



16 June 2003

Workers' Compensation and OHS Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Commissioners

Please find attached a submission to this Inquiry on behalf of Workplace Injury Management Services Pty Ltd.

Please contact me if you require further information or elaboration of the comments provided in this submission.

Yours sincerely

Greg McCarthy and Dr. Martin Raftery
Directors



Submission to the Productivity Commission
Inquiry into National Workers' Compensation
and Occupational Health and Safety Frameworks

June 2003

EXECUTIVE SUMMARY

Workplace Injury Management Services Pty Ltd (WIMS) is a specialist provider of injury prevention, injury management, claims management, training and consultancy services.

Based on our extensive experience and expertise in the NSW workers' compensation scheme, we are pleased to provide our views on significant problems and suggestions for improvement in the following specific issues encompassed by the Inquiry's terms of reference.

Improving workplace-based injury management

- WIMS supports the wider adoption of a case management model for managing serious workplace injuries, entailing early intervention and ongoing communication and coordination between the employer, injured worker, treatment providers and insurer.
- We believe it is critical that Australian workers' compensation schemes recognise that small to medium sized employers need additional hands-on support and practical assistance to effectively participate in a case management model.
- Intensive case management facilitation services should be targeted with regard to the seriousness of the injury and the existing resources and expertise of the employer. Early indicators for minor injuries with potential to develop into serious injuries must be monitored.
- Treating medical practitioners must be encouraged to identify what an injured workers capacity is rather than focus specifically on what they cannot do which is the more common practice at the present time.

Re-employment and new employment of injured workers

- Similarly, workers' compensation schemes need to recognise the significant practical barriers that in many cases prevent the return to work of injured workers of small to medium employers and contractors.
- In our view there is a need for a much earlier assessment of the likelihood of injured workers returning to work with their existing employer, and much earlier and wider utilisation of vocational retraining programs and employment placement services.
- As well, the range of "second employer" schemes currently available across the jurisdictions should be reviewed to identify the most effective subsidies and incentives for the employment of previously injured workers.

Dispute prevention and resolution

- WIMS believes that wider adoption of case management model for managing workplace injuries will greatly assist in preventing disputes by avoiding delays and maintaining communication and goodwill between employers and injured workers.
 - Ensuring small to medium employers are properly supported in facilitating workplace-based injury management processes will also assist in the early identification and resolution of disputed issues and by ensuring relevant documentation is complete and readily accessible during formal dispute resolution processes.
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Improving financial incentives

- Experience-based premium rating systems and currently available premium discount or bonus schemes provide clear and direct incentives for larger employers, but generally fail to provide sufficient or practical incentives for medium to small employers.
- Consideration should be given to greater use of variable claims excesses and premium penalties and bonuses to promote specific desired behaviours and actions on the part of employers in relation to individual claims, such as early notification and implementation of return to work plans for significant injuries.

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1 About Workplace Injury Management Services Pty Ltd

Workplace Injury Management Services Pty Ltd (WIMS) is a specialist provider of injury prevention, injury management and claims management, training and consultancy services.

WIMS provides services to a wide range of customers including insurers, large and small businesses, industry groups and unions. We employ a wide range of professional consultants to meet the often-complex needs of our clients. Whether these needs are medical, injury and claims management, safety, training, dispute resolution, WIMS has the expertise to assist.

WIMS aims to assist employers reduce their workers' compensation premiums by providing;

- education on key workers compensation cost drivers
- effective and practical injury prevention services
- assistance in establishing efficient and practical workplace-based injury and claims management systems, and
- ensuring effective relationships with their insurer or claims agent, including establishing service agreements, advice on premium calculations and facilitating strategic claims reviews.

WIMS promotes a case management approach to assist injured workers achieve full return to health and employment, involving working collaboratively with individual injured workers, their employers, medical and rehabilitation providers and insurers to ensure;

- an early and accurate diagnosis
- appropriate and effective treatment
- timely and effective rehabilitation and return to work programs, and
- effective communication and relationships between all relevant parties to optimise outcomes and prevent unnecessary delays and disputes.

In addition to these core services, WIMS also provides strategic consulting services to large employers on issues such as;

- effective management of long term claimants
- investigation of the viability of self-insurance and assistance in obtaining self-insurance licences, and
- effective injury and claims management systems and procedures for self-insurers.

While primarily operating within the NSW workers' compensation system, WIMS has knowledge and experience in other State and Territory systems through our relationships with large national employers, insurers and WorkCover Authorities.

WIMS is actively seeking opportunities to bring our injury prevention and management expertise and services to new clients in other States and Territories. We are also expanding our growing involvement in related personal injury management systems such as motor accident schemes and other disability classes of insurance.

2 Overview of this Submission

WIMS welcomes this Productivity Commission Inquiry as an opportunity to improve the effectiveness of Australian workers' compensation and OHS frameworks.

It is not our intention to comprehensively address all the Inquiry's Terms of Reference. However, based on our extensive experience and expertise in the NSW workers' compensation system, we are pleased to offer our views on significant problems and suggestions for improvements in relation to the following Terms of Reference:-

- (d) appropriate workplace based injury management approaches and/or incentives, including opportunities and incentives for re-employment or new employment of injured workers*
- (e) effective mechanisms to manage and resolve disputes in workers' compensation matters*
- (f) premium setting principles and models that provide incentives to employers to improve workplace safety*

In particular, we will draw attention to the particular problems and issues facing small to medium sized employers in implementing effective workplace-based injury management and suggest possible approaches to providing appropriate support services and effective incentives to promote the early treatment and return to work of their injured workers.

3 Improving Workplace-Based Injury Management

Practical problems with existing approaches

Effective workplace-based injury management and the early return to work of injured workers are stated objectives of all Australian workers' compensation schemes and are widely acknowledged as the key to reducing the social and financial costs of workplace injury and illness.

To achieve this aim, legislative frameworks for workers compensation set out the respective responsibilities of employers, injured workers and insurers (or claims managing agents) for the management of injuries and claims.

These requirements reflect the findings of research and various inquiries and reviews (including the 1994 Industry Commission Inquiry into Workers Compensation) which have found that key factors in enhancing early and effective injury management and return to work include;

- early reporting and early workplace intervention
- maintaining constructive employee/employer relationships
- a case management approach involving ongoing coordination and communication between injured workers, employers and service providers.

WIMS strongly supports the ongoing adoption and refinement of the case management approach across Australian schemes. However, in practice, the legislative and

administrative frameworks often fail to achieve their stated aims. Injury management processes are often characterised by delays, extensive paperwork, lack of coordination and follow-up and a high-levels of disputation; all contributing to high than necessary claims costs.

Recently several jurisdictions have sought to address these problems by introducing incentives and penalties to encourage the earlier reporting of significant injuries by employers, and the earlier development and active monitoring of injury management and return to work plans by employers and insurers or claims agents.

Earlier reporting and intervention are undoubtedly critical. But in our view the key problem of existing arrangements is their failure to recognise the differing levels of support and assistance required by employers to coordinate workplace-based injury management and return to work processes.

Only very large employers are likely to have the necessary in-house personnel, systems and expertise to effectively manage their responsibilities and drive the injury management and return to work process.

But the majority of employers are small to medium sized. For these employers, a significant workplace injury is a relatively isolated and rare occurrence. Many small to medium employers incur only a couple of significant workers' compensation claims per year if that. Many more operate for several years without a significant claim.

As a result small to medium employers are generally not well equipped to effectively respond to a significant injury when it occurs. They may not understand or have practical experience in their role or what should occur, let alone the importance of ensuring it happens quickly and maintaining a bond with the injured worker.

Indeed, it may be considered unrealistic to expect that small to medium employers have sufficient time or resources to invest in establishing and maintaining processes and expertise for circumstances which rarely, if ever, occur.

Even where written programs and trained return to work coordinators are present at the workplace, they may not have been recently used, and may be unable to handle the range of complex personal, workplace and medical issues posed by a significant injury nor have a consistent approach to coordinating a workplace injury.

Resource and time pressures are also likely to make small to medium employers unable or unwilling to devote the necessary effort to effectively manage a significant workplace injury. Resources and time limitations also make it unlikely that small to medium employers will contribute to or participate in industry or region-based shared rehabilitation programs and processes, as provided for under some Australian schemes.

More effective support for small and medium employers

In our view, workers' compensation schemes need to recognise these limitations to workplace-based injury management in small to medium sized workplaces. They need to provide more effective and tailored support to small to medium employers at the time they need it – as soon as a significant injury occurs.

In some cases this may be as simple as a telephone call. There are already a range of telephone information services established by workers' compensation authorities, insurers, employers groups and unions to provide advice to employers and injured workers.

But small to medium employers need more than general advice and information about responsibilities and processes. In many cases such services provide the employer with a list of actions and tasks that they do not have the time, resources, expertise or confidence to effectively undertake.

To kick start the workplace injury management process, these employers need more practical, tailored and hands-on assistance, above and beyond that which is typically provided by insurers and claims agents under current jurisdictional schemes.

For example, small and medium employers may need practical assistance in facilitating meetings and communication with the injured worker, identifying appropriate medical and other services and service providers, liaising with treatment providers and insurer or claims agents, and documenting and following up on agreed courses of action.

In some cases this type of more intensive facilitation and support may be provided over the telephone. However, depending on their available resources and expertise, small to medium employers may need more practical and hands-on assistance provided at visits to the workplace by dedicated and experienced service providers. This is similar in approach to the "advisory visits" provided by the Australian Tax Office to assist small businesses understand and comply with complex processes and paperwork requirements.

This type of workplace-based injury management facilitation service could be available on request. As well, insurers and claims agents could use criteria including the about the nature of the injury and the availability of relevant resources at the workplace to target situations where this type of workplace-based facilitation service is required.

This service could be provided by insurers or claims agents directly, or through suitable service providers. The formal professional qualifications required for accreditation as a rehabilitation provider are not necessary to fulfil this facilitation role. Key attributes required are a thorough understanding of the relevant legislative requirements and scheme processes, and effective communication, negotiation and organisational skills.

Options for funding the service could include a set fee chargeable as a claims cost, or through supplementing insurer or claims agent management fees. As discussed below, incentives to promote the appropriate use of this service by employers could be incorporated into premium bonus/penalty arrangements or through adjustments to the amounts of claims excess payments.

We believe that there are potentially significant benefits for both small to medium employers and their injured workers in providing more practical and hands-on support to workplace injury management processes. Potential benefits include earlier recovery and return to work, reduced claims costs and prevention of disputes arising from delays and breakdowns in the employer/employee relationships.

4 Increasing the focus on re-employment and retraining

Return to work with the pre-injury employer is the most desirable and cost-effective outcome for both injured worker and employer. As indicated above, we believe there is significant scope to achieve more timely return to work and reduce claims costs by ensuring small to medium employers are provided with appropriate and practical support during the injury management process.

But return to work with the pre-injury employer is not always possible for a variety of reasons. In a proportion of cases, injuries may result in ongoing disabilities such that the worker will never be able to perform their pre-injury duties. More commonly, some employers may not undertake a sufficiently broad range of activities to provide injured workers with reduced or changed work capacities with suitable alternate duties in the short term, let alone a viable alternate position in the long term.

As well, reflecting overall changes in employment relationships, workers may be injured during short or limited term jobs or placements which are tied to specific projects or contracts. In these cases the injured worker's previous position, and in some cases their employer, no longer exists once they have recovered from their injury. There is no job to return to.

Lack of opportunities for return to work with the pre-injury employer is especially the case for small to medium employers. Based on our experience, we estimate that as many as 80% of injured workers of small to medium employers, who are still off work at three months post injury, will not return to ongoing work with their pre-injury employer.

To varying extents workers' compensation schemes include provision for vocational retraining and placement services for injured workers who cannot return to work with their pre-injury employer. As well, several jurisdictions provide varying levels of incentives and support to employers who employ previously-injured workers, such as wage and training subsidies, premium exemptions and protection from future costs associated with the injury (eg, NSW's Job Cover program, Victorian WISE program and South Australia's RISE Program).

However, in our experience vocational retraining and placement services are generally under-utilised. Where they are accessed, it is often as a last resort after sometimes lengthy delays and unsuccessful attempts to achieve return to work with pre-injury employers, which may result in considerable frustration and loss of confidence for the injured worker.

In our view, there is a need for Australian workers' compensation schemes to ensure a much earlier assessment of the likelihood of return to work with the previous employer, having regard to both the nature of the injury and the availability and nature of work activities undertaken by the employer. Consideration should also be given to ensuring claims cost estimation rules to not overly penalise small to medium employers who cannot provide suitable alternate duties and contribute to delays to the active consideration of vocational retraining and employment placement services.

This would facilitate the much earlier and more active utilisation of vocational retraining and employment placement services in appropriate circumstances. There may also be opportunities for workers' compensation schemes to access or learn from the services

and expertise of specialist disability placement services such as those funded through the Commonwealth Government's Job Network program.

Finally, consideration should also be given to comparative assessment of the range of "second employer" incentive schemes across the jurisdictions. The aim should be to identify the most effective type and levels of financial incentives and subsidies for durable employment placements, and to determine the most effective ways of promoting and marketing these schemes to relevant employers.

5 Preventing Disputes and Ensuring Fair and Efficient Dispute Resolution

In our experience, many disputes about claims arise due to frustration from unnecessary delays in the injury management process due to lack of effective communication and coordination between the parties and the subsequent breakdown of trust and good will between the employer and injured worker.

In many cases such disputes and related costs are entirely preventable and avoidable. We believe that an increased utilisation of the collaborative and appropriately supported case management approach to injury management outlined above will greatly assist in preventing disputes about claims.

A well planned and supported workplace-based injury management process creates an environment in which the injured worker is more likely to feel supported by the employer and more likely to maintain a positive attitude towards the workplace and work in general. It also provides an opportunity for the rights, responsibilities and processes to be clarified and for problems and issues to be raised and addressed before misunderstandings and delays arise.

By creating an expectation of planned and meaningful activity towards the goal of return to work the collaborative case management approach also makes it more difficult for employees to pursue and extend doubtful or non-genuine claims.

Ensuring small to medium sized employers are properly supported in establishing workplace-based injury management processes will also assist in clearly identifying and more quickly resolving disputed issues at the workplace-level. As well, it ensures relevant documentation is complete and readily accessible if formal conciliation or dispute resolution processes are initiated.

We do not intend to comment in detail on the advantages and disadvantages of the different dispute resolution mechanisms in operation across the jurisdictions, except to emphasise the need for all parties to genuinely expect that these processes will be fair and equitable.

6 Improving Financial Incentives in the Premium System

Australian workers compensation schemes primarily rely on experience-based premium systems to provide financial incentives for both preventing and more effectively managing workplace injuries and disease.

These premium rating systems generally increase the impact of claims cost experience on premiums paid according to the size of the employer. This is justified on the basis that larger employers are in a better position to devote resources to injury prevention and management, and that smaller employers need protection from excessive premium increases that may otherwise arise from a single expensive claim.

As a result, while experience-based premium systems provide larger employers with clear and direct financial incentives, they generally provide insufficient or no real incentives for small to medium employers.

Where supplementary schemes providing premium discounts or penalties have been established, they also tend to be attractive and feasible for larger employers only. For example, the level of low level of discounts available under the NSW Premium Discount Scheme and former South Australian Safety Achiever Bonus Scheme are not likely to outweigh the considerable costs to small to medium employers of establishing and maintaining the required workplace safety and injury management systems.

In our view, Australian workers compensation schemes could make greater use of claims excess payments to provide more targeted and direct financial incentives for small to medium employers. Most schemes currently provide for a modest flat-rate claim excess payment (eg, \$500 in NSW) and allow small employers to avoid excess payments by paying a very small loading on their premium.

Consideration should be given to increasing the maximum claim excess amount, and providing for a range of excess reductions to promote and reward desired behaviours on the part of small and medium sized employers. For example, recently legislative changes in NSW provide for claims excess amounts to be varied according to the timeliness of initial injury notifications.

This approach could be extended to provide for lower excess payments, or excess payment refunds, for specific actions such as timely participation in a facilitated case management process and timely preparation of an agreed return to work plan.

Similarly, there may be opportunities for small reductions or penalty payments to be applied to premiums to provide incentives for employers to encourage timely performance of desired actions in the injury reporting and management process.

Creative use of the claim excess facility and premium bonuses and penalties in this way could provide a more targeted and transparent incentive for small to medium employers, and one that is more clearly and directly tied to the claim event than current experience-based premium formulae.