

SUBMISSION

to

PRODUCTIVITY COMMISSION – NATIONAL WORKERS’ COMPENSATION AND OCCUPATIONAL HEALTH & SAFETY FRAMEWORKS

by

**NATIONAL MEAT ASSOCIATION OF AUSTRALIA – NSW
DIVISION**

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SOME OF THE ISSUES TO BE ADDRESSED FOR A NATIONAL FRAMEWORK

1. DEFINITIONS

Workers Compensation Act 1987 (NSW) - sections 6 and 7

- (a) **Injury** – means a personal injury arising out of or in the course of employment, and includes journey claim. The problem being that this definition is too general. It also widens eligibility to injuries that may have happened during work time but did not arise because of the employment.
- (b) We agree with the recommendations of the Queensland Division of the NMAA made under the heading of injury definition in its submission. This is of fundamental concern in NSW and has not been dealt with in the recent legislative changes.

Occupational Health & Safety Act 2000

- (a) **Injury** – No definition is contained in the legislation therefore creating inconsistencies with the NSW workers compensation legislation.
- (b) The point has been made in the main submission of the NMAA that there needs to be a complete relationship between workers’ compensation and OHS legislation and regulation.
- (c) To date there has been fragmentation.

2. COMMON LAW CLAIMS

Section 151H of the Workers Compensation Act 1987 specifies that no damages are awarded for common law claims unless the injury results in the death of the worker or in a degree of permanent impairment of the injured worker that is at least 15%.

The original recommendation to the government from an inquiry report was for a minimum of 20% impairment.

The access to common law should be severely restricted, as it has been recognised as the major contributor to the current \$3 billion debt of the NSW Workers Compensation Scheme.

The statutory code should prevail for by far the majority of injured workers.

A proposal for a National Framework could be to use the current NSW structure, which involves the Workers Compensation Commission (The Commission) replacing the Compensation Court. The Court will cease to exist after 31st December 2003. The Commission encourages the resolution of a dispute at the earliest possible opportunity moving (hopefully) some distance away from the adversarial system.

Since the inception of the Commission in April 2002, 41% of cases were settled, 27% were discontinued, 10% determined by arbitration and 12% closed by Registration of a section 66A Agreement (agreements between an insurer and worker for lump sum payment for permanent impairment or pain and suffering compensation).

On average the arbitration process in the Commission takes an average of 91 days from start to finish.

As well:

- there is also a restriction on the time period in which documents are exchanged and used in matters before the Commission;
- there is also a less adversarial approach and one primarily concentrating on mediation and conciliation and resolution.

3. WORKPLACE INJURY MANAGEMENT

Chapter 3 of the WIM and Workers Compensation Act 1998, states that:

- (a) an insurer must establish and maintain an injury management program, which must be lodged with the WorkCover Authority;
- (b) an injured employee must report it to their employer as soon as possible;
- (c) the employer must notify their insurer within 48 hours of a significant injury (i.e. if the employee will be absent for more than 7 consecutive days, otherwise to notify within 7 days;
- (d) employee to nominate treating doctor for the implementation of an injury management plan, which is developed between all parties;

- (e) employee must comply with return-to-work provisions;
- (f) employer is required to provide suitable duties, if practicable based on injured employee restrictions;
- (g) WorkCover provide employers with financial assistance to take on workers injured elsewhere for the purpose of their rehabilitation and re-education. This should be strongly promoted in a national system;
- (h) Financial incentives also provided to employers to retain or re-employ their injured workers;
- (i) WorkCover also provides for financial incentives to employers where their injured employees suffer further injuries;

Recommendations include:

- greater obligations upon treating doctors and specialists.
- it should be compulsory for an injured worker to seek an alternative vocation if recommended by the treating doctor and/or specialist.
- It should be compulsory that a treating doctor authorise suitable duties and for the worker to return to work, other than where the injured worker is deemed totally and fully incapacitated.
- Consultation between all parties to the rehabilitation process should be made compulsory. Barriers to communication are a major problem in practice.

4. DISPUTE RESOLUTION

Part 4 of Chapter 7 of the WIM and Workers Compensation Act 1998, states that:

- (a) Dispute matters regarding the following can be referred to the Workers Compensation Commission for resolution:
 - 1. weekly compensation payments;
 - 2. medical expenses;
 - 3. lump sum payments;
 - 4. compensation for property damage;
 - 5. No compliance with workplace injury management provisions.

The legislation makes no prescription for dispute resolution at the immediate parties level. Medium to large employers should be given more autonomy in the rehabilitation of injured workers. Small employers should be provided with rehabilitation officers from directed by their insurer to assist them in the return to work process.

5. COMPENSATION PAYMENT ISSUES

Part 3 of the Workers Compensation Act 1987 prescribes the structure of payments for injured workers as well as payments to cover medical, hospital and rehabilitation costs.

Areas of concern relate to:

- (a) The level of compensation payments includes incentive payments even though the worker is not present (clause 11 of the Workers Compensation I(General Regulation 1995). Such payments should not be included in the payment as the worker is receiving the same amount as if they were present. Therefore there is no incentive to return to work as soon as possible.
- (b) This is more so an issue in times of stand-down of workers due to shortage of stock or breakdowns or other reasons beyond the control of the employer. In these situations the injured worker continues to receive weekly payments whilst the other workers receive no payment. The injured worker should not receive payment during these periods.
- (c) Section 49 of the Workers Compensation Act 1987, allows for injured workers to receive a double payment when on a period of annual leave, long service leave or even a public holiday. Another area where payment should not be made.
- (d) Where claimants have been found to have made a false or exaggerated claim they should not only be prosecuted but also be required to repay any compensation already paid plus all other associated costs to the employer. Such situations should also adjust the employers claims history.

6. REGULATOR OF THE SCHEME

The WorkCover Authority of NSW currently regulates the workers compensation scheme and provides funding for select insurers to administer the scheme.

Issues of concern:

There should be a greater accountability placed upon treating doctors/specialists as well as insurers to process claims as quickly as possible and to address situations of detected fraud.

7. OPTION TO REDUCE THE REGULATORY BURDEN AND COMPLIANCE COSTS ON BUSINESS

The NSW legislation provides for incentives for employer such as a premium discount scheme, where employers can gain up to a 15% reduction to their premium in the first year of the program.

There is no obligation on an employer whose basic tariff premium is less than \$50,000 per year to appoint a return-to-work coordinator.

Under the NSW Occupational Health & Safety Act 2000, an employer with less than 20 employees has no obligation to establish an OH&S committee, whether agreed between the employees or not. There is still an obligation though to appoint a person as OH&S representative unless other consultation arrangements are agreed to.

8. THE SHARING OF WORKERS COMPENSATION COSTS

The NSW Workers Compensation and OH&S legislation don't require the injured worker to contribute to the cost of workers compensation payments or premium therefore employers should be given assistance to reduce these costs, particularly if it is supposed to be a 'no-fault' system.

9. PREMIUMS

Just released by WorkCover New South Wales is the Insurance Premiums Order for 2003/2004 which contains new industry premium rates.

This Order has been based upon the expanded wages definition of wages, which includes such items as SGC and FBT.

WorkCover maintains that the new definition is intended to be revenue neutral but when one looks at the overall rates for some sectors in the meat industry it is hard to see how such a claim is meaningful.