of liability should not be the prime concern.

Dispute Resolution Process

The Dispute Resolution Process in South Australia works reasonably well dispute its critics.

The Stanley Project Report has made some significant recommendations that are not generally supported by the trade union movement for the following reasons.

Lack of equity in the costs to be awarded to the representatives of an injured worker who is not legally qualified.

The time frames between when the notice of dispute is lodged and when the first conference is to take place if its is a medical issue you would not be able to obtain a consult and report within 21 days.

The alternative approach Comcare

The dispute resolution process under Comcare is a nightmare it is a financial burden on injured workers, lawyers don't want to go near it, is too formal.

The Role of Private Insurers in Workers Compensation Schemes

The experience in South Australia from having a compensation authority performing all the function, to outsourcing claims management in 1995 has not seen any significant reduction in the cost of administering the agents in fact the cost to the Corporation have increased.

There may be improved outcomes from the employers perspective, because the agents do not want to upset their client, I have had it said to me by a case manager "The Employer wants the claim rejected you put in a dispute notice it will get fixed up".

Employers would argue that since the claims management has been outsourced they have had better outcomes, workers representative on the other hand say it is worse.

I am not sure what the answer is the majority of unions on South Australia would rather see the case management brought back in house.

This Stanley review Recommendation 9.1.

That the claims agent contracts be finalised as soon as practicable and the responsibilities of the claims management be reverted to WorkCover.

No decision has yet been made or suggested by the South Australian Government on the claims agents contract.

National Self Insurance

Administration of a national Scheme

Self insurance is granted to larger employers on the premise that they can do it better than registered employers, they then become the sacred cow or a bit like the Australian cricket team a few years ago your in it until you choose to retire.

The changed approach by the selectors now is if you don't perform your out, this approach should apply to exempt employers who don't perform get kicked out, I wish it was that easy.

Having regard to a National scheme of self insurers under the umbrella of Comcare would be a disaster for all concerned for all the reason I have outlined in my submission.

The only way we would agree to a National Scheme for exempts is that, its all in or nothing.

Premium Setting

The question might be do we need to maintain "Fully Funded Schemes".

It is really necessary for a Workers Compensation Scheme to be fully funded at the end of each financial year, for a scheme liability that may very well be for the next 40 years.

Does the conception of Policy/Philosophy of governments put unnecessary pressure on authorities.

It may well be levy rate principles need not necessary be targeted at a scheme be fully funded you set your levy rate at a pay as you go with increases for inflation built into levy rate.

Levy rates setting on a scheme basis may not be the way to go to reduce the incidence of work related injuries and illness you might have to look at the individual employers claims experience and remove levy caps on industries.