

**Submission
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INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

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**SUBMISSION
TO THE
JOINT SELECT COMMITTEE ON
WORKERS COMPENSATION SCHEME**

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**NSW Farmers' Association
Level 25, 66 Goulburn Street
Sydney NSW 2000**

**Gracia Kusuma
Industrial Relations Manager**

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1. Introduction

NSW Farmers' welcomes the establishment of the Joint Select Committee on Workers Compensation Scheme and appreciates the opportunity to present its view to the Committee.

NSW Farmers is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries. Maintaining competitiveness is vital to the success of farm businesses. Regrettably, farmers in NSW have been short changed by the workers compensation scheme in this state for far too long.

The Scheme that we have does not directly award safer workplaces, it does not adequately incentivise return to work and it impedes on our commercial competitiveness as a state. The Scheme is in urgent need of reform, especially in the current alarming situation where it is in deficit by more than \$4 billion dollars and businesses are faced with the probable 28% increase in premiums should there be no change.

NSW Farmers applauds the Government's call for reform. NSW Farmers agrees that an effective workers compensation scheme should be financially sustainable, proactively promotes return to work, provides seriously injured workers with adequate support and compensation, and creates commercially competitive environment for business. With the objective of creating an effective Scheme, NSW Farmers supports the suit of statutory reform propounded by the Government.

NSW Farmers further recommends for restriction on recess claim, removal of rural work from deemed workers list for the purpose of coverage, and the need for non-statutory reform to also be considered and adopted.

The alternative to not reforming the current Scheme will be disastrous for businesses' bottom line with the flow on effect of stifling economic development and potentially compromising job security.

2. Need for Workers Compensation Scheme Reform

NSW Farmers supports the view that a reform to the workers compensation scheme is imperative, not only for the purpose of fixing the financial liquidity of the Scheme, but more importantly because the Scheme has failed to assist injured worker in returning to work and put businesses at a competitive disadvantage compared to their counterparts from other states for far too long.

2.1 Long term financial sustainability

The independent actuary report on the Scheme's financial standing prepared by PricewaterhouseCoopers reported a deficit of more than \$4,083 million at 31 December 2012. Although 50% of the driver of this deficit was due to negative returns from investment, the other 50% of the cause of the deficit was identified to be from deterioration of claims management experience.

It is deeply alarming the actuarial projections concluded that with similar claim rate, the Scheme (with certain assumptions of risks and investment returns) will continue to be in significant deficit for more than 10 years should there be no reform. It is important to note the escalated level of deterioration from July to December 2012 increased the Scheme's deficit by \$1,720 million in just six months period.

If this trend is to continue (based on the actuarial projection it is highly probable that the trend will continue) the cost of maintaining the Scheme will be debilitating on businesses as businesses will bear the cost through workers compensation insurance premium. The independent actuarial report indicated that a 28% premium increase per annum for the next five years is required to return the Scheme financial position back to 100% funding ratio¹. This imposition will put a huge strain on farm businesses as farmers won't be able to pass the cost of premium increases where their produce are competing with products from other states and often other countries with lower labour cost. Consequently this will have the ripple effect to the wider community and compromise businesses' capability to employ and maintain workers. Ensuring the long term financial sustainability of the scheme is in the interest of workers and businesses.

2.2 Failure to motivate return to work

The cost of the Scheme has been increasing despite the number of claims dropping.

Injured workers in NSW are remaining on workers compensation benefits for longer. The average amount of time that a worker remains unfit for duty in the first six months from injury has increased by 2.7 days since December 2006. This represents an 8 per cent increase over five years.

The average days required to return to work has deteriorated since 2008 by around 2 days². Because of the large number of people who receive weekly benefits and the duration of time, small changes in the average cause large changes in liability.

International research has consistently found a correlation between early return to work and improved health outcomes. In March 2011, the Australasian Faculty of Occupational and Environmental Medicine of the Royal Australian College of Physicians, released a *Consensus Statement* on the health benefits of work.³ The Consensus recognises a recommendation from the Faculty's Position Statement, *Realising the health benefits of work*, that work is generally good for health and wellbeing and that long term work absence, work disability and unemployment generally have a negative impact on health and wellbeing.

The *Position Statement* states "Work absence tends to perpetuate itself: that is, the longer someone is off work, the less likely they become ever to return."⁴ Anyone who has known an injured worker knows that long-term absence from work is harmful to physical and mental health and wellbeing.

The chance of a person ever returning to work after a workplace injury is⁵:

- 70% if off for 20 days;
- 50 % if off for 45 days; and
- 35% if off for 70 days.

Long term work absence, work disability and unemployment are one of the most significant negative factors impacting on the health and wellbeing of individuals, families, the economy and society.

There is a large body of research that has identified long-term spent without work as one of the greatest known risks to public health.⁶ For this reason, experts have identified unemployment as among the most risky occupations.⁷

Psychiatrists have also established that lack of work is bad for mental health, with suicide rates 35 times higher in the long-term unemployed than in the employed.⁸ In this respect, it is obvious that getting back to work quickly is the best outcome for an injured worker. It

² PWC. *Executive Summary: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011*, p.22.

³ Link to the *Statement on the Health Benefits of Work*
<http://www.racp.edu.au/index.cfm?objectid=57063EA7-0A13-1AB6-E0CA75D0CB353BA8>

⁴ *Position Statement: Realising the health benefits of work* p.12.

⁵ Johnson D, Fry T. *Factors Affecting Return to Work after Injury: A study for the Victorian WorkCover Authority*. Melbourne. Melbourne Institute of Applied Economic and Social Research; 2002.

⁶ Waddell, G, Burton A *Is Work good for your health and well being?* London, UK: The Stationary Office; 2006 is an extensive and independent review of the scientific evidence regarding work, health and wellbeing.

⁷ Ross J. *Where do real dangers lie?* Smithsonian 1995; 26(8):42-53.

⁸ Wessely S. Mental health issues in Holland-Elliot K, ed. *What about the workers?* Proceedings of an RSM Symposium. London: Royal Society of Medicine Press; 2004:41-6.

is better for a worker’s own health and wellbeing, their workmates, their family and their employer.

Improving return to work outcomes is important for the community and the economy. That is why recovery and return to work should be key priorities of any workers compensation system.

2.3 Commercial competitiveness

The current Scheme is impinging on commercial competitiveness with other states due to higher premiums that ultimately inflate labour cost in NSW. The Issues Paper released by the Finance Minister, indicated that employers in NSW are currently paying 20% to 60% more in premiums compared to similar employers in other states. The disadvantage caused by higher premiums is even more severe in some agriculture sectors as shown in the table below that compares 2011-2012 insurance industry rates for basic premium calculations.

Industry	NSW	VIC	QLD
Vegetable growing	5.27%	2.62%	3.12%
Apple growing	5.31%	2.17%	3.12%
Grain growing	5.30%	1.63%	3.12%
Grain/livestock farming	7.15%	3.13%	4.13%
Sheep/beef farming	7.27%	4.70%	5.29%
Sheep farming	7.67%	4.70%	4.13%
Beef farming	7.16%	2.86%	5.29%
Dairy cattle farming	6.60%	3.13%	3.91%
Poultry farming (eggs)	7.93%	5.02%	3.73%
Pig farming	5.99%	4.81%	3.91%
Shearing	8.74%	11.79%	5.79%

Employers in grain and livestock farming and dairy cattle farming in NSW are paying more than double in workers compensation insurance compared to their counterparts in Victoria. NSW grain growers currently pay more than triple compared to similar employer in Victoria. It is unacceptable businesses are significantly disadvantaged solely due to the state that they operate in.

NSW employers have been at a competitive disadvantage for far too long as this issue was also brought up by Thomas George in his speech to the parliament in 2006 where he highlighted that a company based in Lismore would frequently lose work tender to

competitors from Queensland mainly due to the difference in workers compensation and payroll tax⁹.

It transpired fairly clearly in the Issues Paper that the Government is averse to increasing the premium up to 28% per annum to bring the Scheme back to breakeven point in five years. NSW Farmers strongly supports this view. Even increase in premium that is less than 28% will have deleterious effect on businesses especially when other added costs are factored in, for example, carbon tax, increased wages, and superannuation guarantee contribution increase from next year. Especially when compared to Victoria that has just recently announced a reduction of 3% in premiums.

Any further increase in premium will exacerbate commercial disadvantage to businesses, especially to primary producers as farmers have no way of passing on the increased cost of any premium. Farmers have very little control of the price of their commodity which is purely determined by the market where farmers in NSW are competing with produce from other states. Any further increase to workers compensation premium will directly impact on farmers' bottom line and impede on their ability to grow and expand their businesses. NSW Farmers firmly opposes any increase in workers compensation premiums.

2.4 *Debilitating complexity*

Workers compensation scheme is funded by the businesses through payment of premiums however employers, especially small business owners are frequently looked over in the claim management process. Farm business owners frequently experience lack of control and influence in managing a workers compensation claim. There are lack of clear information and guidelines to support small businesses in managing workers compensation claim and return to work which create a situation of complete reliance on the scheme agent's guidance. The progression of a claim is largely dependent on the proactive handling from scheme agent which have been unsatisfactory in most occasions.

The current Scheme contains complex method of calculation for weekly benefits differentiating between award covered and non-award covered. The formula to calculate weekly benefits for casual employees is commonly misunderstood. Misinformation frequently occurs in calculation of defined benefits for prescribed classes of workers such as shearers.

⁹ New South Wales, Legislative Assembly, 17 November 2006, (Thomas George, Private Member).
http://www.parliament.nsw.gov.au/prod/parliament/hansart.nsf/V3Key/LA20061117008?open&refNavID=HA8_1

3. NSW Farmers' Position on the Issues Paper

NSW Farmers supports the view that the Government canvassed in its published Issues Paper, reform to the Scheme is urgently required. NSW Farmers believe that genuinely injured workers should be adequately supported and well compensated, however the Scheme has failed workers, businesses and the people of NSW.

NSW Farmers supports a reform package that will deliver on the seven reform principles guaranteed by the Government:

1. enhance NSW workplace safety by preventing and reducing incidents and fatalities;
2. contribute to the economic and jobs growth, including for small businesses, by ensuring that premiums are comparable with other states and there are optimal insurance arrangements;
3. promote recovery and the health benefits of returning to work;
4. guarantee quality long term medical and financial support for seriously injured workers;
5. support less seriously injured workers to recover and regain their financial independence;
6. reduce the high regulatory burden and make it simple for injured workers, employers and service providers to navigate the system; and
7. strongly discourage payments, treatments and services that do not contribute to recovery and return to work.

3.1. Statutory reform

NSW Farmers agrees in principal with the proposed suit of reforms canvassed in the Issues Paper. In addition, NSW Farmers urges the Government to include the following changes in its reform package:

- Redefinition of coverage for recess claims

Currently an injury that occurs during recess period is covered under the Scheme provided that the employee has not voluntarily subjected his or herself to abnormal risk. This creates situations where an injury with tenuous nexus to the performance of work such as an employee who takes up running during lunch break and twist his or her ankle to be covered under the Scheme.

Coverage of the Scheme should be aligned with the object of the workers compensation scheme, that is to provide assistance and compensation for injuries contracted during the performance of work or related with work.

- Removal of coverage for rural work as deemed employee

The coverage rural work as deemed employee limit the contractual ability of parties. It is confusing, misleading and unnecessary for rural work contractors to be covered by the Scheme as parties to the contract are able to negotiate a price as part of the contract to include a value for private insurance available for the

contractor such as private health insurance and/or loss of income protection insurance.

Independent contract relationship connotes the exchange of a fee for service without additional payment requires as the total value of the service is accepted to have been compensated by the agreed fee. It is unnecessarily confusing and misleading for farm operators to distinguish between fencing contractors whose fee needed to be declared for workers compensation purposes, as compared to spraying contractors who are not covered under deemed worker. This is a prime example of the Scheme's complexity that poses significant difficulty for businesses to navigate the Scheme.

3.2 Further recommendation

NSW Farmers is of the view that statutory reforms are not adequate to deliver seven reform principles. A holistic reform that includes administrative, commercial and communication improvement is required reform as some of the issues identified by NSW Farmers cannot be addressed through statutory reform only.

NSW Farmers recommends the following actions to be undertaken to complement the statutory reform in achieving an effective and commercially competitive Scheme:

- improvement in contract arrangement with scheme providers to incentivise proactive claim management;
- inclusion of participation from medical and rehabilitation providers as part of the solution;
- provision of assistance to small and medium businesses which are limited in their resources to manage return to work; and
- provision of clear, comprehensive and easily accessible bank of information about the Scheme for workers, employers and scheme agents.