Submission No. 55

Lawyers for the People

AUSTRALIAN LAWYERS ALLIANCE

INDEPENDENT CONTRACTING and LABOUR HIRE ARRANGEMENTS

March 2005

CONTACT:

Ben Cochrane
Legal and Policy Officer
Phone: 02 9258 7700
Fax: 02 9258 7777
Email: ben@lawyersalliance.com.au

Contents

Introduction

The Australian Lawyers Alliance – formerly the Australian Plaintiff Lawyers Association – has members who specialise in the workers' compensation jurisdiction in each state and territory in Australia. Drawing on the expertise of our members, the Alliance is in a unique position to offer a view on sub-contracting and labour hire arrangements as they affect workers' entitlements to benefits under various state and federal workers' compensation schemes. The Lawyers Alliance submission is limited to these workers' compensation issues.

The Lawyers Alliance supports a nationally consistent approach to labour hire and sub-contracting arrangements. In its submissions to the Productivity Commission's review of workers' compensation matters, the Alliance supported in principle the concept of national consistency for the benefit of national employers, provided the rights of workers were not eroded in the process. In that review process, as in this one, our chief concern is with the effect that any changes to the law will have on the rights of injured workers.

Currently, the workers' compensation arrangements in some states and territories reduce workers' compensation benefits for workers employed through sub-contracting or labour hire arrangements. Some contract workers are effectively denied workers' compensation coverage completely.

There is some evidence to suggest that employers are resorting to labour hire or contracting arrangements in part to reduce, or avoid altogether, their obligation to provide workers' compensation coverage to employees. The Lawyers Alliance would support a nationally consistent approach that ensured protection for all workers.

Broadly, there are two forms of legal protection available for workers who suffer work-related injury while employed as or by a contractor, or in labour hire arrangements.

Workers' compensation

Many states and territories have provisions in their legislation 'deeming' subcontractors and or their staff, and persons working under labour hire arrangements, to be 'workers' for the purposes of injury compensation under the relevant workers' compensation scheme.

Such deeming provisions ensure that all workers, regardless of their nominal employer, are covered by the relevant workers' compensation scheme. The wording of the deeming provisions is different in each jurisdiction. Depending on how well the provision is drafted, it can be a very effective way of ensuring that the scheme is genuinely universal.

The schemes all provide statutory workers' compensation benefits on a no-fault basis, meaning that injured workers are not required to show negligence on the part of the employer before they are entitled to benefits.

In addition to statutory benefits, some states also allow workers to sue negligent employers at common law. The schemes all provide different levels of statutory benefits and have different rules allowing access to common law, some allowing no common law access at all. The schemes with common law all have mechanisms that control access and limit total damages recoverable at common law.

Public liability coverage

The legal owner or occupier of any work-site has a common law duty to ensure that their management of the site does not, through negligent act or omission, cause injury

to any person – including a worker – who comes on to the site. This duty is referred to as public liability.

Where the occupier of the site is also the employer, the relevant workers' compensation legislation usually governs this liability. In most jurisdictions, the injury will be treated as a workers' compensation matter. As a result, any right that the worker might otherwise have to a common law action will be governed by the common law access regime within the workers' compensation scheme.

Where the occupier of the site and the employer are different entities, as will be the case where a sub-contracting or labour hire arrangement is in place, a worker's injury might give rise to separate rights against the occupier and employer. The worker can seek workers' compensation entitlements, involving their direct employer, and make a claim against the negligent occupier of the work-site where the accident occurred. Again, most workers' compensation schemes consider this eventuality and govern the workers' rights.

For subcontractors working without proper workers' compensation or alternate injury and income protection, the coverage afforded by the owner or occupier of a work-site through a common law public liability claim may be their only legal protection in the event of work injury.

The protection provided by this right to sue an occupier would be unnecessary were it compulsory for all workers to be covered in some way by the appropriate workers' compensation scheme. The Lawyers Alliance submits that the greatest gain for injured workers that could arise from a nationally consistent approach would be compulsory workers' compensation coverage for all workers, regardless of their nominal employer.

The interplay between statutory benefits and common law rights, between workers' compensation entitlements and occupiers' liability, and the arrangements for subcontractors and labour hire employees, is different in each state. Further explanation of these complex arrangements at a general level is difficult.

In the sections that follow, the relevant arrangements in Tasmania, New South Wales and Victoria are set out in some detail. These examples illustrate the difficulties that arise for injured workers employed by labour hire companies, or as subcontractors.

Following this examination of state schemes, the Lawyers Alliance offers some recommendations regarding a nationally consistent approach.

Tasmania

Increasingly in Tasmania there is direct evidence that workers are being hired under labour hire agreements. The worker is then defined as an 'independent contractor' and held responsible for their own accident and other insurance coverage. The purpose of this arrangement seems to be to sever the employment relationship between employee and employer.

The current use of labour hire companies is largely confined to the construction, building and slaughterhouse workforces. However, in the experience of Tasmanian Lawyers Alliance members, such 'self-employed' contract workers can also be found in transport, tourism, processing, farming, nursing, cleaning, shearing, retailing, wholesaling, hospitality, stevedoring, health, administration, teaching, home services, child care and entertainment.

The impact of labour hire arrangements on injured workers in Tasmania is uncertain. Often the injured worker seeks legal advice following a workplace injury only when the injury is such that they are unable to work for an extended period of time. Many less serious injuries therefore go unreported.

The Tasmanian workers' compensation scheme

Section 3 of the Tasmanian *Workers Compensation and Rehabilitation Act 1998* contains the following definitions:

'employer' *means the person with whom a worker has entered into a contract of service or training agreement and may include –*

the Crown; and
the employer of any person or class of persons taken to be a worker for the purposes of this Act; and
the legal representative of a deceased employer.

'worker' *means –*

any person who has entered into, or works under, a contract of service or training agreement with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is express or implied, or is oral or in writing; and any person or class of persons taken to be a worker for the purposes of this Act and when used in relation to a person who has been injured and is dead, includes the legal personal representatives or dependants of that person or other person to whom or for whose benefit compensation is payable.

Most people will be covered as workers employed by an employer, and are therefore protected by the legislation.

Section 31 seeks to ensure that an employer does not abrogate their responsibilities under the Act through individual contracts with workers, except as allowed by the Act.

> ***31.*** *Except as provided in this Act, no contract or agreement made between an employer and a worker has the effect of relieving the employer from liability to pay compensation under this Act.*

Exclusions

However, the Act also specifically excludes a number of persons.

Section 4(5) provides

> *This Act shall not apply to any person –*
> *whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business; or*

who is an outworker; or

who is a domestic servant in a private family, and has not completed 48 hours' employment with the same employer at that time when he suffers injury; or

who is a member of the crew of a fishing boat, and is remunerated wholly or mainly by a share in the profits or gross earnings of that boat; or

notwithstanding section 4D, who is participating in an approved program of work for unemployment payment under the Social Security Act 1991 of the Commonwealth –
and no such person shall be deemed to be a worker within the meaning of this Act.

'Outworker' is defined in section 3 as:

a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale, in premises not under the management or control of the person giving them out.

Contractors
There is no definition of the term 'contractor' in the Act, but true independent contractors are covered by two clauses.

First, the *Workers Compensation and Rehabilitation Act 1988* excludes contractors from the scheme of workers' compensation if they carry their own insurance:

4B.
(1) Subject to subsection (2), where a person makes a contract with a contractor to perform work exceeding $100 in value that is not work incidental to a trade or business regularly carried on by the contractor in the contractor's own name or under a business or firm name, and the contractor does not sublet the contract or employ any worker, the contractor is taken to be a worker employed by the person making the contract.

(2) If a contractor to whom subsection (1) applies takes out his or her own personal accident insurance, the contractor is taken not to be a worker for the period during which that insurance remains valid.

(3) If a contractor takes out his or her own personal accident insurance, the contractor is to provide the person with whom the contract is made with evidence of the contractor's insurance.

(4) If a contractor does not take out his or her own personal accident insurance, he or she is to advise the person with whom the contract is made that the contractor has not taken out such insurance.

Subclause 1 effectively provides an option for a genuine contractor – who does not sublet the contract or employ any workers – to carry their own insurance. Many contractors do so voluntarily, for they genuinely are small business operators who provide their skills and services for a fee. For as long as their insurance remains valid, the contractor is not a worker.

Second, section 29 provides that a principal employer who engages a subcontractor is liable under the Act for injuries sustained by employees of that subcontractor. The section also allows the principal to be indemnified by the subcontractor. The effect of this provision is to ensure that a principal cannot gain insulation from the workers' compensation legislation by adopting an artificial subcontracting arrangement.

29.
(1) Where a person (in this section referred to as "the principal") in the course of, or for the purposes of, his trade or business contracts with any other person (in this section referred to as "the contractor") for the execution by or under the contractor of the whole

or any part of any work undertaken by the principal, the principal is liable to pay to a worker employed in the execution of the work any compensation under this Act that he would have been due had the worker been immediately employed by him.

(2) Where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Act, a reference to the principal shall be substituted for a reference to the employer, and the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he is immediately employed.

(3) In the construction of the provisions of this section, the expression "the principal" includes a contractor who enters into a sub-contract with any other person for the whole or any part of the work undertaken by him, and the expression "the contractor" includes a person who takes such a sub-contract.

(4) Where the principal is liable to pay compensation under this section, he is entitled to be indemnified by any person, other than the Nominal Insurer, who would have been liable to pay compensation to the worker independently of this section, and the right to that indemnity is available against every contractor standing between the principal and the worker.

(5) Nothing in this section shall be construed as preventing a worker recovering compensation under this Act from the contractor instead of the principal.

(6) This section does not apply in any case where the injury occurs elsewhere than on, in, or about the place on which the principal has undertaken to execute the work or that is otherwise under his control or management.

Costs of the workers' compensation system

In his *Report on the Review of Workers' Compensation in Tasmania,* Rutherford acknowledged that workers' compensation was a significant cost in doing business, because the no-fault scheme was borne by employers, and workers' compensation schemes took costs away from other systems of social welfare support.'[1]

Obviously, if a worker cannot access workers compensation – covering payment of wages, rehabilitation and medical costs – they will need to access other resources to assist themselves and their families. They will access the public health system because, even if privately insured when working, keeping private insurance will be prohibitively expensive for a worker no longer receiving a salary. They may need to access other social welfare options.

Defining 'employee'

Despite the definitions and exclusions within the Act, the question of who is an employee still arises at times. This was acknowledged by Rutherford, who observed that it can 'be exceedingly complex to determine whether someone is a worker or independent contractor'.[2]

The use of common law definitions of 'employee', to be determined on a case-by-case basis through the courts, adds to the uncertainty and confusion for workers. Often workers believe that they are in fact employees, only to have that belief challenged following a workplace injury. This causes additional unnecessary stress to the worker at a time when their health and livelihood are at risk.

[1] Rutherford B, *Report on the Review of Workers' Compensation in Tasmania,* February 2004, available at http://www.dier.tas.gov.au/publications/index.html, p 74-75.
[2] *Ibid,* p12.

However, Rutherford was concerned that 'heavy prescription in statute of what constitutes a worker may result in the rearrangement of relationships in order to avoid the consequences of the legislation'.[3]

Labour hire practices in Tasmania

Currently, labour hire firms in Tasmania are creating ways of purchasing labour outside the traditional employer/employee relationship. Indeed, the structure is actively designed to destroy any such formal relationship. At least one organisation operating in Tasmania requires the worker to sign a contract that states:

> "I acknowledge and agree that there is no relationship of employer/employee with the and that does not guarantee me any work. I am self-employed and, as such, I am not bound to accept any work through "[4]

Further, if injured at work and requiring medical assistance, the worker is instructed to advise the health provider that they are 'self-employed' and not covered by workers' compensation. The injury is then dealt with through Medicare and documented by general medical certificates.

It appears that is manipulating the employment relationship in order to save employers the costs associated with employees. The form of the labour hire agreement purports to shift former employees outside of that employment relationship, nominally rendering them 'independent contractors' to their former employer. The business is not then responsible for any entitlements or additional payments that would usually attend the formal employment relationship. offers to 'provide the skills you need without the liabilities of employment'.[5]

The use of labour hire firms to provide a pool of additional casual labour is not new in Australia. In these arrangements, the worker is effectively employed by the labour hire firm and subcontracted to others. Where used to provide a flexible short-term labour force to a business genuinely affected by a fluctuating demand for its goods or services, such arrangements are legitimate. However, there now appears to be a deliberate trend toward using labour hire arrangements as a mechanism to actively destroy the employment relationship, for the sole purpose of avoiding the liabilities of a standing labour force.

As 'independent contractors', workers are required to provide their own insurance cover for income and public liability. refers workers to Marsh Pty Ltd for such advice and cover. With this cover, and employed as 'contractors', they are excluded from the definition of 'worker' by virtue of section 4B(2) of the *Workers' Compensation and Rehabilitation Act 1988* – see above.

Income protection insurance generally does not provide even income cover that is comparable to Tasmanian workers' compensation legislation, let alone other benefits. The major differences are set out in the table below.

---

[3] *Ibid*, p75.

[4] This content is supplied by a Lawyers Alliance member with access to a copy of an agreement. The contract is not loaded to the website.

[5] See http://www.

BENEFITS	WORKERS' COMPENSATION	PRIVATE INSURANCE COVER
Income replacement	100% of income for first 13 weeks 85% for 14 – 78 weeks 80% for 79 weeks, but not exceeding 9 years	Often limited to a set period of time – for example 2 years.
Medical Expenses	Covered when claim accepted	Not covered
Return to Work Workplace Rehabilitation	Must be provided (unless demonstrably impractical)	No provision; no employer; no compulsion.
Access to Common Law	In limited circumstances	Yes
Cost to Worker	Nil	Percentage of gross earnings or fixed premium.

In the experience of Tasmanian members of the Lawyers Alliance, the 'independent contractor' is often an unskilled worker, who was previously employed by the business that now obtains their labour through the labour hire agreement.[6] Such former employees are often in a poor position to appreciate properly the real ramifications of the changed employment structure.

Out of their weekly earnings they must pay for their accident and public liability insurance and bear the cost of their own tools and uniforms. They are no longer covered by any industrial agreement. They are entitled to no annual or sick leave. But, unlike true independent contractors, they have no ability to negotiate a price for the provision of their services. These workers are dependent upon the labour hire firm providing them with work, and enter that arrangement only through the imposition of a new relationship that they do not properly comprehend.

Whether the labour hire arrangement can be challenged under section 29 of the *Workers Compensation and Rehabilitation Act* is yet to be tested. Arguably the 'Agreement to Contract' would not fall under section 31 of the Act as acts as a labour hire firm, connecting 'independent contractors' with businesses, rather than as a subcontractor.

This type arrangement is likely to expand, as it offers great flexibility and cost savings to business. It places costs and risks back on the worker who, though nominally an independent contractor, is really a worker simply seeking a working wage. If this arrangement is all that is available, then that is the work they will have to accept.

Perhaps, instead of a heavy statute prescription of the meaning of 'worker', it would be preferable to introduce a clear definition of 'contractor' which excludes quasi-contractors working under these, or similar, arrangements simply because an alternative employment avenue does not exist.

[6] boasts that it 'specialise(s) in the legal conversion of existing employees into bona fide self-employed contractors'. See their website, *ibid.*

Labour hire firms and WorkCover premiums

In recent years, labour hire firms have been used in Victoria to distort proper industry classification for the purposes of paying workers' compensation premiums.

Notorious examples have included the meat industry, where slaughterhouses have been known to employ their entire workforce through a labour hire firm. The result is that the slaughterhouse, through the labour hire firm, pays a relatively low premium, calculated according to the labour hire firm's profile. Given that slaughterhouses are subject to one of the highest injury rates, and therefore attract the highest workers' compensation premium, the saving to the employer is significant.

Over the last 12 months the Victorian WorkCover Authority (VWA) has made a concerted effort to eradicate the use of labour hire companies to distort industry-appropriate WorkCover premiums. The VWA commenced negotiations and stakeholder involvement from March 2004 and proposed major changes in February 2005.

The VWA has identified the limitations of the current classification system, including:

1. Having only two employment agency classifications does not reflect the different risks.
2. There is no difference in classification between labour hire and job placement or recruitment services.
3. Injuries are not recorded against the industry in which they occur, an omission which has important implications for health and safety and the setting of industry rates.

The VWA concluded that the situation was unsustainable for the scheme.

Its final recommendation was that premiums levels be set in accordance with that applicable to the host employer. The result is that one of the motivations for using a labour hire arrangement – saving WorkCover premiums – is effectively defeated.

Contractors

Amendments since the enactment of the *Accident Compensation Act* in 1985 have been made the definition of 'worker' sufficiently broad to make it very difficult to artificially define employees as contractors, so as to deny them WorkCover entitlements.

Sections 8 and 9 of the Act have wide deeming provisions that are designed to capture such artificial employment arrangements.

These include ***Section 9(2)b***

(2)(b) a person who during a financial year -

> *i) performs work for or in relation to which services are supplied to another person under a relevant contract; or*
>
> *ii) being a natural person, under a relevant contract, re-supplies goods to an employer –*
>
> *shall be deemed to be a worker in respect to that financial year.*

...

(3) Where a contract is a relevant contract pursuant to both sub-sections (1)(a) and (1)(b)-

(a) the person to whom, under the contract, the services of persons are supplied for or in relation to the performance of work shall be deemed to be an employer; and

(b) notwithstanding sub-section (2)(a)(i) the person who under the contract supplies the services shall not be deemed to be an employer.

Section 10(2) further provides

(2) If a person to whom this section applies is injured, the authority may, if it is satisfied the services provided by that person under a contract would have been likely to have been provided for 90 days or more in the financial year, determine that the person is, for the purposes of this Act, to be deemed to be a worker.

Labour hire arrangements continue to present problems for the VWA, but the issue seems to be in hand. In the experience of Lawyers Alliance members in Victoria, the provisions relating to contractors effectively ensure coverage for contractors who are essentially *de facto* employees.

New South Wales

Contractors

An independent contractor would not ordinarily expect to be covered for workers' compensation in New South Wales. The *Workers Compensation Act 1987* (WCA) defines 'injury' as personal injury arising out of or in the course of employment. The common law applies in respect of the distinction between a contract of service and a contract for services. Where a dispute arises as to whether an injured person is a worker or contractor, the common law tests apply.

Section 20 of the WCA provides that a principal contractor who is insured may be liable for injuries sustained by employees of a subcontractor who is uninsured. However, the benefit of the Act is extended only to *employees* of the subcontractor, not to the subcontractor.

The effect of section 20 is to prevent the use of a subcontracting arrangement to insulate principal employers from their obligation to pay workers' compensation premiums, and to ensure coverage of the WCA to such workers. Given that it does not extend to contractors themselves, the Act allows genuine self-employed contractors to make their own arrangements and assumes that they will not fall within the workers' compensation system. This rule operates with one exception.

Schedule 1 of the NSW *Work Place Injury Management and Workers Compensation Act 1998* deems certain workers to be employees for the purposes of that Act and the WCA. The primary extension is to cover contractors who perform work that is incidental to the trade or business in which they regularly work. The contractor may not sublet the contract or employ any worker. Effectively, a self-employed tradesperson who took on some additional work as a labourer would be entitled to workers' compensation if injured while working as a labourer.

Recommendations

Full protection - statutory benefits

Artificial labour hire and contracting arrangements, as the Tasmanian evidence clearly shows, are increasingly being used as a mechanism to avoid the liabilities involved in maintaining a standing labour force, including the liability to pay workers' compensation premiums.

Addressing the misuse of such arrangements has benefits for both workers and workers' compensation schemes.

Benefits for workers

Most workers operating under labour hire arrangements are clearly 'workers' within the meaning of the common law 'control test', which asks who has effective on-the-job control over the work performed by the worker. Allowing a strict interpretation of legislation to trump this practical test produces unintended consequences for both injured workers, and workers' compensation schemes.

Labour hire arrangements, and some subcontracting arrangements, can leave workers outside the protection of the workers' compensation scheme. Frequently an injured worker discovers this, and appreciates the consequences, only after they have been injured. Allowing recourse to contrived employment arrangements to exploit loopholes in workers' compensation schemes cheats workers of proper protection, and runs counter to the spirit of such schemes.

In some circumstances falling through the cracks of the workers' compensation scheme leaves the worker with a common law claim that they would otherwise be prevented from pursuing. For this minority, the result may be that the common law claim provides a degree of protection. In a very few cases, the worker's common law rights may exceed their workers' compensation entitlements.

Closing off the loopholes will keep all workers within the workers' compensation scheme. While this will mean that a small minority bring their potential common law claims within the control of the relevant workers' compensation rules, it guarantees universal and compulsory coverage to all workers.

The Lawyers Alliance has consistently supported the maintenance of common law rights for all workers. However, the Alliance also strongly supports change that will ensure that no worker is left entirely without workers' compensation coverage.

Benefits for WorkCover schemes

As the Victorian experience shows, manipulating premium rates through the artifice of labour hire arrangements can severely affect workers' compensation authorities' revenues. A nationally consistent approach that ensures universal coverage to all workers would also remove one motivation for resorting to artificial arrangements. The result would be more accurate matching of premium levels with risk profiles adapted to each industry area, contributing to a more responsive and financially viable workers' compensation scheme.

Deeming provisions, costs and funding

Two mechanisms could be used to ensure a nationally consistent approach to subcontractors and labour hire arrangements, guaranteeing workers' compensation cover for all workers as recommended by the Lawyers Alliance. Either approach, or a combination of the two, would have ramifications for funding.

Deemed Employees
The Victorian example referred to above deems workers to be employees for the purposes of workers' compensation. The provision would appear to be effective against the type of contract arrangement adopted by in Tasmania and would ensure that the labour hire firm does not escape its obligation to provide workers' compensation coverage. Coupled with an arrangement such as that the VWA has recently explored – linking premium rates payed by labour hire firms to the industry in which their workers are placed – this mechanism would ensure coverage for workers and prevent distortion of premium rates.

Deemed Employers
An alternative or additional measure is for legislation to contain a deeming provision operative on principal employers; the agencies that take on workers from labour hire companies. One advantage touted by on its website is that principal employers will escape their workers' compensation obligations. A deeming provision would prevent this saving to employers, which is a cost to workers' compensation schemes and workers.

Either of these arrangements, or perhaps both, might be adopted to bring national consistency to workers' compensation arrangements affected by contracting and labour hire arrangements. They would not prevent subcontracting and labour hire arrangements where they are genuinely needed. But they would ensure that all workers employed in such positions were appropriately covered under workers' compensation schemes. The result would be to remove the basis on which artificial arrangements are attractive.

Costs
The type arrangement, or the use of subcontractors, relieves the real employer of the obligation to pay workers compensation premiums. While the cost saving achieved appears attractive, there are other considerations.

First, in some jurisdictions principal employers will remain liable at common law for accidents occurring on their work-sites. The result is that such employers will maintain public liability insurance. The supposed workers' compensation premium saving is eroded by the continuing need for public liability cover.

A worker injured on such a site may have rights against their employer and the occupier of the site. Enforcing such rights is expensive for the worker, who must mount two separate legal actions, inflating legal costs. Where the claim is successful, a portion of the legal costs is recovered from the insurer. The duplication of legal costs affects both the worker and the insurer, and therefore ultimately the premium.

Moreover, the putative cost saving achieved by using a labour hire firm is perhaps unreal: instead of paying a workers' compensation premium, the employer is paying a public liability premium. There is no real saving to the employer, and the split system results in increased administrative costs.

Shifting these employers back into the workers compensation schemes may not cost them any more than they are paying in public liability premiums, but will produce administrative savings and increase total workers' compensation premiums, improving the financial viability of the relevant workers' compensation scheme.

Second, the removal of workers' compensation rights achieved through the labour hire arrangement may result in the worker having no rights to compensation at all. Such an injured worker will be forced onto Commonwealth welfare for income support, and will seek rehabilitation and medical services through state and federal agencies, in part ultimately subsidised by Medicare.

Funding

The costs associated with compensating and rehabilitating injured workers appears somewhere on the state and federal governments' balance sheets. The Lawyers Alliance recommends use of deeming provisions, which will bring all workers within workers' compensation schemes, meaning that the costs of work injuries will appear within the workers' compensation systems.

The resulting funding pressure is an important consideration before the Committee could adopt the Lawyers Alliance recommendation. The question arises, how best to fund a system of universal coverage?

Each year the Workplace Relations Ministers Council collects and publishes comparative data on the various workers' compensation schemes across Australia, and in New Zealand. In recent years these comparisons have shown that states operating with tandem access to common law compensation, and statutory no-fault benefits, provide the best performing schemes in financial terms. States such as Queensland run their WorkCover scheme with a positive return to Treasury, comparatively low premium rates for employers and excellent benefits for injured workers.

Conclusion

The Lawyers Alliance recommends universal coverage for all workers, achieved through deeming provisions ensuring that head contractors using labour hire firms or subcontractors, and the workers thus employed, are all deemed to be part of the workers' compensation regime. Any additional funding pressure thereby placed on the schemes will be offset by increased revenues, and can be further managed by adoption of the current best practice model in workers' compensation: dual common law and no-fault access.

The Australian Lawyers Alliance

Background

The Australian Lawyers Alliance is the only national association of lawyers and other professionals dedicated to protecting and promoting justice, freedom and the rights of individuals. We have some 1,500 members and estimate that they represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief. The Lawyers Alliance started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

Corporate structure

APLA Ltd, trading as the Australian Lawyers Alliance, is a company limited by guarantee that has branches in every state and territory of Australia. We are governed by a board of directors made up of representatives from around the country. This board is known as the National Council. Our members elect one director per branch. Directors serve a two-year term, with half the branches holding an election each year. The Council meets four times each year to set the policy and strategic direction for the organisation. The members also elect a president-elect, who serves a one-year term in that role and then becomes National President in the following year. The members in each branch elect their own state/territory committees annually. The elected office-bearers are supported by ten paid staff who are based in Sydney.

Funding

Our main source of funds is membership fees, with additional income generated by our events such as conferences and seminars, as well as through sponsorship, advertising, donations, investments, and conference and seminar paper sales. We receive no government funding.

Programs

We take an active role in contributing to the development of policy and legislation that will affect the rights of the injured and those disadvantaged through the negligence of others. The Lawyers Alliance is a leading national provider of Continuing Legal Education/Continuing Professional Development, with some 25 conferences and seminars planned for 2005. We host a variety of Special Interest Groups (SIGs) to promote the development of expertise in particular areas. SIGs also provide a focus for education, exchange of information, development of materials, events and networking. They cover areas such as workers' compensation, public liability, motor vehicle accidents, professional negligence and women's justice. We also maintain a database of expert witnesses and services for the benefit of our members and their clients. Our bi-monthly magazine *Precedent* is essential reading for lawyers and other professionals keen to keep up to date with developments in personal injury, medical negligence, public interest and other, related areas of the law.