

Response of the Australian Government
to the Report of the House of Representatives
Standing Committee on Employment and Workplace Relations

Back on the Job
An inquiry into aspects of Australian workers' compensation schemes

Overview

1. The Inquiry has highlighted important issues, and given increased impetus to addressing the substantial human and economic cost of workplace injury and disease in Australia today.
2. The Committee's Report reinforces the need for improvement in national workers' compensation arrangements. It provides a detailed analysis of the Australian workers' compensation system and concludes that there is a need for change in current practices by all sectors: employees, employers, service providers, insurance companies, and in the design and operation of the workers' compensation schemes.
3. The Committee identifies the need for nationally consistent workers' compensation arrangements and calls on the Government to support and facilitate the development of a national framework.
4. The Government recently commissioned the Productivity Commission to inquire into national workers' compensation and occupational health and safety (OHS) frameworks. The Productivity Commission's report, National OHS and Workers' Compensation Frameworks and the Government's response was released on 24 June 2004. The report identified a number of areas where national consistency needs to be improved.
5. In its response, the Government proposed the establishment of a new Advisory Council that will advise, for the first time, on both OHS and workers' compensation issues. Its establishment is still subject to consultation with stakeholders. The role of the Advisory Council, to be named the Australian Safety and Compensation Council (ASCC), will be to develop the broad policy and strategic directions for OHS and workers' compensation. More specifically it will identify and recommend to the Workplace Relations Ministers' Council design elements of schemes to gain consistency in the regulatory framework.
6. In relation to the issue of fraudulent behaviour, the Report notes that the incidence and cost of fraud is difficult to quantify given the lack of available data. In acknowledging that there are procedures in place and reforms underway to address fraud and non-compliance, it noted that the level of employee fraud is generally considered to be low. The Report also noted one reason that small businesses may be failing to pay correct premiums may be because of the complexity of the current workers' compensation arrangements.
7. The Government is responding positively to most of the recommendations in the Report. A number of recommendations that have asked the Government to further examine certain matters have been effectively addressed by the findings in the Productivity Commission's report. The Government also considers that the proposed new ASCC is the appropriate body to investigate and develop a number of the recommendations as they overlap with recommendations made by the Productivity Commission.
8. The Government agrees that the focus of the Report on improving the workers' compensation system was appropriate for a committee of the Commonwealth Parliament given the social and economic implications of workplace injury and disease for all Australians.

CONSULTATIONS AND INPUT

9. Responses tabled in this document reflect input from:

- the Health and Ageing portfolio, on Recommendations 4, 6, 8 and 9;
- the Family and Community Services portfolio, on Recommendations 4, 5, 6, 10, and 13;
- the Attorney-Generals portfolio, on Recommendation 4; and
- the Treasury portfolio, on Recommendations 4 and 7.

10. A number of recommendations relate to, or have implications for, agencies within the above portfolios - Centrelink, Health Insurance Commission and Australian Taxation Office; these agencies have also been consulted in preparing the relevant responses. In addition, the National Occupational Health and Safety Commission and Comcare within the Employment and Workplace Relations portfolio have been consulted on recommendations relevant to their activities.

GENERAL COMMENTS

11. These general comments are intended to provide context to the responses to individual recommendations made by the House of Representatives Standing Committee on Employment and Workplace Relations (HoRSCEWR) in its Report dated June 2003 entitled *Back on the job: Report on the inquiry into aspects of Australian workers' compensation schemes*.

Workplace injury and disease in Australia

Putting the problem into perspective

12. Each year as a result of a workplace incident there are over 200 fatalities compensated by the various workers' compensation schemes. And each year there are over 145,000 workplace accidents that result in an injured worker receiving workers' compensation.

13. However, compensated fatalities and injuries do not reflect the full extent of the problem.

14. It is generally acknowledged that the rate of workplace injury is higher than that reported by the various schemes. One good indicator of the extent of workplace injury can be gleaned from a national survey which reported that five percent of the work-force (or nearly half a million workers) suffered a work-related injury or illness in the previous twelve months¹. This rate of injury, 49.3 per thousand employees, is significantly higher than the rate of injury compensated by the workers' compensation schemes, 14.0 per thousand².

15. The HoRSCEWR Report draws attention to the substantial human and economic costs of work-related injuries.

16. A work-related fatality, injury or disease costs the employee, the employer and the Australian community. For the employee and their family the direct costs will vary depending on the nature and type of injury and whether they have post-injury durable return to work. The employee incurs a loss of income and, in some circumstances may be responsible for certain medical related expenses. It is difficult to quantify these costs. The personal cost of pain and suffering to the employee and their family, particularly in cases involving a fatality, cannot be quantified.

17. It is estimated that the cost of workplace injury and disease to employers to be in excess of \$30 billion annually. This estimate is based on the direct cost of premium paid by employers annually (\$6.15 billion per annum³) and using a conservative estimate of 'four' times for the indirect cost of a workplace injury or disease. The indirect cost may arise from the lost production time due to accidents, damage to plant and the cost of overtime or training of new workers to replace those injured.

18. Each government has its own administrative infrastructure to operate and manage the schemes. It costs over \$1.2 billion to administer the various workers' compensation schemes in 2002-03. This accounts for one dollar in every five dollars paid by employers for workers' compensation insurance⁴.

19. There is also evidence that the taxpayer funded programmes, Medicare and the social security income support and services are directly and indirectly meeting the cost of work

¹ *Work-related Injuries Australia* Australian Bureau of Statistics, September 2002 (ABS survey, Sept 2000)

² *Workplace Relations Ministers' Council – Comparative Performance Monitoring – 6th Report* November 2004 (6th CPM Report), page 19.

³ *Ibid* – 6th CPM Report, page 57.

⁴ *Opt cit* 6th CPM Report – page 58.

related injuries. A recent national survey revealed that in the preceding twelve months some 60,000 workers who suffered a workplace injury sought assistance from these programmes⁵.

Existing Workers' Compensation and OHS Arrangements

20. Each State and Territory (State) has in place its own compulsory workers' compensation regime and regulates health and safety for employees within their jurisdiction. For a workforce of approximately nine and half million - there are eleven workers' compensation schemes - nine of which cover the general workforce and two industry based schemes (NSW coal miners and the Commonwealth scheme for seafarers). While the basic structure of all the schemes is similar, each State scheme has evolved in isolation resulting in a diversity of arrangements that impacts on employers, employees and the national economy.

21. All Australian workers' compensation schemes are based on the principle of 'no-fault' compensation, which makes employers liable for all work-related injuries and disease suffered by their workers. There are significant differences, however, across the schemes in the core design elements relating to coverage: benefits, insurance arrangements, premium setting policies, rehabilitation and return to work obligations and dispute resolution mechanisms.

22. The HoRSCEWR Report identifies workers' compensation as a highly adversarial and litigious industry. A major contributing factor is considered to be the complexity of the schemes and resultant uncertainty for workers and employers. The availability of common law damages under most schemes also adds to the litigious nature of the industry.

23. The benefits regimes of the various workers' compensation schemes represent the most identifiable area of inconsistency. As a result injured employees across Australia have different outcomes even if they have the same injury and same pre-injury income. While employers are subject to varying premium setting policies and rates even if they conduct the same type of business in different States. National employers are required to take-out separate insurance in each State.

Drivers for improvement

24. The HoRSCEWR Report draws attention to a number of challenges facing the various workers' compensation schemes.

25. There are a number of factors testing the traditional basis on which all the workers' compensation schemes are founded. The past 10-15 years have seen significant changes in working arrangements and relationships. The emergence of different forms of employment is a reflection of the modern Australian economy and the personal choices which Australians want to make about work, lifestyle, family and security.

26. The various schemes have to date responded to the changing arrangements in an ad-hoc fashion, creating more uncertainty for workers and employers on whether they are covered by a workers' compensation scheme or not. The HoRSCEWR Report identifies this as an important issue as the extent of coverage by the schemes today is not known.

27. The traditional coverage by the schemes for traumatic injury and disability now extends to include occupational stress and diseases such as musculo-skeletal degenerative disorders, hearing loss and diseases from exposure to hazardous substances. Such types of

⁵*Opt cit* - ABS Survey Sept. 2000. At some time during the year ending September 2000, 5% (or 477,800 workers) of the total workforce experienced a work-related injury or illness. Of this population of injured workers over 150,000 received no financial assistance and some 60,000 sought assistance from Medicare and or Centrelink.

compensable injuries/diseases may be contributed to by factors external to the workplace such as ageing, and degenerative conditions. For compensable stress-related conditions, the contribution of employment does not address the fundamental issue of employer controllability over the incidence that may have given rise to the stress.

28. The HoRSCEWR Report also notes that in a period when the number of compensable injuries and diseases is falling, the costs of workers' compensation premiums for employers are increasing. A number of factors may be contributing to this outcome. One may be that the cost of a work-related injury is increasing due to the worker staying on benefits for a longer period because of ineffective rehabilitation and return to work programmes provided by the schemes. The available evidence indicates that there has been a fall in national return to work rates of injured workers.

29. As the HoRSCEWR Report observes, workers' compensation schemes should aim to provide workers with a meaningful and sustainable outcome following a workplace injury. The structure of the current workers' compensation arrangements is not delivering this desirable outcome as evidenced by the number of injured workers who are forced to rely on taxpayer funded income support schemes for assistance.

RESPONSES TO RECOMMENDATIONS

Recommendation 1

The Committee recommends that the Minister for Employment and Workplace Relations request that the Workplace Relations Ministers' Council (WRMC) conduct a study to identify the extent to which workers are currently not covered by any workers' compensation system, with a view to adopting a national standard that covers the widest possible number of workers.

Government Response

30. The Government agrees with this recommendation in-principle.

31. The Productivity Commission examined the extent to which workers are currently covered under existing workers' compensation schemes. The Productivity Commission's report stated that there has been an increasing variation in the nature of work relationships between workers and employers as contracting, casualisation and part-time work have increased. This has had implications for the distinction between those workers regarded as employees and required to be covered by workers' compensation schemes and workers who are regarded as self-employers and contractors and are responsible for their own cover. The Productivity Commission's report stated that the Australian Bureau of Statistics (ABS) survey of employment arrangements and superannuation estimated that, of the total employed persons of 8.73 million, 73 per cent reported they were covered by workers' compensation. The Productivity Commission concluded that, using all the available evidence that approximately three-quarters of employed persons are covered by workers' compensation schemes.

32. Further to this finding the Productivity Commission's report identified and recommended several principles to be used when determining if an employee will be covered under compulsory workers' compensation schemes. These include:

- employer control, recognising that common law 'contract of service' provides a solid basis for defining an employee in most situations;
- consistency with other legislation, to capture significant informational benefits and cost savings; and
- durability and flexibility, to deal with a wide variety of work arrangements.

33. In view of these findings made by the Productivity Commission regarding compensation coverage of workers the Government considers that an additional study is not required. The Government will refer the Productivity Commission's recommended principles to the Australian Safety and Compensation Council (ASCC) for consideration and development under the guidance of the WRMC.

Recommendation 2

The Committee recommends that the Commonwealth Government, in collaboration with the State and Territory workers' compensation authorities, and with other stakeholders, look at the need to amend the Australian and New Zealand Standard Industrial Classification in relation to its applicability to workers' compensation systems and interjurisdictional consistency.

Government Response

34. A review of the Australian and New Zealand Standard Industrial Classification (ANZSIC) system is currently being undertaken by the ABS and Statistics New Zealand. The result of this review will form a revised set of ANZSIC codes to be implemented in 2006.

35. The current review of the ANZSIC codes has the following objectives:

- recognition of the changing needs of users of industry data;
- implementation of a purer conceptual framework (that is, a supply side, production function framework. The supply-side concept prescribes that economic units that engage in identical or similar production or service-delivery processes be grouped together into common industry categories);
- identification of new and emerging industries;
- updating industry descriptions to reflect the adoption of new materials, technologies and production techniques; and
- the provision to develop alternate industry views.

36. State workers' compensation authorities are being given the opportunity to provide input to the review and to comment on proposed revisions. Subject to the establishment of the ASCC, the National Occupational Health and Safety Commission (NOHSC) will continue to coordinate the input on the review from the States and Territories and contribute to the review as part of its responsibility to collect consistent national workplace injuries and disease data.

Recommendation 3

The Committee recommends that the Minister for Employment and Workplace Relations request that the WRMC continue to work towards the introduction of nationally consistent Memoranda of Understanding between the jurisdictions to ensure that employees have equivalent workers' compensation cover when working in other jurisdictions.

Government Response

37. The Government supports this recommendation.

38. The Government agrees that the current position can operate unfairly for both employers and employees and that gaps in coverage can arise. This matter is a standing item on the agenda of WRMC. While progress in achieving nationally consistent arrangements has been slow, legislation is now in place in a number of jurisdictions and the others are working towards implementing the necessary arrangements.

Recommendation 4

The Committee recommends that the Commonwealth Government:

- examine the need to extend the National Data Set for Compensation-based Statistics, to provide nationally relevant workers' compensation data that assists meaningful interjurisdictional comparisons for policy analysis and contributes to the development of a national framework.
- further investigate the implications and appropriateness of a national database on workers' compensation claims which identifies injured workers, employers, service providers and insurance companies.
- further investigate the implications and appropriateness of additional data matching capacity between Commonwealth agencies and the State and Territory workers' compensation authorities.

The Committee strongly believes that confidentiality should be exercised in relation to the use of these databases.

Government Response

39. The Government agrees that the availability and reliability of statistical data on workplace safety and workers' compensation outcomes for policy analysis and data matching should be further investigated and extended, where appropriate.

40. The Government has made a significant contribution to improving the quality of data available in this area over recent years.

41. The national comparative performance monitoring (CPM) project has been the major driver in improving and making available comparable national data on workplace health and safety and workers' compensation outcomes. The CPM project is an initiative of the Government under the auspices of the WRMC and has met the costs associated with its development.

42. The Government also fully funds the ongoing maintenance and development of the National Data Set for Compensation-based Statistics (NDS) which is currently managed by NOHSC. The NDS is the primary source of national OHS statistics on workplace injuries and diseases.

43. Improving the quality and availability of data are core objectives of the CPM project and the NDS. NOHSC has recently completed the third review of the NDS. This review was undertaken in close consultation with each of the Australian and New Zealand workers' compensation jurisdictions with the aim of producing a workers' compensation data set that further assists meaningful inter-jurisdictional comparisons for policy analysis. It is expected the revised data specifications will be implemented from 1 July 2005.

44. Further, the NOHSC National OHS Strategy identifies comprehensive OHS data collections as an area requiring national action. The proposed actions to address this include:

- extending data coverage;
- developing consistent definitions and measurement principles; and
- extending systems to allow timely reporting and provisions of information.

45. The Government agrees that this will need to be addressed to enhance inter-jurisdictional comparisons, including international comparisons.

46. Data matching between Australian Government agencies and the State workers' compensation authorities offers potential benefits to both parties and in the longer term to employers and employees. The Government considers the use of data matching can assist to increase compliance by employers with statutory obligations, assist to eliminate double-dipping for benefits across the schemes and identify possible use of taxpayer schemes for work-related injuries.

47. The Report directly refers to two Australian Government agencies, Centrelink and Department of Family and Community Services. However, it is possible for the Australian Department of Health and Ageing and the Australian Tax Office (ATO) to be included as part of the broader range of agencies referred to. The provision of health data under the *Health Insurance Act 1973*, is subject to restrictions contained within that Act. Under section 16(4)(g) of the *Income Assessment Act* officers of the ATO can provide certain information to the Australian Governments workers' compensation scheme, Comcare. All Australian Government agencies, however, are subject to the *Commonwealth Privacy Act 1988*.

48. While recognising the benefits of data matching of databases, the Government is mindful of potential privacy implications. Data matching programmes should comply with current legislation relating to privacy in order to protect employers and employees. To ensure high standards of privacy protection, programmes should comply with the *Use of Data-matching in Commonwealth Administration Guidelines* issued by the Privacy Commissioner. Privacy standards may be further enhanced by the development of appropriate guidelines and protocols where Australian government agencies and State and Territory workers' compensation authorities seek to establish an exchange of information on an employer or employee.

49. Accordingly, the Government will ask the Attorney-General Department or the Federal Privacy Commissioner, as appropriate, for advice on privacy guidelines and protocols which could be used on any data matching arrangements in this area. The Government will ask the Minister for Employment and Workplace Relations to refer the guidelines to the WRMC to settle.

Recommendation 5

The Committee recommends that the Commonwealth, with the States and Territories, conduct a qualitative study of injured workers who have received a lump sum or who have been in receipt of workers' compensation benefits for twelve or more continuous months, to identify if they have subsequently accessed income support entitlements and to determine the extent to which this system is subsidising the workers' compensation industry.

Government Response

50. The Government agrees with this recommendation in-principle.

51. The Productivity Commission examined the extent of cost-shifting away from, or to, workers' compensation schemes. The Productivity Commission reported that in 2003 NOHSC estimated the cost to injured employees, their employers and the rest of the community of work-related injury and disease to be in excess of \$31 billion. Using a methodology previously devised by the Industry Commission for the distribution of costs between employers, employees and the wider community this imply that:

- around \$9 billion is borne by workers and their families;
- around \$12 billion is borne by employers in workers' compensation costs, lost productivity and extra overtime; and
- around \$9 billion is borne by the general community, mostly in social security benefits and health subsidies. The community's share increases with the severity of the consequences.

52. The Government considers that an increased emphasis on greater national consistency in workers' compensation, as recommended by the Productivity Commission, will seek to reduce cost-shifting. The proposed ASCC will play a pivotal role in this area.

Recommendation 6

The Committee recommends that the Minister for Employment and Workplace Relations work with the WRMC to develop a set of benchmarks and best practice for all aspects of workers' compensation, to ensure that the responsibility for assisting people suffering compensable injuries rests with the compensation authorities and not with taxpayer funded social security programmes or the burden placed on the injured worker.

Government Response

53. The Government supports this recommendation in-principle.

54. The Government considers that primary responsibility for the costs of a work-related injury or disease should reside with the employer and not with taxpayer funded social security programmes or place unreasonable burdens on the injured worker. Insurance for work-related injuries and disease is compulsory for employers under State Government legislation. The State workers' compensation schemes that provide this compulsory insurance should encompass the cost of a work-related injury or disease.

55. The Productivity Commission made an extensive examination of injury management practices by the schemes as well as the structure of benefits which can impact upon an injured workers' ability to return to work and to be fully compensated so that they do not have to rely on social security programmes. The Productivity Commission recommended a set of principles for both injury management and structure of statutory benefits. The Government will refer these sets of principles to the ASCC to consider when developing scheme design elements for a nationally consistent workers' compensation framework.

Recommendation 7

The Committee recommends that the Commonwealth Government urgently investigate the extent to which current taxation legislation is inhibiting initiatives of workers' compensation schemes which may benefit the injured workers, such as structured settlements.

Government Response

56. *The Taxation Laws Amendment (Structured Settlements Orders) Act 2002* received Royal Assent on 19 December 2002. Structured settlements and structured orders involve compensating seriously injured persons with regular payments over their lifetime rather than

as a one-off lump sum. Structured settlements/orders are only available to individuals who receive lump sum compensation arising out of a common law action. The legislation provides an income tax exemption for annuities and certain deferred lump sums paid under structured settlements to seriously injured persons in order to encourage the take-up of structured settlements and structured orders among plaintiffs who may not otherwise take compensation in the form of periodic payments.

- Personal injury victims who receive large payments may be unable to properly manage their lump sum. As a result, they can become reliant on the social security and public hospital systems. A lifetime annuity received as part of a structured settlement will provide these people with financial security.

57. Compensation payments under statutory workers' compensation schemes already provide access to periodic payments and they are being utilised.

58. The Productivity Commission examined the implications of retaining, limiting or removing access to the use of common law damages for work-related injuries and illness and fatalities. It recommended that there should not be access to common law on the grounds that it can provide a lump sum compensation which may prove inadequate to the longer term needs of seriously injured workers. If common law was to be included then it should be restricted. The Productivity Commission recommended some restrictions and principles to be considered if common law was retained. The Government will refer these principles to the ASCC for consideration and progression.

Recommendation 8

The Committee recommends that the Minister for Employment and Workplace Relations work with the WRMC to develop a process for identification and national implementation of best practice to consider initiatives such as the Queensland Government's approach of educating and maintaining a close relationship with doctors and requiring them to fill out a form declaring that the injury is work related.

Government Response

59. The Government endorses implementation of best practice initiatives to improve the operation of national workers' compensation arrangements. Initiatives such as education programmes for medical practitioners that explain the workers' compensation system and their role as the treating practitioner have merit. It is well recognised that the medical practitioner has a key role to play in the successful rehabilitation and return to work of an injured worker.

60. The Government does have reservations about placing additional administrative and compliance burdens on general medical practitioners and has reviewed its arrangements for information collection from general practice through the establishment of the Red Tape Taskforce in May 2003. The aim of the review is to bring about short and longer-term reduction in red tape facing General Practitioners (GPs) while ensuring they can continue to provide high quality medical care and achieve health outcomes without the burden of complex paperwork.

61. The Government is committed to working with GPs to ensure that administrative arrangements connected with Government programmes are streamlined and kept to a minimum. In response to the recommendations of the Red Tape Taskforce the Department of Health and Ageing established the GP Communications and Business Unit. The Government

will consult with this unit on this recommendation before addressing this recommendation further with the ASCC.

Recommendation 9

The Committee recommends that the Commonwealth Government determine the extent to which the medical expenses of injured workers are being met by Medicare and the extent to which this system is subsidising the workers' compensation industry.

Government Response

62. The Government agrees with this recommendation in-principle.

63. The *Health and Other Services (Compensation) Act 1995* (HOSCA) allows for the recovery of all medical and/or residential care costs to be recovered, if a judgement or settlement relating to a compensation claim is over \$5,000. All judgements or settlement under \$5,000 are exempt under the recovery process, as it is not financially viable to recover such small amounts.

64. As to the extent to which Medicare is subsidising the workers' compensation industry this could occur under HOSCA where the judgement or settlement is under \$5,000 but to the extent there is subsidisation it has been found to be uneconomical to recover such moneys as they are of minimal value. A review found that for the period July 1997 to June 1999 an amount of \$2.86 million per year could be attributed to compensation judgements or settlements with a value under \$5,000.

65. The Productivity Commission examined the incident of cost-shifting, as previously cited, and has gone further by recommending principles to be used in the development of nationally consistent structure of benefits, which includes:

- all reasonable medical and rehabilitation expenses to be reimbursed by the scheme; and
- the scheme structure, and health and income support schemes to minimise the extent of any cost shifting.

66. The Government notes that the Productivity Commission recommended a statutory benefits structure situated under a national framework that includes elements of HoRSCEWR recommendation. The Productivity Commission's recommendation will be referred to the ASCC to consider and progress.

Recommendation 10

The Committee recommends that the Minister for Employment and Workplace Relations work with the WRMC to implement a process whereby the relevant agencies or authorities in each jurisdiction forward educational material to the injured worker on the various options available and the possible associated pitfalls, and offer financial counselling and support through Centrelink with the view to ensuring a timely return to work where possible.

Government Response

67. The Government agrees with this recommendation.

68. The Government endorses the Committee's view that workers' compensation schemes should aim to provide workers with a meaningful and sustainable outcome following a

workplace injury. This, the Committee considered, is best achieved by a return to work appropriate to the worker's capability and supported by rehabilitation and retraining as required. In order to receive the necessary assistance the injured worker needs to be fully informed and aware of the options that are offered as part of the compensation package.

69. It is recognised that some injured workers may be attracted to the lump sum settlement options, either by way of a common law payout or redemption of future benefits, which are available under most Australian workers' compensation schemes. The various schemes actively encourage lump sum settlements, particularly redemptions, as a means of ceasing further obligations to the injured worker. Injured workers may also be encouraged by their legal representative to pursue a lump sum settlement under the extensively promoted "no win, no fee" arrangement. However, it may not be in the long-term interest of the injured worker to forego future access to rehabilitation and return to work services that cease on taking a settlement.

70. For these reasons, the Government endorses the Committee's proposals and will ask the Minister for Employment and Workplace Relations to refer this matter to the ASCC for advice.

Recommendation 11

The Committee recommends that the Commonwealth Government, in collaboration with the States and Territories, develop a programme to implement the National Occupational Health and Safety Commission *Guidance notes for best practice rehabilitation management of occupational injuries and disease* nationally

Government Response

71. The Government agrees with the view expressed by the Committee in its Report that the best long term prospects for an injured worker lies in a safe and timely return to work. To achieve this goal the injured worker should have access to effective rehabilitation and return to work services from a workers' compensation scheme and the injured worker needs to cooperate fully and participate in the services offered.

72. The Government also agrees that work should commence to develop a programme to implement nationally consistent standards for rehabilitation and return to work services. In this regard, NOHSC's guidance notes, identified by the Committee, do provide a good starting point. There are also State workers' compensation authorities' guidance notes that can be examined to identify best practice in order to develop national standards that are in the interest of injured workers.

73. The work of the WRMC will be assisted by the report of the Productivity Commission inquiry which examined the most appropriate workplace based injury management approaches. The Government believes there is a need to shift away from the traditional approach to rehabilitation management that generally does not have a workplace focus and may have limited, if any, involvement of the employer. A system that is built on early intervention and integrates medical and rehabilitation process with employment practices offers the prospect of delivering improved outcomes for the injured worker and the employer.

74. The Government will ask the Minister for Employment and Workplace Relations to refer this recommendation to the ASCC for advice as soon as possible.

Recommendation 12

The Committee recommends that the Minister for Employment and Workplace Relations work through the WRMC to eliminate vertical integration whereby insurance companies own and operate rehabilitation and return to work providers.

Government Response

75. The Government notes the Committee's concerns that where insurance companies own and operate rehabilitation and return to work providers there is inadequate accountability on the companies in respect of financial interest on the cost of the claim and providing services that ensure the best long-term outcome for the injured worker. To eliminate this form of vertical integration, as recommended by the Committee may, however, remove possible benefits and savings to the workers' compensation system.

76. The Government recognises there is need to ensure appropriate, consistent and outcome focussed standards are in place for providers of rehabilitation and return to work services to compensation claimants.

77. Currently each workers' compensation scheme has in place a system or mechanism for the accreditation of rehabilitation and return to work providers. Some schemes have established standards that cover areas such as a service philosophy focussed on return to work; staffing qualifications; case management protocols; and financial status. Each scheme also generally undertakes auditing or monitoring of providers and implements a performance based engagement.

78. The Government considers that it would be in the interest of injured workers and the rehabilitation industry if consistent standards were in place across the ten workers' compensation schemes operating in Australia. To this end, the Government will seek the cooperation of the State Governments through the ASCC to adopt consistent standards for the accreditation of rehabilitation and return to work providers.

Recommendation 13

The Committee recommends that the Commonwealth Government, in collaboration with the States and Territories, investigate the potential interface of Commonwealth employment schemes with State re-employment programmes to develop more effective ways to assist injured workers to return to work, including communication of this information to providers who are responsible for return to work programmes, without additional cost to the Commonwealth.

Government Response

79. The Government accepts this recommendation in-principle.

80. National return to work of injured workers rates are falling. Available data indicates that there has been a decrease in national return to work rates – the national durable return to work rate was 73 per cent for the year 2002-03⁶. A further indicator of performance in this

⁶ *Opt cit* 6th CPM Report, page 106.

area is the duration of injury rates. Over 20 per cent of injured workers who are compensated for one week or more off work are still on compensation after 12 weeks⁷.

81. The re-employment programmes operated by some State workers' compensation authorities while a good initiative are limited. For example, under the NSW JobCover Placement Programme the full range of financial incentives is only available to NSW employers who pay a premium or self-insure in that State. Interstate and Commonwealth employers are not eligible to premium exemption for the injured worker or protection against second injury costs. State programmes also do not have access to the full range of employment opportunities available in that State and what may be available in other jurisdictions.

82. The Government provides employment assistance through Job Network which is a diverse national network of just over 100 private and community organisations operating at over 2500 sites Australia-wide. Under the Active Participation Model, which commenced on 1 July 2003, Job Network members can refer eligible job seekers to complementary programmes provided by Australian Government and State governments and other agencies. These programmes assist jobseekers to develop skills and competencies and overcome difficulties in gaining employment. There is, therefore, scope for jobseekers returning from workers' compensation to be referred to Complementary Programmes to assist in their reemployment.

83. The Australian Government has signed Memorandums of Understanding (MOU) on cooperation in complementary employment programmes with the Governments of Victoria, Queensland, South Australia and Tasmania, and discussions with the remaining jurisdictions are continuing. Through these MoUs there is some scope to work with State Governments to successfully retrain workers compensation recipients via both Commonwealth and State programmes and therefore equip them for new careers.

84. The existing State-based workers' compensation arrangements with their varying conditions and terms would hinder any attempts to open up Australian Government employment programmes to injured workers. The Government, therefore, considers it is necessary to address the fundamentals of the various workers' compensation schemes before looking at opportunities to use the Australian Government employment programmes.

85. The Government will recommend that the ASCC consider the issue when considering design elements of schemes to gain consistency in workers' compensation framework.

Recommendation 14

The Committee recommends that the Commonwealth Government support and facilitate where possible the development of a national framework to achieve greater national consistency in all aspects of the operation of workers' compensation schemes.

Government Response

86. The Government agrees that where possible there should be greater national consistency in the operation of workers' compensation schemes and has already taken steps to implement the recommendation.

⁷ *Opt cit* 6th CPM Report, page 27.

87. The Government asked the Productivity Commission to report on possible national framework models to deliver comprehensive and consistent workers' compensation schemes across Australia. The ASCC will consider design elements to gain consistency in all aspects of the operation of workers' compensation schemes.

Recommendation 15

The Committee recommends that the Minister for Employment and Workplace Relations work with the WRMC to develop, in consultation with other relevant Ministers in each jurisdiction, a national code of practice for those engaged as investigators in pursuing potentially fraudulent claims.

Government Response

88. The Government agrees with this recommendation.

89. The Government notes that most workers' compensation schemes have in place standards and rules covering claim investigators. For example, the Victorian WorkCover Authority has developed a Code of Practice for Private Investigators. The Government sees merit in developing a national code of practice covering workers' compensation claims investigators and the Victorian code could be used as a model. It would be appropriate that the development of any national code be undertaken in consultation with industry representatives and relevant Ministers in each jurisdiction.

90. The Government will ask the Minister for Employment and Workplace Relations to refer this recommendation to the ASCC to consider and progress.