



AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY 25 June 2003

National Workers Compensation and
Occupational Health & Safety
Frameworks Inquiry Productivity
Commission PO Box 80, Belconnen
ACT 2616

Dear Commissioners

**Subject: Australian Chamber of Commerce & Industry
Submission No. 81**

We attach supplementary background information and data to the ACCI submission to the Productivity Commission Inquiry into National Workers Compensation and Occupational Health & Safety Frameworks Inquiry.

Enforcement data

The data indicates an increase in enforcement activity, workplace inspections (20%), prohibition notices (97%) and improvement notices (48%) issued, prosecutions (20%) and court awarded fines increased (400%) during the 1998-1999 to 2000-2001 financial year period.

Legislative Change

One of the issue raised by members is the constant and never ending changes to OHS regulatory materials which has an impact on employers, particularly small employers, in that it is virtually impossible to keep abreast of the volume and complexity of change in one jurisdiction let alone keep abreast of the total volume of change for national employers operating across state borders.

In the period 1998-2003 our research has tracked 166 amending instrument and 1800 amendments - this is in all probability understated.

Volume of regulatory materials

In addition to the collection of data on enforcement activity the ACCI secretariat has begun to collate data on the amount of OHS regulation and relevant guidance material in each jurisdiction. To demonstrate the volume and complexity of the regulatory materials which employers have to understand and develop compliance strategies to manage.



ACCI House, Level 4 55 Exhibition Street, Melbourne VIC 3000
PO Box 18008, Collins Street East, Melbourne VIC 8003 Australia
Telephone: **61-3-9668 9950** Facsimile: **61-3-9668 9958**
Email: melb@acci.asn.au Website: www.acci.asn.au
ABN 85 008 391 795

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AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY **Comparative Performance Data**

This is data from the Fourth CPM Report August 2002, which highlights the increase in Workers Compensation Premium rates of 6% over the last four years against the reduction in the rate of injuries of 17%.

We advise that the data has been collated from a number of reliable sources but the data is as yet incomplete in some segments. We are working with the authorities to access the data to fill the gaps so that we can present full and accurate data sets.

We will make the final data sets available to the Commission when finalised.

Yours sincerely

David Shaw
Manager
Occupational Health & Safety

ACCI House, Level 4 55 Exhibition Street, Melbourne VIC 3000
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Enforcement data

New South Wales

	1998 -1999	1999 -2000	2000 -2001	2001 -2002
Workplace inspections	57,254	46,151	49,598	
Improvement notices	12,845	11,227	12,480	12,146
Prohibition notices	1,604	1,292	1,332	1,666
Infringement notices (on the spot fines)	2,993	2,179	1,636	
Prosecutions	672	586	467	550
Convictions	617	496	404	455
Court awarded fines	\$2,970,000	\$6,200,000	\$5,400,000	\$9,532,150

Unless otherwise stated the data has been obtained from the 4th Edition of the Comparative Performance Monitoring report, August 2002.

Victoria

	1998-1999	1999 -2000	2000 -2001	2001- 2002
Workplace inspections	48,859	63,066	63,519	50,343#
Improvement notices	1,735	2,763	6,867	11,922
Prohibition notices	1,059	2,468	2,752	3,102
Investigations	-	-	181 *	310*
Cases finalised	89	86	111	198*
Convictions	85	73	107	112*
Court awarded fines	1,076,250	2,134,500	1,662,800	6,011,800*

Unless otherwise stated the data has been obtained from the 4th Edition of the Comparative Performance Monitoring report, August 2002. # Provide by the Victorian WorkCover Authority

* Obtained from the Victorian WorkCover Authority Annual Report 2001-2002

Queensland

	1998 -1999	1999 -2000	2000 -2001	2001- 2002
Workplace inspections	7,106	8,701	11,300	8900+ #
Improvement notices	1,383	6884	9610	7364*
Prohibition notices	128	641	1996	
On the spot fines	142	118	188	
Prosecutions	129	43	55 (142# ?)	135*
Convictions	-	43	54	
Court awarded fines	\$260,000	\$444,000	\$935,000	\$1,500,000*

Unless otherwise stated the data has been obtained from the 4th Edition of the Comparative Performance Monitoring report, August 2002.

Queensland Workplace Prosecutions, Issue 5, November, 2002. *
DIR Annual Report 2001 - 2002 pp26-31

South Australia

	<i>1998-1999</i>	<i>1999 -2000</i>	<i>2000 -2001</i>	<i>2001- 2002</i>
Workplace inspections		5398	5873	10,325*
Improvement notices	152	267	532	1,025*
Prohibition notices	76	82	184	191
Investigations	-	1,326*	1,027*	1,229*
Prosecutions	12	6	1	8*
Convictions	12	6	1	8*
Court awarded fines	\$30,800	\$69,750	\$32,500	\$100,650*

Unless otherwise stated the data has been obtained from the 4" Edition of the Comparative Performance Monitoring report, August 2002.

- Department for Administrative and Information Services Annual Report 2001 - 2002, pp 30 - 40.

Western Australia

	<i>1998-1999</i>	<i>1999 -2000</i>	<i>2000 -2001</i>	<i>2001- 2002</i>
Workplace inspections	6,111	7,462	12,385	10,838
Improvement notices	9,542	9,224	8,460	9,818*
Prohibition notices	805	943	736	887*
Investigations		9,762 to May#	9,200 to May#	17,667*
Prosecutions	65	56	37	55*
Convictions	50	85??	36	29*
Court awarded fines	\$164,000	\$322,800	\$108,750	\$77,050 ?*

Unless otherwise stated the data has been obtained from the 4' Edition of the Comparative Performance Monitoring report, August 2002.

- Department of Consumer and Employment Protection - Annual Report 2001 - 2002

#Investigations sourced from attachment to 2003 April OHS Working Party Meeting Agenda item 4e.

Of interest:

<i>Investigations</i>	Target	Actual	<i>Info & Educ</i>	Target	Actual
Quantity	15,000	17,667	Qu entity	8,800	7,588
Cost p/unit	\$644.06	\$622.79	Cost phunit	\$385.70	\$468.00

Tasmania

	<i>1998-1999</i>	<i>1999 -2000</i>	<i>2000 -2001</i>	<i>2001 -2002</i>
Workplace inspections	8,777	9,039	11,866	
Improvement notices	105	333	498	
Prohibition notices	37	139	93	
Prosecutions	5	9	9	8*
Convictions	5	9	9	8*
Court awarded fines	\$66,000	\$115,250	\$51,000	\$35,500*

Unless otherwise stated the data has been obtained from the 4' Edition of the Comparative Performance Monitoring report, August 2002.

- Data received from Workplace Standards Tasmania.

Northern Territo

	1998 - 1999	1999 -2000	2000 -2001	2001 -2002
Workplace inspections	3,770	3,424	2,877	
Improvement notices	8	-	-	
Prohibition notices	31	38	19	
On the spot fines (Infringement notices)	179	67	49	
Prosecutions	1	4	3	
Convictions	1	4	1	
Court awarded fines	\$45,000	\$24,400	\$26,000	

Unless otherwise stated the data has been obtained from the 4th Edition of the Comparative Performance Monitoring report, August 2002.

Australian Capital Territory

	1998 -1999	1999 -2000	2000 -2001	2001- 2002
Workplace inspections	3,270	3,573	4,759	*5,030
Improvement notices	111	76	47	
Prohibition notices	91	74	42	
On the spot fines (Infringement notices)	-	-	-	
Prosecutions	15	4	2	*4
Convictions	1	1	0	*4
Court awarded fines	\$25,000	\$4,300	\$0	\$11,854

Unless otherwise stated the data has been obtained from the 4th Edition of the Comparative Performance Monitoring report, August 2002.

*Obtained from ACT WorkCover

Summary of jurisdictional enforcement activity of the Private Sector
July 1998 - June 2002

NSW		V C	L,D,		T S		NT	ACT	Total
Workplace inspections									
1998-1999	57,254	48,859	7,106		6,111	8,777	3,770	3,270	135,147
1999-2000	46,151	63,066	8,701	5,398	7,465	9,039	3,424	3,573	146,817
2000-2001	49,598	63,519	11,300	5,879	12,385	11,866	2,877	4,759	162,183
2001-2002		50,343	8,900	10,325	10,838			5,030	80,406
Total	153,003	225,787	36,007	21,602	36,799	29,682	10,071	16,632	529,583
Improvement notices									
1998-1999	12,845	1,735	1,383	152	9,542	105		111	25,881
1999-2000	11,227	2,763	6,884	267	9,224	333	-	76	30,774
2000-2001	12,480	6,867	9,610	532	8,460	498	-	47	38,494
2001-2002	12,146	11,922	7,364	1,025	9,818				30,129
Total	48,698	23,287	25,241	1,976	37,044	936		234	137,424
Prohibition notices									
1998-1999	1,604	1,059	128	76	805	37	31	91	3,831
1999-2000	1,292	2,468	641	82	943	139	38	74	5,677
2000-2001	1,332	2,752	1,996	184	736	498	19	42	7,559
2001-2002	1,666	3,102		191	887				5,846
Total	j 5,894	9,381	2,765	533	3,371	674	88	207	22,913
Prosecutions									
1998-1999	672	89	129	12	65	5		15	988
1999-2000	586	86	43	6	56	9	4	4	794
2000-2001	467	111	55	1	37	9	3	2	685
2001-2002	550	198	135	8	55	8		4	954
Total	2,775	484	362	27	213	31	8	25	3,925
Convictions									
1998-1999	617	85	-	12	50	5	1	1	771
1999-2000	496	73	43	6	85??	9	4	1	632
2000-2001	404	107	54	1	36	9	1	0	612
2001-2002	455	112		8	>29?	8		4	616
Total	1,972	377	97	27	171	31	6	6	2,631
Fines awarded by court \$									
1998-1999	2970000	1076250	260,000	30,800	164,000	66,000	45,000	25,000	4,637,050
1999-2000	6200000	2134500	444,000	69,750	322,800	115,250	24,000	4,300	9,314,600
2000-2001	5400000	1622800	935,000	32,500	108,750	51,000	26,000	0	8,176,050
2001-2002	9532150	6011800	1500000	100,650	>\$77,050?	35,500		11,854	17,269,004
Total	24,102,150	10,845,350	3,139,000	233,700	672,600	267,750	95,000	41,154	39,396,704

This data has been sourced from the Workplace Relations Ministers' Councils Comparative Performance Monitoring Report: Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand, August 2002, 2nd Edition, pp 88 - 89; and jurisdictions annual reports and information services.

There are still a number of gaps in the data, which are the subject of further inquiry and research.

Analysis of Enforcement Activity

ACCI conducted a review of enforcement activity data obtained from the WRMC Comparative Performance Monitoring Report: *Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand* (August 2002, 2nd Edition) for the 98-99, 99-00, and 00-01 financial years, and the jurisdictional authorities' annual reports for the 01 - 02 financial year.

For the July 1998 - June 2001 period the enforcement activity data indicates:

- An increasing trend in the number of workplace inspections undertaken by
Jurisdictional enforcement agencies.

	1998 - 1999	1999 - 2000	2000 - 2001
Workplace inspections	135,147	146,817	162,183

Workplace inspections increased by 20% from the 1998-99 financial year to the 2000 - 2001 financial year.

- An increasing trend in the number of improvement and prohibition notices issued by Jurisdictional enforcement agencies.

	1998 - 1999	1999 - 2000	2000 - 2001
Improvement notices	25,881	30,774	38,494
Prohibition notices	3,831	5,677	7,559

The number of improvement notices and prohibition notices issued increased respectively by 48% and 97% from the 1998 - 1999 financial year to the 2000 - 2001 financial year.

- A sudden decrease, followed by an increasing trend in the number of prosecutions, convictions and court awarded fines.

	1998 - 99	1999 - 00	2000 - 01	2001 - 02#
Prosecutions	988	794	685	954*
Convictions	771	632	612	612*
Court awarded fines	\$4,637,050	\$9,314,600	\$8,176,050	\$17,257,150*

*The 2001-2002 figures exclude data values for NT and ACT as these values were not available at the time of data collation. The 2001-2002 figures have been obtained through information requests to jurisdictional enforcement agencies and their respective annual reports.

h The 2001 - 2002 data has been included due to anecdotal evidence presented to ACCI by its members indicating an increasing trend in prosecutions and fines. As stated above data has been obtained from jurisdictional sources.

The number of prosecutions increased by 20% from the 1999 - 2000 financial year to the 2001 - 2002 financial year. Interestingly, Jurisdictional performance in prosecuting employers decreased from 612 convictions from 685 prosecutions in 2000 - 2001 (a success rate of 89%) to 612 convictions from 954 prosecutions in 2001 - 2002 (a success rate of 64%).

Court awarded fines have increased nearly four fold from the 1998 - 1999 financial year, doubling from 8 million to 17million during the last two financial years despite the drop in the success rate of convictions.

Summary of OHS Legislative Change: 1998 -2003

	No. Amending instruments ”	No. Amendments
ACT		
OHS Act	13	143
OHS Regulation	6	48
NSW		
OHS Act	11 (1 of which was revoked and entirely replaced with a new Act)	24
OHS Regulation	3 (Information regarding revoked Regulations has not been made available by NSW.)	4
NT		
OHS Act	14	215
OHS Regulation	3	19
QLD		
OHS Act	15	22
OHS Regulation	48	651
SA		
OHS Act	2	42
OHS Regulation	11	129
TAS		
OHS Act	4	117
OHS Regulation	1	1
VIC		
OHS Act	—	18
OHS Regulation	12 (4 of which were revoked and replaced)	202
WA		
OHS Act	3	3
OHS Regulation	15	158
TOTAL	166	1796

This data has been collated from the history notes of the principle OHS act and regulations in each jurisdiction. These acts and regulations were sourced from each jurisdictions legislation web-pages/databases.

Summary of the amount of regulations and guidance materials for each jurisdiction

Amount of Regulation

Jurisdiction	Principle OHS Act	Principle OHS Regulations	Other Relevant Acts	Other Relevant Regulations	Total
ACT	1	3	5	7	16
NSW	1	1	5	2	9
NT	1	1	6	7	15
QLD	1	1	1	1	4
SA	1	1	6	4	12
TAS	1	1	5	3	10
VIC	1	11	5	7	24
WA-	1	1	3	1	8
Total		20	36	34	98

Please note that the regulation counted above is only the regulation that falls under each jurisdiction's main OHS administering organisation, and as such this amount of regulation does not truly reflect the volume of legislation employers must comply with as other administering organisations are also responsible for issuing safety related regulation such as the Office of the Chief Electrical Inspector in Victoria that administers the Electrical Safety Act 1998 and seven Regulations.

Amount of relevant codes of practice/advisory standards and guidelines

Jurisdiction	Relevant Codes of Practice or Advisory Standards	Relevant Guidelines	Total
ACT	27	2	29
NSW	Not provided	Not provided	-
NT	3	6	9
QLD	31	Not provided	31
SA	11	6	17
TAS	2	31	33
VIC	20	Not provided	20
WA	31	19	50
Total	125	64	189

Please note that the code of practice/advisory standards and guidelines counted above is only the material that falls under each jurisdiction's main OHS administering organisation.

This data has been sourced from the Workplace Relations Ministers' Councils Comparative Performance Monitoring Report: Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand, August 2002, 2nd Edition, pp 54-61.

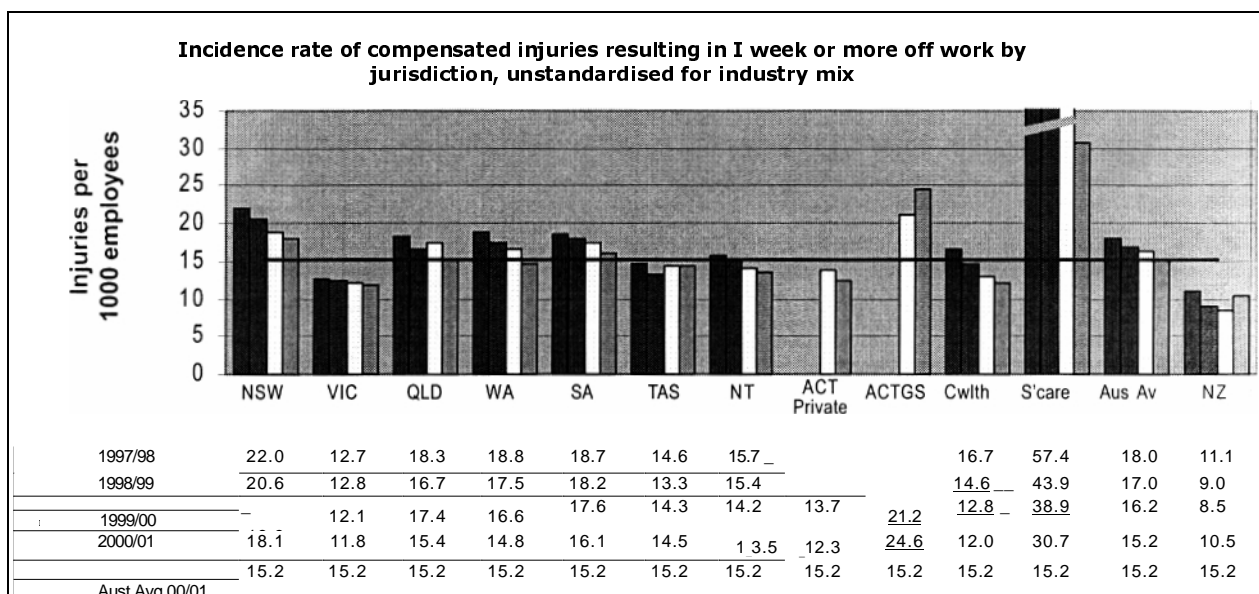
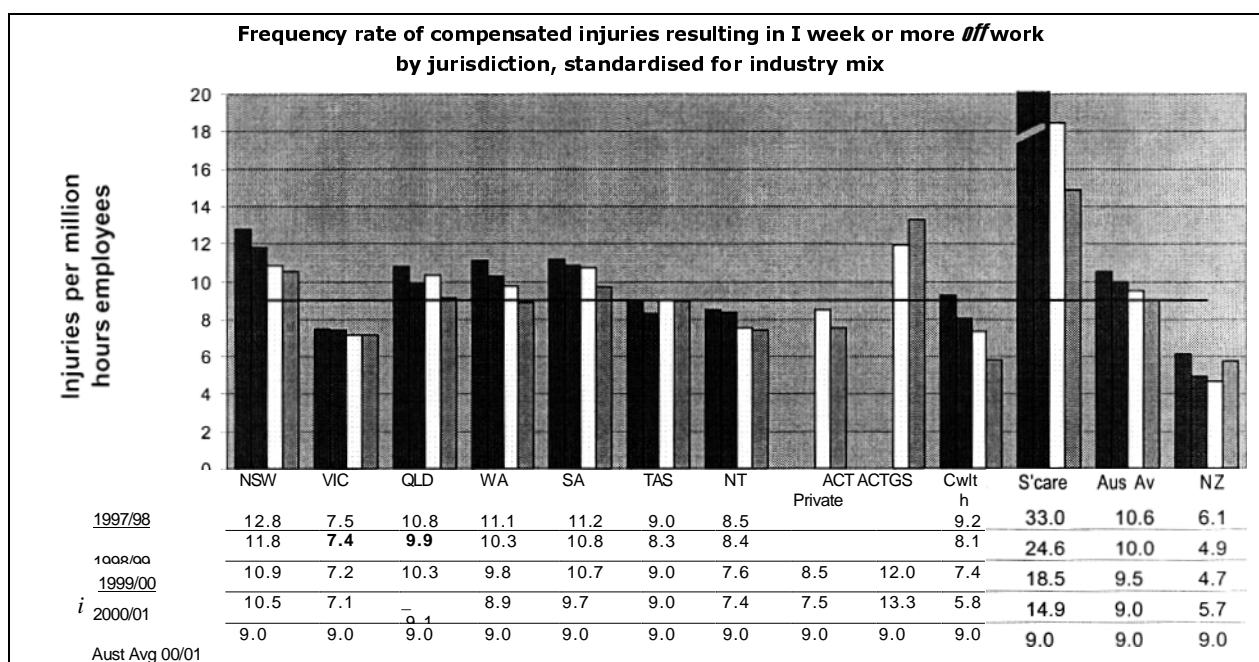


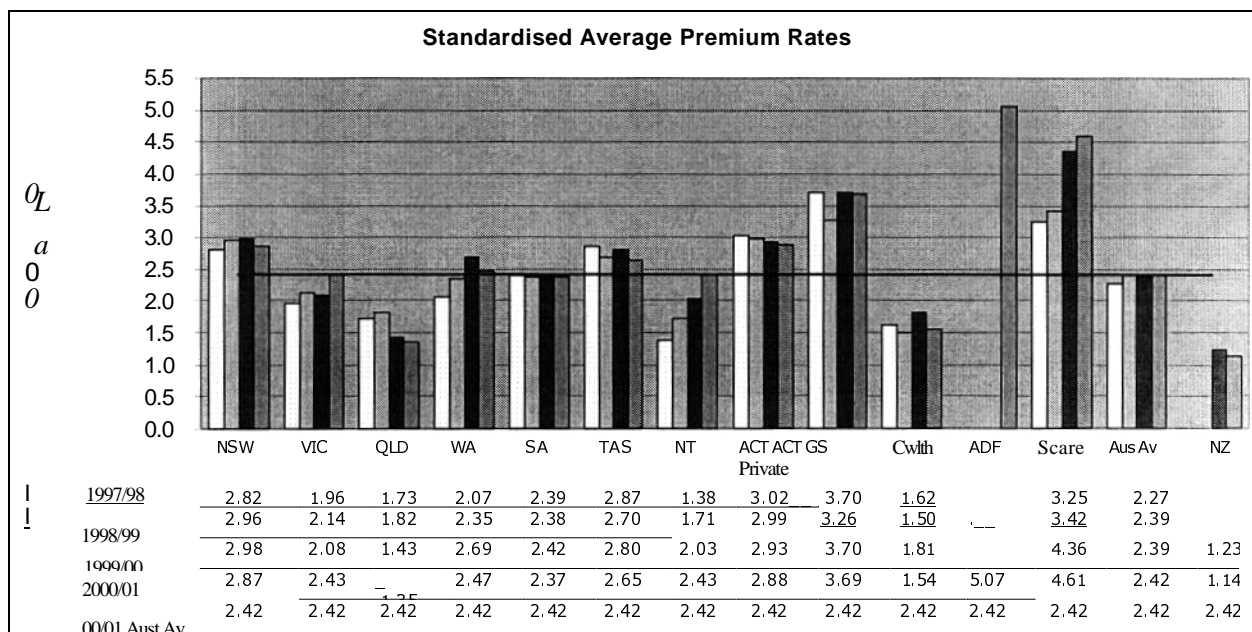
Figure 1 shows that in 2000-01 the incidence of workplace injuries resulting in one week or more off work continued to decrease across Australia, although two states reported increases. The results for the Australian schemes have been standardised to reflect the different mix of industries and workforce composition across the states and territories. Although the New Zealand incidence rate is lower than the Australian rate, New Zealand experienced an increase in this rate in 2000-01 while Australia continued to show a steady decline. However, legislative changes in New Zealand in 2000-01 may account for this increase. *Note: Seacare scheme data is not standardised in Figures 1-10 as this is a single-industry scheme.*



The frequency of injuries per million hours worked (Figure 2) reflects the same trend in outcomes as the incidence of injuries. Over all, the outcomes indicate the downward trend in workplace injuries.

Note: Seacare scheme data is not standardised in Figures 1-10 as this is a single-industry scheme.

PART BI - AVERAGE PREMIUM RATES



Note: The New Zealand standardised rate excludes a levy, at an average of 0.35% of remuneration, to fund residual liability of previous pay-as-you-go scheme. Such levies are generally included in rates reported for Australian schemes.

Figure 40 compares the trends in standardised average premium rates across schemes participating in the CPM project for the period 1997-98 to 2000-01. The comparison is based on premiums paid by employers, not the published rates, and excludes GST.

The Australian average standardised premium rate in 2000-01 was 2.42 per cent of payroll, an increase of 1 per cent since 1999-00 (2.39 per cent of payroll). This compares with the New Zealand premium rate in 2000-01, which was 1.14 per cent (excluding levy to fund residual liability of 0.35%), 8 per cent less than in 1999-00.

The reported premium rates paid by Australian employers for 2000-01 which are used as a starting point for the standardisation calculation, exclude GST. It is recognised that most Australian employers recoup part or all of the GST via Input Tax Credits. As Figure 40 shows, standardised premium-rate changes varied across the schemes, three reporting an increase and nine a decrease.

For the first time a premium rate of 5.07 per cent of payroll for the Australian Defence Forces is reported. The ADF was reported previously under the Commonwealth scheme.

APPROACH TO PREMIUM COMPARISON

The most significant factors that affect the comparison of published premium rates are:

- the level of self-insurers in a jurisdiction;
- variations in the definition of remuneration, particularly the treatment of superannuation;
- variations in the industry mix within jurisdictions; and
- the extent of any excess where the employer meets some of the initial claim costs.

PRODUCTIVITY COMMISSION

**INQUIRY INTO NATIONAL WORKERS COMPENSATION AND
OCCUPATIONAL HEALTH & SAFETY FRAMEWORKS**

PUBLIC HEARING: MELBOURNE, 26 JUNE 2003

**Opening statement by the Australian Chamber of
Commerce and Industry (ACCI)**

The Australian Chamber of Commerce and Industry welcomes the establishment of this inquiry, and the opportunity it presents to recommend workers compensation and occupational health and safety frameworks that are more national in focus and contribute more directly to national economic and social objectives. We have found the Issues Paper released by the Commission to be a useful basis for the development of our submission.

The ACCI submission calls for new approaches that would replace diverse, complex and costly Workers' Compensation and Occupational Health & Safety regulation with a nationally consistent framework in each area.

ACCI does not advocate a single national regulator or the Commonwealth taking the field as regulator and legislator for either Workers' Compensation or Occupational Health & Safety systems. Such a radical move is not necessary. More realistic and less intrusive alternatives exist. However we do strongly advocate nationally consistent standards, regulations and systems managed and administered consistently by the jurisdictions, and the creation of mechanisms to make that happen. The objective should be for a co-operative approach between the Commonwealth and State/Territory governments while still leaving primary responsibility for these systems with the States.

Such a system would be beneficial to employers employees and governments alike. The lack of a nationally consistent approach imposes significant compliance burdens on business and leads to inequities for injured workers in terms of benefits payable and entitlements to benefits.

ACCI is Australia's peak employer body whose membership is made up of State and Territory Chambers of Commerce and a range national employer and industry associations.

ACCI, through our member organisations, is the largest and most representative business organisation in Australia with a strong and

active network covering over 350,000 large, small and medium sized enterprises across all sectors of Australian commerce and industry.

The ACCI employer network employs over 4 million people.

Industry Submissions

The ACCI submission reflects our role as the peak employer body and addresses the fundamental core principles and objectives from a national perspective.

Many of ACCI's member organisations have also lodged submissions, with some member organisations also giving evidence at public hearings. Member submissions whilst reflecting the principles of our national submission provide more detailed information on problems and issues facing employers in jurisdictions or industry sectors, together with a range of case studies that reflect specific developments and experiences.

The ACCI submission is divided into two distinct parts: Workers Compensation and Occupational Health and Safety. The thrust of both is to advocate a nationally consistent framework which is reasonable, practical and affordable.

In order to justify the establishment of new approaches, one must firstly be satisfied that problems exist that need addressing, and that the proposed solutions are the right ones.

There is no doubt that both the workers compensation and occupational health and safety systems in Australia, whilst better than some international comparisons, are letting down employers and the community at large. At the very least they are delivering sub-optimal outcomes. They are complex, subject to constant change, open to abuse, create unnecessary business costs, lack proper incentives to drive best practice, and are interpreted and administered differently in each jurisdiction.

Employers support safety net legislative and regulatory systems for both workers compensation and occupational health and safety.

However, both systems need to be redesigned to contribute in a positive way to our nations economic and social goals. Primarily this means that they should contribute to economic efficiency and not inhibit the capacity of employers to productively employ in even greater numbers.

Employers are being let down by the current arrangements.

On the workers compensation front:

- Premiums are going up despite workplaces being safer and injury numbers falling. The data outlined in the Fourth Comparative Performance Monitoring Report of August 2002 asked the question - 'Why have Workers Compensation Premiums risen by 6% over the period 1997 to 2001 when injuries have reduced by 17% over the same period. ACCI understands that federal Minister Abbott has asked his department to conduct an investigation into the reasons behind this seemingly incongruous trend;

There is an absence of nationally consistent arrangements, leading to national companies

having to pay different premiums and apply different standards of compensation to their same employees incurring the same injury in the same workplaces but in different jurisdictions;

- Duplication, overlap and excesses in administration;
- The retention in some jurisdictions of common law or elements of common law exposes employers to the vagaries of litigation and that in a more litigious society where ambulance chasing lawyers and consultants prevail and an industry feeds of them;

There are loopholes, abuses and excesses which lead to employers paying for non-genuine claims, or non-work related claims, or having the industrial relations system top up statutory benefits - thereby forcing employers to subsidise the community health system;

- Aside from self insured or self managed employers, few employers retain control over decisions on claims, the cost of claims or the employer/employee relationship once a claim has been lodged. The capacity to implement good human resource or workplace relations practices is a secondary consideration in the schemes, despite it being a primary consideration for employers.

On the occupational health and safety front:

Employers, particularly small and medium businesses, are over regulated with hundreds of pieces of regulation, codes of practice, regulations, standards and the like. We have some additional data on this and would like to present that to the Commission as supplementary material at the conclusion of my opening.

- There is some, but only limited, recognition of nationally consistent standards;

There is a substantial degree of unrealism and imbalance in the interpretation by the courts of the duty of care, leading to an almost impossible capacity for employers to ensure their legal compliance;

There is abuse of occupational health and safety in both the workers compensation system and in the industrial relations system (particularly but not limited to the building and construction industry);

There is an imbalance in the required policy mix of education, prevention and enforcement - with a failure by many jurisdictions to involve small and medium businesses in relevant education and prevention programmes, and a preoccupation with headline prosecutions and penalties.

So what then are some of the solutions that should be examined?

Workers Compensation

ACCI calls for nationally consistent workers' compensation schemes incorporating nationally consistent:

premium setting;

- benefits structures; and
- insurance regulation and national insurance mechanisms.

Efficiencies flowing from a nationally consistent framework will assist in reducing the cost of managing the system for the jurisdictions, as well as employers. They should then be reflected in reduced premium costs.

The Issues Paper outlines six possible models for a national framework. Of these, we consider the first four to each have merit and be worthy of examination. These are:

- A model for co-operative work, along the lines of the current NOHSC;
- A mutual recognition model;
- An expanded Comcare model;
- A Uniform Template Legislation model.

Occupational Health & Safety

ACCI calls for:

- A change of focus by WorkCover and government authorities from a culture and

strategy of compliance and enforcement to a more balanced education and prevention strategy where employers and employees are encouraged to take joint responsibility for OHS in the workplace;

- Nationally consistent OHS regulatory frameworks underpinned by practical guidance materials;
- Nationally consistent administration and interpretation;

A regulatory approach which seeks to raise awareness, to inform and to educate with compliance and enforcement as a last resort;

- An OHS workplace culture of working together with mutual responsibilities being accepted and acted upon.

I thank the Commission for the opportunity to present this submission, and look forward to our discussion.

I will now present the supplementary material that I have referred to on the OHS regulatory burden.