PRODUCTIVITY COMMISSION

INQUIRY INTO NATIONAL WORKERS' COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY FRAMEWORKS

SUBMISSION BY
THE NATIONAL MEAT ASSOCIATION OF AUSTRALIA

A. SUMMARY

This is a brief submission dealing with some of the main issues.

The National Meat Association of Australia ('NMAA'), on behalf of its members, is vitally concerned with workers' compensation and OHS. Those members, throughout Australia, are involved with the respective systems on a daily basis. Each system is complex, an administrative nightmare and burdensome in terms of compliance costs.

This is a multi-billion dollar industry out of control.

Many members of the NMAA operate related businesses across state borders necessitating a completely different approach so as to comply with workers' compensation and OHS responsibilities under each system - we are talking about all states. On occasions employees transfer between different inter-state workplaces. Many employees of NMAA members have worked at workplaces in different states owing to seasonal and other geographical and environmental factors.

All interested parties will agree, more or less, that the economics of having eight or more workers' compensation and parallel OHS systems is a ludicrous situation. All will probably agree that there should be established national frameworks. Most will express an opinion as to whether the implementation and administration of the schemes should remain with the states or whether there should be a new national regime. Concerning this last issue, it must surely be a simple question of economics assuming agreement can be reached between governments.

Let us outline some of the primary matters from the NMAA's point of view.

The real danger in attempting to develop a consistent national code for workers' compensation is to reach consensus and to defy any attempt to merely extract from each system 'the best of the best' in terms of funding and monetary compensation. This trap must be avoided. A proper, reasonable base must be established, in whatever model, to meet the very specific objectives of the

schemes for the employer and the worker. The end result is certainly not to increase compliance costs for the premium paying employers so that they are pushed even higher than they are at the moment.

After all, it is the employer who funds the systems and others who allocate the money.

Then there is return to work/rehabilitation programs, the aim being to have in place a code/system that completely encourages the quick return to the workforce of the worker. A low return to work rate is a major cost for the employer and ultimately for the worker. Because of the way most of the schemes are structured at the moment this does not easily occur. Any framework must rid the systems of deterrents.

Obviously an issue for the injured worker is adequate compensation - not the greatest amount of compensation so that the worker receives more to rehabilitate than working. This is what happens at the moment on many occasions in the meat industry where incentive systems operate based on production for specific days. Other anomalies prevail where injured workers accrue RDO's when they are not at work for long periods and accrue other forms of leave. Anomalies like this are written into the legislation and industrial instruments.

Next, if the injured worker is unable to return to work, the issue is overall adequate compensation and/or vocational re-training given the injured worker's position and injury but with in-built limits such as access to the common law courts.

Other objectives include:

- to make the system(s) less complex;
- to reduce administrative costs;
- to reduce and/or rid the systems of unnecessary medical and legal costs;
- to reduce an adversarial approach in the claims process;
- to spread the risk and to lessen the burden on employers of complying.

For decades, workers' compensation systems have tended to be reactive and OHS systems pro-active. Any defects in the workers' compensation system or unwanted complexities have found their way into the OHS process and outcomes. It does not have to continue to be that way and any discussion of reforming workers' compensation should run parallel with a consideration of OHS. That may have been behind one of the recommendations of a recent Inquiry by the House of Representatives Standing Committee on Employment and Workplace Relations namely:

> "**Recommendation 11**
> *The Committee recommends that the Commonwealth Government, in collaboration with the States and Territories, develop a program to implement the National Occupational Health and Safety Commission guidance notes for best practice rehabilitation management of occupational injuries and disease nationally."*
>
> *See: Back on the Job Report, June 2003.*

Concerning the various models proposed for discussion, unless there was complete agreement between the Federal and State Governments and it was cost neutral, there do not appear to be economic reasons why there should be in place a national regime.

Co-operation has taken place in many areas such as Corporations Law and food safety, the latter of which the NMAA is heavily involved. We fail to see the logic of why such a co-operative arrangement cannot occur in the fundamental area of workers' compensation and OHS save and except for political considerations.

At the end of any proposed reform process, we must see tangible and real reform that addresses each of the relevant matters. Otherwise the debate will have achieved nothing.

B. OVERVIEW

Even for a country with a relatively small population such as Australia, the cost of implementing, operating and regulating workers' compensation and OHS legislation runs into billions and billions of dollars. Valuable financial resources are being wasted.

As has been noted elsewhere in dealing with workers' compensation in Australia, there exist at least eight different systems operating throughout the country. To this we can add at least eight different parallel OHS systems.

The NMAA has (and agrees with what others have) submitted in the past that:

- These systems, developed and patched up on an ad hoc basis over many decades, have substantial and complex differences;
- Most of the systems suffer from the same deficiencies;
- The systems have not adapted to meet changing circumstances;
- The response of the states has usually been to increase complexity;
- Most of the systems have failed to meet clear objectives of any system.

All these different systems operating for a working population under ten million people in a country of less than 20 million people. This might have been acceptable (perhaps neglected is the correct word) in the years past but now, nothing could be more absurd.

Consistent reform has to occur either at the federal or each state level.

The failure of the workers' compensation systems in this country does not dominate reporting by the media. Until a financial catastrophe arises it is mostly hidden from the general public arena. For many employers however, workers' compensation premiums represent a very large liability and many believe the money is being wasted on unnecessary inefficiencies.

Workers' Compensation and OHS systems, for the vested interest groups involved, are very emotive issues. Without being too harsh we believe most of

these vested groups would wish to hold onto the present arrangements for fear of what may be contained in any National Framework. For these groups, the systems are a means to an end. When we mention vested interests let us be up front. We mean the lawyers, doctors, consultants, rehabilitation providers, insurers and agents and the overseeing regularity authorities themselves. The operation and regulation of the systems breed inefficiencies.

The cornerstone of workers' compensation and OHS is not about the vested groups. It is, fundamentally, creating the mechanism whereby workplaces across the country are safe environments and where management complies with OHS responsibilities and manages risks. Where employees have the misfortune to be injured as a result of employment, any system should be able to provide a simple procedural process and to provide the fairest compensation in the most efficient and economic manner.

We used the words 'in the most efficient and economic' manner. We believe, at least for the industry represented by this submission, that the vested interests have helped the systems reach a level where they have become an administrative and compliance nightmare. For employers in this industry workers' compensation and OHS regulation and compliance has become such a monetary burden that it has threatened the viability of many of the operations.

Very simply, we need fairer and less complex systems. How that occurs is the subject of this Inquiry.

The following examples that occur on a regular basis:

- doctors issuing certificates without proper investigation is major problem;
- injured workers 'doctor shop' knowing they will receive a certificate and then another certificate as each will further the employee's short term interest;
- employee non-compliance with return to work programs;
- employees refusing to return to work and hiding behind certificates and conflicting medical advice;
- employers are continually advised to settle matters rather than contest matters in the tribunal or court;

- insurers, under a government regulated scheme, do not fully protect the interests of the premium payers;
- whenever lawyers become involved, costs dramatically escalate;
- much of the costs of operating some of the systems end up with lawyers, doctors, witnesses etc. or, become eaten up on administration;
- in many instances after lump sum payments are made the injured worker resumes a career irrespective of the alleged injury.

We are not exaggerating and have given examples to past inquires on these matters. Every one increases the costs associated with the systems. We refer the Commission to the examples cited in the NMAA submissions before the Federal Parliamentary Inquiry.

If the end result of any inquiry is simply to pluck the best of the best from each system thereby creating even higher standards and costs for employers then we suggest do not even bother attempting to reform the systems or recommend the implementation of a National Framework. Such an outcome would be disastrous and eventually all the system(s) will buckle under financial constraints.

This is exactly what has occurred in NSW and perhaps now in South Australia. Make no mistake how these governments will expect deficits in the workers' compensation systems to be met. The answer is by the employers, not from consolidated revenue.

Industrial instruments

We should say something about these matters because federal legislation needs to be addressed.

Many employers operate to federal awards of the Australian Industrial Relations Commission. It is permissible for an award to contain provisions for sick leave including accident pay and matters incidental thereto. Such provisions in the award may seek to cover the field against state legislation and this is permissible.

Above the safety net federal award system, many employers are party bound to Certified Agreements and Australian Workplace Agreements under the Workplace Relations Act 1996 (Cth.). The provisions of such instruments are subject to the provisions of the respective state workers' compensation and OHS systems: see sections 170LZ(2) and 170VR(2) of the Act.

This creates anomalies.

There is a recent example of a probationary employee on accredited light duties recovering from a workplace injury. During this period the employee was summarily dismissed, in accordance with the terms of the employment agreement, for hacking an animal to death at a plant. The employer was informed by the WorkCover authority that dismissal was not available because they - WorkCover - decided that the actions did not constitute serious and willful misconduct in accordance with the state workers' compensation laws.

The NMAA has been involved in instances where courts and tribunals have interpreted matters such as various clauses in an award covering sick or accident leave or new incentive pay structures. Particular vested interests have lobbied governments to amend state workers' compensation legislation to turn the clock back. The NMAA member was not even informed of the proposed amendments.

There is no overall consistency.

C. THE NMAA

The NMAA is an organisation registered pursuant to the provisions of the Workplace Relations Act 1996 (Cth.). or nearly eight decades the organisation has been representing the interests of employers engaged in or in connection with the meat industry.

Our membership covers meat processors, value added meat manufacturers, wholesalers, Smallgoods manufacturers and retailers. he NMAA effectively represents the industrial interests of members in both federal and state jurisdictions. n the state arena one of primary areas of representation is workers' compensation and OH&S.

The NMAA sits on numerous bodies dealing with these subjects. These bodies range from those that are government led and funded to industry bodies in the various states. e are involved in the whole ambit of workers' compensation and OHS on behalf of members.

Over the last decade the organisation has been involved with and, spent numerous amounts on, WC and OHS risk management programs for members to show our resolve to manage the risk at the workplace. Some examples of those recent programs are:

- National Guidelines for health and safety in the meat industry;
- Meat industry safety and health continuous improvement framework;
- OHS Australian meat industry reference guide;
- Ergonomic best practice case studies;
- Reduction in sprain/strain injuries using ergonomic task analysis;
- Assessment of muscular strain during performance of tasks;
- Noise control for abattoirs;
- Injury management resource kits;
- Q Fever information kit.

There are other examples.
All these programs have taken place with industry money. All programs implemented with industry money.

D. THE MEAT INDUSTRY

Under this heading, we extract parts of what we submitted before the Federal Parliamentary Inquiry.

"The meat industry, as covered and represented by the NMAA throughout Australia, is wide and varied.

The processing sector comprises employers in every state and the number of employees could be as low as 20/30 or as high as many hundreds. Smallgoods manufacturing is characterised by the same features. Retail Outlets tend to employ 5/20 persons with the chains employing a number in the hundreds.

In all the sectors, there are some common themes. Firstly, a large number of employees use knives or similar sharp instruments. Secondly, a large number of employees have been employed in the meat industry for substantial periods of time. Thirdly, many employers have operated businesses for lengthy periods i.e. decades rather than years.

The industry is labour intensive and has a large component of repetitive tasks. Due to the nature of the industry, various zoonotic diseases may be prevalent. The industry operators understand these features and significant steps are in place and have been taken to protect people from the inherent risks of injury and illness and to improve health and safety at work generally.

Steps and improvements have been taken up right across the processing sector. They include:

- *Increased use of mechanisation where possible;*
- *Better process and equipment design;*
- *Improved design, manufacture and use of personal protective Equipment;*
- *Better education of safety and hygiene standards;*

- *Increased understanding of ergonomics and application of techniques of work practices;*
- *Increased research into injury management strategies including adoption of early intervention methods.*

The Smallgoods sector has consolidated over recent years through mergers and acquisitions. The change and improvements that have been taken up by meat processing have not escaped Smallgoods. It too is labour intensive and has a large component of repetitive tasks.

Likewise meat retail has had to adopt to changes over the last decade. Most changes have involved education, food safety, hygiene, application of techniques and training.

Some sectors of the meat industry, represented by the NMAA, are the subject of the highest premiums in all of the states when compared with the average for all industries."

We should add some other comments.

First, the meat industry (mostly in the processing and Smallgoods sectors) has severely rationalised over the last decade. This has meant that business operations have spread beyond state borders, sometimes in two, three or four states. In these instances, employers have totally different obligations to meet, different systems to understand, different premiums and completely different administrative burdens. Some schemes are centrally funded and some privately underwritten.

Secondly, we repeat a point made earlier. The processing sector is a production chain operation dominated by incentive schemes i.e. rate of weekly pay varying according to output. In many instances, injured employees receive more to stay off work than to return because of the way the definitions of weekly pay are defined in the statutory codes.

The objective of any compensation system surely is to provide adequate compensation, not more than other employees receive by working each day of the week or month. This feature, along with others, actually provides the worker with a deterrent to returning to work.

Thirdly, the meat processing sector of the meat industry is one that is subject to the highest premiums under each system. It sits usually in a different industry code compared to meat retailing and we make no submissions on that point as there are reasons why this is the situation and the industry has been only too willing to respond with proper risk management programs in a sector that contains many hazards. But the method of ascertaining the premiums for each processing plant is arbitrary, ad hoc and bears little or no relationship to work safety performance.

Fourthly, a culture has developed in the industry whereby it is easy for a worker to enter the workers' compensation system and much more difficult to hide behind the system.

E. COMMON FAULTS WITH THE STATE SYSTEMS.

The NMAA continually conducts surveys concerning WC and OHS throughout Australia. Most faults are common. In the last year those inquiries have resulted in the following general conclusions about most of the workers' compensation schemes where members of the NMAA employ persons in the conduct of the business.

Systems are far too complex.
They are an administrative burden.
The definition of work related injury is just too loose.
Employers pay the premium but given little say in process of claims.
Arbitrary setting of premiums across the country.
Questionable medical decisions are all too common.
Indifference and lack of co-operation of doctors in the claims process.
Medical profession knows little about the workplace yet they make the decisions.
Ease of obtaining medical certificates.
Claims seem to drag on forever.
Excessive time taken to assess claims thus creating problems.
Rehabilitation only successful if employee fully co-operates.
Little incentives for employees to quickly return to work.
Workers' compensation has created a culture amongst the workforce.
Little deterrent to abusing the system.
Limited investigation and co-operation by insurers of claims for whatever reason.
Limited investigation of pre-existing injuries.
Indifference of the legal system where involvement of lawyers is permitted which inhibits a proper working of the system.
Common law claims should be severely limited.
Workers' compensation simply treated as another employer pay out.
Legislation biased in favour of employees.
Attitude of various insurers and WorkCover authorities who treat claims on a 'cost-benefit' basis.

We turn to some of the specific workers' compensation schemes themselves and the view of NMAA members.

Queensland

Access to common law has to be limited to prevent the cost of claims from being artificially inflated through the involvement of legal processes.
Common law now accounts for nearly fifty (50) per cent of claims.
In some cases the earnings rate while on compensation is so attractive that there is little incentive to return to work.
Estimated that up to 60 per cent of all damages claims ends up in the hands of lawyers, medical profession and expert witnesses.
WorkCover is the body that collects the premiums from employers and processes the claims from employees.
The claim and review process is flawed.
The problem with the system lies not with the severely injured but the multiple number of small claims that find their way into the system and over which the employer has little control.
Multiple WorkCover staff involved leading to confusion and delay.
Investigating officers ill prepared resulting in wasting time.
Often when WorkCover disallows a claim, it is subsequently overruled by an internal WorkCover Review unit.
Costs are being driven to prohibitive levels.

The government claims that the average premiums have not increased but the processing sector of the meat industry can provide evidence where premiums are four and fivefold the settled claims for operating entities in any given period. The money is being swallowed up somewhere.

Further, some years back in the early nineteen nineties, the system in Queensland was bankrupt. The way out for the government of the day was to re-structure the method of calculating premiums so that all employers paid for the deficit.

New South Wales

The deficit in the system is three billion dollars.

An effective rehabilitation scheme does not exist because of flaws in the system. This is irrespective of the amendments to the legislation in the past 2/3 years. Faults continue to plague the system such as:

Doctors' need to be made more accountable.
It is financially better off, on many occasions, for a worker to say at home than return to work.
It is the employer who is paying solely for the claim and yet the employer has less contact with the doctor and/or insurer.
Legal representation should be denied completely.
There is no incentive for an employee to strictly adhere to an injury management program.
In many instances there is little incentive to return to work.
WorkCover is simply the banker in the system with a debt of 3 billion.
Superannuation and fringe benefits etc. are now included in the premium base and it is highly unlikely that premium adjustments will be cost neutral and premiums will further rise in the coming years placing an even greater burden on employers.

In this state it is obvious that the government is expecting the employers to fund the deficit.

South Australia, Victoria, Western Australia and Tasmania.

Without repeating them unnecessarily, these systems suffer from many of the defects outlined for Queensland and NSW.

The SA system is heading down the path of New South Wales in terms of deficits. Unfunded liabilities are alleged to have blown to more than $380 million. Levies paid by employers have just increased.

This is under a system where access to common law by employees was abolished some years back. Real reform has to occur.

F. THE WORKERS' COMPENSATION SYSTEMS

The differences between the state systems are alarming and fundamental.

For example, consider as follows:

Definitions of injury differ markedly.
Definitions of employee and employer differ.
Each system has varying levels and layers of compensation.
Each system defines earnings or weekly amounts in a different manner.
Access to common law exists in some systems but not in others.
Different approaches to claims exist in each system.
Some are privately operated while others are not - each system providing unique faults.
There are different rules and regulations that follow the injured worker and the rehabilitation programs.
Premiums for employers are calculated differently.
The mediation process differs, as does the appellate process.
Management of claims differ but overall are all generally poor.
Varying insurance requirements.
No cross border access for all systems.

This is over and above the specific administrative faults in-built into each system.

We can deal in detail with each of these but the Commission will be aware of these substantial differences and which are being addressed in the Inquiry.

The differences in the workers' compensation systems filter over into OHS responsibilities under the various OHS codes.

H. THE PRODUCTIVITY COMMISSION INQUIRY

We now deal with some of the matters listed under the heading 'Scope of the Inquiry' in the Issues Paper.

a. Consistent definition of employer, employee, workplace and work related injury across Australia.

Employer/worker

No one can doubt that the definition of worker and employer should be consistent across the country. There exists no logical reason why this can and should not occur. This means reviewing each of the definitions in the systems and determining the most appropriate framework.

Work related injuries and illnesses.

A more difficult issue is the question of 'work related injury'.

The statutory definitions concerning the causal connection between employment and injury are wide and varied as follows:

- substantial contributing factor;
- significant contributing factor;
- arises from employment;
- a contributing factor;
- must contribute to a significant degree;
- the employment was a real, proximate or effective cause of the injury.

They have altered markedly under each system over the years to suit the times. In many of the instances, these alterations have been patched up attempts to remedy supposed defects and to place even greater burdens on employers. They have been extended by the legislatures due, in all probability, to lobbying from various interest groups. This has resulted in courts interpreting the legislation and, authorities administering the schemes,

so that now the employment of the injured worker does not have to be the major cause of the injury.

We refer to the NSW legislation. Here, the test is 'substantial contributing factor'. The legislation gives examples of matters that are to be taken into account in determining whether a worker's employment was a substantial contributing factor. These are not listed in the other legislative schemes.

Then there arises the area of disease or stress or psychological disorders. In these cases the tests outlined in each of the legislation schemes are different.

Because of the way the systems have developed it is much now much easier for non-genuine and/or exaggerated claims being allowed, as have claims where the injury substantially contributed to by lifestyle, degenerative or hereditary factors. It has become much easier for insurers to simply say to employers 'accept the claim'. It becomes, in many cases if the claim is taken higher, a battleground for forensic evidence in an adversarial situation. In other cases, the word of the employee in all probability is accepted.

We have only ourselves to blame it has ever reached this position and that the systems vary so widely.

One doesn't have to be a lawyer on the roll of any court of superior record to understand, in the case of an injured worker, the difference between the test of employment being the 'major significant factor' causing an injury' compared to employment being a significant contributing factor' to the injury. The Queensland Government, sometime back, legislated such a change prompting the courts to deal with claims that may not have been dealt with prior to the legislation being amended.

In the view of the NMAA, many of the tests operating are outdated and have lifted the standards and the bar in stages on an ad hoc basis resulting in more workers into the system. It has become much easier for claimants to

make claims and has negated the real reason for the schemes being on the books of legislation.

Yes, workplaces are more complex than ever before and medical science has extended the barriers of knowledge. However, in this day and age, in an era of extended litigation in the adversarial system, more certainty is needed for mediators and tribunals and courts - if courts are left in place to deal with such claims. It should be a 'no fault' insurance system where employment was the major and substantial cause of the injury not a system of a worker being injured at work and being able to claim it was a contributing factor.

We are not suggesting we research the earlier definitive schemes to resolve the dilemma. In our view the test of injury should be made clear so that no one is left in any doubt what is intended as to the test. In our view, employment must have been the major and substantial cause of the injury? We suggest as well that the NSW elements, referred to earlier, be added to any national framework.

If pre-existing injuries recur or are aggravated or accelerated or deteriorate then employment must have been the major and substantial cause.

Any such definition of injury should include disease.

Concerning psychological injuries or disorders of the mind some of the statutes provide exclusions and they must be retained in any code.

Of course, there will be those who will argue that any compensation system should cover any contributing factor caused by employment thus giving rise to a claim. If a national framework was developed along such lines our view is that the systems would be bankrupt in a very short period.

In our view the scope of the present systems is the exact reason why we are in the mess we are and why remedial action is urgent. Clear reform has to be proposed under this head.

Unless this critical issue is resolved it is doubtful one can progress reform very far. It is one of the main reason why entry into the workers' compensation system by workers is far too easy and why authorities, private or in a system run by a statutory authority, accept claims.

Let us give an example.

A claim is made under any existing system where employment must be a 'significant or substantial contributing factor'. The employer, with management systems in place, has no idea how the injury occurred and there are no witnesses to what is alleged to have occurred. The claim is denied and the claimant appeals. Mediation is unsuccessful and the claimant retains a lawyer who commences a claim in the common law courts or the claimant seeks a review. Medical reports are obtained from medical practitioners who usually appear for claimants. The claims are settled on the steps of the court or on the day of the hearing without full investigation.

This is an all too familiar case.

We realise that what we propose may create some financial hardship and extra burden on the already stretched medical insurance system and social security system. If an employee is genuinely injured and that employment was not the major and substantial cause of the injury then the medical and incidental costs are inflicted onto other social systems in place.

The House of Representatives Standing Committee touched upon this matter when they said:

> *"8.2 nonetheless, there was widespread evidence that at least one significant form of 'fraud', if it could be called that, occurs against the Commonwealth in the form of cost shifting either covertly or overtly from State based workers' compensation schemes…."*
>
> See: Back on the Job Report, June 2003.

This touches upon two other aspects of the inquiry namely matters (d) and (k) listed under the Scope of the Inquiry. If workers are unable to perform a function at the workplace, there needs to be complete vocational re-training or adequate compensation within the parameters of this paper.

Journey claims

These need to limited and tightened because of the absurd results thrown up by the systems over time.

Contributory Negligence of the employee

Any framework should clearly spell out that contributory negligence by the employee should substantially reduce any claim. T he obligations for implementing and maintaining a proper OHS system at the workplace rest just as much with the employees as the employer. Any framework must reflect this fact, if contributory negligence is proved.

In the case of the meat industry, having regard to an earlier summary in this submission, this is a major problem.

Employees who lie concerning pre-employment injuries

In any framework, an issue will arise as to whether an employer was or was not informed of any pre-existing injuries where such requests for information are made and do not offend applicable state or federal law.

If such a request or requests were made and the worker declined to answer and/or answered knowing it was not true then this should affect a claimant's ability to lodge a claim if the alleged injury is related to that which pre-existed.

There are many instances in the meat industry where this occurs even though employees are given proper and legal forms to complete concerning past injuries.

Such employees are injured and submit claims which are processed or, where applicable, the claimant is represented by a lawyer and the claim is settled on the steps of the court against the advice of the employer.

Time limit on putting in claim

The time limit on submitting claims needs to be reviewed. By the time some claims are submitted the evidence that such an injury occurred at the workplace is long gone, let alone as to whether there does exist a causal connection with the claimant's employment.

b. Consistent benefits structure that provide adequate levels of compensation, including income replacement, medicals and related costs.

The NMAA has the following general comments.

First, there appears to be no rational reason why the benefits of each workers' compensation system paid to injured employees differ from system to system. Surely there are no economic, geographical or environmental factors that say a person in one state should receive a certain benefit for a longer or shorter period than a person in another state.

With this in mind, by far the majority of claims for workers' compensation are for periods of time less than twelve months. The emphasis must be on return to work programs for these workers.

However, as it is just far too easy for employees to jump into the workers' compensation system it is also far too easy to remain in the system. The NMAA does believe that any benefit structure has to be fair but not such that a worker receives more than what the worker would have received had the worker not been injured. This objective means receiving a percentage of defined earnings for a period no longer than six months and a substantially reduced percentage for a period up from six months to one year.

There will obviously be a debate about these figures and these percentages.

The second comment concerns the earnings base during the period of the injury. In the view of the NMAA where workers receive more during periods of workers' compensation than if they were working it creates a huge problem and provides the ultimate incentive not to want to return to work. Such deterrents must be eliminated.

There are different income bases existing in each of the various systems in the payment of benefits and a case can be made for consistency. We again make the point that in developing any National Framework if the objective is to lift the 'best' from every system and lump it together there will be grave consequences for the viability of such a scheme.

The NSW system is now framed so that employers must include superannuation guarantee payments and fringe tax benefits in the remuneration definition for the calculation of premiums. It is just a case of the government extending the base to fund the deficit.

Thirdly, there are other anomalies such as in Queensland where the employer is required to pay for the first four days where a worker is absent on workers' compensation.

c. The implications of retaining, limiting or removing access to common law damages.

The NMAA points out that in Queensland common law payouts account for nearly fifty (50) per cent of the payouts. A large proportion of this percentage ends up in the pockets of lawyers, the medical profession and witnesses.

There is an overwhelming argument that there must be an end to workers being able to access the common law courts and an adversarial system of deciding claims, except in extreme cases of impairment.

There are those who will argue that injured workers should have the same right as any private citizen to approach the courts and file what the claimant believes is a just cause of action. But the private citizen is not wholly insured in a no fault system and does not have access to a statutory scheme.

Our criticism of the common law system is that most of the claims are on the lower end of the scale that involved 'no win, no fee' lawyers and the infamous settlement of the claims on the steps of the courthouse.

The statutory scheme should represent the complete code and should not entertain access to the common law courts except in extreme cases.

There should be tribunals within the mediation and review process where strict rules of evidence and procedure should not apply but the adjudicator or group of experts sitting on a panel (not WorkCover employees) should have wide discretion to entertain matters after hearing all parties including the employer.

If one puts in place a proper mediation and review code, then it is hard to imagine that such a system can require access to common law to continue in the state systems where it still exists.

The NMAA was scathing in its submissions to the Federal Parliamentary Inquiry about the role of lawyers and the legal system. Many members of the NMAA operate in regional areas and regularly one could find advertisements in the local press calling upon allegedly injured workers to ring up for an interview.

d. The most appropriate workplace based injury management approaches and/or incentives to achieve early intervention, rehabilitation and return to work assistance to injured workers and to care for the long-term and permanently incapacitated.

Claims should be able to be processed quickly and unless this is done valuable time is lost in many instances. To achieve this requires a flexible system based upon the co-operation of all the interested parties.

Guiding principles should be developed and codified and the obligations should be on all the parties. The aim must be, in by far the majority of cases, a quick return to work for the injured worker and the eradication of impediments that deter a return to work.

Consideration should be given to establishing independent medical tribunals to assess cases and independent mediators with expertise to resolve disputes.

Those workers unfortunate not to be able to return to the place of work must be assisted, if appropriate, in a vocational re-training program or adequately compensated.

e. Effective mechanisms to manage and resolve disputes in workers' compensation matters that encourage resolution, involve all interested parties, encourage dispute resolution and retain an appellate structure.

Our comments on this matter are spread through the submission. Once the emphasis in any system or code is mediation and dispute resolution it should, in our view, reduce administrative costs and thereby lessen the burden on the employers.

This will only occur if:

- There are truly independent expert bodies that can assess any claimant.
- All the parties are able to participate in the process.
- Legal access is severely limited or not permitted.
- All parties accept the mediation and conciliation process.
- There is an independent review process available if a party feels aggrieved.

- Access to the common law is severely limited.

f. The premium setting principles.

A section of NMAA members are subject to some of the highest premiums in the land.

Our major criticism is that premiums appear to bear little relationship to the overall workforce safety performance of many businesses and places a penalty on the many good performers. Governments set the premiums on a completely arbitrary basis.

Sectors are first slotted into a convenient category for overall rating purposes. Individual performance is then generally tested against this rating. From that point employers suffer financial discrimination.

Many employers have argued and advised against settling claims - including common law claims - and these matters are not recognised by the system where it is the insurer who becomes the respondent in any proceedings.

The length of time the safety performance at workforces is taken into account is short term considering we are talking about operations that have been operating for many decades.

The rules and regulations continually change and become more complex lacking equity and stability.

Governments legislate or regulate to capture everything connected to any payroll of the employer including SGC payments and fringe benefit payments etc. but the premiums continue to rise on a real basis.

We have made other comments on this subject in this paper.

g. A regulatory framework to allow suitably qualified employers to obtain national self-insurance.

There is no justifiable reason why this cannot occur to suitably qualified employers with a large cross-border workforce.

There is no justifiable reason why there should not be proper competition between insurers.

h. A regulatory framework which would allow licensed insurers to provide coverage under all schemes.

If this could stabilise and eventually reduce premiums on a national basis consideration should be given to appropriate insurers to be able to provide coverage.

i. Options to reduce the regularity burden and compliance costs on businesses of different sizes by the existing legislative structures for workers' compensation and OHS - including examining the interrelation between workers' compensation and OHS.

We have made the point that a proper OHS system in place is a major factor in attempting to reduce the long term costs associated with work related injuries.

If what we suggest in this paper, concerning reform of the legislative requirements, was implemented it would substantially reduce compliance costs for all businesses.

l. The national and State and Territory infrastructure and relative costs necessary to support the models identified.

Whatever models are adopted, there must be more appropriate measures in place to:

- Prosecute fraudulent claims;
- Place obligations on the insurers to investigate doubtful or exaggerated claims;

- Remove structural impediments from the state systems that contribute to fraud;
- Provide for much clearer and better administrative procedures;
- Remove bureaucratic inefficiencies.

Should workers' compensation and OHS be combined under the one framework.

We have made the submission that both workers' compensation and OHS are absolutely connected. Any proposed national framework should envelop both systems together.

H. NMAA's OVERALL POSITION

The models

It seems to us somewhat incongruous that we should advocate the complete dismantling of the state infrastructure presently existing and the establishment of a national regime. Economic arguments alone dictate otherwise unless there be complete co-operation between various levels of government.

Subject to the extreme caveats we have outlined, the task is to develop a national code or framework workers' compensation and OHS accepted by all parties. It cannot occur in a vacuum and needs complete co-operation between federal and state governments.

I. CONCLUSIONS

The NMAA has not attempted to cover every issue or topic raised for discussion. Some are beyond our expertise.

However, we do know that all workers' compensation and OHS systems are complex, fragmented and in need of complete overhaul.

We can only hope that positive and constructive recommendations result from this, yet another Inquiry that may be the basis for co-operative action.