

Senate Standing Committee on Environment, Communications and the Arts

Inquiry into Australia Post's treatment of
injured and ill workers

Submission by the Australian Postal Corporation

23 November 2009

Senate Standing Committee on Environment, Communications and the Arts

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Part 1 - Executive Summary

- 1.1 Australia Post is proud of its long-standing and recognised commitment to workplace health and safety. As this submission seeks to demonstrate, Australia Post's professional and equitable approach to injury prevention, management of injury and illness and rehabilitation means that our employees have access to one of the most progressive occupational health and safety and injury management programs in Australia.
- 1.2 On 29 October 2009 the Senate referred the practices and procedures of Australia Post over the last three years in relation to the treatment of injured and ill workers to the Senate Standing Committee on Environment, Communications and the Arts for inquiry and report. The inquiry has been called after concerns have been raised by Australia Post's principal union, the CEPU (Communications Division) and some individual employees in various forums regarding the application of Australia Post's policy in this area.
- 1.3 Australia Post is of the view that its systems, policies and programs relating to ill and injured workers are fair and lawful and accord with research and the recommended approach advocated by the regulatory bodies, such as Comcare, that ensure compliance with workplace health and safety laws in Australia and best practice principles in the model of injury management, return to work and occupational rehabilitation.
- 1.4 We have set out below a detailed submission that provides background material on Australia Post, the policies and programs Australia Post uses to assist ill and injured workers and the research that supports our approach. We then address each of the terms of reference established for the Inquiry.
- 1.5 The submission provides detailed information regarding:
- (a) Australia Post's overall approach to workplace health and safety;
 - (b) the operation of the Injury Management (Early Intervention) Program (EIP);
 - (c) when and how Facility Nominated Doctors (FNDs) are utilised;
 - (d) the international and Australian research that supports our approach to workplace health and safety and injury management and in particular the focus on safely and productively returning injured employees to the workplace;
 - (e) the oversight and appeal mechanisms available to employees and their representatives who have concerns about their treatment by Australia Post; and
 - (f) Australia Post's response on each of the Terms of Reference to be considered by the Committee.
- 1.6 Australia Post considers that the information contained in the submission supports its position that the treatment of ill and injured workers at Australia Post is fair, appropriate and lawful.
- 1.7 In respect of each of the Terms of Reference to be considered by the Committee, we have set out a summary of our position below:
- The practices and procedures of Australia Post over the past 3 years in relation to the treatment of injured and ill workers including, but not limited to:*
- (a) *Allegations that injured staff have been forced back to work in inappropriate duties before they have recovered from workplace injuries;*

This term of reference note an allegation that Australia Post places its employees at risk of further injury by sending an injured employee back to work too early or by providing them

with inappropriate duties. Australia Post denies this allegation. While Australia Post admits that one of the stated objectives of its approach to workplace injuries is to safely return the employee to safe and productive duties as soon as possible, Australia Post submits that such actions are taken under the advice of medical professionals and align with the modern, best practice approach to dealing with workplace injuries and illness, particularly early return to work.

- (b) *The desirability of salary bonus policies that reward managers based on lost time injury management and the extent to which this policy may impact on return to work recommendations of managers to achieve bonus targets;*

It is Australia Post's position that placing some of the "at risk" component of a manager's remuneration package is consistent with recommendations of international and Australian occupational health and safety research and aligns with the recommended approach of the independent regulator, Comcare. A relatively small percentage of bonus is available based on safety performance creating a suitable incentive for managers to ensure compliance with policies and procedures and focussing on good rehabilitation and return to work outcomes, without encouraging inappropriate or risky decision-making.

- (c) *The commercial arrangements that exist between Australia Post and InjuryNet and the quality of the service by the organisation;*

The commercial arrangements between Australia Post and InjuryNet were the subject of a competitive tender process in 2007. The arrangements that were entered into were commercially sound and transparent. The tender process will be undertaken again in 2010 in line with Australia Post's procurement policies.

The fee paid to InjuryNet for the provision of its services is a flat fee and there are no additional sums payable based on return to work or lost time injury frequency rate (LTIFR) outcomes.

- (d) *Allegations of compensation delegates using fitness for duty assessments from facility nominated doctors to justify refusal of compensation claims and whether the practice is in breach of the Privacy Act 1988 and Comcare policies;*

Some fitness for duty assessments may be used when assessing an employee's workers compensation claim. This is not a breach of the *Privacy Act 1988* or Comcare policy and that there has been no adverse finding by either the Privacy Commissioner or Comcare in relation to these matters.

- (e) *Allegations that Australia Post has no legal authority to demand medical assessments of injured workers when they are clearly workers' compensation matters;*

It is Australia Post's position that there is clear legal authority (supported by legislation and the common law) underpinning all of its policies and programs in respect of workplace injury management and return to work and fitness for duty assessments. At no time has Australia Post been found to be in breach of any law in respect of these programs.

- (f) *The frequency of referrals to InjuryNet doctors and policies and circumstances behind the practices;*

It is Australia Post's position that the number of referrals to FNDs in no way supports the position that there is a systemic problem with our policies and programs in relation to ill and injured workers. With over 4000 referrals to FNDs on average every year, approximately 10% of which are subject to a direction to attend a fitness for duty assessment, Australia Post considers that the relatively small number of directions and the even smaller number of employee complaints arising from such directions demonstrate that the system is fundamentally sound.

- (g) *The comparison of outcomes arising from circumstances when an injured worker attends a facility nominated doctor, their own doctor and when an employee attends both, the practices in place to manage conflicting medical recommendations in the workplace.*

There is no direction to Australia Post workers' compensation Claims Managers to automatically prefer the advice of an FND over any other medical practitioner. It is the responsibility of a Claims Manager to act fairly at all times and assess each case on the facts as presented. In circumstances where the assessment of an FND is preferred over an employee's treating doctor the employee is provided with reasons for the decision and there are a number of review processes available to the employee to query the decision.

Part 2 - Overview

1. The Australian Postal Corporation

1.1 Australia Post is a body corporate established pursuant to the *Postal Services Act 1975*, the existence of which is continued by section 12 of the *Australian Postal Corporation Act 1989*. Australia Post is a Government Business Enterprise, 100% owned by the Commonwealth.

1.2 Section 14 of the *Australian Postal Corporation Act* states that:

The principal function of Australia Post is to supply postal services within Australia and between Australia and places outside Australia.

1.3 Australia Post is one of Australia's largest employers and employs approximately 35,000 employees who are spread across a broad geographic area and work in over 1700 facilities.

1.4 Australia Post employees perform a wide variety of different duties including mail and parcel sorting, mail and parcel delivery, mail and parcel collection, retail, financial services, sales and marketing, courier services, call centres and agency services.

1.5 The terms and conditions of employment of our employees are regulated by a number of different awards and collective agreements. The more significant of these are;

- Australia Post General Conditions of Employment Award
- Australia Post Operations Award
- Australia Post Technical Award
- Australia Post Administrative/Professional Award
- Australia Post Enterprise Agreement 2004 (colloquially referred to as EBA6).

1.6 In addition, the underpinning subordinate legislation which prescribes minimum terms and conditions is the Principal Determination (terms and conditions of employment for Australia Post employees established under section 89 of the *Australian Postal Corporation Act 1989*). A copy of the Principal Determination is annexed at Appendix 1.

2. Ill and injured workers – the legislative framework

2.1 Australia Post's management of work-related injuries and illnesses is regulated by the *Safety, Rehabilitation and Compensation Act 1988 (SRC Act)*.

2.2 Australia Post has been a self-insurer since the inception of the SRC Act in 1988. Australia Post holds a self-insurance licence, granted by the Safety, Rehabilitation and Compensation Commission (SRCC) acting under Part VIII of the SRC Act. Australia Post has been a licensee under the SRC since the early 1990s when the SRC Act first introduced self-insurance licencing arrangements. The current licence is for the period 1 July 2006 to 30 June 2010. Australia Post has recently submitted an application to the SRCC for an extension of the licence.

2.3 The SRC Act places a legal obligation on Australia Post to rehabilitate employees injured at work. Where an employee is injured in work-related circumstances and certain criteria are satisfied, Australia Post must, among other things:

- (a) assess the individual's capability to undertake a rehabilitation program;
- (b) provide a rehabilitation program where applicable; and
- (c) provide suitable employment where reasonable to do so or assist the employee to find such employment.

3. Australia Post's approach to injury prevention, rehabilitation and workers' compensation claims management

Overview

- 3.1 Australia Post has a mature integrated approach to injury prevention and the management of rehabilitation and workers' compensation claims operating within effective corporate governance and reporting frameworks. This approach has evolved over many years through a commitment to continuing improvement in the corporate approach to further drive the prevention and management of work-related injuries and illnesses in compliance with the regulatory requirements of the *Occupational Health and Safety Act 1991* and the SRC Act.
- 3.2 Australia Post takes very seriously its obligations under the OHS Act, the SRC Act and its self-insurance licence. Australia Post has maintained strong performance under the conditions of its self-insurance licence meeting or exceeding the licence conditions that the SRCC has set for it.
- 3.3 The Corporation's management framework, which includes a strong focus on continuous improvement, has been effective and a major contributing factor to Australia Post being granted and retaining the highest Tier 3 status under the SRCC's tier model across the prevention, claims management and rehabilitation functions.

Australia Post's corporate governance framework

- 3.4 Australia Post has a comprehensive system of corporate governance practices designed to provide appropriate levels of disclosure and accountability. These practices derive principally from the provisions of the *Australian Postal Corporation Act 1989*, the *Commonwealth Authorities and Companies Act 1997* and the *Governance Arrangements for Commonwealth Government Business Enterprises*.
- 3.5 The governance framework that is applied to the Corporation's management of injury prevention, rehabilitation and workers' compensation encompasses:
- (a) Australia Post Board;
 - (b) Board Audit and Risk Committee; and
 - (c) Board Human Resources Committee
- 3.6 These bodies receive regular reports of Australia Post's injury prevention, rehabilitation and claims management performance against the requirements of the OHS Act, the SRC Act and the SRCC self-insurance licence.
- 3.7 Key components of the corporate governance arrangements are two annual audit programs, namely:
- (a) Australia Post's OHS Management System Quality Assurance Program (OHSMS QA Program) for injury prevention audits; and
 - (b) the Corporate Licensee Improvement Program for claims management and rehabilitation audits.
- 3.8 The annual audit programs are conducted utilising both internal and external resources and apply the audit tools endorsed by the SRCC. The outcomes of these audits are reported to the relevant Board committees and the SRCC.
- 3.9 Annually, the SRCC assesses Australia Post's performance against the requirements of the self-insurance licence. Among other things, the SRCC considers:
- (a) the outcomes of the abovementioned audits;
 - (b) Australia Post's performance against the suite of SRCC performance indicators and the results of any injury prevention; and

- (c) rehabilitation and claims management audits undertaken by Comcare of Australia Post's compliance with regulatory and licence requirements.

3.10 Since the inception of the licensing regime under the SRC Act, the SRCC has found that Australia Post has satisfied the conditions of its self-insurance licence.

Australia Post's OHS management approach

3.11 As expressed in Australia Post's OHS Policy and its Ethics Standards, Australia Post is committed to providing a safe, healthy and secure workplace for its employees, in compliance with the regulatory requirements of the OHS Act and self-insurance licence requirements.

3.12 Australia Post implements an OHS management approach that accords with the provisions of the Australian Standards AS/NZS 4804: 2001 OHS Management System – General Guidelines on principles, systems and supporting techniques. This Australian Standard describes a systematic management approach to assist in meeting legal requirements and achieving sustained improvement in OHS performance. The companion Australian Standard AS/NZS 4801:2001 OHS Management Systems – Specification with Guidance for Use provides auditable criteria to review the effectiveness of the OHS management system and assess achievement of compliance with the provisions of the standard.

3.13 Australia Post's OHS Management System Quality Assurance Program (for OHS audits) and Comcare's injury prevention audits involve audit tools that align with the criteria contained in the Australian Standard AS/NZS 4801.

3.14 Among other things, and consistent with the provisions of the Australian Standards AS/NZS 4804 and 4801, Australia Post's OHS management approach involves establishing injury prevention performance objectives, measures and targets to drive injury prevention improvements. Also, the approach involves holding managers responsible and accountable for achieving the objectives and targets.

3.15 Australia Post uses a number of indicators to measure and report safety performance and improvement. These include;

- (a) measures of the incidence of work-related injuries and illnesses such as the lost time injury frequency rate (LTIFR – as defined by the Australian Standards AS1885.1 Measurement of occupational health and safety performance - Describing and reporting occupational injuries and disease (known as the National Standard for Workplace Injury and Disease Recording));
- (b) SRCC indicators of injury prevention performance;
- (c) the outcome of Australia Post's OHS Management System Quality Assurance Program OHS audits and Comcare injury prevention audits;
- (d) evidence of OHS management activities (for example, the implementation of OHS supervisory programs); and
- (e) the outcome of investigations conducted by Comcare.

3.16 Like numerous other organisations in Australia, Australia Post uses the LTIFR as a key indicator of OHS performance with LTIFR performance reported to the Board and published in Australia Post's Annual Report. The LTIFR is a useful and important indicator of safety performance being a measure of relatively severe injuries or illnesses where an employee is absent from work due to their injury for at least one full shift after the date of the injury.

3.17 As with many organisations in Australia, Australia Post's managers are held accountable through the managers' performance appraisal system for achieving injury reduction targets and, in many instances, demonstrating evidence of implementing OHS management programs such as OHS supervisory programs. In all cases, it is expected that a manager will strive to achieve OHS performance objectives through the implementation of Australia Post's policies and programs.

Australia Post OHS Performance

3.18 As indicated above, Australia Post uses a number of indicators to measure and report OHS performance including the key indicator, the LTIFR.

3.19 Over a long period Australia Post's performance has improved steadily as illustrated below in Figure 1.

3.20 Since 2001/02, Australia Post's LTIFR reduced by 49% due primarily to substantial improvements in the safety of our motorcycle mail delivery operations and manual handling tasks (see Figure 1).

3.21 Importantly, and pleasingly, Australia Post's OHS improvement is ahead of the improvement target established in the Commonwealth's National OHS Strategy 2002-2012 that provided for at least a 40% reduction in the incidence of workplace injury in the period 2001/02 to 2011/12.

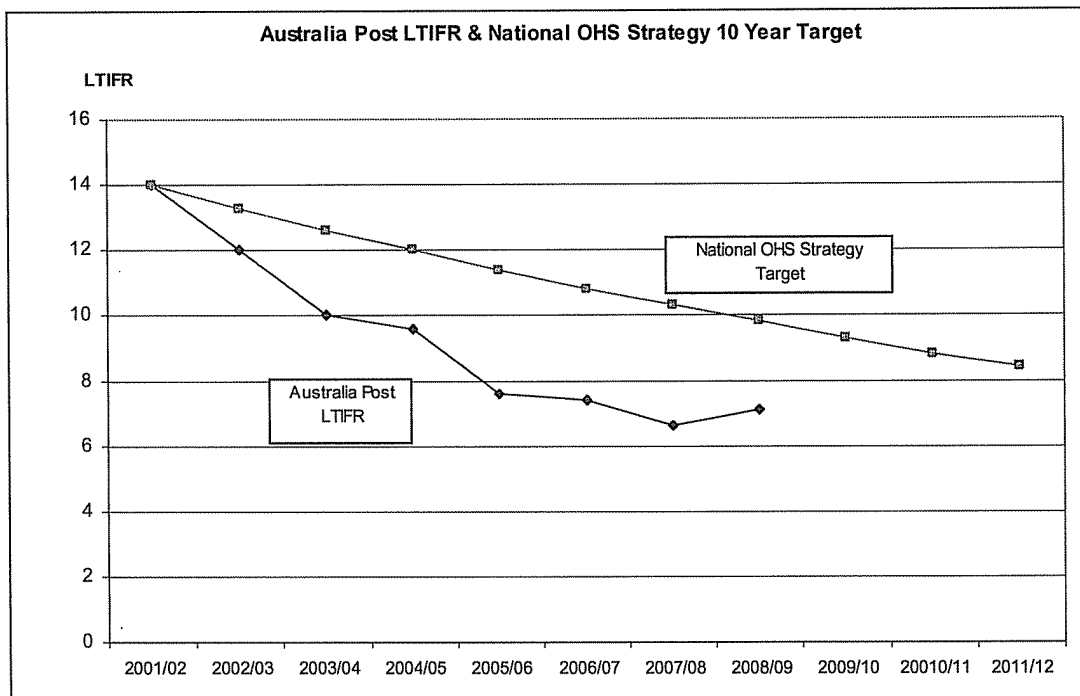


Figure 1: Australia Post's OHS Performance showing LTIFR time series compared with the Commonwealth Government's National OHS Strategy 10 Year Injury Reduction Target

3.22 In addition to the improved LTIFR, over the period since 2001/02, Australia Post achieved substantial reductions in both the number of all work-related injuries (down 33%) and the number of work days lost due to work-related injuries and illnesses (down 873 days or 4.8%).

3.23 In the last three years, Australia Post's OHS performance as measured by the LTIFR has remained basically steady with a small increase in 2008/09 due mainly to an increase in the number of injuries associated with motorcycle mail delivery.

3.24 Since 2001, Australia Post has also received recognition through the SRCC's Safety Awards for innovative approaches to further reducing the risk of injury in our operations:

- (a) in 2001, for Australia Post's approach to reducing the risk of injury associated with load shifting operations (including the use of fork lift trucks);
- (b) in 2004, for improving the safety of motorcycle mail delivery operations.

SRCC performance indicators

- 3.25 The SRCC uses a suite of indicators to assist it in monitoring the performance of self-insurance licensees against the individual licensee performance targets set by the SRCC. With the publication of the Commonwealth's National OHS Strategy 2002-2012, the SRCC uses, among other things, the following two indicators to set targets for, and measure injury prevention performance:
- (a) Prevention Indicator 1 (PI 1) – accepted workers' compensation claims with one week (cumulative) lost time – a measure of the number of accepted workers' compensation claims in which the 5th day of incapacity was determined in the reporting period per 1,000 full time equivalents; and
 - (b) Prevention Indicator 3 (PI 3) – accepted workers' compensation claims with one day (cumulative time) lost time – a measure of the number of accepted workers' compensation claims in which the first day of incapacity was determined in the reporting period per million hours worked.

- 3.26 Australia Post's continues to meet the SRCC's PI 1 and PI 3 targets set for it.

Australia Post's Injury Management Approach

- 3.27 Australia Post has implemented a management system to ensure the effective management of work related injury. The system, similar to Australia Post's OHS approach, is based on the Australian Standards AS/NZS 4801 and 4804. The systemic approach to injury management incorporates governance, planning, implementation, analysis and reporting, and communication and is underpinned by a commitment to continuous improvement.
- 3.28 Key elements of the system are a strong focus on planning, innovative improvements to current practice, clearly understood accountabilities, consistency in application and an extensive measuring and reporting of performance. The effectiveness of the system is reviewed on an annual basis as part of the Corporate Licensee Improvement Program through audits conducted by independent third parties. Comcare also conducts audits of Australia Post's injury management system and application of the SRC Act.
- 3.29 Australia Post's approach to rehabilitation and return to work is comprised of two key components:
- (a) application of Australia Post's Injury Management (Early Intervention) Program (EIP) which provides for early intervention in the assessment and management of employee illness and injury, where a work relationship may be indicated; and
 - (b) management of work related injuries in accordance with the provisions of the SRC Act upon acceptance of liability.
- 3.30 Australia Post supports its rehabilitation management system through the provision of an extensive infrastructure. The foundation for the delivery of rehabilitation services is built upon rehabilitation units that are located in each State. There are also dedicated rehabilitation resources in some of the larger Australia Post facilities. Australia Post uses a mix of internal and external approved rehabilitation providers and each rehabilitation unit is responsible for managing the rehabilitation and return to work of injured employees in conjunction with line management.
- 3.31 A range of performance indicators has been established to measure and report on the effectiveness of the injury management system. These include, and are not limited to the following indicators:
- (a) Number of Referrals – the number of referrals to the rehabilitation unit for the provision of rehabilitation services;

- (b) Return to Work Outcomes – the effectiveness of rehabilitation at the closure of the rehabilitation program (eg employee returned to same job at same location);
- (c) Number of Rehabilitation Cases – following a referral, the number of cases that proceed to a rehabilitation program;
- (d) Rehabilitation Process Indicators – a range of indicators that indicate the time Australia Post takes to do certain things under the rehabilitation program eg time to first rehabilitation contact with provider), and
- (e) SRCC Indicators – a suite of KPI's that measure rehabilitation effectiveness.

Australia Post Injury Management Performance

3.32 Australia Post has achieved strong rehabilitation and return to work performance over a long sustained period. As shown in Figure 2, Australia Post continues to exceed the SRCC targets set for it for the percentage of workers' compensation claims with return to work (RTW) plans under rehabilitation. In accordance with SRCC requirements, most claimants returned to the same job at the same workplace when RTW rehabilitation was completed. Furthermore, against all of the SRCC indicators relating to claims management, Australia Post has consistently achieved and in many instances exceeded the targets set by the SRCC.

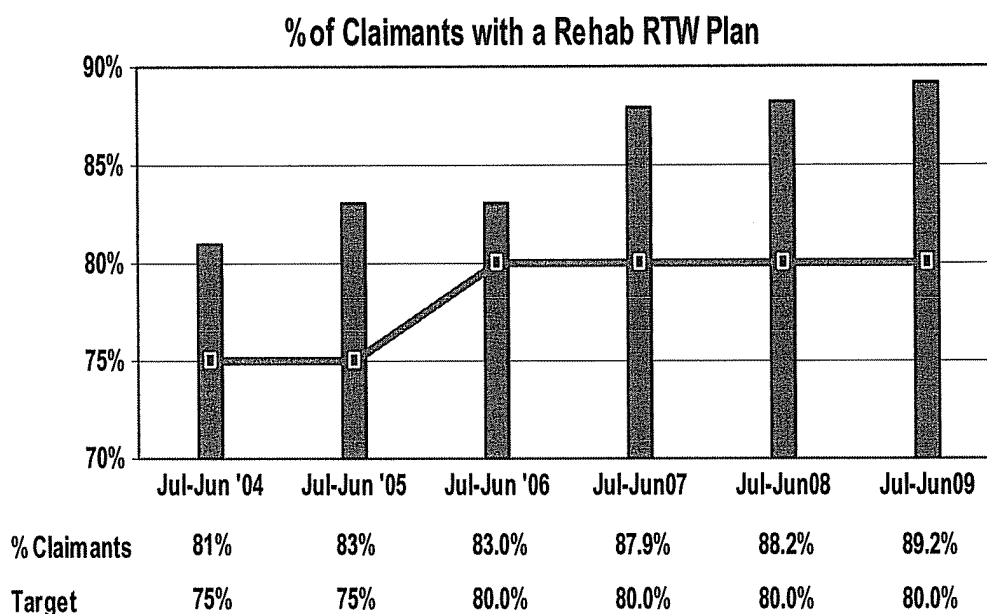


Figure 2: Rehabilitation Performance - Australia Post Rehabilitation Performance against SRCC Rehabilitation Indicator RI.2 and targets for the period 2003/04 to 2008/09

3.33 Further confirmation of the effectiveness of Australia Post's approach to management of injury can be drawn from the preliminary advice following Comcare's 2009 audit (due to be finalised shortly). Comcare indicated the following:

- (a) that the rehabilitation function was managed very well;
- (b) that the EIP worked well with a seamless transition between EIP and SRC Act processes in all cases audited;

- (c) there was excellent commitment by Australia Post to:
 - (i) rehabilitation and the provision of suitable duties; and
 - (ii) line manager training in relation to rehabilitation.

3.34 As described at section 3.1 above, Australia Post has an integrated approach to injury prevention and the management of rehabilitation services and workers' compensation claims. Each of these components of the approach is important and, in combination, has assisted Australia Post to achieve substantial improvements in safety performance and significant reductions in the workers' compensation liability of Australia Post.

3.35 As shown in Figure 1, since 2001/02, Australia Post improved its safety performance by 49%. In the same period, the estimate of Australia Post's workers' compensation liability (Figure 3) has reduced by 21% from \$141.3m at 30 June 2002 to \$111.3m at 30 June 2009 (indexed to 2008/09) (refer to Figure 3).

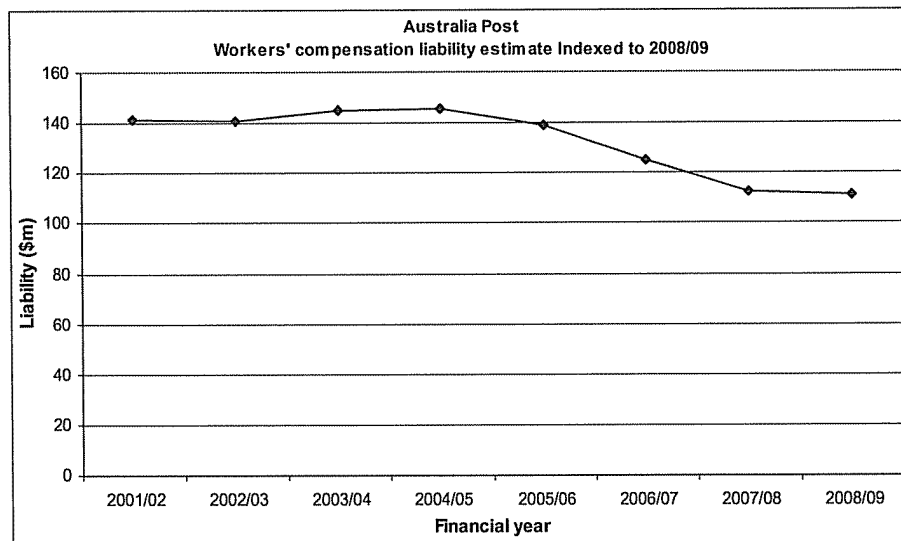


Figure 3: Workers' Comp liability (Australia Post Workers' Compensation Liability Estimate showing time series for the period 30 June 2002 to 30 June 2009

3.36 Australia Post's approach to rehabilitation was recently recognised in the SRCC's 2009 Safety Awards. Australia Post was awarded the SRCC's 2009 Safety Award in the category Rehabilitation and Return to Work – this Award recognises organisations that demonstrate excellence and innovation in rehabilitation and return to work programs for ill or injured workers.

4. Injury Management (Early Intervention) Program

4.1 An important component of Australia Post's approach and commitment to injury management is its Injury Management (Early Intervention) Program (EIP).

4.2 In 1999, Australia Post introduced the EIP as a mechanism to enable management to assist employees suffering from suspected work-related injury or illness.

4.3 A copy of the EIP is at **Appendix 2**.

4.4 The EIP is designed to assist an employee suffering from a suspected work-related injury or illness to receive the earliest possible medical treatment to maintain them at work within appropriate medical restrictions or facilitate their earliest return to work. Treatment under the program is voluntary and is subject to the following principles:

- (a) an employee is free to attend either a Facility Nominated Doctor (FND) or a doctor of their choice for injury assessment and treatment;

- (b) an employee is fully informed in writing about the purpose of the EIP including the preservation of their rights and responsibilities under workers' compensation, and that if they submit a workers' compensation claim Australia Post may make an employee's medical records available to the workers' compensation delegate to assist in finalising their claim; and
 - (c) in limited circumstances, Australia Post may direct an injured employee who has elected to see their own medical practitioner to a FND for a FFD assessment.
- 4.5 Over the last three years, on average there have been 4119 instances per annum where employees across Australia have taken advantage of the EIP program with its benefits of free medical support and treatment.
- 4.6 The EIP is an important and valuable component of Australia Post's approach to providing best practice assistance to employees with suspected work-related injury or illness to recover quickly and continue in productive work. It is popular with the vast majority of employees and complements Australia Post's injury prevention and regulated injury management processes through workers' compensation and rehabilitation.
- 4.7 EIP provides a number of significant benefits to both employees and Australia Post. These include:
- (a) optional employee access to free medical assessment (no out of pocket expenses) and free follow up treatment (up to four medical treatments and four physiotherapy treatments) for suspected work-related injuries or illnesses;
 - (b) facilitating the employee to remain at work or return to work quickly in line with recognised rehabilitation principles in line with medical evidence;
 - (c) receiving free medical treatment with no requirement to submit a workers' compensation claim;
 - (d) no effect on rights to workers' compensation;
 - (e) further protection of employee workers' compensation rights through internal and external auditing in accordance with Australia Post's self-insurance obligations under the SRC Act;
 - (f) providing a productive and supportive workplace;
 - (g) demonstrating management commitment to the employee;
 - (h) preventing long term absence from the workplace and the development of chronic illness;
 - (i) reducing the adverse effects on co-workers of the injured employee;
 - (j) improving staff confidence and morale;
 - (k) increasing management involvement in the injury management process;
 - (l) increasing the probability of return to work;
 - (m) supplementing Australia Post's approach to meeting its claims management and rehabilitation obligations under the SRC Act;
 - (n) assisting Australia Post to reduce the cost of workers' compensation claims for both the individual and Australia Post;
 - (o) reducing the indirect costs to Australia Post such as lost productivity, recruitment and training costs for replacement staff; and
 - (p) assisting overall safety performance in conjunction with a comprehensive approach to preventing injuries occurring in the first place.

- 4.8 Managers and employees have clear guidelines on how return to work is best handled, giving them confidence in the application of the EIP.
- 4.9 In its December 2000 audit under the SRC Act of SRC Act and EIP arrangements in Australia Post's Victorian administration, Comcare identified one area of interaction that needed to be improved – namely that it needed to be made clear to employees that, if they submitted a workers' compensation claim under the provisions of the SRC Act, the Claims Manager could be provided with a copy of the FND's FFD assessment to assist in determining the employee's workers' compensation claim. This clarification was addressed by way of written advice provided to EIP participants (see attachment to the EIP at Appendix 2).
- 4.10 Comcare has reviewed the EIP and its overlap with the SRC Act on a number of occasions, the most recent being in early 2009 following representations by the CEPU. In a letter dated 11 August 2009 Comcare indicated to the CEPU that:
- 'Australia Post's IM(EI) Program is designed to emulate best practice in workplace injury management systems.*
- 4.11 A full copy of Comcare's letter to the Divisional Secretary of the CEPU, Mr Husic dated 11 August 2009 is attached at Appendix 3.
- 4.12 Further, in the context of their preliminary audit advice following the 2009 audit (referred to above at 3.33). Comcare auditors have commented positively on Australia Post's rehabilitation arrangements including the interaction of EIP and SRC Act processes. The Comcare auditors commented:
- (a) that the rehabilitation function was managed very well;
 - (b) that the EIP worked well with a seamless transition between EIP and SRC Act processes in all cases audited; and
 - (c) there was excellent commitment by Australia Post to:
 - (i) rehabilitation and the provision of suitable duties; and
 - (ii) line manager training in relation to rehabilitation.
- 4.13 Comcare has not yet published its final report of the audit. A copy of the report will be provided to the Committee as soon as practicable after it is received by Australia Post.

5. Facility Nominated Doctors (FNDs)

- 5.1 An important second aspect of Australia Post's approach and commitment to injury prevention and rehabilitation is an established network of FNDs.
- 5.2 The FNDs provide a range of workplace employee injury management related services to assist in meeting a number of aims, including achieving best practice in early intervention following a workplace injury and return to work programs. This network of doctors is a proactive approach to workplace injury management and has a positive impact on employee health and safety and work participation.
- 5.3 FNDs are independent medical practitioners who are familiar with Australia Post's operations through the provision of training by InjuryNet Pty Ltd, workplace visits and the ongoing provision of information about Australia Post workplaces, policies and procedures. Australia Post provided an overview of the background of training which it understands is provided by InjuryNet to the FNDs who perform working for Australia Post in response to the Senate Committee's question on 19 October 2009. Broadly, the InjuryNet training involves:
- (a) a theory component dealing with, among other things:

- (i) Australia Post (including its structure, safety performance and review of workers' compensation claims);
 - (ii) best practice rehabilitation (including the importance of communication between all interested parties and the principle of early intervention (discussed further in Part 3);
 - (iii) practitioner training (including the consultation and treatment process and assessing working capacity); and
- (b) a practitioner visit to relevant Australia Post facilities (eg facilities / worksites of the kind likely to refer employees to the FND) to complement the theoretical training. The length of a site familiarisation visit will depend on the type of site visited and involves examination of equipment and processes and discussions between Australia Post managers and supervisors about the interaction between employees and their work environment (including, in particular, the possible alternative duties for injured workers which may be available at the particular site).

5.4 Approximately 436 doctors across Australia provide services to Australia Post through the FND network.

5.5 FNDs are engaged to provide specified medical services to Australia Post, namely:

- (a) pre-employment medical examinations;
- (b) medical assessments and treatments under the EIP; and
- (c) fitness for duty (FFD) assessments.

Pre-employment Medical Examinations

5.6 Pre-employment medical examinations are undertaken as part of Australia Post's recruitment processes to determine a job applicant's medical capability to safely perform the duties of their proposed position.

5.7 Approximately 5000 pre-employment medicals are conducted annually for Australia Post.

Fitness for Duty Medical Assessment (FFD)

5.8 FFD assessments are undertaken to determine an employee's medical fitness to discharge their duties. Where a manager or supervisor reasonably believes that an employee may be unfit or incapable of discharging their duties, or poses a risk to the health of themselves and/or others, they may direct an employee to undergo a FFD assessment, but only after consultation with a Human Resources Adviser. This direction may also occur in the event that an employee has a medical certificate supporting sick leave for a suspected workplace injury that is for a period longer than Australia Post considers reasonable given the nature of their injury and the type of work that is available for the employee in that workplace.

5.9 Not all FFD assessments occur as a result of possible work related injuries. For example, an employee on long-term sick leave who has a non-work related injury where there has been an unexplained change in the level of their restrictions may be required to undergo a FFD assessment.

5.10 In conducting a FFD assessment, a FND reports only on an employee's fitness to perform the work required; no other personal medical information is reported or provided to Australia Post management by the FND.

5.11 In relation to those injuries that are possibly work related, approximately 430 FFD assessments are conducted annually across Australia Post.

5.12 The legal basis for Australia Post's ability to direct an employee to undergo an FFD assessment is set out in **Part 4(5)** (Terms of Reference).

6. Oversight Mechanisms

- 6.1 As noted above, Australia Post takes its obligations under the OHS Act, the SRC Act and its self-insurance licence seriously. It has maintained strong performance under the conditions of its self-insurance licence, meeting or exceeding the licence conditions set for it by the SRCC.
- 6.2 In addition, there are a number of avenues of review and appeal available in circumstances where an employee has a concern about:
- the requirement to attend an FND;
 - the advice/diagnosis/treatment of an FND
 - the application of the EIP program to them;
 - the duties they are required to work; or
 - a workers' compensation decision resulting from EIP processes and the involvement of an FND.
- 6.3 Employees who are concerned about the application of the EIP and FFD procedures or how they were treated by an FND, have a number of options for seeking redress. Australia Post considers these review procedures are important in ensuring equity and transparency in the process. The options available are:
- Communicating concerns directly to Australia Post management;
 - Accessing Australia Post's internal grievance process;
 - Making a complaint to Comcare;
 - Using the workers' compensation review and appeal process;
 - Making a complaint to InjuryNet;
 - Making a complaint to the Australian Medical Association or the relevant medical registration board; and
 - Bringing a dispute to Fair Work Australia.
- 6.4 Appendix 4 outlines in detail the review and appeal mechanisms available to employees and their representatives in respect of the EIP and FFD processes.
- 6.5 Comcare's auditing and monitoring of Australia Post's compliance with the SRC Act also takes account of the interaction between EIP and the SRC Act.

Part 3 – Research and best practice recommendations - the importance of early return to work

1. Overview

- 1.1 Australia Post's approach to early intervention is in line with best practice in injury management and accords with recommendations of Australian workers' compensation regulatory authorities.
- 1.2 There is abundant research, and a broad consensus of opinion 'across multiple disciplines' including disability groups, employers, unions and insurers,¹ that support the importance of an early and durable return to work after injury or illness.
- 1.3 Research commissioned by the Department for Work and Pensions in the United Kingdom (and relied on in the Hanks Report which was a recent review of the Victorian *Accident Compensation Act 1985*)² identifies a number of factors supporting the importance of returning to work as soon as possible including that it:
- (a) helps to promote recovery and rehabilitation and leads to better health outcomes;
 - (b) minimises the harmful physical, mental and social effects of long-term sickness absence;³
 - (c) reduces the risk of long-term incapacity; and
 - (d) improves quality of life and well-being for the worker.⁴
- 1.4 Research indicates that the longer injured employees are away from work the more likely they are to develop chronic illness and remain off work. Reducing an employee's time away from work, therefore becomes an important part in promoting, among other things, better health outcomes and improved quality of life for employees.
- 1.5 The physical activity of returning to work can be an essential part of rehabilitation from illness or injury.⁵ According to a literature review by the Australian Institute for Primary Care at La Trobe University, an early return to work is important because:

There is strong evidence that advice to continue usual activities as normally as possible despite pain is associated with better outcomes than traditional medical treatment and rest and this also applies to work activities. For example most workers with low back pain are able to continue working or return-to-work within a few days or weeks even with residual or recurrent symptoms.⁶

- 1.6 Moreover, an early return to work reduces the likelihood of injured workers suffering from negative psychological effects.⁷ The WorkCover WA literature review of best practice in injury management notes that:

Injured workers who are absent from the workplace often report experiencing anxiety, mild to severe depression, a loss of personal status, a reduction in self-esteem and a loss of their sense of self as a result of workplace injury; all of which are strongly linked to a decline in psychological health and well-being, and a reduction in inclination and motivation to [return to work] following injury.

As a result of these findings, it becomes apparent that injured workers would benefit from returning to work as early as possible, rather than taking extended absences. It is thought that early [return to work] facilitates the maintenance of self-esteem, the development of independence, and the ability to earn an income sooner, all of which help reduce the potential for worker's psychological health and well-being to be negatively affected.⁸

- 1.7 WorkCover SA claims statistics for 2005 demonstrate the importance of early return to work in reducing the duration of claims:⁹

Time off work	Probability of RTW within 3 months
3 months	50%
6 months	40%
9 months	33%
1 year	25%
2 years	12%
3 years	6%

- 1.8 Guidance from the Department for Work and Pensions in the United Kingdom suggests that less than 50% of people with 6 months absence from work ever return to work and few people return to any form of work after 1-2 years absence, irrespective of further treatment.¹⁰ Similar statistics are referenced in Comcare's publication, *Leadership Commitment – Early Rehabilitation Assistance to Employees*.¹¹
- 1.9 Other factors support the principle of early intervention and return to work as soon as possible. As recognised in the Hanks Report, employees, employers and the broader community (through social security and health systems) bear costs associated with workplace injuries.¹²
- 1.10 The Hanks Report cites National Occupational Health and Safety Commission estimates that put the total economic cost of workplace injury, illness and death to workers, employers and the wider community at more than \$31 billion annually (4.3% of gross domestic product).¹³ Direct costs to employers are listed in the Hanks Report as including the cost of medical expenses (hospitalisation, medical and allied health practitioner visits and rehabilitation), legal costs and the costs of hiring a replacement worker; indirect costs are listed to include lost output due to reduced productivity, lower staff morale and the administration of workers' compensation claims.¹⁴

2. How to achieve early return to work – early intervention

- 2.1 Studies on the management of injured workers emphasise that early intervention to manage the injured worker is a significant factor in facilitating the injured worker's early return to work.¹⁵ An early intervention following a workplace injury can also be effective in addressing the psychological obstacles to recovery which can prolong absences and create a barrier to early return to work.¹⁶
- 2.2 The WorkCover WA literature review of best practice in injury management recommends that injured workers notify their employer as soon as an injury occurs to allow intervention to begin as soon as possible.¹⁷ The review notes evidence which states that: *'the first 24 to 48 hours following an injury play the biggest role in determining the individual's [return to work] outcomes.'*¹⁸
- 2.3 Internationally, a guideline issued by the American College of Occupational and Environmental Medicine notes that best practice employers now begin return to work efforts on the first day of absence or within 72 hours of being notified of a claim.¹⁹

3. Role of doctors in return to work / rehabilitation process

3.1 The Research included in this submission also emphasises the important role played by doctors in the recovery of ill and injured workers. Factors identified as important in promoting the best recovery of ill and injured workers include:

- (a) experience and knowledge of the treating doctors in the occupational rehabilitation;
- (b) communication between the treating doctor and the workplace; and
- (c) familiarity of the treating doctor with the workplace (including modified duties).

Doctors who are experienced in occupational rehabilitation

3.2 Literature suggests that most general practitioners are relatively inexperienced in dealing with occupational rehabilitation. According to statistics provided by the Victorian WorkCover Authority, injured workers only make up approximately 2% of the patients seen by general practitioners.²⁰ In addition, most treating practitioners do not have specific training in work disability or occupational medicine²¹ and lack awareness or interest in occupational issues and outcomes.²²

3.3 As discussed above, research into occupational rehabilitation demonstrates that an early return to work can be important in, amongst other things:

- (a) promoting recovery and rehabilitation and, in turn, better health outcomes;
- (b) minimising the harmful physical, mental and social effects of long-term sickness absence; and
- (c) reducing the risk of long-term incapacity.²³

3.4 Doctors who are experienced in occupational rehabilitation or who specialise in the treatment of injured workers may be more likely to make recommendations in accordance with best practice principles supporting, where appropriate, return to work as soon as possible. For example, in its publication *Best practice in managing injured workers – literature review*, WorkCover WA stresses the importance of the way in which treating practitioners communicate with injured workers in influencing return to work outcomes. WorkCover WA notes that healthcare providers often focus on the individual's incapacities rather than exploring their potential for the future, where as positive recommendations regarding return to work are strongly linked to an improved return to work rate.²⁴

Doctors who communicate with the workplace

3.5 There is abundant evidence that communication between the treating practitioner and the workplace is a key factor in rehabilitating ill and injured workers. According to the Hanks Report:

*Communication and coordination between all parties, including the treating practitioner, have been demonstrated as having a positive influence on health and return to work outcomes. The evidence suggests that participation by healthcare providers is important in achieving early return to work.*²⁵

3.6 A research report prepared for the Workers' Compensation and Rehabilitation Commission, Western Australia found that doctors who liaised closely with the employer to discuss their patient's medical treatment and return-to-work options secured better return to work and claim cost outcomes.²⁶ The importance of communication between doctors and the workplace in the management of injured workers and improving return to work outcomes has been emphasised in numerous other guides, studies and publications.²⁷

- 3.7 Communication also assists doctors to understand the alternative or modified duties that may be available to an injured worker. According to WorkCover WA, employers and treating practitioners should communicate to exchange information about the demands of the injured employee's position, the availability of modified work, and appropriate return to work restrictions.²⁸
- 3.8 However, although research shows that a treating practitioner's decision about whether the workplace is suitable for the injured worker should be based on communication with the employer, healthcare providers generally fail to communicate with employers.²⁹ The American College of Occupational and Environmental Medicine notes that part of the problem is that doctors rarely get paid for the time spent communicating with employers and recommends that doctors should be compensated for the time spent on such activities.³⁰

Doctors who are familiar with the workplace environment

- 3.9 Better rehabilitation outcomes are associated with doctors (and other health professionals) who are familiar with the employer's workplace and employee's duties.
- 3.10 According to guidelines issued for doctors by the UK Department of Work and Pensions, doctors should 'consider the functional limitations which result from the patient's condition, particularly in relation to the type of task they actually perform at work.'³¹ Doctors should not automatically advise patients to take time off work and should fully and appropriately explore the option of the injured worker performing modified duties before determining them to be completely unfit for work.³²
- 3.11 The Canadian Institute for Work and Health, again highlighting the importance of communication between employers and healthcare providers to support successful return to work outcomes, suggests:
- (a) contact with the workplace can range from a simple report sent to the workplace to more extensive workplace visit/s by a health care provider; and
 - (b) the more health care providers understand the worker's job requirements and the workplace's ability to provide accommodation, the better they can advise workers and participate in informed return to work decision making.³³

4. How to achieve early return to work - role of modified duties in return to work / rehabilitation process

- 4.1 The offer of modified or 'light' duties can allow a worker to return to work before they are able to carry out their full range of usual duties. The WorkCover WA literature review of best practice in injury management notes that:

Modified work provides many benefits to injured workers as it helps maintain self-esteem, provides a social network, prevents the deterioration of skills, and enables the individual to earn an income while undergoing rehabilitation; all of which improve the likelihood that the worker will [return to work].³⁴

- 4.2 Research has also shown that the rate of return-to-work for workers who were provided with modified duties was two times higher than that for those with no such accommodation in employment³⁵ which makes it an important factor in achieving an early return to work.

5. Comcare's best practice recommendations for injury management

5.1 According to Comcare's publication, *Leadership Commitment – Early Rehabilitation Assistance to Employees*, the cornerstone of effective rehabilitation is early intervention.³⁶ Comcare identifies a number of benefits of early intervention, which reflect factors identified in the research referred to above including:

- (a) demonstrating management commitment to the employee;
- (b) preventing long term absence from the workplace and the development of chronic illness;
- (c) reducing the adverse effects on co-workers of the injured employee;
- (d) improving staff confidence and morale;
- (e) increasing management involvement in the injury management process;
- (f) increasing the probability of return to work;
- (g) containing the cost of incapacity and in the long term, the premium; and
- (h) reducing the indirect costs to employers such as lost productivity, recruitment and training costs for replacement staff.³⁷

5.2 In its report, Comcare comments that:

'when a workplace injury occurs, an employee usually reports the injury and medical treatment is sought. Following this, some managers assume the employees will return to work when they are able. This is not good management, and has potential to lead to poor results for injured employers and poor results for organisations.'

Injury management should commence immediately after an injury occurs. The employer, injured worker and medical practitioner should work together to ensure that the injured employee receives appropriate treatment for their injury, and returns to the workplace as soon as possible'.³⁸

5.3 In the context of responding to concerns raised by the CEPU in relation to the EIP and Australia Post's use of FNDs, Comcare summarises best practice injury management as follows (see full letter at **Appendix 3**):

'Comcare encourages all scheme employers to be proactive and to expeditiously manage all employees who notify of a workplace injury, well in advance of any workers' compensation liability decision or even the lodgement of a claim by the employee. Where there is a report of an injury in the workplace, such a proactive approach would involve assisting an injured employee to obtain early and expert medical diagnosis and treatment. 'Best practice' employers would offer the provision of this medical attention without cost to their employees and from local and readily available doctors who have been inducted into the local workplace and have a good knowledge of the range of alternative or suitable duties, should the employee be immediately unfit to return to his or her normal duties. In this way, there would be a seamless transition from acute care to primary rehabilitation (recovery) to tertiary rehabilitation (maintenance at work or return to work), or a smooth transition from injury management to occupational rehabilitation.'

Comcare also encourages scheme employers to adopt a model of occupational rehabilitation by developing rehabilitation management systems which seek to either maintain injured employees at the workplace on suitable duties or to return injured employees to the workplace, quickly but in a safe and durable manner. There are positive gains for both the employee and the employer in such an approach and one which is consistent with the aims of the SRC Act.'

Comcare's approach to early intervention is supported by general research outcomes and is also followed by other Australian workers' compensation schemes.'

- 5.4 State based workers' compensation authorities have also published material that advises facilitating an early return to work as a key principle of best practice in injury management. For example, WorkCover NSW included the following as key principles to improve outcomes for the management of workers with soft tissue injury.³⁹

Key Principle	Supporting Statements
1. Early, safe and durable return to work	<ul style="list-style-type: none"> • Early reporting and return to work promotes the worker's recovery and prevents long term disability and work loss. • Early return to work maintains the worker's activity and links with the workplace. • Safe return to work with guidance can occur despite the worker's symptoms.
2. Focus on activity and independence	<ul style="list-style-type: none"> • Keeping active promotes recovery. • The worker's activity ideally is work related, functional and graded. • Activity (including work) can occur despite the worker's symptoms. • The design of activity promotes transition to independence and self management. • Self management skills are integrated into clinical management to improve the worker's confidence and independence.

6. Australia Post's injury management approach

- 6.1 Australia Post's approach to early intervention is in line with best practice in injury management and accords with recommendations of Australian workers' compensation regulatory authorities.
- 6.2 Facilitating a safe, productive and durable early return to work is a central component of a successful injury management program. The key elements of Australia Post's injury management procedures reflect these key principles:
- (a) Australia Post's EIP is designed for early intervention and treatment so as to make possible an early return to work.
 - (b) Australia Post engages InjuryNet to provide a network of practitioners to ensure that injured workers can be referred to practitioners who are:
 - (i) experienced in occupational rehabilitation; and
 - (ii) familiar with Australia Post's workplaces and the availability of modified duties.
 - (c) Australia Post offers modified duties to enable workers with partial capacity to have a graduated return to work during their recovery.

Part 4 - Terms of Reference

1. Allegations that injured staff have been forced back to work in inappropriate duties before they have recovered from workplace injuries
 - 1.1 Australia Post does not accept that injured staff have been forced to work in inappropriate duties before they have recovered from workplace injuries.
 - 1.2 As outlined in **Part 3**, abundant research and the recommendations of safety regulators such as Comcare overwhelmingly support the principle of returning injured workers to safe and durable work as soon as possible, and frequently prior to recovery from injury.
 - 1.3 Australia Post has processes in place to determine the appropriateness of duties assigned to injured workers:
 - (a) all activity relating to return to work is based on medical evidence. Where an employee's capacity to work is affected by an injury, medical evidence is required to ensure the duties performed in a return to work will not exacerbate that injury. This advice must come from a medical professional and Australia Post does not have any authority, nor would it seek to influence a medical opinion on an employee's level of fitness that was inconsistent with their medical condition. Where a workplace has any concern about the duties that can be performed following a FFD assessment further clarification could be sought from the doctor or the assistance of the in-house rehabilitation services may be obtained;
 - (b) rehabilitation programs based on the medical evidence are developed in consultation with employees, managers, rehabilitation provider and doctors.
 - 1.4 Australia Post's rehabilitation processes (including return to work processes for injured workers on modified duties) are audited in accordance with Australia Post's licence requirements – such audits have established that Australia Post's systems are fundamentally sound and accord with Comcare's best practice recommendations on injury management (Part 3 at 5.1 - 5.3)).
 - 1.5 As at 31 October 2009, there were 708 open rehabilitation cases for Australia Post employees with workers' compensation claims under the SRC Act – most of these employees would be performing modified duties of some kind. This figure does not include employees who are performing modified duties under the EIP or those employees who are on permanent modified duties whose rehabilitation cases have been closed.
 - 1.6 There have been a small number of concerns raised by individual employees and the CEPU (noting that no complaint has been raised by the other constituent unions at Australia Post namely the CPSU and the TWU). These concerns are appropriately investigated and responded to by Australia Post.
 - 1.7 At the same time, Australia Post has received praise from some injured workers who have expressed support for Australia's rehabilitation process and its preparedness to explore options for modified duties and the gradual returns to pre-injury duties.
 - 1.8 The relatively small number of individual cases where concerns have been raised support the view that Australia Post's systems are fundamentally sound. This is particularly so given that:
 - (a) the weight of research in support of early return to work (see **Part 3**);
 - (b) independent audits by regulators of Australia Post's practices (see **Part 2(3)**); and
 - (c) there are a large number of cases of injured employees assigned modified duties under agreed rehabilitation programs without issue.

1.9 Further, if individuals or their representatives have concerns about the return to work / rehabilitation process, there are a number of avenues through which they can seek redress (see further at **Appendix 4**). Australia Post welcomes the opportunity to address those individual concerns.

2. The desirability of salary bonus policies that reward managers based on lost time injury management and the extent to which this policy may impact on return to work recommendations of managers to achieve bonus targets

Accountability of Australia Post Management

- 2.1 Australia Post's managers are held accountable through Australia Post's performance appraisal system for achieving OHS-related objectives. These may include injury reduction targets and, in many instances, evidence of implementing OHS management programs such as OHS supervisory programs.
- 2.2 In all cases, it is expected that a manager will strive to achieve their OHS performance objectives (summarised below) through the implementation of Australia Post's policies and programs.
- 2.3 Consistent with many organisations in Australia (see below at 2.9 to 2.12), some managers have bonuses linked to the achievement of OHS performance under Australia Post's performance appraisal system.

Nature and Form of OHS management performance objectives at Australia Post

- 2.4 The nature and form of a manager's OHS related performance objectives under Australia Post's performance appraisal system varies according to the person's role. Only a small part of the maximum bonus payable to a manager is linked to achieving the OHS performance objective and an even smaller percentage of total remuneration is impacted by OHS-related performance. In general, approximately 5% of the total bonus available to a manager is payable for the achievement of the manager's OHS performance objective; this generally represents about 0.5% of a manager's total remuneration.

Approach of safety regulators

- 2.5 Research and safety regulators (including Comcare) stress that an important key to ensuring management commitment in the area of workplace health and safety is to reward managers based on performance against safety performance indicators.
- 2.6 A literature review by WorkCover WA in 2007 notes that:

*'The manner in which supervisors use [return to work] interventions is closely associated with [return to work] outcomes; therefore, encouraging supervisors to be engaged in the process of IM is vital. To do this, supervisors must have a vested interest in improving [return to work] outcomes, which can be achieved by increasing their accountability for injury-related costs, and/or including IM practices in the performance appraisals of supervisors.'*⁴⁰
- 2.7 In Comcare's publication, *Leadership Commitment – Early Rehabilitation Assistance to Employees*, Comcare states:

*'It is important to have safety Key Performance Indicators (KPI) in place as part of performance measurement. The suite of safety KPI should include return to work measures. Include reward and recognition for those Leaders who ensure that injured workers have quick access to rehabilitation services.'*⁴¹
- 2.8 Comcare has created a checklist for senior managers that addresses the various elements of successful early intervention – the checklist includes specific provision for among other things management accountability and incentives. A copy of Comcare's early intervention checklist for senior managers is attached at **Appendix 5**.

How does Australia Post compare?

- 2.9 A broad range of employers across a range of industries include safety, and in particular performance against injury reduction indicators such as LTIFR, as a measurement of performance that is linked to the payment of bonuses.
- 2.10 It is the advice of DuPont Safety Resources, a business of DuPont (arguably the world leader in safety management), that it is DuPont's practice and that of large Australian companies that are leaders in safety management, to hold managers accountable for their personal and company safety performance through the managers' performance appraisal system. These companies use a combination of leading and lagging safety targets and measures, including LTIFR and suitable measures of all injuries, to measure a manager's safety performance. The companies link the realisation of safety targets to the payment of a salary bonus.
- 2.11 DuPont Safety Resources advised Australia Post about the practice of two large Australian companies, with a combined total of 40,000 people that linked the payment of salary bonus to the achievement of safety goals. Both of these companies were pursuing significant improvement in their safety performance and during the change process, linked between 30% and 50% of their managers' salary bonus to the achievement of a 50% annual reduction in LTIFR – both companies were highly successful in achieving significant improvements in their safety performance.
- 2.12 Mercer, a global organisation that specialises in remuneration and benefits, have also advised Australia Post that, in a range of industries including logistics, energy, mining and chemicals, the linking of safety related targets to performance bonuses is not uncommon.

General comments

- 2.13 It is Australia Post's position that:
- (a) appropriate systems are in place to ensure appropriate duties are assigned to injured employees returning to work as part of the rehabilitation process (see Part 4(1) at paragraph 1.3) – this does not extend to watching television or what Australia Post considers to be trivial duties;
 - (b) placing some of the "at risk" component of a managers remuneration package is consistent with research in this area including from international safety experts and accords with the approach recommended by the independent regulator, Comcare;
 - (c) the relatively small percentage of bonus that is available based on safety performance at Australia Post means that there is a suitable incentive for managers to ensure compliance with policies and procedures and focussing on good rehabilitation and return to work outcomes, however, it is not enough to encourage inappropriate or risky decision making; and
 - (d) if individuals or their representatives have genuine concerns about particular cases involving individual managers, Australia Post would welcome the opportunity to investigate those concerns.

3. The commercial arrangements that exist between Australia Post and InjuryNet and the quality of the service provided by the organisation

Commercial arrangement

- 3.1 Australia Post has engaged an independent company InjuryNet Pty Ltd (**InjuryNet**) to establish and maintain a comprehensive network of FNDs to examine and treat Australia Post employees in Victoria, Tasmania, New South Wales, the Australian Capital Territory, Queensland and Western Australia.
- 3.2 South Australia and the Northern Territory have specific local arrangements for medical consultancy services and therefore are not included within the InjuryNet network. They do however, operate in accordance with the EIP and FFD processes.
- 3.3 Australia Post's current agreement with InjuryNet commenced on 18 May 2007 and expires on 17 May 2010 (**Consultancy Agreement**).
- 3.4 While WA was not originally part of the InjuryNet network when the Consultancy Agreement was first entered into, InjuryNet commenced providing services to Australia Post's operations in WA in late 2007.
- 3.5 InjuryNet was selected to provide this service under the Consultancy Agreement in 2007, following a national competitive tender process.
- 3.6 The medical consultancy services provided by InjuryNet under the Consultancy Agreement include coordinating services in connection with:
- (a) ad-hoc consultancy services, including training of practitioners (including general practitioners and physiotherapists), and
 - (b) identification, development, implementation and monitoring of a treatment network of practitioners for Australia Post's injured workers who perform:
 - (i) pre-placement medical examinations for employment applicants;
 - (ii) general fitness for duty examinations; and
 - (iii) treatment to employees where appropriate
- (see further at Part 2(5) for further detail on the services provided by InjuryNet's FNDs.
- 3.7 Australia Post pays InjuryNet a consultancy fee (valued at \$1.5million over the three year term) under the Consultancy Agreement for providing the services outlined above (**Consultancy Agreement Fee**). The Consultancy Agreement Fee is fixed over the life of the Agreement and is not linked to LTIFRs outcomes or any other indicators supporting the early return of injured workers to work.
- 3.8 Under the Consultancy Agreement, the charges by individual doctors for providing services to Australia Post employees are the Australian Medical Association listed rate (**AMA Rates**) or in Queensland at the rates specified by Workcover Queensland. No further fee is provided to the practitioners.
- 3.9 Standard Procurement practice at Australia Post is to go to market 3 - 4 months prior to the expiry date. At this stage the next tender process for medical services is scheduled to go to market in February 2010.

Quality of service provided by InjuryNet

- 3.10 In Australia Post's experience, InjuryNet has provided a professional, responsive and well organised service.

3.11 InjuryNet has not been alleged to be or found to be in breach of any term of the Consultancy Agreement.

3.12 InjuryNet and its network of practitioners are also familiar with Australia Post's documentation and processes – having provided services under various arrangements since 1999 in various jurisdictions. This allows InjuryNet practitioners to focus on injury management issues rather than the need to familiarise themselves with Australia Post's systems each time an Australia Post employee is referred to them.

4. Allegations of Compensation Delegates using fitness for duty assessments from Facility Nominated Doctors to justify refusal of compensation claims and whether the practice is in breach of the *Privacy Act 1988* and Comcare policies

- 4.1 Under the provisions of the SRC Act and associated licence conditions Australia Post Claims Managers have the power to do all things necessary or convenient to be lawfully done for, or in connection with, the performance of functions under the SRC Act. Furthermore in managing claims a Claims Manager:
- (a) must be guided by equity, good conscience and the substantial merits of the case without regard to technicalities;
 - (b) is not required to conduct a hearing; and
 - (c) is not bound by the rules of evidence.
- 4.2 Having regard to these provisions Claims Managers are empowered to make decisions in relation to claims on the evidence provided to them or where necessary seek additional evidence to assist with making a decision (see for example, the power in section 58 of the SRC Act).
- 4.3 The EIP applies to injuries where a work relationship is indicated. Where an injury managed under the EIP leads to a claim for compensation under the SRC Act then fitness for duty assessments generated under the EIP will be provided to the Claims Manager for consideration in making decisions on the claim. Fitness for duty information is not relevant to decisions under section 14 of the SRC Act which considers whether an injury has arisen out of or in the course of employment. Australia Post does not use fitness for duty assessments in considering liability under section 14 as they do not contain any information concerning the cause of injury.
- 4.4 A Claims Manager will consider a fitness for duty assessment, along with other relevant information, when deciding whether a period of absence from duty should be accepted and paid as incapacity under the provisions of the SRC Act. Where conflicting medical evidence is provided by a FND and treating doctor, the Claims Manager can take the following action:
- (a) make a decision on the evidence provided. Where the decision results in a claim for benefit not being paid the Claims Manager must provide reasons for their decision and why certain evidence was preferred;
 - (b) seek clarification of the information provided by either doctor. Clarification could include obtaining more detail or providing the doctor with further information upon which they are requested to comment; or
 - (c) obtain an opinion from an independent doctor using the power under section 57 of the SRC Act. Generally the independent doctor will be provided with the medical and other relevant evidence, asked to examine the employee and requested to furnish a report which will include answers to specific questions.
- 4.5 Once the Claims Manager has all the information they believe is necessary to make a decision a formal determination is made in writing outlining the decision and including a Notice of Rights which outlines the employee's appeal rights. It should be noted that it is not uncommon in workers' compensation jurisdictions for there to be differing medical opinions relation to an employee's condition. It is a key function of a Claims Manager to consider all the evidence on a claim and make a decision on the weight of that evidence.

- 4.6 Fitness for duty assessments may also be used by rehabilitation case managers under the provisions of section 36 of the SRC Act which provides for the assessment of an employee's capability to undertake a rehabilitation program.
- 4.7 This practice is not in breach of the *Privacy Act 1988 (Privacy Act)* or Comcare policies. The basis for our view is set out below.

Privacy Act

- 4.8 The Privacy Act applies the Information Privacy Principles to 'agencies' and the National Privacy Principles to 'organisations'. Australia Post is an 'agency' under the Privacy Act and therefore the Information Privacy Principles apply to Australia Post. Australia Post's commercial activities are covered by the National Privacy Principles.
- 4.9 Australia Post can have regard to fitness for duty information provided by FNDs when making decisions about injuries involving a workers' compensation claim under the SRC Act without breaching its obligations under the Privacy Act because:
- (a) the use of fitness for duty (FFD) information in assessing entitlements to compensation under the SRC Act is 'directly related' to the purpose of obtaining the FFD information as part of the EIP;
 - (b) express consent is provided when an employee signs the current claim forms (issued November 2007) for compensation; and
 - (c) implied consent was provided when an employee signed previous claim forms as the employee may reasonably have been expected to assume that reports relating to the claimed condition would be used for a purpose associated with assessing compensation entitlements.

Express consent is provided when an employee signs the current claim forms for compensation

- 4.10 Principle 10 of the Information Privacy Principles limits the use of personal information where the information was obtained for a particular purpose. Principle 2 of the National Privacy Principles limits the use and disclosure of personal information for a purpose other than the primary purpose of collection. However, under both sets of privacy principles the information can be used for another purpose where the individual concerned has consented to use of the information for that other purpose.
- 4.11 Current claim forms for compensation used by Australia Post (issued November 2007) include authorisations to be signed by claimants which state:
- (a) Release of private and personal information
 - Australia Post needs to collect personal information about you to determine your entitlement to compensation and to perform other function required by the SRC Act.*
 - In the course of managing your claim, Australia Post may need to disclose your personal information to: your work centre manager, medical practitioners ..., rehabilitation service providers ...*
 - I authorise and consent to Australia Post disclosing or releasing records containing personal information about me in the performance of its functions under the SRC Act or for the purposes of managing my compensation claim and/or to assist Australia Post in any actions authorised under the SRC Act.*
 - (b) Authorisation for Medical Information

I authorise and consent to any health professional ... discussing with, or providing to Australia Post, Comcare, my case manager and my rehabilitation provider any information relating to any assessment, examination or treatment of me (including any clinical notes, diagnosis, procedures, prognosis, report and results) concerning the injury or disease (claimed) or any related or similar condition claimed on this date.

I understand that this information is required for the purposes of determining and managing my compensation claim and/or assessing my suitability to undertake a rehabilitation program and/or to assist Australia Post in any actions authorised under the SRC Act...

- 4.12 The above authorisations, if signed by an employee, constitute express consent for Australia Post to use and disclose the FFD information for purposes associated with assessment of entitlements to compensation under the SRC Act.
- 4.13 Implied consent was provided when an employee signed previous claim forms as the employee would reasonably have been expected to assume that reports relating to the claimed condition will be used for a purpose associated with assessing compensation entitlements.
- 4.14 As discussed above, Principle 10 of the Information Privacy Principles and Principle 2 of the National Privacy Principles provide that personal information can be used for another purpose where the individual concerned has consented to use of the information for that other purpose. 'Consent' is defined by section 6(1) of the Privacy Act to include implied consent.
- 4.15 Before the current claim forms for compensation were introduced by Australia Post in November 2007, previous claim forms used by Australia Post provided authority for '*the doctors who have treated me for: [injury or condition] to provide to Australia Post reports relating to this or a similar or related condition*'.
- 4.16 By signing an authority in these terms as part of a claim for compensation, implied consent has been given as the employee would reasonably be expected to assume that reports relating to the claimed condition would be used for a purpose other than which they were obtained (that is, to determine compensation entitlements).

The use of fitness for duty information in assessing entitlements to compensation under the SRC Act is 'directly related' to the purpose for obtaining the fitness for duty information

- 4.17 Principle 10 of the Information Privacy Principles allows the use of personal information where 'the purpose for which the information is used is **directly related** to the purpose for which the information was obtained'.
- 4.18 Principle 2 of the National Privacy Principles allows the use of personal information for a secondary purpose where:
- (i) *the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection; and*
 - (ii) *the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose.*
- 4.19 Therefore, in the absence of consent, personal information may be used for another purpose if that other purpose was directly related to the purpose for which the information was obtained.

- 4.20 The collection of personal information by way of a report or certificate of a medical examination with a FND has the following express purposes:
- (a) Under the EIP:
 - (i) to determine whether or not an employee is able to safely perform their duties because of medical reasons;
 - (ii) to recommend appropriate medical restrictions;
 - (iii) to safeguard the health and safety of the employee or their co-workers; and
 - (iv) to clarify a treating doctor's assessment of incapacity, where a possible work related illness or injury is involved.
 - (b) Under Clause 10: Fitness for Duty, of the Australia Post Determination No. 6 of 2006, the purpose is to protect the employee or the public where Australia Post considers an employee is incapable of performing duty or constitutes a danger to other employees or the public.
- 4.21 FND examinations under the EIP are only in respect of identified and potential work related illnesses or injuries. The purpose of assessments undertaken by FNDs is to ascertain the nature of the injury reported or claimed; the employee's work capacity (including hours of work and recommended work activities); treatment plan; and the prognosis for a return to normal duties.
- 4.22 Where an employee claims to have suffered a work related injury and is subsequently assessed by a FND in relation to that injury, Australia Post considers the assessments are directly related to the assessment of compensation entitlements for the injury. This is particularly so given that recommendations for treatment and work capacity will presumably form part of claims for medical expenses and incapacity under the SRC Act.
- 4.23 Therefore, the assessment and decision making in respect of entitlements under the SRC Act is directly related to the purpose for which the FFD information was obtained because the EIP:
- (a) is intended only for injuries where a work relationship is indicated;
 - (b) states that it interacts and must be read in conjunction with existing Australia Post policies and relevant legislation, including the Safety, Rehabilitation and Compensation Act; and
 - (c) expressly states that, although a FND assessment is not a medical examination for the purposes of establishing liability under the SRC Act, where appropriate the information may be accessed by the Claims Manager to assist in the determination of liability.
- 4.24 Information is provided to employees when they are directed to attend FND examinations under clause 10 of the Australia Post Determination No. 6 of 2006 (see the Information Sheet attached to the EIP at Appendix 2).
- 4.25 The information sheet states that the employee may be directed to submit to a medical examination *'for the purpose of a medical assessment and a report to Australia Post concerning the employee's fitness to perform all or part of his or her duties'*. The information sheet also states, regarding access to the FND report, that:
- 'The doctor will send your fitness for duty report to your supervisor or manager. The report will not contain confidential personal or medical information about you but will simply outline the doctor's opinion of your capacity to undertake work with or without restrictions.*
- There are strict rules regarding your privacy and both your supervisor/manager and the doctor must observe these rules...*
- If you submit a workers' compensation claim under the [SRC Act] the doctor may be requested to provide a copy of his or her report to a workers' compensation delegate.'*

4.26 Therefore, the use of the FND information for the purpose of assessing fitness for duty under the SRC Act is directly related to the purpose for which the FND information is obtained.

Comcare policies

4.27 In 2000 Comcare issued jurisdictional policy advice on the extent to which information obtained in the course of a FFD examination can be used for a purpose related to the management of a compensation claim.⁴² The policy advice refers to licensees being bound by the provisions of the SRC Act and the relevant Information Privacy Principles (discussed above).

4.28 The policy advice also states that:

The basic principle to be followed is that information should only be used for the purpose for which it was collected, unless the person to whom it refers has given permission for it to be used for another purpose.

If information regarding an employee's medical condition is collected for an employment-related purpose (for example, to record absences from work or to assess their fitness for duty) it should not, in principle, be used for a compensation-related purpose (for example, to support a decision to continue or cease liability). With the employee's written permission, however, the holder of the information may grant access.

4.29 Comcare recognises in the policy advice that the basic principle is subject to exceptions, such as written consent.

4.30 Australia Post does not accept that any of its policies or procedures related to employee health and safety, including the EIP and FFD processes are in breach of the Privacy Act or Comcare policy.

4.31 There has been no finding that Australia Post has breached the Privacy Act or the Comcare jurisdictional policy advice referred to at paragraph 4.27 above.

5. Allegations that Australia Post has no legal authority to demand medical assessments of injured workers when they are clearly workers' compensation matters

5.1 Australia Post's legal authority to direct an employee to a medical assessment derives from a number of sources that differ depending on the circumstances of the direction.

5.2 Employees attend medical assessments in one of three circumstances:

- (a) voluntarily for medical assessment and treatment under the EIP;
- (b) when directed under the SRC Act in relation to a compensation claim; or
- (c) when directed by a manager for a fitness for duty (FFD) assessment under the Australia Post Principal Determination.

5.3 At no time has Australia Post been found by any Court, tribunal or regulatory body to be in breach of any law in directing employees to attend medical assessments in any of the above circumstances.

5.4 In circumstances in which medical information is necessary for the employer to evaluate the fitness of an employee to undertake their duties, employers also have a common law right established by the Courts to direct the employee to attend a medical examination.⁴³

Injury Management (Early Intervention) Program (EIP)

5.5 The majority of referrals to FNDs are through the EIP. Employees voluntarily choose to attend an FND or their own doctor under this program for medical treatment, and hence there is no 'direction' by Australia Post.

Workers Compensation

5.6 Under the provisions of the SRC Act, Australia Post has the power to direct an employee to be medically examined.

5.7 Under section 36 of the SRC Act Australia Post, as a rehabilitation authority, may assess an employee's capability of undertaking a rehabilitation program. An assessment shall be made by:

- (a) A legally qualified medical practitioner nominated by the rehabilitation authority;
- (b) A suitably qualified person (other than a medical practitioner) nominated by the rehabilitation authority; or
- (c) A panel comprising such legally qualified medical practitioners or suitably qualified persons (or both) as are nominated by the rehabilitation authority.

5.8 Australia Post may require an employee to undergo an examination by the person or panel of persons making the assessment.

5.9 Under section 57 of the SRC Act Australia Post, as a relevant authority, may require an employee to undergo an examination by a legally qualified medical practitioner nominated by the relevant authority.

5.10 Where an employee refuses or fails, without reasonable excuse, to undergo an examination, or in any way obstructs such an examination, the employee's rights to compensation under the SRC Act, are suspended until the examination takes place.

Fitness for Duty

5.11 Under section 89 of the *Australia Postal Corporation Act 1989*, Australia Post may determine the terms and conditions of employment that apply to its employees.

5.12 Accordingly, a Principal Determination (derived from this statutory power) has been made prescribing minimum terms and conditions of employment for Australia Post employees. A copy of the Principal Determination is at Appendix 1.

5.13 Clause 10 of the Australia Post Principal Determination provides:

CLAUSE 10 – Fitness for Duty

- (a) *Australia Post may direct an employee to:*

 - (i) *obtain and furnish to Australia Post a report from a registered medical practitioner concerning a medical assessment of the employee's fitness to perform all or part of his or her duties; and/or*
 - (ii) *submit to a medical examination by a registered medical practitioner determined by Australia Post, for the purpose of a medical assessment and a report to Australia Post concerning the employee's fitness to perform all or part of his or her duties.*

- (b) *If Australia Post considers that an employee is incapable of performing a duty or constitutes a danger to other employees or the public due to the employee's state of health, Australia Post may direct the employee to:*

 - (i) *obtain and furnish to Australia Post a report from a registered medical practitioner; or*
 - (ii) *submit to a medical examination by a registered medical practitioner determined by Australia Post.*

- (c) *An employee to whom a direction is given under clause 10(a) or 10(b) must comply with the direction.*
- (d) *Where an employee fails to comply with a direction under clause 10(a) or 10(b) without reasonable cause, the employee may be subject to the Employee Counselling and Discipline Process and fees payable for the examination may be charged against the employee and deducted from salary.*

5.14 Australia Post has issued Guidelines on how the FFD process should be applied to ensure fairness and transparency. A copy of these Guidelines is at **Appendix 6**.

6. The frequency of referrals to InjuryNet Doctors and the policies and circumstances behind the practices

Frequency of referrals to InjuryNet doctors

- 6.1 As noted in Part 2(5), Australia Post engages a network of FNDs through a third party (currently InjuryNet) to provide specified medical services to Australia Post, namely:
- pre-employment medical examinations;
 - medical assessments and treatments under EIP; and
 - fitness for duty (FFD) assessments.
- 6.2 Approximately 5000 pre-employment medicals are conducted annually for Australia Post.
- 6.3 Table 1 below sets out the frequency of referrals over the past three years for:
- voluntary referrals to FNDs under the EIP; and
 - directions to attend FNDs for a FFD assessment under the Principal Determination.

Count of referral types	2006/2007			2007/2007			2008/2009		
	EIP	FFD	%*	EIP	FFD	%*	EIP	FFD	%*
Total	3,856	435	10.1	4,378	445	9.2	4,124	410	9.9

Table 1: Injury Management Program (EIP) – Medical Treatments and Fitness for Duty Assessments (by Referral Type in Period) – from July 2006 to 30 June 2009

* This is the percentage of all EIP and FFD cases directed to attend a FND under FFD

Policies and circumstances behind referrals to FNDs

- 6.4 As outlined in **Part 2** - Overview of Australia Post's Injury Management approach, the following policies / instruments govern Australia Post's referral to employees to InjuryNet practitioners for assessment:

Type of referral to FND	Relevant Policy Documents
Fitness for duty assessment	Clause 10, Principal Determination (see Appendix 1) Guidelines for the Use of Determination 10A (see Appendix 6).
Medical assessment and treatment under EIP	Injury Management (Early Intervention) Program, version 8, June 2006 (see Appendix 2)

- 6.5 Pre-employment medical examinations are undertaken as part of Australia Post's recruitment processes to determine a job applicant's medical capability to safely perform the duties of their specific designation.

- 6.6 FFD assessments are undertaken to determine an employee's medical fitness to discharge their duties. Referrals to an FND for a FFD assessment occur relatively infrequently and only following advice from a Human Resources Consultant and in accordance with clear guidelines on how such referrals are to occur (see Appendix 6).
- 6.7 Under the EIP, employees may choose to attend an Australia Post nominated doctor for limited medical treatment for work-related medical conditions (or conditions where a work relationship may be indicated) at Australia Post's expense.
- 6.8 The voluntary nature of the EIP and the large number of employees that choose to attend an InjuryNet doctor for medical treatment as a result demonstrates the benefits of this system. Namely, that the EIP genuinely aims to provide employees with a quick, free medical referral service that ensures they are treated by a medical practitioner focused on their well-being and seeking to find safe and meaningful work for the employee to perform to ensure they can continue to work while recovering from their injury whether or not it results in a workers' compensation claim.
- 6.9 Australia Post's experience and data does not support any finding that there is a systemic reliance on directing employees to attend FNDs for the sole purpose of reducing LTIFR's and achieving management bonus targets at the expense of the health and safety of our employees.

7. The comparison of outcomes arising from circumstances when an injured worker attends a facility nominated doctor, their own doctor and when an employee attends both, the practices in place to manage conflicting medical recommendations in the workplace

7.1 We have set out below how conflicting medical evidence is treated in the management of a claim for workers compensation under the SRC Act, the EIP and where an employee is directed to undergo a FFD assessment under Clause 10 of the Principal Determination.

SRC Act

7.2 Under the provisions of the SRC Act and associated licence conditions, workers' compensation Claims Managers at Australia Post have the power to do all things necessary or convenient to be lawfully done for, or in connection with, the performance of functions under the SRC Act. Furthermore, in managing claims a Claims Manager:

- (a) must be guided by equity, good conscience and the substantial merits of the case without regard to technicalities;
- (b) is not required to conduct a hearing; and
- (c) is not bound by the rules of evidence.

7.3 Having regard to these provisions, Claims Managers are empowered to make decisions in relation to claims on the evidence provided to them or where necessary seek additional evidence to assist with making a decision.

7.4 Where conflicting medical evidence is provided by a FND and treating doctor (as outlined above at Part 4(4)) (Terms of Reference) the Claims Manager can take the following action:

- (a) make a decision on the evidence provided. Where the decision results in a claim for benefit not being paid the Claims Manager must provide reasons for their decision and why certain evidence was preferred;
- (b) seek clarification of the information provided by either doctor. Clarification could include obtaining more detail or providing the doctor with further information upon which they are requested to comment; or
- (c) obtain an opinion from an independent doctor using the power under section 57 of the SRC Act. Generally the independent doctor will be provided with the medical and other relevant evidence, asked to examine the employee and requested to furnish a report which will include answers to specific questions.

7.5 Once the Claims Manager has all the information they believe is necessary to make a decision a formal determination is made in writing outlining the decision and including a Notice of Rights which outlines the employees appeal rights.

7.6 If an employee wishes to appeal a decision of a workers' compensation Claims Manager there is a two stage appeal process available involving:

- (a) firstly, a reconsideration of the decision by a new Claims Manager; and
- (b) if an employee does not agree with the reconsideration decision the employee may elect to apply to the Administrative Appeals Tribunal to review the reconsideration decision.

Reconsideration of Decision

- 7.7 Once an employee has received a decision they can request within 30 days that the decision is reconsidered. A request for reconsideration must be in writing and must contain the reasons for the request. An employee can provide further information in support of their claim at this time.
- 7.8 Upon receipt of a reconsideration request the decision in dispute will be reconsidered by a Claims Manager not involved in the making of the first decision. The Claims Manager will consider any new evidence and has the same power as the initial decision maker to seek clarification of evidence or arrange for the provision of new evidence. The reconsideration decision will be documented in writing, will outline the reasons for decision and will provide the employee with a further Notice of Rights which contains the second step in the appeal process.

Administrative Appeal Tribunal (AAT)

- 7.9 Where an employee does not agree with the reconsideration decision they may elect to make application to have the AAT review the reconsideration decision. An application to the AAT must be made in writing in accordance with the provisions of the *Administrative Appeals Tribunal Act 1975* and must be made within 60 days from the date of receipt of the reconsideration decision.
- 7.10 Once an application to the AAT has been made, the AAT process will typically involve (among other things) telephone conferences, mediation and conciliation. If the matter is not resolved it may proceed to a hearing. Where a hearing occurs, the AAT will consider the evidence presented by both parties and make a decision on the evidence having regard to the provisions of the SRC Act.
- 7.11 The decision of the AAT can be appealed to the Federal Court on a point of law.

Injury Management (Early Intervention) Program (EIP)

- 7.12 Where an employee reports an injury which is indicated to be work related they are provided with the opportunity to participate in the EIP or they may elect to see their own local doctor. Where a local doctor is seen and certificate indicating the employee is unfit for work is provided the workplace manager may arrange to have the employee examined by a FND using the authority under the Principal Determination. In some instances an employee will be examined by a FND under the EIP in the first instance. The employee may also elect to be examined by their own local doctor.
- 7.13 Where conflicting medical opinion arises from the two doctors this may provide the basis for further discussion between the doctors. Where differing medical opinions continue to prevail it is the decision of the employee as to which opinion they will follow
- 7.14 The EIP is clear that the FND assessment will not override a treating doctor's opinion. Where an employee decides to follow the advice of their doctor and a claim for workers' compensation under the SRC Act has not been subsequently lodged the employee will be paid in accordance with Australia Post's sick leave provisions. Where a workers' compensation claim has been lodged the Claims Manager will determine, based on the evidence, whether or not any absence for duty is paid as workers' compensation incapacity or not. This will involve assessing all medical information available to the Claims Manager, including any assessment or report that has been provided by an FND. All cases are considered on an individual basis based on their own facts. There is no automatic assumption that the information of an FND will be preferred to the advice provided by any other doctor.

Fitness for Duty (FFD) Assessments – Clause 10 of the Principal Determination

- 7.15 Australia Post has the authority under Clause 10 of the Principal Determination to direct an employee to undergo a FFD assessment. The medical opinion arising from an assessment may conflict with the opinion of a treating doctor.

- 7.16 A FFD assessment under these circumstances would not occur where an employee has an active claim for workers' compensation under the SRC Act for the injury. In these cases, the Claims Manager would rely on their power under the SRC Act to direct the employee to attend a medical examination.
- 7.17 Where the FFD assessment is arranged under the EIP the employee must decide which opinion they will follow. As indicated in the previous section if the employee elects to follow the opinion of their treating doctor and not attend work then they will be paid in accordance with Australia Post's sick leave provisions. However, the assessment of an FND will be considered with all other available evidence in determining the appropriate payment or leave arrangements of the employee.
- 7.18 Where the FFD assessment is conducted outside of the EIP and conflicting medical evidence prevailed it would be a management decision as to whether the employee was directed to commence, cease or modify their work. Each case must be considered on an individual basis according to its facts.
- 7.19 Where an employee was given a direction in relation to their requirement to work and they failed to follow that direction then they may be subject to the disciplinary process.

Part 5 - Conclusion

Australia Post is proud of its commitment and approach to workplace health and safety and injury management including its commitment to returning employees back to work safely and productively as soon as possible after a suspected workplace injury under the EIP.

Despite concerns raised by individual employees and the CEPU, Australia Post does not consider that the small number of individual cases raised over the past three years, when balanced against the weight of supporting research, independent audits by regulators and the significant number of referrals and directions that occur without complaint, justify any change to the underlying policy and procedures that support this system.

Australia Post would draw attention in particular to the fact that:

- The EIP is considered best practice by the independent regulator Comcare;
- The weight of research in this area supports the model adopted by Australia Post;
- Decisions to return people to work are made based on medical evidence. A manager cannot return an employee to work without supporting medical evidence;
- No Court, Tribunal or regulatory body has found any aspect of the EIP or FFD to be unlawful - in fact, Australia Post's rehabilitation and return to work procedures have recently been recognised by the SRCC as part of its 2009 SRCC Safety Awards;
- Australia Post is regularly audited in relation to its compliance with its license requirements under the SRC Act. In addition, Comcare conducts audits every four years to review and ensure Australia Post's compliance with its license requirements. The most recent of those Comcare audits was completed in October 2009 and the preliminary advice following that audit is that Australia Post's injury management system is performing at a high standard;
- Australia Post's EIP provides significant benefits to employees, including access to free, convenient medical assessment and treatment if required; and
- If individuals or their representatives have concerns about their treatment under the EIP or a direction under FFD there are a number of avenues through which they can seek redress.

Having regard to Australia Post's submissions and supporting material provided in the attached Appendices, Australia Post considers that there is no basis for any adverse finding in respect of its treatment of ill and injured workers.

Australia Post looks forward to the opportunity to address any further issues raised by the Committee at any scheduled public hearings or through supplementary submissions as required.