

15 April 2014

The Hon. David Clarke MLC
Chair
Standing Committee on Law and Justice
Parliament House
6 Macquarie Street
Sydney NSW 2000

Dear Mr. Clarke,

Inquiry into Review of the Exercise of the Functions of the Workcover Authority and the Workers Compensation (Dust Diseases) Board - Questions on Notice

We refer to our appearance at the above inquiry. We are pleased to now provide further detail in response to both questions on notice and supplementary questions on notice arising from that hearing.

CHAIR: *But you are not even sure whether there is an online service.*

Mr. PATTISON: *That online service has now been discontinued. You cannot find it on the WorkCover website.*

CHAIR: *And you are suggesting that it be reinstated?*

Mr. PATTISON: *Fix it and put it back up.*

CHAIR: *But fix the issues. Have you raised that with WorkCover?*

Mr. PATTISON: *Yes, we have.*

CHAIR: *When did you raise it?*

Mr. PATTISON: *That was some time ago.*

CHAIR: *When you say "some time ago", how long ago?*

Mr. PATTISON: *You are going back over 12 months ago.*

CHAIR: *Did you get a response?*

Mr. PATTISON: *No, not in a formal sense. No we have not.*

CHAIR: *Would you like to take that on notice—*

Mr. PATTISON: *Sure, I will see what I can find.*

CHAIR: *—and find out when you raised it, what response you got and when, and whether you have continued to pursue that issue?*

Response

Following Mr. Pattison's retirement from the NSW Business Chamber in October 2013, his Chamber computer was removed and reassigned, and as a result the contents of his hard drive were deleted. Therefore, evidence of the Chamber raising this issue with WorkCover cannot be located at this time.

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Mr DAVID SHOEBRIDGE: *Contrary to your proposition, it looks to me that the aggressive penalty notices and prosecutions between 2004 and 2006-07 have, on one view of it, been in the period where we have had the most dramatic reduction in serious claims per million hours worked.*

Mr PATTISON: *You could draw that conclusion, yes, and perhaps we should go back and provide some additional information because if you look before 2004-05 you will also find times when New South Wales was prosecuting more matters than all other jurisdictions in Australia combined and collecting more in fines than all other jurisdictions combined and still not getting improvements in safety.*

Mr SCOT MacDONALD: *Can you provide that information?*

Mr PATTISON: *I would have to go back and dig it out.*

and

The Hon. PETER PRIMROSE: *My question is: Given what seems to be inconsistency there, I am worried, firstly, that we are confusing correlation and causation; that, frankly, we are not comparing apples with apples; but, even if we were not, to what would you attribute the reductions between 2004 and 2007, if not the successful prosecutions, et cetera, as outlined? Can I get you to take that on notice and come back to us with some advice?*

Mr. PATTISON: *Sure.*

Response

Rather than being attributable to a single cause, the increased improvement rate in WHS outcomes between 2004 and 2007 is a result of a range of initiatives designed to improve business awareness of their WHS obligations and promote safer workplaces. The following lists a range of initiatives, activities and events that impacted on the improvement rate over this period.

- Premium Discount schemes were introduced in 2001 for both large and small employers. To be eligible for discounts, large employers had to reduce claims (i.e. injuries), while smaller employers had to implement safety management systems
- The National OHS Strategy (2002 – 2012) set targets to reduce the incidence of work related deaths by 20 per cent, and to reduce the incidence of workplace injury by at least 40%. NSW committed to support this strategy.
- In 2002, the first WorkCover Assist Grants, worth \$5 million, were made available to employer associations and unions. The grants were designed to build understanding of, and compliance with, the changes to workers compensation and OHS laws and reached approximately 10,000 workplaces.
- The 2002 and 2005 NSW Workplace Safety Summits, hosted by WorkCover, gave a state and industry sector focus to the 2002 National OHS Strategy. The Summits established important industry benchmarks and working parties to regularly consult on important WHS matters.

- The 2005 review of the *Occupational Health and Safety (OHS) Act* created a heightened awareness of WHS obligations and responsibilities.
- In 2006, there was a growing awareness within WorkCover that having a primary focus on prosecutions as a means of achieving compliance was ineffective, and culminated in the establishment of the Business Advisory Unit. Employers had lobbied for some time for the creation of a unit within WorkCover focused solely on assisting businesses to meet their WHS obligations and the creation of the BAU was welcomed.
- Over the period, WorkCover initiated a number of statewide safety advertising awareness campaigns and industry-specific initiatives such as TargetSafe and ShearSafe.

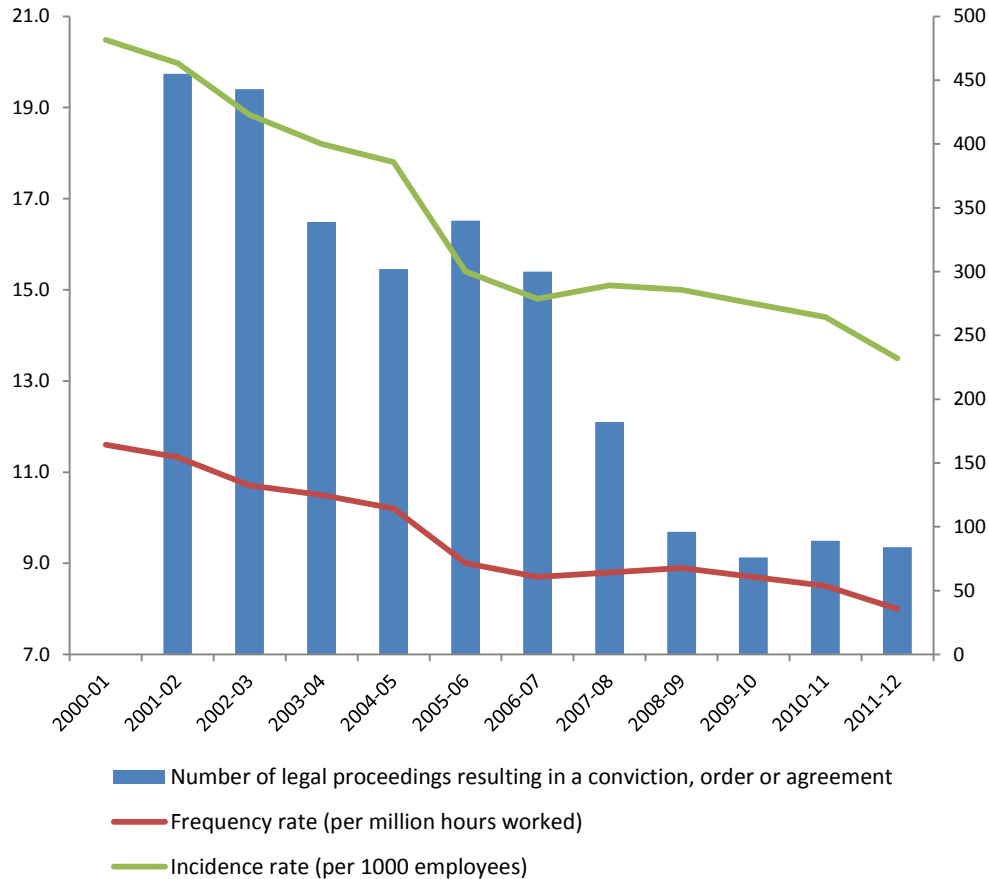
As a result of these activities, employers were made more aware of the impacts of their WHS obligations, leading to the majority of NSW businesses better managing their WHS practices.

This can be clearly demonstrated by the strong improvement in WHS performance, with both the frequency rate and incidence rate of serious claims improving by 31% and 34% respectively. The improvement in WHS outcomes aligns with the increased awareness in WHS and the recognition by WorkCover to provide greater assistance to industry.

In the course of giving evidence, it was put to the Chamber that the significant improvement in WHS outcomes between 2004 and 2007 was attributed to the high number of prosecutions being undertaken at the time.

The graph below shows that there is a continuing pattern of decreasing prosecutions over time. When looking at the time series (especially in recent years), the sustained lower rate of prosecutions has not led to a deterioration of WHS performance, and according to the latest data, has shown further improvements.

Figure: Prosecutions data (right Y-axis), combined with incidence and frequency rates of serious claims (left Y-axis) (2000/01 - 2011/12)



Source: Safe Work Australia

The Chamber accepts and supports a role for prosecutions in the regulation of safety in the workplace. Where they are targeted and warranted, legal proceedings undertaken by WorkCover have a role in deterring other potential offenders.

However, prosecutions should not be relied upon as the only way of ensuring WHS compliance. A regime where there is a reliance on prosecutions to achieve compliance has been shown not to produce safer outcomes.

We contend that an authority which incorporates prosecutions as part of a wider system of providing businesses with practical advice and support will more effectively promote productive, healthy and safe workplaces and will help to further drive improvements in WHS in NSW.

The Hon. PETER PRIMROSE: *Again, please take this on notice, given the time. I note in relation to page 4D you talk about the publication of actuarial valuations and other statistics, and I was wondering if you could tell us what type of statistical information you would like to see WorkCover release to better enable analysis? Again, you can answer now or take it on notice.*

Mr. PATTISON: *Let us take that on notice, if we may.*

In addition to the publication of the full actuarial valuations of the scheme NSWBC believes timely statistical information should be publicly available with respect to:

1. **WHS performance** – The reintroduction of the Statistical Bulletin should significantly address that need, provided the information is available in a timely fashion. WHS data is notoriously slow in being released, however this is not a problem unique to WorkCover NSW.
2. **WHS compliance and enforcement activity** – WorkCover reports on compliance and enforcement activity in its annual reports. That relevant data is clearly being collected and should be published on the WorkCover website with greater frequency e.g. on a quarterly basis. For example the number of reactive and pro-active workplace visits; improvement, prohibition and infringement notices issued; the number of prosecutions launched (including some analysis of the time between the alleged offence and when summonses were issued); the number of prosecutions concluded and the outcomes (successful and unsuccessful).

WorkCover is required to commence proceedings within two years of the alleged offence and historically it has taken WorkCover most of these two years to begin proceedings, often with summons being issued on, or just before, the expiration of the two years. If one of the reasons for prosecutions is to provide a general deterrence then that objective is, in our view, significantly undermined if matters take years to be brought to before a court. Other related useful statistics would include the number and an analysis of the calls to WorkCover Assistance Line (13 10 50) as well as a summary of any initiatives, programmes or blitzes that have commenced and/or concluded during the period under review.

3. **Workers Compensation** – In addition to the Actuarial Reviews, compliance and enforcement activity should be reported e.g. the number of wage audits completed in the period, prosecutions commenced and/or concluded (these may be a subset of the prosecutions data in 2 above), summary of any initiative, programmes and blitzes commenced and/or concluded during the period under review.

This listing is not exhaustive and it is our recommendation WorkCover engage with key stakeholders to develop a reporting package which provides a useful insight into what is happening with respect to both WHS and workers compensation. There will

be differences of opinion between stakeholders however an informed debate is more likely to produce better outcomes than one which is not.

Supplementary question on notice

A number of submissions to this Review have discussed the potential conflicts of interest between the WorkCover Authority's many functions, such as its role as both regulator and nominal insurer. Do you share these concerns? How do you suggest WorkCover deal with this perceived conflict of interest?

Response

With respect to its position as a nominal insurer, the Chamber understands that the WorkCover Authority is the third largest insurer in the country and with an organization of this size, it may be useful to consider the separation of its workers compensation and work health and safety functions, with people with the appropriate level of expertise providing oversight of the respective authorities.

In the alternative, perhaps greater consideration could be given to the modifying the current aggregation of the various compensation authorities by separating the work health and safety activities.

Separating the advisory from enforcement functions would seem to bring the following benefits:

- greater certainty for employers as to the functions individual attending WorkCover officers are fulfilling;
- removing conflicts of role, and at times interest, for individual inspectors;
- facilitating a more efficient use of resources – a dedicated inspectorial function may assist with speedier prosecutions;
- greater consistency because the number of WorkCover staff directly responsible for prosecutions would be reduced but they would be engaged in the more specialist role; and an
- increased willingness for employers to engage with WorkCover preventative and advisory services before there is any accident.

If you require more information regarding our submission and supplementary responses, please contact Craig Milton, Policy Analyst on (02) 9458 7913 or craig.milton@nswbc.com.au .

Yours sincerely



Paul Orton
Director, Policy and Advocacy