

**House of Representatives Standing Committee
on Employment and Workplace Relations**

**Inquiry into Aspects of
Australian Workers'
Compensation**

**Submission from the
Victorian Government**

Submission to the Inquiry into Aspects of Australian Workers' Compensation

Terms of Reference

The Federal Minister for Employment and Workplace Relations has asked the House of Representatives Employment and Workplace Relations Committee to conduct an inquiry into aspects of Australian workers' compensation schemes in respect of:

- the incidence and costs of fraudulent claims and fraudulent conduct by employees and employers and any structural factors that may encourage such behaviour;
- the methods used and costs incurred by workers' compensation schemes to detect and eliminate:
 - (a) fraudulent claims; and
 - (b) the failure of employers to pay the required workers' compensation premiums or otherwise fail to comply with their obligations; and
- factors that lead to different safety records and claims profiles from industry to industry, and the adequacy, appropriateness and practicability of rehabilitation programs and their benefits.

Summary

- For the third year running the Victorian average WorkCover premium rate will remain at 2.22% of remuneration and for the second year running, businesses with an annual remuneration of \$1 million or less will have their premium calculated at the same rate in 2002/03 as in the previous year. This will give more than 90% of Victorian businesses certainty in relation to their WorkCover premiums during a very unstable period in the insurance market.

- Through better management, the Victorian WorkCover Authority's (VWA) finances are improving after the scheme absorbed a billion dollars of liabilities resulting from the GST and pre-1997 common law claims. The Government will continue its good management of the WorkCover scheme by implementing an improved claims management system during 2002. VWA will also progressively introduce a simpler and fairer premium system.
- The incidence and associated cost of fraud in respect of employers in the scheme is relatively low. In the 5 year period between the 1993/94 and 1997/98 financial years a total of \$45 million in unpaid premium was recovered. This compares to total premium collection over the period of \$4.4 billion or approximately 1% of total premium.
- Benefit fraud is detected through agents, targeted programs and in response to complaints. In the 2000/01 financial year 429 complaints were received. Twenty six fraud related prosecutions were finalised during the same period. The total amount of restitution or compensation recovered for the 2000/01 financial year in relation to benefit fraud was \$286,578. This figure does not include the impact on liabilities of reducing benefit fraud.

Introduction

In order to provide a context for the issues raised in the Committee's terms of reference this submission will provide some background to the current focus of the Victorian WorkCover Authority (VWA) and its projects and achievements over the last two and a half years. It is hoped that this context will put the narrow scope of the Committee's inquiry into perspective.

Broadly the responsibilities of the VWA are to:-

- help prevent workplace injuries occurring;
- enforce Victorian's occupational health and safety laws;
- provide reasonably priced insurance for employers;
- help injured workers back into the workforce; and
- manage the workers' compensation scheme by ensuring the prompt delivery of appropriate services and adopting prudent financial practices.

VWA administers legislation of the Victorian Parliament that covers:

- health, safety and welfare in the workplace under the *Occupational Health and Safety Act 1985*.
- workers' compensation and the rehabilitation of injured workers under the *Accident Compensation Act 1985* and the *Accident Compensation (WorkCover Insurance) Act 1993*.
- explosives and other dangerous goods under the *Dangerous Goods Act 1995*.
- the transport of dangerous goods by road under the *Road Transport Reform (Dangerous Goods) Act 1995*.
- high risk equipment used in public places and on private premises under the *Equipment (Public Safety) Act 1994*.

These Acts are supported by more detailed subordinate instruments – regulations, orders and codes of practice.

The VWA's funding is derived from insurance premiums paid by Victorian employers. In 2000/01 this totalled \$1.6 billion or an average of 2.22% of the insured firms' total remuneration. Supplementing these funds are the returns generated by the money VWA holds in trust for injured workers.

Financial Position

The Committee is referred to the 2000/01 Annual Report of the VWA. The Chair of VWA, James MacKenzie stated in his report that the scheme's revised unfunded liabilities as at 30 June 1999 were \$771 million – almost \$480 million higher than originally estimated and reported.

The failure to anticipate the surge in claims at the time that old common law was abolished in November 1997, coupled with the failure to effectively manage the old common law system when it was in place, were symptomatic of a WorkCover scheme that had not been properly managed for a decade.

The unfunded liabilities as at December 2000 were estimated at \$1074 million. This also reflected the \$190 million additional unrecoverable impact of the GST on liabilities.

Despite the task of managing these liabilities the scheme is showing signs that it is beginning to stabilise. Financial highlights for the six months to 30 June 2001 included an actuarial release of \$130 million, a \$390 million half year profit and improvement in funding ratio. The notional full year profit for the scheme was \$317 million.

The scheme also recorded an operating profit of \$149 million for the six months ending 31 December 2001 – the second successive half-yearly operating profit – and the first time since 1995 that the scheme has recorded successive profits. In addition at 31 December 2001, the scheme also achieved its second successive actuarial release with a write down in projected liabilities of \$28 million.

For the third year running the Victorian average WorkCover premium rate will remain at 2.22% of remuneration and for the second year running, businesses with an annual

remuneration of \$1 million or less will have their premium calculated at the same rate in 2002-03 as in the previous year. This will give more than 90% of Victorian businesses certainty in relation to their WorkCover premiums.

Strategy 2000

During 2000 the VWA set about determining its key challenges for the future. These are: reducing the number of deaths and injuries in Victorian workplaces and ensuring that injuries and the claims they create are effectively managed. The Committee is referred to Strategy 2000 which is the VWA's blueprint for achieving these key outcomes for the WorkCover scheme and the Victorian community. Strategy 2000 focuses on three key issues:-

- Increasing the emphasis on prevention;
- Developing more effective claims management; and
- Revitalising the VWA organisation.

Focus on Prevention

The focus on prevention is driven by a constructive compliance policy. Constructive compliance relies on both positive motivators and deterrents. The strategy involves encouragement for effective workplace health and safety through information and education, investment in health and safety and an improved premium system. The strategy also entails strong deterrence for poor performance which includes a greater emphasis on the regulatory role of the VWA and increased prosecutions and regulatory notices when the legislation is breached.

The focus on prevention has specifically targeted the following areas:

- the four worst industries: manufacturing, construction, transport and storage, public sector and community service;
- the 100 worst employers that have the most to gain from improving their health and safety record;
- common injury types, in particular, strains and sprains;

- ensuring that work related fatalities are reduced;
- major hazard facilities – implementing the new major hazard regulations introduced as part of the recommendations of the Longford Royal Commission.

Claims Management

An important aspect of the turnaround of the WorkCover scheme is the VWA's innovative approach towards claims management.

Bill Mountford, the Chief Executive of VWA, reported in the 2000/01 Annual Report that an intensive focus on common law claims in the past two and a half years and in particular old common law has seen WorkCover adopt a number of strategies aimed at better managing common law. The success of this approach has led the organisation to undertake the Claims Management Review which identified the structure and work practices VWA required to successfully manage claims into the future.

The results of the review led to the announcement of major reforms in April 2002. VWA is implementing a new performance based system for WorkCover agents which will deliver better outcomes for injured workers, through better treatment and return to work and – ultimately – lower costs for Victorian business.

A new panel of WorkCover agents was appointed to manage the employer premium and injured worker compensation elements of the scheme. An extensive open tender process selected the new agents with the view to delivering the significant changes the VWA phased in from 1 July 2002.

In designing the new system the VWA has incorporated the most successful elements of workers' compensation systems from throughout the world. All members of the new agent panel are required under their contracts to meet the new performance standards set by the VWA which will be audited and monitored.

An element of effective claims management is ensuring the right benefit is paid and the right treatment is provided at the right time to enable effective return to work. One aspect of this strategic claims management approach is ensuring those who are not entitled to benefits do not continue to access benefits. Benefit fraud is detected

through agents, targeted programs and in response to complaints. Unlike other states, when a claim is accepted under the Victorian system the employer pays the employee directly (in the majority of cases) and the VWA reimburses the employer. Any systemic fraud may involve the employee and the employer. The new claims management model envisages a stronger reliance on agents managing claims including appropriate use of private investigators to establish the original and ongoing entitlement to benefits.

In the 2000/01 financial year 429 complaints were received. Twenty six prosecutions were finalised during the year. The total amount of restitution or compensation recovered for the 2000/01 financial year in relation to benefit fraud was \$286,578. This figure does not include the impact on liabilities of reducing benefit fraud.

Premium

Premium Review

The VWA is currently conducting a premium review to implement a simpler and fairer system for premium calculation. The premium review was established in 2001 to:

- Simplify the WorkCover premium system;
- Improve communications with employers; and
- Increase incentives for employers to improve their safety and return to work performances.

The Victorian Government has reiterated the importance of the premium review in its business statement *Building Tomorrow's Businesses Today*.

Reforming the premium system is expected to deliver significant benefits including fewer injuries, better return to work outcomes, fairer and more equitable premiums, lower costs for employers and the VWA. Qualitative benefits include: less complexity, less volatility unrelated to behaviour, greater transparency and more choice.

Premium collection 2000/01

In 2000/01, the VWA received about \$1.6 billion in premium revenue from Victorian employers covered by WorkCover. This represents an average rate of 2.22 per cent of the insured firms' total remuneration. All employers that are not self insured with remuneration above \$7,500 are required to take out a WorkCover insurance policy, while VWA covers employers with remuneration under \$7,500 without charge unless a claim is made.

Each workplace of an employer is classified to an industry as defined by the WorkCover Industry Classification (WIC) system. Premiums for the 94 per cent of employers who have remuneration of less than \$650,000 are almost totally based on the rate prevailing in their industry. As firms get larger, so too does the proportion of the premium based on the firm's own experience.

Employers take out a WorkCover premium with one of the seven VWA agents. As the "frontline" service delivery arm of the VWA, agents' responsibilities and activities include:

- issuing WorkCover insurance policies to employers;
- collecting employer's premium;
- administering and managing workers' claims for compensation;
- facilitating and managing return to work;
- assisting employers with injury and claim prevention; and
- providing information and educating employers and workers about their obligations.

These agents compete for the business of employers based on the quality of their service provision (rather than price).

The VWA also performs certain roles in premium collection including an annual Premiums Order made by the Governor-in-Council (which sets out the formula under

which individual premiums are calculated), providing computer support and banking facilities.

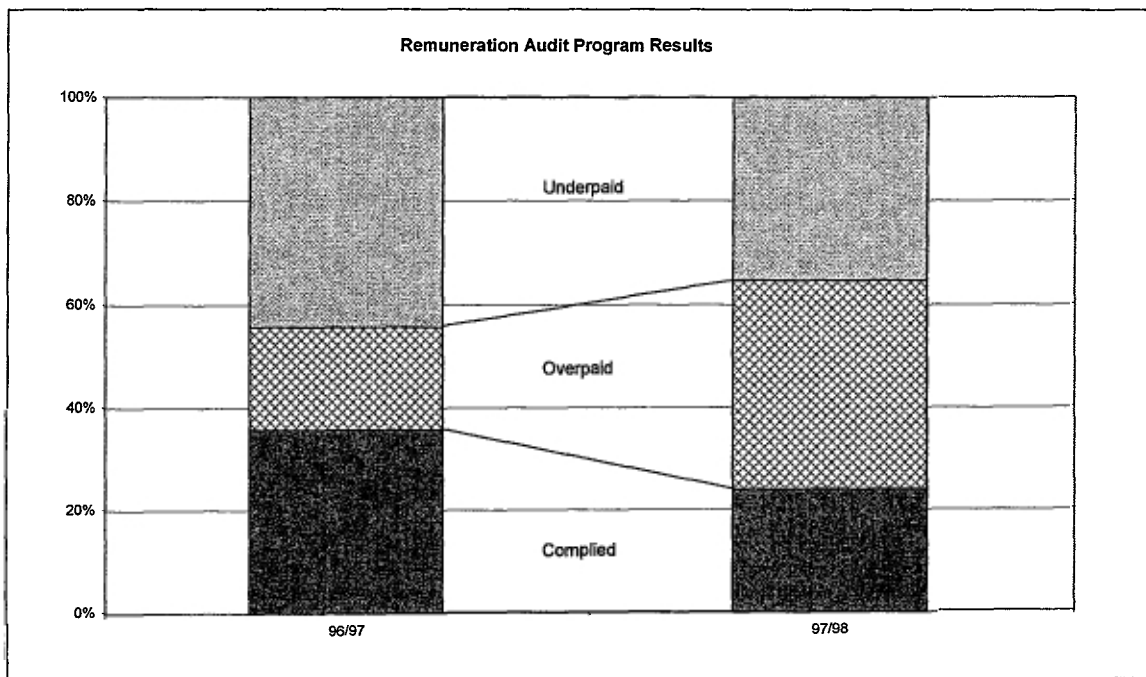
The VWA operates an audit process for premiums. The audit of employers is conducted to ensure employers pay the correct premium in accordance with the legislation. Audits review the employer's rateable remuneration and may include a review of the employer's workplace industry classification. The audits are completed on a program basis, with each program based on the financial year to be audited.

For the remuneration audit program for the year 1997/98 5,257 audits were conducted from an allocated 6,200. For all audit programs over the period 1993/94 to 1997/98, 26,310 audits were conducted.

The following diagram shows the results of selected audit programs. The Remuneration Audit Programs for 1996/97 and 1997/98 (not yet fully complete) show that the percentages of audited employers complying with or overpaying premium payments is higher than the percentage with underpaid premiums. This has been a consistent pattern over time. Any overpaid premium is offset against the premium that is required in future years from the employer.

It should be noted that the audit program is not entirely random. A proportion of employers are selected from the employing population at random, however, the majority of audits are risk targeted. Industries where there is known to be confusion in WorkCover Industry Classifications, or a high use of contractors or outworkers are frequently targeted. These include Building and Construction and allied industries, Clothing, and Manufacturing Industries as well as employers classified to administration type services, employment agencies, and wholesaling agencies.

Remuneration audit compliance data



In all audits covering the 1993/94 to 1997/98 period a total of \$45 million in additional revenue has been collected (with an additional \$5 million identified and in the process of being collected) from those employers that have underpaid premium. This compares to total premium collection over the period of \$4.4 billion.

The cost to VWA of conducting these audits was \$18 million. While these audits require significant resources to complete, the audit programs have had significant cash benefits to the WorkCover scheme. There is no quantification of their deterrent effect in achieving subsequent compliance from both audited and non-audited firms.

Safety records in different industries

VWA maintains claims records that it uses as the basis for targeting its occupational health and safety prevention activity. The health and safety performance of employers varies across industry sectors and within individual industry sectors. The variation across industry sectors occurs because of the differences in hazards and risks that workers are exposed to and the different systems of work employed. For instance office workers are exposed to few hazards that generally result in low risks to

workers. By contrast the construction sector has a large range of hazards that, in some cases such as working at height, represent high risks to workers.

The variation in performance within a particular industry sub-sector can be attributed to the commitment that individual employers have to the provision of healthy and safe workplaces. Committed employers will generally have occupational health and safety programs or initiatives in place that are effective in controlling risks to employees.

The following provides a summary of the claims data reported for the twelve months ended 30 June 2001 extracted as at 31 August 2001.

- A total of 32,539 compensated workplace injuries were recorded.
- The number of injuries per \$1 million remuneration (without super) during 2000/01 was 0.47 for all industries.
- Manufacturing industry workers had the highest proportion of injuries with 28.7 percent (9,330) of all injuries. The injury rate was also highest for manufacturing industry workers (0.89 injuries per \$1 million remuneration excluding super).
- During 2000/01 for claims reported, 943,749 work days were lost in all industries due to work injuries (does not include estimates, only days compensated to date).
- The average number of days compensated per injury was 29 (does not include estimates, only days compensated to date).
- Labourers and related workers sustained 24.2 per cent (7,894) of all industries injuries.
- The three occupations with the highest number of injuries in all industries were miscellaneous labourers and related workers 7.3 per cent of injuries, truck drivers 4.3 per cent of injuries and process workers 4.0 per cent of injuries.
- The most common nature of injury was sprains and strains, which accounted for 56 per cent of injuries in 2000/01.

- Over 24.5 per cent of all injuries sustained by workers in 2000/01 were back injuries. These injuries accounted for 29.7 per cent of work days absent (does not include estimates, only days compensated to date).
- Most commonly, injuries occurred from muscular stress while lifting, carrying or putting down objects, accounting for 21.4 per cent of all injuries.
- Fractures and dislocations, sprains and strains and open wound injuries accounted for 68.8 per cent of the total payments for all industries.

Compensated workplace injuries, number and rate, all industries 2000/01

Selected Industry	Number	Per cent of claims	Claims Frequency Rate (1)
Agriculture	809	2.5	0.82
Mining	121	0.4	0.58
Manufacturing	9,330	28.7	0.89
Utilities	189	0.6	0.35
Construction	2,810	8.6	0.73
Trade	4,513	13.9	0.36
Transport	2,476	7.6	0.80
Communications	49	0.2	0.19
Finance and business	2,015	6.2	0.13
Public administration	486	1.5	0.33
Community services	7,729	23.8	0.46
Recreational/personal services	1,987	6.1	0.55
Unclassified	25	0.1	N/A
All Industries	32,539	100	0.47

(1) Number of injuries per \$1 million remuneration (without super)

The Committee should note that different information is provided to the Workplace Relations Ministers' Council as part of the Comparative Performance Monitoring

Project. The fourth report of the Comparative Performance Monitoring Project will soon be available.

Rehabilitation and Return to Work

Improving return to work outcomes is a major focus of VWA's new claims management model, because it benefits not only the scheme but most importantly those it is designed to support – workers and employers. One important feature is the multidisciplinary model which offers a comprehensive and coordinated method of managing the rehabilitation and compensation aspects of a high risk claim. It encourages active management of high-risk claims in a manner that promotes an early and safe return to work and community activities in a cost-effective manner. When a new claim that is identified as high risk is received the case manager must undertake a three-point contact with the employer, the worker and the treating practitioner. The three-point contact is critical in establishing the employer's and worker's expectations and clarifying their obligations in the return-to-work process. This involves addressing in a systematic manner issues associated with Return to Work Plans, suitable duties, the employer/worker relationship, etc.

In April 2002 the Minister for WorkCover, the Hon. Bob Cameron, launched a new campaign aimed at improving return to work outcomes for Victoria's injured workers. The information campaign introduced new return to work guidelines which came into effect on July 1 this year and are designed to ensure injured workers receive appropriate support. A CD-ROM was sent to 180,000 Victorian employers and all employers have been encouraged to learn more about their return to work obligations through print, radio and television advertisements.

Employers have always had obligations to their injured workers but under the new return to work guidelines the specifics of those obligations have been made clearer. The new guidelines and supporting information campaign is designed to help improve average return to work rates in Victoria.

Conclusion

The new claims management system being introduced by the VWA will ensure the workers of Victoria are provided with the right benefits at the right time. The premium review will encourage employers to improve their health and safety performance and potentially reduce their costs. Return to work initiatives underway will enhance the working life of those who are injured at work and encourage employers to meet their statutory obligations. The VWA will continue to work towards achieving these key goals of the workers' compensation system.

The documents referred to are attached. Further information is available on the VWA's website at www.workcover.vic.gov.au.