



Leading the Recruitment Industry

**Submission to the House of Representatives standing
Committee on Employment and Workplace Relations**

Regarding the Australian Workers' Compensation Schemes

Date: Thursday August 8, 2002

Distribution: The Secretary
Standing Committee on Employment and Workplace
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EXECUTIVE SUMMARY

The workers' compensation landscape is changing – it is growing for a variety of reasons and impacting on efficacy with which business operates.

The Recruitment and Consulting Services Association represents an industry that is collectively Australia's largest employer. With 3200 members across Australia and New Zealand placing people in permanent and on-hired employment RCSA members have intricate knowledge of how the Workers Compensation schemes work across Australia and also how they are being abused.

This paper responds to the Minister for Employment and Workplace Relations request for industry and community comment on the workers compensation schemes. There are three areas that will be addressed by the inquiry, the RCSA will respond to the first (structural factors behind the incidence and cost of fraudulent claims) and the third (factors that lead to different safety records). We believe the second terms of reference on the costs incurred by workers' compensation schemes will be sufficiently addressed by the insurance industry.

Unlike any other industry bodies, the RCSA members operate in every industry from retail to hospitality to mining to science, and every occupation from nurse to engineer to labourer to archaeologist. As a result we feel qualified to comment on the variety of workplaces that operate within Australia.

In short, our recommendations to enhance Workers' Compensation schemes are to:

- Create a national database, managed by Government, of injured workers receiving workers' compensation so that they can be redeployed to assist rehabilitation
- Encourage the emphasis on creating a healthy as well a safe workplace
- Create a national WIC code system and national workers' Compensation scheme
- Work with the RCSA membership to create a more detailed data collection
- Create a scheme to retrain mature employees who have been in highly labour intensive occupations and can no longer find suitable employment.

THE RECRUITMENT CONSULTING SERVICES ASSOCIATION

The RCSA is the peak body for the recruitment and consulting services industry throughout Australia and New Zealand. The RCSA is a not-for-profit association that is managed by a Board of Directors.

The central focus of the RCSA is 'To represent and serve the interests of members for the increased profile and professionalism of the industry'.

The RCSA's 3200 members in Australia and New Zealand include multi-national companies, single consultancies, and individual practitioners operating within a recruitment consultancy.

The Association is instrumental in setting the professional standards through its Code of Conduct; educating and developing member skills; monitoring industry participant performance and working with legislators to formulate the future. Members are kept up-to-date on information regarding best practice techniques, resources and technological innovation, along with legislative changes impacting on employment.

The RCSA also acts as a lobbying voice, representing its members on issues that impact upon the industry. It has a strong relationship with the public and private sector.

Members offer the following capabilities:

- On-hired employee services
- On-hired contractor services
- Recruitment services
- Employment consulting services
- Managed project/ contract services

The RCSA has a very good working relationship with Department of Employment and Workplace Relations with significant numbers of members using the Government's JobSearch website to lodge vacancies.

WORKERS' COMPENSATION IN AUSTRALIA

The Australian Government, insurers, employers and the public suffer when an employee is injured at work. Not only does the employee suffer from the injury, their family may lose income, the employer loses a valuable employee and the Government and insurers have to subsidise the lost income.

Australia has not been able to halt the increase of employees being injured at work and consequently increase in cost in terms of workers' compensation benefits.

There are various reasons for workplace injuries.

- Safety and health for work is not taught in Australia's education system below tertiary level,
- Rehabilitation is difficult in some workplaces (ie. worker with back problem can't return to a construction site and the company may not have 'suitable alternative duties' available, as a result injured employees stay on workers' compensation benefits for longer)

Unique to the recruitment and on-hired sector – even though the RCSA member is officially the employer of on-hired employees - as they pay their salaries; if the employee is injured on a work site the industry is not designed to rehabilitate them at the RCSA member's offices and often finds it difficult to convince alternate clients that such injured employees do not pose a risk to their business,

This submission is prepared based on discussion with RCSA members. Our submission reflects concerns that we have with the workers' compensation system and how it can be improved. Unfortunately there are no statistics collected by the RCSA in this area, so our submission is based on member feedback and industry experience.

STRUCTURAL FLAWS IN THE SYSTEM

WorkCover Industry Codes (WIC)

It is difficult for the on-hired employee service providers to accurately assess cross-border industry safety records given the inconsistency of WIC's in each state. There is a different set of WIC's in each state – some describe occupations, while others describe industries.

If we take Victoria as an example, that are only two WIC codes – employment services to production sector and employment services to services sector. The services sector covers 'white collar' work such as office and call centres and activities in this WIC are less prone to serious injury. Therefore the workcover premium is lower. Production services relate to construction / manufacturing type activities or traditional 'blue collar' work, which attracts a higher workcover premium due to the increased risks associated with such work. Whilst it would be of particular value to be able to utilise the information collated within each state to assess the safety performance of an industry within the state, this is not currently possible given the different categorisation of employers and their employees injuries within each state.

Furthermore, WIC's tend to change on a regular basis, which means that it is also difficult to assess the performance of an industry over a long period, given the WIC definition changes. Therefore, comparisons within one State can also be misleading.

Employee Manipulation of the System

RCSA members and state WorkCover authorities have also been victims to employee abuse of the system. There are many cases of unsubstantiated claims brought against the host or on-hired employer for injuries that can't be proven or occurred because of an employee's deliberate misbehaviour. In the on-hire industry employees move from provider to provider and it is recognised that they have been known to claim for old injuries at each new site..

Without a national database, managed securely by a Government body, that lists these claims it is impossible for an on-hired agency to know if they have a consistent WorkCover compensation 'claimant' on their hands.

The following lists some examples from RCSA's membership where a national database could prevent employees abusing the Workers compensation system.

- In Victoria, an on-hired employee had a long-standing pre-existing back injury in which he received a large payout (\$250,000) only four years ago. They registered with the RCSA member for labouring type work, did not advise them that he had a pre-existing back injury in the pre-employment medical questionnaire. He then suffered a further back injury and was on compensation for 16 weeks.

- In NSW an on-hired employee was working in a chicken processing plant and lifted a crate of chickens weighing 7kgs. From this action the employee suffered a back injury. X-rays showed that the employee had suffered a fracture in his lower back previously, and lifting the chickens had exacerbated the fracture. The employee did not disclose the information in pre-employment questionnaire. The worker will be on compensation for a long time, before he recovers, and is able to be placed in suitable duties.
- Also, in NSW an on-hired employee was told that his temporary assignment was ending on a Friday. The following Monday he lodged a claim for compensation, for tendonitis, and he took 8 weeks off under workers' compensation.

Note: These are representative only of many similar cases around the country.

Health Education

Although there is a level of community awareness about workplace safety through campaigns undertaken by the Government agencies such as WorkSafe, the RCSA notes that there is not as much focus on the Occupational Health in Occupation Health and Safety.

It could be argued that an employee's safety is often dependent on their health. If a worker is suffering from stress, sleep deprivation or they are unfit for the worksite they are more likely to suffer from a lack of concentration and consequently accidents. Assessments are done on a workplace, in terms of risk management, however it would be advantageous to include employee health in that review.

Research both hearsay and qualified is showing that Australians are working longer hours, as almost "3.3 million Australians or 38 per cent of the employed workforce, work overtime"¹. This along with the pressures of family life can also add to the pressures at work. Although stress alone may not cause a physical injury, it can cause an employee to rush, makes mistakes or not concentrate on the task at hand.

The RCSA believes that along with educating the safety of their workplace, emphasis should also be given to the health of the workforce. This recommendation is valid across all industries.

Industry Information

The RCSA believes that on-hired employment service providers can provide an extra level of responsibility to the workplace. As the provider they must inspect a worksite for safety and compatibility with the on-hired employees skill set this adds an extra level of

¹ Australian Industrial Relations Commission, Working Hours Case Decision July 2002, quoted in The Age July 24, 2002.

responsibility to ensure that qualified and skilled people are placed on the site and that it adheres to safety regulations.

The RCSA is keen to commence collation of occupational health and safety data with employers so that both can work together to create safe work places.

A No Fault System

In essence the no fault system enables an injured worker, to immediately claim workers' compensation without a review of the circumstances of the injury. The RCSA appreciates the reasons behind this policy however it is open to exploitation.

The RCSA believes that employees should have a level of accountability for their own safety and that a level of common sense should be expected of people – as in any situation whether at work, at home or in public places.

The RCSA is aware of cases where employees have been repeatedly told about the safety procedures of a machine, advised of the safety guards around the machine and yet deliberately ignore those warnings, and their own common sense and caused injury to themselves. It is similar to someone walking on to the train tracks and ignoring the train coming towards them, the flashing lights and the safety beams – and yet still being compensated for their injuries.

One RCSA member in Victoria noted an incident where an on-hired employee told two workmates that he needed a holiday and was going to go on workers compensation. That night he suffered an injury to his hand and had six weeks off until the hand healed. The RCSA member was not able to gather sufficient information regarding this to deny liability for the claim.

Even an employee who is injured on a work site during a fight between employees at lunchtime, where the incident is classified as an 'assault' it is subject to Worker's Compensation benefits.

Workers Compensation benefits commence immediately a claim is made – no matter what the circumstances: ignored safety warnings or even if 25 witnesses did not see anything (ie. as can occur with back injuries).

This abuse of the Workers' Compensation system is creating a quasi welfare system.

Rehabilitation

Rehabilitation is critical in reducing injured employees reliance on workers' compensation benefits. However it must be acknowledged that there is hesitancy on behalf of employers to re-employ injured workers as they are perceived to be 'damaged goods'. There is a fear in taking on 'someone else's liability'.

Some businesses may not have the opportunities or diverse workplace so that an injured worker can be rehabilitated, ie. a logging factory may not have a quiet office environment for an injured worker to work.

Flexible nature of the on-hired employment

The short term nature of casual on-hired employee service requirements inhibits the ability of such employees to obtain suitable alternate duties during rehabilitation at their original workplace (host-employer).

It is quite possible for an on-hired worker to claim that they are injured at a host site and commence receiving workers compensation benefits. However they can quite easily gain on-hired employment through another on-hire agency while still earning workers compensation through another. Unfortunately this is not an issue where the RCSA can provide statistics other than information provided by our membership.

Apprenticeship and Group Training Schemes

There are a variety of apprenticeships and group training schemes operating around Australia that operate under different WIC codes.

In Victoria apprentices in group training schemes are inappropriately incorporated into the two 'employment services' WIC's which inappropriately skews the premium rating given that employers of apprentices are not liable for workcover premiums to cover such persons. This results in a lack of accountability and a subsequent increase in the WIC premium rating.

The WorkCover system is designed to encourage businesses to take on apprentices by allowing them a payroll concession. Therefore the host employer (eg. BHP) of an on-hired employee does not have to pay workers compensation premiums, nor are they fined if the apprentice is injured on the host's worksite. However in all cases if the apprentice is injured they are still eligible for WorkCover compensation.

Apprentices are prone to workplace accidents. They are new to the worksite; they are young, unskilled and subject at times to a lack of proper supervision and bullying.

Because the host employer does not pay premiums they are therefore not accountable to create a safe workplace, because there are no penalties or incentive and they don't rehabilitate injured apprentices. At the same time the apprentices receive 75% of their income through workers compensation while they recover. As there is no incentive for the employer to have them return to work, they can often 'hide' and continue to receive their payments while gaining employment elsewhere.

Fundamentally the structure is sound by encouraging employers to hire apprentices but it also can place apprentices in dangerous workplaces, or any easy income for young Australians.

Retrain the workforce to avoid injuries

The Australian workplace is ageing and as such there are several employees who have worked in labour intensive jobs that are coming to an age in their life where they are more prone to injury. It is important that these injuries are prevented through a program of re-training so that these employees can maintain their role in the workplace and that they will not become candidates for WorkCover.

This model already occurs in some format in most states in Australia. An example is the WISE (Workcover Incentive Scheme for Employers) scheme in Victoria. We support these schemes being extended and widely promoted to retrain employees into 'safer' occupations as they near the end of their working life.

RECOMMENDATIONS

The RCSA proposes the following suggestions that we believe would improve the management and administration of the Worker's Compensation system while maintaining the integrity of the system, which is to protect and rehabilitate injured workers.

Database

Create a national workers compensation database so that employers and workers compensation authorities are not exploited by employee's lack of disclosure. Likewise this could also act as an employment database, so that a company looking for a call centre worker could quite easily employ someone who has a limited work capacity. This would be of particular assistance in developing broader rehabilitation and return to work opportunities. We recommend that RCSA members use this database to assist in placing injured workers in employment.

We advocate that Government manages the database; as issues of privacy are paramount. It should be used to ensure that employees record all their previous injury details when applying for positions – not used as a form of discrimination.

Health

Encourage a focus on creating and maintaining healthy employees as well as safe environments and procedures.

More detailed information

There is a genuine opportunity to utilise the on-hired employee service industries coverage of every industry to provide efficient and succinct statistical snapshots of each industry instead of having to fully assess each industry in it's own right. The RCSA is keen to work with the Government to gain an intricate understanding to the true cause behind injuries and those workplaces that are most susceptible.

National Scheme

To overcome the inconsistencies and confusion between states (particularly in reference to WIC code) we recommend that a national WIC code and Workers' Compensation scheme be established. Alternatively, any efforts made to ensure consistency of definitions, benefits and obligations across state boundaries would lead to greatly improved efficiency.

Retraining

A system of retraining and re-skilling mature employees who work in highly labour intensive occupation, such as abattoirs and the textile industry would prevent employees being injured and claims in the future

CONCLUSION

In conclusion, the RCSA has presented a series of concerns and opportunities to improve the Australian Workers' Compensation system. There are cases of fraudulent behaviour by employees and businesses in regards to this issue, however there are far more cases of misrepresentation, dishonest behaviour and 'pushing the limits' of the legislation to ones own advantage.

The RCSA hopes that the Standing Committee will consider the suggestions put forward and discuss the merits of system that creates uniformity across the state jurisdictions.

The RCSA is pleased to present its case to the Standing Committee if requested.