Report

Faulty Frameworks: The Productivity Commission and Workers' Compensation

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The Productivity Commission's Report *National Workers' Compensation and Occupational Health and Safety Frameworks*[1] is the latest in a seemingly endless stream of government-sponsored reviews of workers' compensation arrangements in Australia over the course of the last decade. It comes in the wake of major reports prepared for the New South Wales,[2] South Australian[3] and Western Australian[4] Governments, as well as recently published reports by the HIH Royal Commission into Australia's largest ever insurance company collapse,[5] and a wide-ranging review by the Commonwealth House of Representatives Standing Committee on Employment and Workplace Relations.[6]

As was the case with the inquiry into workers' compensation initiated by the Federal Labor Government during the mid-1990s,[7] the terms of reference underpinning the Productivity Commission's report were very broadly based. Among other issues, the commission was called upon to investigate inconsistencies in State and Territory legislation concerning eligibility for workers' compensation, the range and level of statutory payments, access to common law damages, premium setting principles, injury management arrangements and dispute resolution mechanisms. Most importantly, the examination of these issues was to take place within an overarching context designed to create a new, national regulatory framework for multi-State employers. More particularly, the commission was required to 'assess possible

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1 Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks*, Final Report, AGPS, Canberra, 2004.

2 McKinsey & Company, *Partnerships for Recovery: Caring for Injured Workers and Restoring Financial Stability to Workers' Compensation in NSW*, NSWGPS, Sydney, 2003.

3 B Stanley, F Meredith and R Bishop, *Review of Workers Compensation and Occupational Health, Safety and Welfare Systems in South Australia*, SAGPS, Adelaide, 2000.

4 R Guthrie, *Report on the Implementation of the Labor Party Direction Statement in Relation to Workers' Compensation*, WAGP, Perth, 2001.

5 HIH Royal Commission, *The Failure of HIH Insurance*, vol 1, AGPS, Canberra, 2003.

6 House of Representatives Standing Committee on Employment and Workplace Relations, *Back on the Job: Report into Aspects of Australian Worker's Compensation Schemes*, AGPS, Canberra, 2003.

7 Industry Commission, *Workers' Compensation in Australia*, Report No 36, AGPS, Melbourne, 1994.

models for establishing national frameworks for workers' compensation and OHS arrangements'.[8]

The Productivity Commission's views and recommendations in relation to workplace health and safety regulation have been addressed elsewhere.[9] The proposal of the commission for a new national workers' compensation framework, which was the centrepiece of its Report, is the focus of this article. The scope of the proposal for a new 'national framework' is potentially far-reaching. It has major ramifications for the State and Territory government schemes as well as workers and employers throughout the country.

The national framework models developed by the Productivity Commission are outlined and then critically reviewed. It is argued that the implementation of the commission's recommendations would transform the regulatory landscape governing workers' compensation arrangements in Australia. The main beneficiaries of this radical agenda for change would be corporate Australia, with small to medium employers and injured workers the likely losers. The Howard Government's rejection of the Productivity Commission's agenda for an overhaul of existing workers' compensation arrangements was, we conclude, in no small part due to a reluctance to alienate its small-business constituency, and especially so during the lead up to a federal election.

A(nother) New National Workers' Compensation Framework?

Australia is one of only three countries where State (or provincial) and Territory Governments have primary responsibility for workers' compensation arrangements. This, understandably, has given rise to many inter-jurisdictional inconsistencies. The most obvious examples involve differences in eligibility criteria and entitlement regimes for injured workers. With the growth of national markets and the increasing integration of Australia into the world economy, the persistence of inter-jurisdictional inconsistencies has been the subject of increased attention by policymakers and scheme administrators in recent years. The upshot has been an ongoing, albeit lukewarm, commitment by the States and Territories to pursue national consistency in workers' compensation policy.

It is against this backdrop that the commission put forward proposals for a national workers' compensation framework. The essence of its recommendations for change involved the establishment by the Commonwealth Government of a national workers' compensation scheme for corporate employers that would operate in parallel with existing State and Territory schemes. It was intended that the new scheme would be implemented in three discrete stages, utilising three different scheme design models that would progressively increase the availability of national workers' compensation coverage for corporate employers. It was also indicated that these developments could be accompanied by the creation of a new national

8 Productivity Commission, *National Workers' Compensation and OHS Frameworks*, above n 1, p viii.

9 K Purse, 'The Productivity Commission and OHS Arrangements in Australia' (2004) 20(5) *Jnl of Occupational Health and Safety — Australia and New Zealand* 417.

body, directly accountable to the Workplace Relations Ministers Council, that would be responsible for furthering the cause of national consistency in workers' compensation.[10]

At present, there is provision under the federal Comcare scheme for self-insurance coverage to be extended to private sector firms which are 'carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority'.[11] In the Productivity Commission's model A, multi-State firms that met this 'competition' test would be able to transfer from State and Territory schemes to become national self-insurers, subject to meeting certain prudential and other criteria. In the next stage, model B, federal legislation would be enacted to create a new national workers' compensation scheme that would provide national self-insurance coverage for all interested multi-State firms.[12] Finally, under model C, a new national scheme would be made available for all corporations. Unlike models A and B, model C would provide options for both premium based insurance and self-insurance.[13] In support of its position, the Productivity Commission presented advice from the Australian Solicitor-General that the corporations power contained in s 51(xx) of the Constitution provides a legal basis that would enable the Federal Government to validly enact the legislation necessary to give effect to models B and C.[14]

As part of the overall package, the Productivity Commission also recommended that the proposed national workers' compensation scheme be privately underwritten.[15] If implemented, this would have had the effect of privatising much of the workers' compensation insurance market in Australia, a development that no doubt would have been welcomed with open arms by the insurance industry.

The rationale for the Productivity Commission's agenda of wholesale institutional change is based on the issue of compliance costs for multi-State firms. Firms that fall into this category amount to less than 1% of the total. They also account for 29% of the Australian workforce.[16] Although few in number these firms are disproportionately influential and, as acknowledged by the commission, 'have been a driving force for a national approach to workers' compensation'.[17] For firms that operate in more than one State or Territory, the multiplicity of workers' compensation schemes in Australia can be a problem. It means that their compliance costs are likely to be higher than might otherwise be the case, although the extent to which this might be so is unclear.

It is apparent, however, that the Productivity Commission's treatment of the compliance costs issue was both selective and lacking in analytic rigour. It did not seek to obtain any systematic estimate of compliance costs. Instead, it

10 Productivity Commission, *National Workers' Compensation and OHS Frameworks*, above n 1, pp 150–1.
11 Ibid, p xxxiv.
12 Ibid, p xxxvi.
13 Ibid, p xxxvii.
14 Ibid, pp 419–22.
15 Ibid, p xxxvii.
16 Ibid, pp 17–18.
17 Ibid, p xxv.

confined itself to anecdotal reports from a few large firms.[18] One example cited was of some $50,000 for the purchase of a data system by BHP Billiton, to provide relevant information to scheme administrators in different jurisdictions.[19] A further example was a claim by CSR that it could save $500,000 a year if granted a national self-insurance licence.[20] Such savings are modest and particularly so in view of the size of these firms. More to the point, they hardly provide a sound policy platform for the radical overhaul of Australian workers' compensation arrangements advocated by the commission.

There were also claims that were contradictory. The telco Sing Tel Optus, for example, estimated that it could save up to $2 million a year if granted a national self-insurance licence by Comcare.[21] By contrast, one of Australia's largest companies and Optus's main competitor, Telstra, itself a Comcare self-insurer, argued that it would be better off to the tune of $1.4 million a year if its workers' compensation obligations were managed under the various State and Territory schemes![22] The Productivity Commission did not seek to analyse, let alone resolve, these conflicting claims.

These contradictory viewpoints highlighted the pivotal importance of the benefit regime associated with the Productivity Commission's proposals for a national workers' compensation framework.[23] Under the Comcare scheme, weekly payments to injured workers are 100% of average weekly earnings for the first 45 weeks and 75% thereafter. These payments are considerably higher than in most other jurisdictions particularly New South Wales, Victoria and Queensland, where the majority of multi-State firms have the bulk of their operations.[24] National self-insurance under Comcare and, more generally, a new national workers' compensation scheme would be unlikely to attract these firms and other corporations unless weekly payments were significantly reduced below those that currently apply under Comcare.

The cost impact of any mass exodus of firms from State and Territory schemes must be a critical consideration. In the case of model A the financial impact could be expected to be minimal, at least to the extent that current self-insurers would be the only firms to seek self-insurance under an expanded Comcare. Since these firms contribute only marginally to the premium pool in their respective jurisdictions, their migration to the Comcare scheme is likely to be more or less cost neutral. This, of course, is subject to the proviso that they were required — and this is a big ask — to accept ongoing responsibility for the maintenance of their long term claims incurred under existing schemes.

In the case of premium paying firms seeking self-insurance, the situation would be more problematic because of the uncertainties involved. These

18 Ibid, pp 19–22.
19 Ibid, p 18.
20 Ibid.
21 Ibid, p 116.
22 Ibid.
23 Australian Business Limited, *National Workers Compensation and Occupational Health and Safety Frameworks: Australian Business Limited Submission on the Productivity Commission Interim Report*, Sydney, 2004, pp 6–7.
24 Heads of Workers' Compensation Authorities, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand*, Melbourne, 2002, pp 20–1.

uncertainties include such issues as the number of firms likely to transfer to Comcare, the loss of premium revenue to the State and Territory schemes and the level of cross subsidisation between large and small firms. Although the Productivity Commission acknowledged that 'there could be higher premiums for the remaining employers'[25] it took the view, on the actuarial advice it had received, that the increase in average premium rates in the State and Territory schemes would be 'very small'.[26]

Under model B, the impact of the proposed national self-insurance scheme on the State and Territory schemes also seems uncertain. The Productivity Commission itself was sanguine about the likely financial consequences.[27] State and Territory governments, however, did not share this confidence. The ACT Government argued that the withdrawal of larger firms 'could have a significant impact on the ACT scheme'.[28]

Criticism by the Victorian Government was of a more general nature. It took issue with the methodological basis on which the Productivity Commission's cost analysis was predicated. More particularly, it argued that the commission's exclusive reliance on actuarial advice provided an inadequate basis for assessing the full gamut of the economic costs and benefits involved in implementing its proposals for change.[29] Needless to say, it concluded that 'it is not possible to safely rely' on either the Productivity Commission's analysis or conclusions.[30]

The situation under model C is much less ambiguous. The introduction of a new national scheme that provided both for self-insurance and premium based insurance for corporate employers would have had major consequences for the State and Territory schemes. This was explicitly recognised by the Productivity Commission, which acknowledged that:

> The opening up of a national scheme to all corporate employers would have potentially significant impacts on the existing State and Territory schemes . . . Some of the smaller schemes may ultimately become unviable on a stand-alone basis if a significant number of employers switch to the national scheme.[31]

That the Productivity Commission was prepared to entertain the demise of several State and Territory workers' compensation systems in pursuit of its agenda for change was not unexpected, given that it regarded compliance costs for multi-State firms as the central issue facing workers' compensation policy in Australia.[32] Nevertheless, its case for change remained less than persuasive. Not only were compliance costs for multi-State firms not estimated with any semblance of precision, it was by no means clear that the

25 Productivity Commission, *National Workers' Compensation and OHS Frameworks*, above n 1, p 122.
26 Ibid, p 128.
27 Ibid, p 133.
28 Australian Capital Territory Government, *Submission — National Workers' Compensation & Occupational Health & Safety Frameworks*, Canberra, 2004, p 6.
29 Victorian Government, *Final Submission — Productivity Commission Inquiry into the 'National Workers' Compensation and Occupational Health and Safety Frameworks'*, Melbourne, 2003, p 8.
30 Ibid.
31 Ibid, p 135.
32 Ibid, p xxxii.

benefits to these firms from a new national scheme would be substantial, let alone outweigh the costs that would be borne by the overwhelming majority of firms that would remain in the State and Territory schemes. For a change in public policy of this magnitude, a thorough examination of the nature and extent of the costs and benefits involved is an essential prerequisite. This, the Productivity Commission failed to provide. On these grounds alone, the commission's recommendations for change were always going to be unacceptable to a wide range of interested parties.

More generally, the claim that compliance costs for multi-State firms is the most pressing issue in workers' compensation policy defied both logic and credibility. If compliance costs were so important, why have they hardly rated a mention in the plethora of government-sponsored reports that have been commissioned over the last three decades? A far more plausible explanation for the prominence attached to compliance costs by the Productivity Commission is that it reflected intense lobbying of the Howard Government by some of the nation's largest firms.[33] It is also apparent that for the overwhelming majority of Australian firms and workers there would have been no benefit at all arising from yet another workers' compensation scheme. On the contrary, with reduced premium pools in State and Territory schemes, the remaining employers could have expected higher costs. This in turn would have placed increased pressure on the entitlements of injured workers.

As might be expected, the State and Territory governments rejected the Productivity Commission's agenda for wholesale change to workers' compensation arrangements in Australia. As expressed by one Minister: 'All State and Territory Ministers at the recent WMRC meeting in November 2003 made their opposition to this proposal very clear.'[34] This opposition was echoed by the trade union movement.[35] Although generally supportive of the commission's proposals for national self-insurance for multi-State firms, there was widespread opposition to the establishment of a new national workers' compensation scheme among some employers.[36] As one employer organisation put it, '[w]e see no valid reason for competition between national and State schemes within a single jurisdiction'.[37] This observation was particularly apposite given that dual State and Commonwealth jurisdictional coverage in other areas involving the regulation of industrial relations arrangements has been a source of difficulty for many decades.

More generally, these objections by employers highlighted the fact that the workers' compensation scheme advocated by the Productivity Commission would have inevitably given rise to some bizarre consequences. The most

33 M Priest, 'Optus First to get Nod to Self Insure', *Australian Financial Review*, 4 August 2004, p 3.

34 Hon Michael Wright, Minister for Industrial Relations (South Australia), Submission to Productivity Commission, 30 January 2004.

35 Australian Council of Trade Unions, *National Workers' Compensation and Occupational Health and Safety Frameworks*, Melbourne, 2003, pp 15–16.

36 See, for example, Australian Business Limited, *Submission on the Productivity Commission Interim Report*, above n 23, p 7; and Australian Chamber of Commerce and Industry, *Productivity Commission Inquiry into Workers' Compensation and Occupational Health & Safety — ACCI Interim Response to Interim Recommendations*, Canberra, 2003, p 13.

37 Australian Business Limited, *Submission on the Productivity Commission Interim Report*, above n 23, p 7.

obvious would have involved the co-existence of differing coverage, eligibility and entitlement regimes within individual jurisdictions. For example, workers employed in the same industry or occupation could have been eligible for substantially different levels of compensation even though they incurred precisely the same injury, simply by virtue of whether or not their employer had Commonwealth or State/Territory workers' compensation coverage. This is both arbitrary and capricious. Not dissimilarly, marked variations could have been expected in premium rates faced by firms with identical risk profiles, operating in the same jurisdiction, because of the commission's proposal to impose a two-track workers' compensation system on the States and Territories. Instead of promoting national consistency in workers' compensation arrangements, the proposed national scheme would have created new anomalies, not to mention widespread confusion, while at the same time undermining the financial viability of existing schemes.

It was also quite conceivable that firms which obtained self-insurance status under an expanded Comcare scheme would still have been required to comply with State and Territory workplace health and safety laws, since federal self-insurance under Comcare could be obtained without legislative change, whereas federal coverage for workplace health and safety purposes would have required amending legislation. There was never any guarantee, however, that amendments along these lines would have been passed by the Federal Parliament, especially in view of the universal opposition by the Labor State and Territory governments. Needless to say, a scenario in which firms were covered by Commonwealth workers' compensation legislation but subject to State/Territory workplace health and safety laws could only have added to the complexity and confusion associated with the Productivity Commission's agenda for change.

Access to the proposed national scheme was intended to be optional; that is, corporate employers would be free under these proposals to choose whether they stayed within existing schemes or transferred to a national scheme. It is however noteworthy that there would have been no such freedom for the millions of Australian workers who would have been affected. They would simply have been bound by the decisions of their employers. In this regard, the commission seemed to regard workers as little more than appendages of their employers, in much the same manner as they have been in the industrial jurisdictions. This is disturbing since workers' compensation laws have traditionally been viewed as 'remedial' in nature, intended for the benefit of injured workers.

Not only would workers be adversely affected by the national scheme proposed by the Productivity Commission. Hundreds of thousands of small and medium-sized firms unable to access a federal scheme would have been left to bear the brunt of likely premium increases brought about by an exodus of corporate employers from the State and Territory schemes. Small business could well have been the biggest loser from the commission's agenda for change.

Underwriting and Other Institutional Arrangements

The underwriting arrangements proposed for its national scheme also warrants comment. Workers' compensation insurance in Australia is predominantly

publicly underwritten. Although private underwriting occurs in some of the smaller jurisdictions, public underwriting prevails in the larger jurisdictions and Australia-wide accounts for 85% of total premiums paid by employers.[38] While it acknowledged that 'research into the relative merits of public and private underwriting suggests that sound management can be more important than the form of underwriting',[39] the commission did not hesitate to support a scheme based on private underwriting.[40]

Two major reasons were put forward by the Productivity Commission in support of this position. The first was the contention that it is preferable to have private capital, rather than taxpayer funds, at risk.[41] This rather naive perspective ignores the reality that it is taxpayers, along with policyholders, who invariably pick up much of the tab when private insurers go into liquidation. The spectacular collapse of the HIH Insurance in 2001, with debts estimated at $5.3 billion, is but the most recent reminder of this. The commission's position also, conveniently, overlooked the fact that no publicly underwritten workers' compensation scheme in Australia has ever collapsed or required a taxpayer-funded bailout. This is not to suggest that publicly underwritten schemes are without problems, but simply to underline the point that privatisation of workers' compensation insurance is fraught with difficulties and is by no means in the best interests of employers, workers or taxpayers.

A further illustration is the practice of premium setting under private underwriting. Where competitive conditions prevail there is a tendency for insurance companies to seek increased market share. This, though, can have perverse effects including a cyclical pattern of 'self-destructive competition' in which significant discounting is followed by disproportionate increases in premiums.[42] During the late 1970s and early 1980s this contributed to marked increases in workers' compensation costs. Between 1979 and 1984 these costs, as a percentage of the total wages bill, escalated Australian-wide by 77%[43] and considerably more in some jurisdictions.[44] The volatility in employer premiums, in conjunction with the collapse of some major insurers at the time, was largely responsible for the shift from private to public underwriting in Victoria, South Australia and New South Wales during the mid-1980s. Premium volatility has remained as a feature of privately underwritten schemes. During the 1990s, this was most notable in Western Australia, the largest privately underwritten workers' compensation market in Australia, where discounts of 30% or more — with, incidentally, no linkages to workplace health and safety performance — subsequently resulted in

38 Productivity Commission, *National Workers' Compensation and OHS Frameworks*, above n 1, p xxv.
39 Ibid, p xxxvii.
40 Ibid, p 150.
41 Ibid, p 323.
42 Institute of Actuaries of Australia, *Initial Submission to the Productivity Commission Inquiry into National Workers' Compensation and Occupational Health & Safety Frameworks*, Sydney, 2003, p 22.
43 Advisory Committee on Prices and Incomes, *The Costs of Workers' Compensation in Australia*, AGPS, Canberra, 1986, p 49.
44 K Purse, 'Australian Workers' Compensation Policy: Conflict, Step-Downs and Weekly Payments' (2003) 9(1) *International Employment Relations Review* 27.

premium hikes in excess of 35% for many employers.[45] The Productivity Commission's analysis seriously underestimated the destabilising effects of private underwriting on workers' compensation premiums.

The second major justification offered for private underwriting was the proposition that it 'is likely to generate incentives for efficiency and innovation'.[46] No evidence was adduced in support of this claim and as has already been demonstrated, the pricing of premiums under private underwriting tends towards chronic cycles of under pricing and overpricing. As regards innovation, the major reforms in workers' compensation arrangements over the last two decades have been overwhelmingly a feature of publicly underwritten schemes. The emphasis on vocational rehabilitation, the introduction of alternative dispute mechanisms and systematic attempts to link compensation premiums with workplace health and safety performance have not been the result of competition between private insurers but the product of public policy innovations and legislative reform.

As with its case for a new national workers' compensation scheme, the Productivity Commission's arguments that it should be privately underwritten lack substance. A similar conclusion also applies to its recommendation for a new workers' compensation body answerable to the Workplace Relations Ministers Council.

The main aim of this proposed body, which the commission argued should be jointly funded by the Commonwealth, State and Territory governments, would be to formalise 'cooperation among the jurisdictions'.[47] Opposition by the States and Territories, however, was universal. As expressed by New South Wales WorkCover:

> The establishment of a new body to oversight workers compensation . . . is not supported on the basis that it would simply add another level of bureaucracy without any evidence of improved outcomes for either injured workers or employers.[48]

This position was also shared by the trade union movement and leading employer organisations.[49] Fears of a Commonwealth Government bid to take over a policy domain that has traditionally been the prerogative of State and Territory governments was no doubt an important consideration as well.

There are a number of other objections to the Productivity Commission's proposal. The Workplace Relations Ministers Council meets infrequently, usually no more than twice a year and for about half a day at a time. In addition, the council's industrial relations agenda has a much broader ambit than considerations pertaining to workers' compensation. This gave rise to concerns that policy issues involving workers' compensation and vocational rehabilitation could be swamped or downgraded by the council's broader

45 D D R Pearson, B McCarthy and R Guthrie, *Report of the Review of the Western Australian Workers' Compensation System*, WAGP, Perth, 2000, pp 148–9.

46 Productivity Commission, *National Workers' Compensation and OHS Frameworks*, above n 1, p 323.

47 Ibid, p xxxvii.

48 New South Wales WorkCover, *Productivity Commission Interim Report: National Workers Compensation and OHS Frameworks — WorkCover NSW Response*, Sydney, 2004, p 2.

49 ACTU, *National Workers' Compensation and OHS Frameworks*, above n 35, p 11; ACCI, *Interim Response to Interim Recommendations*, above n 36, p 14; and Australian Business Limited, *Submission on the Productivity Commission Interim Report*, above n 23, p 8.

industrial relations agenda. Nor was the commission's case assisted by the absence of any representative involvement in the decision-making process of its proposed new body. The exclusion of union and employer representation from a forum intended to deal with policy issues of fundamental importance to their respective constituencies was a serious omission. For all of these reasons, the commission's push for this new workers' compensation coordinating body was ill considered and destined to fail.

The End of An Agenda

The recommendations of the Productivity Commission for a revamped national workers' compensation framework encapsulated a policy agenda overwhelmingly designed to benefit 'the big end of town'. In the process, the concerns and interests of injured workers and small business were subordinated to this overriding objective. Had the commission's recommendations been implemented it is also quite clear that the existing State and Territory schemes would have been subjected to escalating funding pressures that could well have jeopardised their financial viability.

In many respects, the most disquieting feature of the Productivity Commission's Report was the paucity of the arguments and data presented in support of its case for such a dramatic change in the Australia's workers' compensation arrangements. The Productivity Commission's claim that compliance costs for multi-State firms are 'excessive' was not sustained by any systematic investigation of the evidence. The anecdotal references cited were quite obviously no substitute for a thorough analysis. The commission's reluctance to resolve the issue of whether the possibility of lower compliance costs would, by itself, be sufficient reason for multi-State firms to take up the option of either an expanded self-insurance regime under Comcare or a new federal scheme, was also unsatisfactory. Clearly the cost of compensation payments needs to be considered by employers before a move is to be made. The potential for employers to make a decision on compliance costs alone has left open a very real prospect that reductions in weekly payments would have been required as a necessary inducement.

The Productivity Commission's predilection for private underwriting was also less than compelling. It downplayed the inefficiencies caused by the cyclical volatility in premiums that is characteristic of private underwriting. It also failed to fully appreciate that major corporate collapses, such as the HIH debacle, are a recurrent feature of private insurance markets or to grasp the devastating effects that these market failures can have on injured workers, employers and the broader community. It appears that free market ideology took precedence over both history and contemporary reality in the commission's treatment of these issues.

It can be argued that it was not so much the analytical flaws in the Productivity Commission's proposals to reshape the regulation of workers' compensation arrangements in Australia that prompted the Howard Government to reject the commission's agenda for change. Rather it was the political consequences of what would have ensued had this agenda been adopted. The most likely scenario is that there would have been concerted efforts by the States and Territories to prevent firms exiting their schemes. This would have been accompanied by opposition to any moves by the

Federal Government to legislate for a national scheme. The trade union movement no doubt would have joined forces with State and Territory governments in lobbying the Senate to reject any such legislation.

Most importantly, as indicated earlier, the business community was divided over the issue of a new national scheme. While elements of big business fully supported the proposal, there was widespread concern among small and medium business interests that they would face higher premiums in the wake of an exodus from the State and Territory schemes by large corporations. This concern was voiced by the Federal Treasurer who subsequently amended the Productivity Commission's terms of reference by insisting that it specifically examine 'the impact on small business of any proposed national workers' compensation . . . arrangements'.[50] This, it appears, sealed the fate of the commission's recommendations for a national scheme.

In political terms the Howard Government was caught between a rock and a hard place. On the one hand, it had been lobbied heavily by big business to develop a national scheme. On the other hand, by acceding to such a demand it ran the risk of seriously alienating its small business constituency. In the run up to a federal election this would have been a particularly high-risk strategy. In the end, the government opted for caution.[51]

In advocating for a national workers' compensation scheme on behalf of corporate Australia, the Productivity Commission managed to combine a dubious analytical assessment with a conspicuous lack of political acumen. The result was that its key recommendations were expeditiously consigned to oblivion. In the process, the opportunity to have made a lasting contribution to improving workers' compensation arrangements for the broader Australian community was squandered.

Postscript

This review was submitted and accepted for publication prior to the re-election of the Howard Government in October 2004. The analysis in this review is based on the assumption that neither major party would hold the balance of power in the new Federal Parliament. As this assumption is no longer valid, it is possible that the government may revisit some or all of the Productivity Commissions recommendations.

50 Productivity Commission, *National Workers' Compensation and OHS Framework*, above n 1, p viii.

51 Priest, 'Optus First to get Nod to Self Insure', above n 33. This is not to deny the possibility that it might use the existing Comcare arrangements to provide self-insurance, on a limited basis, along the lines specified in the Commission's model A. This in fact was foreshadowed by an announcement in August 2004 of its intention to grant self-insurer status to Sing Tel Optus.