

Submission

*Inquiry into Aspects of Workers' Compensation
House of Representatives
Standing Committee on Employment and Workplace Relations*

**Masters Cleaners Guild (WA) INC
October 2002**

INTRODUCTION

The Master Cleaners' Guild of Western Australia Incorporated (the Guild) welcomes the opportunity of providing advice to the Standing Committee in relation to their stated Terms of Reference inquiring into "Aspects of Workers' Compensation."

The Guild as an employer organization represents the interests of members whose business, internationally, nationally and within the State fall within the contract cleaning and assets maintenance industry. The Guild has affiliation to national bodies with similar business objectives. As one of the largest employers of part time and fulltime labour in the State of Western Australia, the Guild's members are very conversant with the issues surrounding safety and injury management in the workplace.

The Guild endorses proactive measures aimed at the adoption of sound risk management principles and early intervention principles in relation to injury management, with a focus on return to work as soon as is practicable following injury or illness. The Guild has in the last month assembled a range of key note speakers from WorkSafe Western Australia, Workcover Western Australia, Private Insurer and Technical and Further Education, culminating in a seminar focusing on safety performance and injury management including claims management and training issues from a management and supervision perspective.

Therefore whilst the Executive of the Guild is cognisant of the need to ensure that members are conversant with best practice in these areas with a view to improving safety performance, it is equally the case that members are aware of many of the current shortcomings of current safety management and workers compensation schemes around Australia, though particularly Western Australia wherein the majority of members work.

It is on this background that we offer our comments to the Standing Committee

Terms of Reference

Matters incidental to Australian workers' compensation scheme changes in respect of:

- **The incidence and costs of fraudulent claims and fraudulent conduct by employees and employers and any structural factors that may encourage such behaviour;**

The Guild's evidence for the existence of outright fraudulent behaviour by employees or employers based on claims experience is non-existent. Having said this, perception on the matter is quite different such that members in anecdotal explanation (qualitative narrative) describe their concerns based on their experiences. On interpretation, the issues appears not so much to be the issue of outright fraud, rather an assessment of overstatement of worker's impairments and disabilities that precludes compliance with the injury management and vocational rehabilitation aimed at management of the worker in the workplace.

The existence of no fault legislation in Australian workers' compensation schemes results in the view of members in an ease in claim that is reinforced by key stakeholders in the system. Due to this no fault entitlement it is the experience of members that the onus of proof on submission of a claim moves rapidly from the worker to the employer and remains heavily focused at this point.

It is further noted that over statement in claims arises very often from the inception of medical certification, often a manifestation of medical incompetence and unprofessional behaviour than necessarily, a result of calculated worker behaviour. By this, the Guild expresses on behalf of its members the significant degree of disillusionment that members experience with the performance of general medical practice in fulfilment of their designated responsibilities within the system.

Specifically the failure of General Practitioners to become familiar with the requirements of the scheme, communicate and demonstrate commitment to early intervention and return to work principles and familiarise themselves with the specifics of the worker's duties and work environment, severely erodes in our view the validity and reliability of the contribution made, to the point that such actions are tantamount to contributory negligence and mal practice in the system. The failure to recognise medical practice in workers compensation as a specialised field, to certify practitioners in the field competent to practice and the imposition of training restrictions on such practitioners caused by the non-availability of occupational physician training within Western Australia imposes structural limitations on the ability of practitioners to rectify this level of performance.

It is apparent that in the absence of structural change in these areas, employees will continue in many instances, to be the only source of information on which medical practitioners will continue to certify. The issue of fraudulence or over statement of impairment and disability can only continue in a process that fails to control for such outcomes. In this respect whilst legislative inclusion of responsibility for fraud monitoring in the State Act is not thought to be the solution, accountability in professional practice is and thus, licensure of medical practitioners based on competency achievement is strongly recommended.

Such expectations are not at all unrealistic in the view of members given the premium fees that are routinely applied to management of workers' compensation cases managed in General and Specialist Medical Practice.

The second area of structural influence that the Guild wishes to draw to the attention of the Standing Committee promoting the potential overstatement in claim relates to the influence of legal intervention by unions and solicitors wherein it is apparent that counsel frequently advises against return to work and more commonly against resumption of fulltime work and normal duties. This advice occurs on the basis that to do so will adversely affect redemption entitlements under the claim. Workers advise employers and their representatives of this fact on a regular basis. Therefore whilst any scheme continues to offer the "have your cake and eat it too" options, that is, use up your statutory entitlements and then pursue your second schedule or common law entitlement, it is likely that workers and their representatives will continue to advocate this course of action.

The fundamental issue that needs to be addressed in reform is the notion of intent of the system and the commitment of all parties to this intent. Whilst all systems are by Guild Members understanding, focused on the objective of return to work following work related injury or illness, the reality is that many participants including employers in some instances work against this objective.

It is noted that when elements of the system endeavour to reinforce this objective it is all too easy for the worker, frequently acting on advice, to avoid the commitment through electing change of medical provider and or rehabilitation provider. The basis for change in service providers is deeply rooted in the discrepancy in opinion over work capacity such that when an unfavourable opinion on work capacity occurs obligating return to work, the worker side steps the commitment by changing provider.

The central point of system performance in this process pertains to the failure across States to adopt a uniform definition and protocol on disability and impairment rating, such that when one begins to talk about comparisons in systems performance, the validity and reliability of statistically comparisons is highly questionable. It is further observed that emphasis is nevertheless placed on quantitative measures of system performance rather than a balance alongside qualitative measures the latter likely to reveal detail of the attitudinal and cultural issues that underpin participant responses within the system.

It is stating the obvious to note that workers compensation schemes have their own culture. It is the failure to understand the ethnography of this culture that leads to polarisation of positions in the system such that for example, the notion of "insurer doctors" and "workers' doctors" continues to prevail whether in reality or perception.

If it were the case that all licensed doctors had to adhere in assessment of workers to a standardised impairment rating, then the probability of bias would to a great extent be eliminated. By process of random allotment of reviewing medical specialist to certify impairment, the ability of various proponents to manipulate outcomes would be better controlled.

This recommendation does not remove from the worker the right of choice to treating (licensed medical practitioner) practitioner but does impose at the point of impairment determination, often coinciding with common law determination, the input of an entirely impartial assessor selected randomly from a list of accredited assessors.

- **The methods used and costs incurred by workers compensation schemes to detect and eliminate:**
 - a) **fraudulent claims; and**
 - b) **the failure of employers to pay the required workers compensation premiums or otherwise fail to comply with their obligations; and**

The Guild does not express a view in relation to part A of this area of inquiry, as the Guild's is not actively involved in any way in the investigation of fraudulent claims. Clearly this is an area for insurer response.

In respect of part B of this area of inquiry, the Guild is cognisant of the criticism pointed at employers generally in regard to accurate industry premium classification and adequate coverage of employees. The Guild is aware that across industries premium rating can be greatly influenced by success or otherwise in achieving an industry classification with a lower premium rating than another.

The first issue that this raises is the adequacy of the industry classification scheme such that it is possible for employers or their representatives to undertake such action. The Guild's position in recent negotiations with Workcover Western Australia has in fact been very open and transparent on this issue, namely that because the cleaning industry, despite its numbers, does not attract an independent classification, that the Industry has encouraged Workcover to create the same so that Industry performance can be assessed without the overlay of other industries performances.

The Guild through its Broker and Insurer affiliations has a very good control on the issue of insurance compliance. The Guild advocates for all industry, uniform, tighter and specific industry classifications across States of Australia.

At a broader level the issue of compliance ultimately in the view of Guild Members extends back to management performance, specifically in relation to the matters under consideration, to the safety management and injury management systems in place. The Guild has developed an industry wide approach in this respect implementing management guidelines for implementation of an Occupational Safety and Health System.

The Guild therefore advocates the broader adoption of this approach, that is, industry focused developments avoiding the duplication in resource allocation that is evident within and between States, that all too frequently appear to want to reinvent the wheel. It is apparent therefore that industry lead initiatives need to be facilitated through some central control point to produce generic system guidelines that can then be customised to individual user requirements.

In conclusion on this point whether in relation to worker or employer compliance issues, the real issue is the success of management systems and therefore initiatives designed to improve management system uniformity and performance compliance are to be encouraged. This approach should continue to reinforce the self-regulatory responsibility of employers focused on the industry operations and hazard management specific to the hazards and risks that an organization confronts in its day-to-day business.

One of the most substantial changes impacting the ability of employers to assume management control on a day to day basis relates to recent changes in labour hirer trends with emphasis on more casual, part time and contractual positions. There can be no doubt that some employers have ceased upon the opportunity to outsource work or engage labour hirer in the belief that they can mitigate against costs in relation to workers compensation and exposure to high risk activity.

Unfortunately such activity is often conducted on the misconceived notion that duty of care can be assigned to third parties. Thus labour reform has to some extent placed some employers at a further distance in terms of ability to supervise, oversee operations and manage their duty of care.

For an industry such as the Cleaning and Assets Maintenance Industry wherein many workers work in isolation it is apparent that such changes have the potential to further distance management and workers. Whilst the Guild's members are addressing this issue through review of supervisory practices there remains across industries a need for there to be clarification as to the definitions of 'principal employer' or 'principal contractor' as the current arrangements result in the unacceptable circumstance involving requirement for duplication of insurance coverage, of benefit to insurers whilst affecting the cost base and competitiveness of employers.

- **Factors that lead to different safety records and claims profiles from industry to industry, and the adequacy, appropriateness and practicality of rehabilitation programmes and their benefits.**

Members of the Guild convey that one of the principle problems that beset the performance of the system is the methods of data collection and uniformity of scheme operation across jurisdictions. Whilst calls for performance measurement will no doubt result in re-examination of current quantitative outputs it is important that some focus begins to evolve on appropriate qualitative evaluation of the system cultures that underpin operations or as some would say, undermine the various schemes operational around Australia.

As an example the biased view of an employer faced with the outcome of falling return to work rates, in spite of vocational rehabilitation intervention, might argue for the abolition of the service or alternatively the establishment of formal benchmarks to monitor performance. Clearly in principle one could quantify the outcomes but confront the problems associated with comparisons of data in which system definitions, operations and outcomes are in fact entirely different events.

Further, evaluation of the benefits of rehabilitation extend well beyond the outcome measures often proposed, extending to the qualitative areas based on principals of morality, equity and social justice. A further principal that the Western Australia's workers' compensation system has been unable to address despite touting the philosophy is that of early intervention and early referral for rehabilitation.

A primary area for national investigation relates to barriers to early referral and return to work management. This includes in the more serious of cases, the efficacy of discharge planning and employer liaison on hospital discharge following initial injury/illness or any subsequent treatment or surgical intervention.

Linking to this and our former points concerning the competency of general practitioners and their fulfilment of their professional responsibilities, it is apparent that treating medical specialist need to be bought to task over communication with stakeholders in the system ensuring communication on post treatment/surgical management on which general practitioners heavily rely for work certification. Failure of communication in this area delays return to work management and further more, does not obligate the worker and specialist to discuss treatment management in the context of proposed return to work management and outcomes.

In other words, members of the Guild advocate that there should be no stage of the process where return to work outcomes in some form isn't the focus of management, planning, and discussion. The only point at which this should differ should occur at determination of a permanent impairment by an independent randomly selected medical evaluator. At this point claims settlement and redemption should be the considered option.

In conclusion the macro issues on which the Guild believes action is required relates to the following: -

Macro Issues - Recommendations

- a) System Focus on integration of Occupational Safety and Health & Workers' Compensation management supported by implementation of uniform national data collection and system entitlements.
- b) Implementation models in relation to point (a) appropriate to small and large business that reflects the economy of scale issues confronted by small business.
- c) Focus on system performance targeting the medical and legal influences over system performance that are adversely influencing the focus on return to work management.
- d) Avoidance of duplicity of effort and expenditure by States with a nationally coordinated industry focus on management systems development pertaining to occupational safety and health and injury management of which workers compensation and claims management is a component rather than the reverse.
- e) Review of the industry rating classification system for the purpose of premium classification and rating adopting national uniformity. Further, undertaking of qualitative and quantitative research into performance of the workers' compensations system to not only evaluate outcomes and cost benefits, but better understand the culture of workers compensation from different stake holders perspectives.
- f) Undertake review of the "no blame system" with a view to responsibility and reduction of entitlement being apportioned to employees were contributory negligence of the employee is demonstrable.
- g) Primary stakeholders – reassess the role of general medical practice as a designated stakeholder with a view to recognition of the field of work in workers compensation as a speciality field. Promote the development in all states of faculties of Occupational Medicine as a means of transitional management of general practitioners wanting to continue working in the specialty area of occupational medicine and workers' compensation injury management.

Implement this over a five year period after which entitlement to practice and service workers compensation patients is confined to this speciality other than for specialist medical intervention relating to treatment. It is probable that an appropriate level of remuneration will need to be afforded such specialist to attract quality practitioners and provide recompense for the level of accountability expected.

h) Incentives

Encourage the development of a performance based system in which employers receive premium benefits for evidence of having a sound safety and injury management system in place and further premium incentives based on achievement of positive performance indicators as recommended from time to time. To some extent the recognition of such efforts can be built into risk assessment formulae that ensures uniformity in incentive or penalty subject to management performance in workers compensation and occupational safety and health. These two management areas should be closely linked in policy, planning, management and evaluation.

The Master Cleaners Guild of Western Australia thanks the Standing Committee for the opportunity of commenting on aspects of workers compensation under review.

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