



Submission to:

Productivity Commission

**Inquiry into National Workers' Compensation
and Occupational Health and Safety
Frameworks**

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Executive Summary

This submission provides comments and suggestions in support of the Productivity Commission's objective of assessing possible models for establishing national frameworks for workers' compensation and OHS arrangements.

The Minerals Council of Australia (MCA) is the peak body representing the Australian minerals industry. The Australian minerals industry includes the mining industry as defined by the Australian Bureau of Statistics, as well as the minerals processing and metal production industries, but excludes the petroleum sector.

The MCA member companies generate more than \$A43.3 billion in export revenue in 2001-2002, representing 85 percent of industry exports and 28 percent of Australia's total exports of goods and services. The minerals industry has 77,000 direct employees and in many areas this is an ageing workforce.

The MCA argues for the objective of national consistency in regulation underpinning workers compensation and occupational health and safety and the key concepts of efficiency, effectiveness and affordability, which are so critical to the international competitiveness of the Australian minerals industry.

In developing this submission, the MCA has sought input from our colleagues in the respective State and Territory Minerals Councils and Chambers. Some individual member companies also lodged their own submissions.

In relation to OHS Frameworks, the MCA has previously provided the Productivity Commission the National Mine Safety Framework endorsed by all relevant Ministers in March 2002 as a possible model for other industry sectors.

The key objectives advocated in this submission are:

- removal of impediments to early intervention, rehabilitation and return to work of employees injured in the workplace;
- elimination of disincentives to return to work;
- implementation of nationally consistent workers compensation and OHS legislation;
- adoption of flexible, non-prescriptive legislation to encourage innovation and best practice;
- facilitation of insurance coverage across multiple jurisdictions;
- adoption of consistent definitions and terminology
- clarification of contractor and sub-contractor responsibilities;
- encourage alternatives to litigation and the adversarial court system in the interests injured workers;
- provision of a cap on maximum benefits;
- adoption of non-adversarial dispute resolution systems such as mediation;
- adoption of premium setting that rewards responsible practices and improved safety performance;
- development of a framework that provides national insurance options;
- avoidance of cross subsidisation when integrating workers compensation and OHS legislation and statutory authorities.

National Workers' Compensation and Occupational Health & Safety Frameworks

Prevention of injury and the adoption of risk management systems is considered the best strategy for minimising workplace related injuries.

Historically, legislative changes in the areas of workers' compensation and occupational health & safety have tended to result in increased complexity and costs and are not directly correlated with improvements in performance. Future changes need to reverse this trend and identify mechanisms whereby improved workplace safety is facilitated and impediments to early intervention, rehabilitation and return to work for those injured in the workplace are removed.

Any workers' compensation scheme needs to strike a balance between supporting employees who sustain work related injuries and assisting them in their recovery. It is important to ensure support measures do not provide disincentives to return to work.

The basic principles, which underpin workers' compensation and occupational health & safety legislation, should include efficiency, effectiveness and affordability.

In relation to OHS Frameworks, the Minerals Council of Australia has previously provided the Productivity Commission the National Mine Safety Framework, endorsed in March 2002 by the Ministerial Council on Petroleum and Mineral Resources. The Framework provides for the adoption of a uniform, consistent approach to mine safety across jurisdictions. The key goals relate to:

- consistent legislative framework
- competency development
- compliance
- enforcement strategies
- consistent and reliable performance data
- effective approaches to consultation
- effective research

The Ministerial Council has tasked the Chief Inspectors of Mines from all States and Territories to drive the implementation of the framework and to engage key stakeholders in the development of the implementation plan. This approach might provide a useful model for other industry sectors.

National Consistency

The MCA considers a nationally consistency approach to workers' compensation and occupational health & safety arrangements essential in addressing the concerns relating to the common situation where a company has employees who work in multiple jurisdictions. Currently, such organisations provide coverage in one state but also obtain duplicate coverage if employees are interstate for an extended period of time.

The requirement for companies to comply with different legislative systems in each jurisdiction is neither efficient nor sustainable. The resulting effects on employers who operate in multiple jurisdictions are increased costs in insurance and administration arrangements. Alternatives to the multiplicity of arrangements currently in place need to be considered.

The MCA advocates:

- a move towards establishing national consistency in workers' compensation and occupational health & safety to encourage efficiency in administration and a reduction in costs incurred by employers;

- the development and implementation of equitable policy and procedures for all staff employed by organisations that operate in more than one jurisdiction;
- a flexible but nationally consistent approach in responding to change, encouraging innovation and best practice and adopting a non-prescriptive minimalist regulatory approach;
- where an employer is able to demonstrate an employee has insurance coverage in one state, it should not have to obtain duplicate insurance if the organisations employees work in alternative jurisdictions

The MCA provides the following comments in response to the Productivity Commission's Issues Paper of April 2003. The MCA's position is founded in the key objectives of national consistency, efficiency, effectiveness and affordability and is presented in support of the Commission's objective of assessing possible models for establishing national frameworks for workers' compensation and OHS arrangements.

Definitions

Any progress towards national consistency will require as a matter of priority, the review and integration of definitions used by both workers' compensation and occupational health & safety systems. Consistent definitions should apply to common terms such as employer, employee, workplace and work-related injury/illness and fatalities, rehabilitation, injury management. (For example, a definition of workplace including travel to and from work is inappropriate as compensation for workplace injury was designed to cover employees while they are at work). Similarly, there should be consistent interpretation of impairment or disability concepts.

The responsibilities of contractors and sub contractors in the provision of, and access to, workers' compensation should also be clarified.

Benefit Structures

Consistent benefit structures should be implemented which are both fair to the employee and encourage a return to work.

The MCA considers that any increases in benefit structures will result in an increase in the premiums imposed on employers, which potentially could result in a reduction of services and the viability of business operations.

It is understood benefits can and do act as a disincentive to return to work. The MCA suggests consideration be given to:

- a cap on all benefits including medical benefits, and a step down approach taken to weekly payments (in Western Australia there is no support for any increase in the limit on claims of \$130,609 and most claimants return to work before exceeding the limit. Any increase in the claim limit would lessen the focus on a return to work and result in an increase in premiums);
- weekly benefits to be less than full pre-injury earnings (this will require clarification of whether weekly benefits include overtime, bonuses or allowances)

Consideration should also be given to ensuring all fees and charges are consistent, with rates negotiated with relevant professional bodies to prevent over charging by individuals. Currently, some services provided to workers' compensation recipients that are not regulated may be charged at a higher rate than those charged to the general public resulting in increased claim costs. Provision of treatment and other services should be evidence based to prevent over-servicing and monitoring of service providers should occur to ensure quality.

For the purpose of coverage, employers should not be responsible for claims where circumstances outside their control are a major factor causing the injury, for example journey

claims to and from work, nor where there is gross negligence or wilful misconduct on behalf of the employee.

Lump sum payments in lieu of statutory benefits should be permitted only where permanent partial or total impairment results from the work related injury. Consideration should be given to strategies where acceptance of a lump sum terminates any further entitlement to weekly payments and medical benefits for that particular disability, and results in the wavering of common law rights.

In determining lump sum payments and access to statutory benefits, consistency is needed in the method of assessing permanent impairment.

Common Law Damages

The focus of any workers' compensation system should be on return to gainful employment rather than litigation as a means to resolving claims. The MCA considers that litigation through common law can act as a disincentive to return to work and directly conflict with a focus on injury management. Common law action may be appropriate in some circumstances where employees have permanent severe impairment but even then, the adversarial court system is not always in the best interests of injured workers (third parties may be the beneficiary of any such action).

Employees suffering from a work related injury should be required to waive access to common law if they elect to accept statutory benefits. It is desirable to avoid a situation where there is the capacity to accept statutory benefits and continue to pursue common law action.

Consideration should be given to both capping maximum payments and to reducing common law damages by an amount equivalent to statutory compensation payments already received by the injured worker.

Any proposal made in the area of common law should take into account the recommendations of the *Review of the Law of Negligence, Final Report by Justice Ipp et al, September 2002*.

Injury Management

The primary focus of nationally consistent legislation should be on early intervention and return to work as opposed to ongoing compensation of injured workers.

The employer and injured worker should have joint responsibility for return to work.

Medical practitioners treating injured workers should be required to liaise with both parties to facilitate an early return to work. Doctors need to work closely with employers to better understand the work environment to which an injured worker will return. There is also a need to avoid over servicing (eg physiotherapy).

Consideration should be given to continuation of benefits should an injured worker fail to actively participate in or refuse to undertake rehabilitation or a return to work program prepared by either the employer or a rehabilitation provider.

While an employer should be required to keep an injured worker's position open for a limited period of time, the employer should not be required to provide suitable alternative duties for an indefinite period. Additionally, it should not be mandatory for employers to appoint a trained rehabilitation coordinator, however the development of internal policies and procedures to assist injured workers return to work should be encouraged and supported by linking premiums to performance.

Consideration should be given to the implementation of incentive schemes for new employers of injured workers. The features of this would depend on the features of the nationally consistent scheme implemented.

Rehabilitation should be targeted at complex cases with a low probability of a return to work with the original employer.

Dispute Resolution

The MCA supports non-adversarial dispute resolution systems that are nationally consistent. The participation of legal representatives in the initial mediation or conciliation stages of the dispute resolution process should be avoided as it can significantly increase the cost of the process.

Employers want to be involved in decisions impacting on their employees, particularly when claims are to be rejected.

Premium Setting

Premium setting should be experience rated, rewarding responsible practices and improved safety performance and internal management practices. This will provide incentives for ongoing occupational health & safety improvements and the return to work of injured workers.

The Australian minerals industry has made a concerted and significant effort over the last decade to improve occupational health & safety performance. Strategies implemented to achieve national consistency in premium setting need to recognise this effort and ensure that the minerals industry is not cross-subsidising other industries that have not been as focused on improvements in their safety performance.

National Self-insurance

Self-insured companies face strong incentives to prevent injuries and manage claims effectively and efficiently. As such, national self-insurance options should be available to those organisations that operate in more than one jurisdiction.

Eligibility criteria for national self insurance should take into account the organisations ability to meet prudential requirements and the structures and resources it has in place to effectively manage work related injuries.

Insurers

Strategies that facilitate positive competition in the provision of insurance are important and can have a positive impact on reducing premiums. A role for private insurers is important to allow this to occur.

The MCA supports a framework that allows licensed insurers to provide coverage in all jurisdictions. Such a framework would prevent organisations having to negotiate with multiple insurance companies for coverage where they operate in more than one state. In light of the recent corporate failures it is essential that insurance companies meet mandatory prudential requirements.

The use of insurance contracts is supported so that organisations can clearly see which component of the premium is based on risk and how claims experience and implementation of safety strategies will affect this. Insurance contracts should also establish service delivery standards so that an organisation is aware of what it can expect from the insurance company.

Mechanisms should be put in place that encourage insurers to minimise administration costs, while increasing the quality and diversity of services offered to organisations to assist them effectively manage workers' compensation claims.

Interrelation of Workers' Compensation and Occupational Health & Safety Legislation

In advocating nationally consistent legislation for both workers compensation and occupational health and safety, the MCA urges caution when seeking to integrate workers compensation and OHS legislation and the relevant statutory authorities.

The MCA's considers it unacceptable for funds raised through workers' compensation premiums to be used to finance the activities of the authority that administers the occupational health & safety legislation.

Any such transfer of funds could result in increased workers compensation premiums to subsidise occupational health & safety strategies. The MCA believes workers compensation premiums should only be used to cover the benefits of injured workers, running expenses of approved insurers' and the statutory authority that administers the relevant workers compensation scheme.