

# WOOLWORTHS LIMITED

19 June 2003

Attention: Ms Jill Irvine  
Administrative Officer  
Workers' Compensation and  
OHS Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

Dear Ms Irvine

## **National Workers' Compensation and OHS Frameworks Inquiry**

Woolworths Limited welcomes the opportunity to respond to the Productivity Commission's invitation to comment on the matters raised in the Issues Paper published in conjunction with the Commission's current Inquiry into National Workers' Compensation and Occupational Health & Safety (OH&S) Frameworks.

As one of Australia's largest employers, Woolworths continually seeks to improve workplace safety for the Company's 147,000 employees. Prevention is always the priority. Where an injury has occurred Woolworths seeks to ensure that the affected employee is encouraged to return to their workplace as soon as their personal circumstances permit.

We applaud the Commission's focus on the need to establish the most effective and efficient national frameworks for workers' compensation and OH&S. Australia-wide consistency of frameworks will maximise efficiencies and cost-effectiveness for national employers such as Woolworths while still allowing the States adequate flexibility to address local conditions and meet national competition objectives.

We look forward to participating in the Productivity Commission's Inquiry into this important area of public safety.

Your sincerely



Gary Reid  
**General Manager Business Development**

## WOOLWORTHS LIMITED

# National Workers' Compensation and OHS Frameworks Inquiry

### Executive Summary

Woolworths is currently self-insured for workers' compensation in all States and Territories except the ACT (where an application has been lodged). The opportunity for a company like Woolworths to self insure is essential as it promotes a management culture of ownership and accountability for safety and rehabilitation. This facilitates improved workplace safety and rehabilitation outcomes which are important in terms of protecting our employees and in reducing our cost of doing business.

An organisation insured against workers' compensation claims through third parties can develop a mindset of simply paying a premium and viewing rehabilitation, in particular, as the insurance company's responsibility.

**Woolworths' submission presents a case for reform in several policy areas: 1.**

### National harmonisation

National consistency is desirable to:

- Reduce the cost of compliance. In a national organisation such as Woolworths it is inefficient and costly to be obliged to manage to eight different OH&S requirements and Audit tools.
- Provide equity to all employees in relation to what constitutes a claim and benefits payable for workplace injuries. In our submission, Woolworths employees should be governed by comparable benefits systems Australia-wide.

### 2. Rehabilitation

The design of the benefits structure is critical in supporting injured employees and in promoting their early return to work. Early return to work is desirable from a social perspective and also for the productivity of the employer.

- The weekly benefits scheme should incorporate an effective 'step down' structure which encourages injured employees to focus on their return to work objective.

- Time limits are needed on benefits where minimal impairment occurs.
- A national training and accreditation system of workplace rehabilitation resources should be developed.
- A national accreditation system and standard fee structure which promotes return to work outcomes are needed for medical providers.
- Legislation requiring employee participation in rehabilitation is essential. **3.**

### **Commutation**

- Commutation should be permitted for long- term claims, where mutually agreed, to enable the employer to finalise liability and to allow the injured person to take control of their position and move on.

### **4. Merits of Common Law vis-a-vis Statutory Benefits**

If an appropriate statutory scheme is in place which adequately protects injured workers, access to common law should be unnecessary.

### **5. Preservation of the Rights to Self-Insure**

Woolworths considers that the retention of the ability to self- insure for major national companies is essential and in the best interests of the employer and the employee.

### **6. Consideration of a National Self-Insurance System**

Woolworths supports the concept of a national self insurance scheme. However, we have considerable concerns that if adopted the scheme may be based on the provisions currently in force in the larger States, eg NSW and/ or Victoria. These schemes do not adequately address the objectives that Woolworths has outlined in this submission.

## **1. National Harmonisation**

### **(a) OH &S Legislative Coverage**

OH&S standards across all States should be consistent. In a country the size of Australia, where the profile of industries in each State does not vary greatly, there is no reason why the same safety standards should not apply in all States and Territories. In a national organisation such as Woolworths, it is extremely inefficient to be obliged to monitor up to eight different legislative and regulatory requirements to ensure that the Company's OH&S management systems are compliant.

The standards of workplace health and safety that apply to our staff should not vary across jurisdictions and as such there is no need for varying legislative requirements.

Woolworths submits that Occupational Health and Safety should be governed by a single Commonwealth Act, and be administered by a national body.

As a self-insurer, Woolworths supports the adoption of a common audit system for OH&S. At present the various WorkCover Authorities have adopted different methods of assessment of a self-insurer's OH&S standards. This complicates the development and maintenance of a national OH&S management system, and imposes unnecessary costs.

### **(b) Workers Compensation Legislation**

National legislation covering workers' compensation is also desirable to ensure equitable treatment of all employees across the Nation. For example, Woolworths' employees are covered for journey travel to work in some States but not in others. Similarly, different benefit structures apply to employees suffering the same injuries in different jurisdictions.

### **(c) Definitions**

Basic definitional principles need to be addressed, especially the two key threshold questions as to what factors define a 'worker' and what is an appropriate and acceptable definition of a 'workplace injury' (see below).

A national body should be established to define these basic issues, with all States and Territories committed to accepting the recommended outcome within an agreed time frame.

Woolworths submits that the following criteria be adopted in relation to an acceptable definition of 'injury':

- Injuries covered should be limited to those arising "out of or in the course of employment", and where employment is "the major significant factor" contributing to the injury. The current definitions allow claims to be paid for events such as merely walking at a workplace. It is not reasonable that employers be held liable for everyday events, just because they occur at a work-place.
- Journey claims (to and from work only) should not be covered under workers' compensation legislation, as employers have no ability to control these events.
- Stress claims should be limited to exclude situations where reasonable management action has occurred. These situations may include disciplinary counselling, re-deployment and non-promotion.

## **2. Rehabilitation and Return to Work Incentives**

### **(a) Benefits Design**

One of the critical issues in achieving effective return-to-work outcomes, is the design of the weekly benefit structure. It is essential that the design incorporates appropriate 'step-down' features to encourage injured workers to focus on their return to work efforts.

Woolworths considers that payment of average pre-injury earnings at the commencement of a claim is appropriate. However, as most injured workers have fully recovered at the three- month stage post injury, this is where the first step-down in benefits should occur. Further step-downs at six and twelve months would provide further incentive for return to work for the more seriously injured. .

### **(b) Time Limits**

Woolworths submits that there should also be a time limit for weekly benefits to apply. It is suggested that a three- year time limit would be appropriate. After this time any lump sum offered for on-going economic loss should only be available to workers who have suffered a significant impairment, ie more than 10%, based on a specified Table of Injuries.

As an example, an analysis of Woolworths' Qld data indicates that almost 50 per cent of workers who obtain quite significant lump sums for economic loss under common law have 0-2% impairment from their work-related injury, when assessed by an independent expert. Clearly in these cases, the work-related injury is usually not the reason for any loss of employment, and in our view it is not reasonable that the employer should have to bear these costs.

### **(c) Rehabilitation Training**

An important factor in seeking to ensure effective and enduring return to work is to have a system which promotes ownership at the operational / supervisory level at each individual workplace. There should be a requirement for a suitably trained person at larger workplaces to assist in this role. Woolworths considers the rehabilitation coordinator role that currently exists in the Queensland legislation to be effective.

To assist in achieving this goal, Woolworths believes that a national training and accreditation system should be established. A national syllabus covering the critical skills to implement workplace-based rehabilitation, would be beneficial.

Further, a national program for accreditation of the medical profession to assist in the management of rehabilitation should be considered. The development of an appropriate fee structure to support this is also important. There are still many medical professionals who do not understand the substantial benefits that can be achieved through workplace based rehabilitation programs.

Strong legislative provisions for participation in workplace- based rehabilitation should apply both to employers and to workers. Woolworths' experience shows that the commencement of Suitable Duties Programs at the injured person's own workplace, as soon as possible following injury, is the most effective method of achieving the best possible result following a workplace injury. The Comparative Performance Monitoring fourth report released by the Workplace Relations Ministers' Council supports this view.

## **3. Commutation of Claims**

If a long-tail weekly benefits structure is adopted (which is not supported by Woolworths), it is critical that the ability to commute claims should be available. The importance of the ability to pay a lump sum to finalise the liability of the employer and to allow the injured person to move on with their life cannot be over-stated.

However, this benefit should, in Woolworths' view, only be available for the more significantly injured. No long- tail benefits should be available for those persons with minor injuries, and therefore commutation should not be an issue.

Further, the additional medical costs incurred in long- term cases, which are purely for the purpose of on-going determination of liability, are often significant and wasteful.

## **4. Merits of Common Law vs Statutory Benefits**

The ability of injured workers to access any form of significant lump sum benefit can be detrimental to their recovery. In Woolworths' experience, this can mean that some employees' focus on remaining "injured" so that the extent of lump sum is increased. This situation can be aggravated by the involvement of the legal profession.

It is considered that some access to lump sums for a "pain and suffering" component, particularly for the more seriously injured, is necessary. This should be incorporated into the statutory benefits scheme and strictly regulated based on objective criteria. The most relevant criterion to use is the Permanent Impairment suffered as a result of the work-related injury.

The payment of lump sums for both economic loss (as discussed in Section 3 above) and non-economic loss under the statutory scheme would provide adequate benefits for all workers which should eliminate the need for common law systems.

A national Table should be established based on the American Medical Association guidelines, with strict procedural methods for medical assessment clearly outlined, to ensure more consistent assessments across the medical profession. There should be a sliding scale of benefits, based on increasing degrees of impairment.

It is also essential to minimise the involvement of external advisers in this process, by the establishment of Specialist Medical Review panels to referee any discrepancies in assessments.

## **5. Preservation of the Rights to Self-Insure**

Woolworths considers that the retention of the ability to self-insure for major national companies is essential.

The major advantages achieved through self-insurance include:

- Increased focus and commitment from all levels of management due to increased ownership of the outcomes.
- Improved return to work outcomes as a result of the employer dealing directly with the injured employee.
- More timely responses to injured employees on rehabilitation, return to work plans and payments.
- Improved integration of OH&S and workers' compensation, which ultimately allows for improved OH&S performance.
- Immediate investigation and management of claims, due to direct contact/liaison throughout the organisation.
- Improved links with the HR systems to address specific on-going needs that may arise from any injuries.

- Cost effectiveness in claims administration and rehabilitation. The costs of administering the scheme as a self-insured entity are considerably lower than those incurred by the Workcover Authorities and private Insurers.

The regulatory framework which has been established for self-insurers, including an appropriate complaints forum for workers/unions, ensures that no worker can be disadvantaged.

Based on Woolworths' experience over the last few years, we are convinced that the ability to self-insure does reduce both the human and financial costs associated with workplace injury. It is therefore essential that this right is retained.

We would highlight however, that the level of resources devoted to the establishment of a self-insurance licence, including the recruitment of appropriately qualified staff, is significant. It is therefore essential that there is stability in the legislative criteria governing self-insurance licensing. This will allow focus on improved outcomes rather than over-burdening self-insurers with excessive changes to compliance issues.

## **6. Consideration of a National Self-Insurance System**

Woolworths supports the concept of a national self-insurance scheme, as this would provide for the same benefits to workers in all States. However we have considerable concerns that, if this were to occur, the scheme may be based on the provisions currently in force in the larger States, eg NSW and/or Victoria. These schemes do not adequately address the objectives that Woolworths has outlined in this submission.

Should the Inquiry consider that a National Self-Insurance framework is appropriate, Woolworths believes that there would need to be further consultation with the relevant affected Companies, to determine a satisfactory approach.