
VACC SUBMISSION

**PRODUCTIVITY COMMISSION
NATIONAL WORKERS COMPENSATION AND OCUPATIONAL HEALTH AND
SAFETY FRAMEWORKS**

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SUMMARY

The Victorian Automobile Chamber of Commerce advocates the implementation of a safe work environment. However VACC suggests that a national framework for health and safety would be of little benefit to its members and would prefer that adequate financial resources are provided to small business, by both State and Federal Governments, to assist employers comply with the requirements of Occupational Health and Safety legislation.

VACC considers that health and safety legislation is too complex and prescriptive. Current legislation does not support implementation of health and safety practise at the workplace, as employers are more intent on worrying about compliance issues rather than focussing on eliminating workplace injuries.

VACC believes that Workers Compensation should complement Occupational Health and Safety by ensuring that premiums reflect the health and safety standards achieved by employers.

Background

The Victorian Automobile Chamber Commerce (VACC) is an employer association representing over 4500 members in Victoria and Tasmania in the Automotive Repair, Services and Retail Industry. VACC strongly advocates the establishment and maintenance of a healthy and safe workplace, in which health and safety principles and practices are established and maintained, in a consultative environment.

VACC considers that a national framework would be of little benefit to VACC members and employers generally. A number of improvements should be made to the existing State system rather than to continue the debate on a national framework for OHS and workers compensation. It is VACC's view, that resources would be better applied to improve and maintain more robust systems within each State. VACC believes that without appropriate legislative mechanisms, dismantling State and Territory systems is impractical. As Taylor, Easter and Hegney state *'...although there is a certain administrative appeal for the bureaucrats to deal with these matters collectively, the solutions required to redress the incidence of industrial injury and disease bear no relationship to the problems associated with the management of either compensation or rehabilitation...'* (Taylor, Easter & Hegney, 1998, p.62).

VACC agrees that workplace injury, illness and fraudulent claims for workers compensation, impose significant social and economic costs on injured workers, their families, the community, and business. VACC agrees there are concerns with the current Victorian Workers Compensation scheme that entitles injured workers to compensation from their employers for injuries sustained, regardless of any fault or breach of safety procedures by the employee. This is one of the main areas that VACC believes resources would be better spent. It is our strong recommendation that the current system should be improved to remove the onus of proof of the employer before looking to a national framework for workers compensation.

OHS NATIONAL FRAMEWORKS

Robens style legislation introduced by most Australian States and Territories during the 1980's, advocated a new style of legislation that was not prescriptive but would provide for a tripartite approach to resolving health and safety issues, one that involves consultation between employers, employees and relevant unions. However, some twenty years later, regulation and enforcement of Occupational Health and Safety throughout Australia is governed by a myriad of approaches, compliance and enforcement policies, Acts and Regulations. VACC argues that OHS legislation is still too prescriptive and does not reflect Robens philosophy and ideology. As Brook states '*...it would seem that we have spent twenty years of undeniably increased concern with occupational health and safety matters only to find ourselves back where we started*'. (Brooks, 1993, p.951). Currently OHS legislation in Victoria provides little incentive for compliance by employers or employees, except the avoidance of penalties.

The Interim National Occupational Health and Safety Commission, proposed in 1984, that model legislation be adopted as a means of rectifying the problem of a myriad of approaches to health and safety regulation in Australia. However, the regulatory environment continues to be complex, costly and confusing for employers, particularly small business. As Emmett suggests, the result is that employers are more intent on complying with the mass of OHS legislation, rather than focusing their attention to the end purpose, that is, the avoidance of workplace injuries and illness. (Emmett cited in Brooks, 1993, p.950). Regulations still set out in detail what is required of employers and while nearly all states and Territories now have OHS legislation based on the co-regulation approach recommended in the Robens Report, the coverage of these Acts is neither consistent nor universal within jurisdictions.

VACC believes it is time to stop debating the doubtful benefits of a National Framework for OHS and Workers Compensation. Government resources would be better spent on committing financial resources, to small business through incentives to allow small business to provide and maintain a safe work environment. The regulatory framework should focus on performance and result in lower workers compensation premium costs to the better performers, with funding or subsidies allocated to small business to assist them improve workplace safety to gain the "buy in" of small business. Small business would benefit from a degree of flexibility which would allow them to use alternative methods to the ones specified by legislation and allow them to achieve an equivalent or better standard of health and safety and free small business from the constraints of a 'one way only' approach. (Emmett, cited in Brooks, 1993, p.948).

VACC believes that Workers Compensation should complement Occupational Health and Safety by ensuring that premiums reflect the health and safety standards achieved by employers. (Brooks, 1993, p.2410). VACC support sustaining the existing separate State jurisdictions with a focus on greater industry specific information, guidelines etc. supported by statistics and standard operating procedures for the automotive and other industries.

Industry specific statistics for reported and recorded incidents and injuries incurred in the automotive are presently inadequate. Occupational injury data and an appropriate recording system would provide the automotive industry with a greater insight into causal factors such as hazardous manual tasks, identification of recurring areas of non compliance and where further improvement is required to manage health and safety risks.

Workers Compensation National Frameworks

There are a number of structural inadequacies of the existing Workers Compensation system in Victoria, for example:

- The ease at which fraudulent claims may be made;
- The onus of proof resting with the employer to disprove a claim;
- Over servicing by rehabilitation providers;
- Lack of regulation of legal practitioners advertising for employees to claim their “pot of gold”.

However, VACC does not support a National and uniform workers compensation model. Currently, employers in Victoria lack control and input to the management of claims due in part to the unwillingness of Insurers to listen to employers as the system is structured on a “no fault of the worker” basis. Employers are continually being disadvantaged by employee fraudulent claims and increased premiums as a result of the industry classification they come under.

Areas for improvement with the current system

The ease by which employees can make a workers compensation claim is a contributing factor with employee fraudulent claims. There is a high degree of difficulty in disputing a claim as the onus of proof to challenge a claim, rests entirely with the employer. The claim process makes it too easy for employees to submit a claim. In addition, if a claim is denied, that was subsequently proven to be fraudulent, VACC experience is that fraudulent claims are not rigorously pursued by WorkCover and do not discourage fraudulent claims from occurring.

Early intervention, rehabilitation and return to work

While VACC supports early intervention, rehabilitation and return to work, VACC considers the following factors need to be addressed to minimise an employers Workers Compensation costs. For example, billing hours for rehabilitation services should be actively monitored, to limit the amount of over servicing that currently occurs. Presently, the current financial incentives paid to the employee, impede the return to work process and should be reviewed.

Regular file reviews should occur where there are unsatisfactory delays in an early return to work instead of remaining open without attention for long periods of time. Rehabilitation Providers should be changed after 13 weeks if a return to work is not achieved to minimise the possibility of any over servicing occurring. Also, the role and services provided by both legal practitioners and doctors in Workers Compensation claims should be regulated in terms of the scope of their involvement. For example, legal practitioners are continually advertising “no win, pay no costs” legal services to employees who submit Workers Compensation Claims. Similarly, employees who make fraudulent claims, are able to “doctor shop” to locate a doctor who may continue to support the claim.

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