



QBE Submission to the Productivity Commission

Productivity Commission Inquiry into National Workers' Compensation
And Occupational Health and Safety Frameworks

June 2003

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Acknowledgements

QBE Insurance is pleased to participate in the Productivity Commission's review of National Workers' Compensation and Occupational Health and Safety Frameworks.

QBE appreciates the opportunity to contribute to the inquiry and welcomes any questions and comments on the issues raised in this submission.

Terms of Reference

QBE is committed to the achievement of greater national consistency in workers' compensation schemes in order to ensure equity and financial sustainability. The national consistency approach outlined in this document proposes a cooperative principle based approach.

In regards to the terms of reference in this inquiry, QBE believes that consistency should be sought in the following areas:

- Coverage and Access
- Benefits and Entitlements
- Premium Setting Principles
- Injury management, rehabilitation and return to work
- Self Insurance Rules
- Dispute Resolution.

Achieving steps towards national consistency will:

- Deliver sustainable, quality outcomes for stakeholders
- Provide stability and predictability for both workers and employers
- Play a significant role in reducing the cost of compliance and regulatory burden
- Address the problems inherent in multi jurisdictions and, enable scheme regulators and providers to focus on what really redresses compensation costs - helping employers to prevent injury and getting injured and ill workers safely and speedily back to work.
- dispute resolution as the cornerstone of it's operation.

Structure of the Submission

QBE's submission examines a principled based approach to national consistency, as well as analyses the existing arrangements and the scope for change.

Section 1 of the submission covers the concepts and principles that underpin the structure of the existing workers' compensation arrangements in Australia and the manner in which the system has evolved. It asks the fundamental question: why do we have workers' compensation? It explores the historical origins and development of worker compensation, from its inception through to its existing arrangement. In particular, this section highlights the socio- cultural, political, economic environment affecting workers' compensation and the impact it has had on the nature of scheme developments.

Section 2 provides an overview of the existing systems arrangements. It highlights the inconsistencies, gaps and deficiencies in the system. It advocates an integrated approach to workers compensation that acknowledges the complexity of worker compensation and its interface with a multiplicity of policy areas.

Section 3 provides an outline of QBE's approach to national consistency. This section argues for a simplified model to address the challenges facing Workers' Compensation. It outlines a two-tiered approach to developing a consistent national framework.

Firstly, it argues the need for a set of fundamental building blocks or key principles that drive the development of future workers' compensation schemes.

Secondly, it argues for the application of these principles to the structural elements of Australia's Workers' Compensation systems.

Section 4 illustrates how the key principles can be applied to the structured elements of the system: coverage and access, benefits and entitlement, premium setting, injury management, rehabilitation and return to work and service delivery (self insurance and dispute resolution) .

1. Workers Compensation Origins and Principles

Introduction

At the core of workers compensation is a very simple system, based on the principle of "no fault". The historical development of workers compensation has transformed this simple framework into a complex system.

Australian States and Territories have responded in different ways to the need to provide guaranteed access to workers' compensation for people suffering from work related injury and workplace illness.

At present, the Australian arrangement is an ambiguous, inconsistent and often nonsensical system characterised by multiple regimes. The differences across jurisdictions produce potential inequities between workers in different jurisdictions and added costs for employers operating nationally.

QBE advocates a return to the practical adoption of the fundamental principles of workers' compensation to develop a basic approach for moving towards greater national consistency. This will require stripping away the layers of complexity to create transparent, equitable and sustainable arrangements.

Historical Dimensions

Workers' compensation in Australia has evolved from a long process of socio-cultural, economic and technological change. An understanding of the origins of workers' compensation in Australia provides a greater understanding of the severity and complexity of the contemporary system.

Some of the major trends of the Australia system are described below along with the factors which have influenced these trends.

The Origins of Workers' Compensation

Workers injuries have been a significant social and legal concern since the industrial revolution. Workers' compensation evolved as a response to serious societal problems caused by the dramatic rise in the number of social justice systems.

Workers' Compensation was set up as a "no-fault" system of social legislation. Prussian Chancellor Otto von Bismarck (1812-1898) introduced compulsory public workers' compensation in 1884 amidst workplace activism among Prussian workers. Bismarck's legislation related "all social benefits to a worker's professional life" to instil "a strong partnership between employers and employees". Schemes subsequently implemented throughout the world were based on the premise that the right to care for workers, injured on the job, is a basic entitlement of the social justice system.

Contemporary workers' compensation has developed from two streams:

- German model represented by the legislation of the 1884 and 1900
- English Workmen's Compensation Acts 1897 and 1906 (largely followed by the British dominions e.g. the Australian states).

Prior to the development of worker's compensation laws, the only financial support that injured workers could hope to receive was from either:

- Charitable employers
- Assistance from others (benefits from workers paid into friendly societies, mutual societies like trade unions, employer sponsored accident schemes, government provided health care)
- Common law actions for negligence¹.

The earliest Australian workers' compensation statutes, followed the model of the 1897 English legislation. The model confined coverage to a number of defined classes of "dangerous employment". The concept of general coverage of workers in all industries and occupation came with the 1906 English Act, a concept adopted by the various Australian jurisdictions.²

South Australia was the first state to introduce workers' compensation legislation (1900), followed by Western Australia (1902), Queensland (1905), Tasmania (1910), Victoria (1914), the Northern Territory (1920), New South Wales (1926) and the ACT (1951).

¹ Industry Commission (1994) *Workers' Compensation in Australia*, Report No. 36, *HWCA(1997) Promoting Excellence*, 2
² House of Representatives Standing Committee on Employment and Workplace Relations (2003) *Back on the Job*. Industry Commission (1994) *Workers' Compensation in Australia*, Report No 36, pg F2³ HWCA (1996) *Promoting Excellence*.⁴ Interim Report, pg 27

The enactment of legislation aimed to eliminate lawsuits against employers and to provide some measure of swift relief to the injured workers, regardless of fault. Society began to take a more humanitarian view to workplace accidents. It was thought that work injuries were such an inevitable part of work that they should be treated as another cost of the business and not left to the individual worker to bear.⁶ It was thought that the common laws had failed workers, and that legislative intervention was needed.

Over the years coverage has broadened, entitlements have increased and more injuries and disease have become compensable.

The Evolution of Workers Compensation

During the course of this century the scope of workers' compensation accessibility and responsibility has been extended both by legislation and by judicial interpretation. The system has developed "into an elaborate but rather disordered scheme for social security benefits".⁷

The process has involved a slow extension of coverage from the 1930s to the early 1980s with more dramatic changes in the next decade and a half. The mood for change in the area of workers' compensation gained momentum in 1974 with the Woodhouse Committee Report. One of the underlying themes of that report was national consistency. Western Australia made significant changes to its system in 1981 following the Dunn report. The momentum accelerated from the mid 80s with the Victorian WorkCare changes in 1985. These were followed by the 1986 South Australian Work Cover and Northern Territory Work Health reforms. Then came the 1987 New South Wales WorkCover changes and the reorganising of the arrangement for Commonwealth employees in 1988. Significant changes followed in Tasmania also in 1988, Queensland in 1990 and the introduction of a new federal seafarers scheme in mid 1993.

Shifts within workers' compensation reflect the volatility of the system, the struggle of different perspectives and political and social agendas over time.⁸ The changes in workers' compensation illustrate that systems arrangements are in a constant state of flux and are being pulled in different directions.

⁶ Luntz, Hambly and Hayes (1985) cited in Industry Commission (1994) *Workers' Compensation in Australia*, Report No. 36.⁷ Judge Harris (1976) *Victoria, Australia*

⁸ Refer to Appendix 1: Historical Development and Political Trends in the Evolution of the Victorian Workers' Compensation System for an example of the shifts in workers' compensation in Victoria and the political and socio-cultural, economic environment.

Indeed, the history of arrangements in Australia bears testimony to the success of various stakeholders in influencing the specifics of individual schemes from time to time.

Over the past 5-10 years workers' compensation schemes have been open to multiple political influences. During this time, issues concerning system changes have become politically emotive. We have witnessed real evidence of the politicisation of workers' compensation systems for short term political gains. This has had significant consequences for the long-term balance and stability of workers' compensation arrangements.

A perfect example of the politicisation of workers' compensation in recent times is the use of workers' compensation as a political bargaining tool in the State election. In one state premium ratings were reduced prior to the election, and then raised again following the election. Changes to the system were clearly underpinned by political motives and worked contrary to the long term consequences for the system and resulted in the creation of an unfunded liability for the residents of the state.

Different political philosophies and political trends are discernable in the reforms undertaken over the years:

- Changes in the late 80's gave greater power to workers' compensation authorities. The authority's ambit was increased from compensation to a greater emphasis on rehabilitation and prevention!
- Victoria, South Australia and New South Wales all followed the path from private competition to government centralism'. Other states left the private insurance market intact, but focused on greater changes in other areas.
- At present the major emphasis is on financial viability'. Centralist schemes (NSW, Victoria and South Australia) have created significant unfunded liabilities and are striving to eliminate their deficit burden. As such most workers' compensation changes of recent times have focused on reforms to reduce liability like stress claims restrictions, stricter workrelatedness tests, reduced involvement of lawyers and medical panels."

HWCA(1997) *Promoting Excellence :Final Report*

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HWCA(1996) *Promoting Excellence :Interim Report*, Industry Commission (1994) *Workers' Compensation in Australia*,

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Report No. 36, pg F3, KPMG (1997) *Inquiry into Workers' Compensation System in NSW*
io Industry Commission (1994) *Workers' Compensation in Australia*, Report No. 36, pg F3
WorkCover NSW (2001), *Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 30 June 2001*, Volume 1, HWCA(1997) *Promoting Excellence : Final Report*

- There is also a tendency to try and create best practice operations through the introduction of a multiplicity of inconsistent processes that focus more on administrative compliance rather than developing effective scheme performance.
- The question of who will fund the deficit in each state remains a question for consideration in regard to future price settings. Ultimately the cost of the deficit will be transferred to employers of the future and the community at large.

Socio-Cultural Dimension

It is important to recognise that present state based workers' compensation arrangements are a subset of the range of socio-cultural, economic and political arrangements made by society to provide for injured people.

Arising from this is the recognition that there are two ends of a continuum of arrangements providing for injured workers. The constant challenge for workers' compensation is balancing these two ends. To achieve equilibrium is in the interests of all parties.

Current workers' compensation arrangements sit somewhere in the middle of the two poles. All limit access to coverage to persons who are injured as a consequence of their employment and contain a mix of individual and community responsibility."

Interaction with other government programs and superannuation

There are significant interactions between social policy and workers' compensation arrangements. The interface between the social security system and workers' compensation is far from seamless.

Workers' compensation pre-date any broadly based, community funded social security system." There has been no attempt to define and rationalise the scope of each type of system. Historical developments illustrate that the two areas have been designed in isolation from another, usually with different objectives, eligibility rules and different philosophies and priorities.

¹² Refer to Appendix 2: Fundamental Characteristics of Schemes for Addressing Costs to Individuals of Long Term Disability Arising from Work Injuries.
 HWCA (1997) *Promoting Excellence: Final Report*, pg 29

The isolated development of policy has created a gap in the fabric between the workers' compensation and the social security system. This results in costs being transferred between programs and levels of government.

Cost shifting can take a variety of forms. It can occur between employers and injured workers and between employers and taxpayers. Shifting can occur in both directions, for example, when weekend sporting injuries manifest themselves at work on Monday and are claimed as workers' compensation.¹ Where costs are shifted, overall costs remain the same - but those whose responsibility it is to pay for them fail to do so. In the process incentives to prevent work related injuries and illness and encourage rehabilitation are blunted. Where "double dipping" occurs, more is paid than is justified"

Often those suffering from work related injuries and illness turn to forms of alternative support other than workers' compensation. Injured workers may be motivated to seek compensation from alternative providers based on variations in benefit levels and the safety net provided by the national health care system.

Where the boundaries of the workers' compensation system are unclear a transfer of costs will occur between government programs. Where an immediate injury or its long-term effect may have only minimal connection to work injuries, workers' compensations systems can bear the cost if that connection is identified. On the flipside, the national social security system bears the costs of many genuine work-related injuries in an ad hoc fashion depending on the form of benefits paid in a particular workers' compensation jurisdiction and the access rules for social welfare.¹⁵

QBE believes that the Australian psyche and the stigma that it associated with making a claim play an active part in cost shifting. The Australian psyche manifests itself in the workplace reinforcing certain perceptions and the social stigma about making a workers' compensation claim. This can motivate injured workers to seek compensation through alternate systems.

¹Smith (1989) cited in Industry Commission (1994) *Workers' Compensation in Australia*, Report No. 36

¹⁵House of Representative Standing Committee on Employment and Workplace Relation (2003) *Back to the Job* is Head of Workers' Compensation Association (1996) *Promoting Excellence*, House of Representative Standing

Cost shifting can equally be impacted by the general economic environment, the level of job security and availability and of self/employer funded options that have a higher level of benefits".

QBE believes that the rationalisation and integration of these two systems should be considered as a matter of priority in light of the socio-cultural challenges that lie ahead for both the workers' compensation schemes and the broader community.

The major challenges facing the current workers' compensation systems are:

- Slowing population growth with an accompanying slowing in employment growth
- An ageing population and workforce
- An increased prominence of employers in the services sector
- A greater proportion of workers employed on a part time or casual basis
- A greater proportion of workers who are self employed, primarily for taxation based reasons.

Workers' compensation can not be developed in isolation from the social realities. There needs to be a clear delineation between the responsibility of the social system and workers' compensation as the issues become increasingly concerned with socio-cultural shifts in the nature of risk.

Political Dimension

Workers' compensation has become somewhat of a political football. A common approach to dealing with the issue of increasing costs has been to either reduce benefits or increase premiums. Both approaches have their advocates and detractors. Nowhere in this process is the fundamental reason of why claims are still occurring critically examined. OH&S often sits outside this process and the reason for this is that the effects of OH&S strategy can take some time to become apparent. This has important consequences for various aspects of scheme operation.

An additional level of complexity, yet one equally influential is the dynamics of the HR/IR systems adopted in the workplace. Dissatisfaction with these

^{is}
House of Representative Standing Committee on Employment and Workplace Relation (2003) *Back to the Job*, Hunt (1998) *Three Systems of Worker Compensation* Upton Institute for Employment Research, Hunt et al (1997) *Victorian Workers' Compensation System Review an Analysis* Victorian WorkCover Authority A Member of the QBE Insurance Group

processes can result in claims occurring in workers' compensation and the cause of the claims been not entirely evident.

The historical and political dimensions influencing the development of workers' compensation have tended to obscure the true role and function of system arrangements." The system has developed in an incremental fashion, often with little regard to the origins or long-term rationale for particular developments. In particular, there has been very little articulation of the interfaces of workers' compensation with the wider political and social system.

A number of features of the workers' compensation system provide a challenge in relation to the proper boundaries for system coverage and operation.

- Australian workers' compensation is primarily a form of statutory no fault compensation although common law actions in negligence remain.¹⁸
- The system is underwritten by employer premium and levy payments, although to the extent that this is passed in the price of goods and services, it becomes the community's cost."
- Entitlement is an all or nothing affair, as soon as the legislative threshold is reached then the full range of benefits are involved¹⁹

To meet the challenges that face workers' compensation in the future the system needs to be redefined in terms of its role and function. A best practice model needs to be established based on the fundamental principles of the system. Clear boundaries that recognise and promote the roles between OHS and IR/HR need to be established and built into the workers' compensation system.

A redefinition of the system will need to operate at a number of levels. It will need to balance the rights and responsibilities of employers, workers and society at large.

The first consideration in redefining the system is to balance the interests of employers and society to the extent of an employer financed, no fault,

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HWCA (1996) *Promoting Excellence: Final Report*

¹⁸ Smith (1989) cited in Industry Commission (1994) *Workers' Compensation in Australia*, Report No. 36 ¹⁹ HWCA (1996) *Promoting Excellence: Final Report*

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HWCA (1996) *Promoting Excellence: Final Report*, Industry Commission (1995) *Work, Health and Safety Report*, No 47

workers' compensation system bearing the burden of all injuries which satisfy a certain work relatedness tests.

The second consideration is in regard to the rights and responsibilities between workers and employers. Employers have the responsibility to maintain a safe and healthy workplace. Where an injury does occur, employers have a further duty to make arrangement to minimise the social and financial burden through proactive and quality arrangements for the safe and speedy integration of the worker back into the workforce.

Workers have the shared responsibility to prevent work place injuries and once they occur cooperate with return to work and rehabilitation programs to meet the need generated by their disability and to achieve a sustainable return to work ²¹

Summary

Workers' compensation lies at the junction of a myriad of social, economic and political issues and can not develop in an effective manner without regard for these factors. Future developments in workers' compensation need to return to the core principles of the system in order to meet the challenges that lie ahead.

A simple system should be developed based on a consistent set of principles that clearly define the boundaries of a national workers' compensation structure. This framework should be flexible enough to proactively adapt to its changing environment. The same model should be free from ambiguity to provide for a less volatile and more stable system.

²¹ Eakin, Clarke and MacEachen (2002) Return to Small Workplaces: Sociological perspective on Workplace Experience, November 2002, Holmes and Gifford (1997) Narratives of risk in occupational health and safety, *Australian and New Zealand Journal of Public Health* 21 (1), Cay and Walker (1982) Psychological factors and return to work, *European Heart Journal*, 74-81).

2. Existing Arrangements

Introduction

Work-related injury and illness and workplace health and safety are currently addressed within a fragmented framework. The complexity and lack of uniformity poses significant problems for employers and workers operating in more than one jurisdiction.

Despite a common underlying philosophy, significant differences exist among workers' compensation schemes.

Insurance arrangements vary widely among jurisdictions in terms of coverage, provisions for self-insurance, and the structure of insurance markets and premium regulation. This has significant consequences for the cost of compliance and regulatory burden for national employers in a multiple of jurisdictions.

Workers' Compensation Arrangements

The variation of workers' compensation arrangements across Australia creates inequalities which are contrary to the Australian traditions of fairness and equality. Appendix 3²², an extract from "Comparison of Workers' Compensation Arrangements in Australia and New Zealand - October 1st 2001 " issued by the Heads of Workplace Safety and Compensation Authorities, (HWSCA), compares just some of the access and entitlement differences across jurisdictions.

As can be seen from the jurisdictional comparisons there is a high level of variation between injury definitions and coverage. A worker in New South Wales may be covered for an injury in their lunch break while a worker in South Australia with an identical injury may not. A worker in Tasmania will not be covered for an injury sustained whilst travelling home from work but

²² Industry Commission (1994) Workers' Compensation in Australia, Report No. 36, pg 19-29

¹³ Refer to Appendix 3: Variation in Access and Entitlements across Australia's Workers' Compensation System for the specific variations in operations of workers' compensation across jurisdictions. For a detailed comparison of the workers compensation schemes in Australia and New Zealand, see Heads of Workers' Compensation Authorities, comparison of Workers' Compensation Arrangements in Australian Jurisdictions, July 2001, at www.hwca.org.au

a worker in NSW will be. Interestingly, a Commonwealth employee must sustain 20% hearing loss to have an entitlement²⁴ while an ACT worker literally working across the road has no threshold to overcome before claiming a hearing loss entitlement. Weekly wages entitlements are different in every jurisdiction both in terms of the level of entitlement and the calculation of entitlement.²⁵ A workers access to reimbursement for treatment expenses varies dramatically depending upon the jurisdiction under which the injury is covered. Even entitlements related to death benefits differ greatly.

Cost of compliance and regulatory burden

In every jurisdiction across Australia, employers are required to have a workers' compensation insurance policy, current at all times, and maintain a safe working environment for their employees.

In addition to the cost of their annual workers compensation premiums, employers also must face the costs of setting up and maintaining systems and work practices to comply with the various OH&S and workers' compensation requirements.

These costs may vary from one jurisdiction to another depending on the level of enforcement. They also vary in accordance with the size of the employers workforce.

Small employers (with a workforce of 20 or less) may spend between \$2,000 and \$5,000 to develop and maintain a basic OH&S system, whereas larger employers (whose workforce exceed 20) may have to spend between \$4,000 and \$12,000 for a similar system.

Certain jurisdictions, for example NSW, mandate that larger employers employ a full time rehabilitation coordinator and this in turn adds to the costs of compliance.

There are additional costs incurred for national or multi-state employers. They bear the burden not only of adhering to compliance in one jurisdiction but in accordance with each scheme operation in which they operate.

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Safety Rehabilitation and Compensation Act, 1988

²⁵See Heads of Workers' Compensation Authorities, *Comparison of Workers' Compensation Arrangements in Australian Jurisdictions*, July 2000, at www.hwca.nrc.au

On the positive side, the performance-based approach provides employers with some flexibility regarding methods of compliance with their duty of care. As the employer's business and technology continues to change they should be able to adapt their OH&S management systems to maintain compliance. On the negative side, due to this flexibility and lack of legislative prescription, employers may have difficulty demonstrating due diligence or their compliance with duty of care requirements, unless they strictly follow the various Codes of Practice or Standards.

Generally the various O&HS Acts throughout Australia are similar in their objectives and duty of care provisions. There are however variations between the states in the supporting legislation, for example, Regulations and Codes of Practice (COP), which provide more detail for the standard of safety required (Regulations) and methods of attaining same (COP). National uniformity in OHS legislation has often been raised as a major impediment to OHS improvement in Australia.

The National OHS Strategy 2002 -2012 has listed 'A nationally consistent regulatory framework' as one of its nine (9) objectives for national action.

QBE supports the adoption of such a nationally consistent regulatory framework as we believe that it will go a long way towards reducing the cost of compliance imposed on employers operating in multiple jurisdictions.

On the other hand, we also recognise that such a framework should not adversely affect the overwhelming majority of employers who operate in one jurisdiction only.

QBE recommends that greater emphasis should be placed on the prevention of accidents as this would eliminate/reduce the social and economic costs resulting from work related injuries.

There should therefore be better incentives to reward employers who invest in prevention and are also active in early intervention following an accident in the workplace.

Coverage

The definitions of worker, employer and work related injury have evolved in each state and territory on an ad hoc and isolated basis. As such, the access and coverage of workers' compensation and OH&S systems may vary from jurisdiction to jurisdiction.

The primary issue to be addressed is how to bring the legislation up to a position that accurately reflects the changing landscape of the Australian workplace.

Fundamentally a consistent approach is required in determining:

- Who is a worker;
- What is a workplace;
- What is an injury.

Self Insurance

Provisions for self insurance exist in all State jurisdictions. Eligibility depends on meeting "suitability" criteria; for example, an employer's assessed ability to manage claims, discharge their liability, maintain a "sound" safety record and provide required information to the administering authority. One of the key considerations for scheme regulation is the size of the workforce.

Employers that operate in more than one jurisdiction must comply with the licensing requirement of each scheme if they wish to self-insure.

The administrative burden and associated cost of self insurance in multiple states is a significant deterrent to moving employers towards adopting this strategy.

The areas of compliance differ in each state and territory with respect to:

- Prudential requirements
- Payment of levies to the regulator that vary significantly
- OH&S management system standards and measurement
- Claims and injury management standards and measurement
- Consistency regarding the use of 3rd party claims management to assist self insurers
- Actuarial analysis of outstanding liabilities Wages and on-costs for staff associated with maintaining the compliance increased exponentially as the number of self insured states increase Differing Re-insurance requirements

- The time and financial outlay required to maintain compliance in multiple self insured states is significant
- Premium Settings

The structure of premium varies considerably among schemes. For example the degree of 'experience rating' and or cross-subsidisation inherent in the premium structures of schemes differs according to how premiums are calculated and the prevailing political influences.

The following table compares the recommended premium rates for a selection of common and representative industries across the two largest public risk jurisdictions, Victoria and NSW, and the two largest private insurer risk jurisdictions, Tasmania and Western Australia.

ANZSIC	Industry	VIC 02/03 ²⁶	NSW 02/03 ²⁷	TAS 02/03 ²⁸	WA 02/03 ²⁹
0114	Grape Growing	4.62%	7.18%	2.87%	5.18%
0125	Beef Cattle Farming	6.76%	10.52%	4.60%	7.98%
0212	Shearing Services	6.76%	13.91%	4.60%	8.34%
0302	Logging	6.76%	14.98%	10.06%	6.74%
1513	Mineral Exploration (Own Account)	3.16%	4.73%	3.86%	2.13%
2161	Bread Manufacturing	5.59%	7.09%	5.84%	6.36%
2173	Seafood Processing	6.76%	6.25%	5.84%	5.40%
2182	Beer Manufacturing	5.59%	5.10%	2.49%	2.01%
2311	Log Sawmilling	6.76%	15.00%	5.60%	9.26%
2323	Wooden Structural Component Manufacturing	5.59%	6.73%	2.25%	4.05%
2741	Structural Steel Fabricating	6.76%	9.66%	5.60%	7.87%
2921	Wooden Furniture and Upholstered Seat Manufacturing	5.59%	7.22%	2.25%	4.92%
4111	House Construction	5.59%	9.85%	4.23%	2.25%
4231	Plumbing Services	9.83%	6.58%	4.60%	5.11%
4242	Carpentry Services	8.19%	12.09%	4.23%	6.28%
5210	Department Stores	2.15%	3.81%	1.87%	2.92%
6110	Road Freight Transport	8.19%	9.17%	4.11%	5.51
6621	Stevedoring	5.59%	7.19%	5.10%	2.71
8422	Secondary Education	1.22%	1.45%	2.62%	1.32%
8613	Nursing Homes	5.59%	7.64%	4.60%	6.55%

²⁶ VWA effective rates published for 02/03

²⁷ NSW W.I.C.S. rates published for 02/03

²⁸ Recommended rates 02/03. Contained in report to Tasmanian WorkCover Board by Benzulla Actuarial Pty Ltd dated 22nd April 2003 Published

²⁹ WA 'Gazetted' rates 02/03

From the above table it can be seen that one of Australia's growth industries, wine making, has input costs that vary by up to 250% from state to state. Sawmilling costs vary by up to 268% while even the retail industry suffers these variations with department store rates ranging from 1.87% to 3.81%, a differential of 204%.

The consequences of these varying business costs are inequities in either pricing for consumers and customers or inequities in profitability for business owners.

For businesses with multi jurisdictional representation, the complexity created by varying business input costs, varying worker access and entitlement is both expensive and confusing³⁰.

The level of government interaction in premium setting highlights further variations across jurisdictions. Government intervention ranges from file and write to laissez faire".

Compensation

There is a significant difference in the approaches adopted by the various schemes in the calculation of compensation and there appears to be no clear differentiation between the need and loss of the injured worker.

Considerations of loss appear to predominate in the workers compensation system. While the system does not seek to measure the precise extent of the actual loss in any individual case, the starting point for calculation of most wage loss and dependency benefits refers to the worker's actual earnings, which does not correlate with actual loss. In that regard, as a general rule workers who begin with a higher pre-injury income have lost more and receive correspondingly higher benefits.

Statutory minimums appear to be based on deliberate decisions to provide minimum levels of benefits irrespective of the actual loss, sufficient to meet basic needs and provide a reasonable subsistence allowance. This is based solely upon considerations of need and as providing a form of social welfare

³⁰ For a detailed comparison of the workers compensation schemes in Australia and New Zealand, see Heads of Workers' Compensation Authorities, comparison of Workers' Compensation Arrangements in Australian Jurisdictions, July 2001, at www.hwca.org.au

³¹ See above

funded by employers. It is questionable whether that is appropriate in light of workers' compensation system's general focus on providing compensation for loss.

Compensation for Lost Earnings

Those workers unable to return to work are entitled to weekly compensation benefits to partially replace wages lost as a result of the injury. Under most current arrangements, initial levels of compensation are based on some surrogate of the worker's pre-injury earnings, for example the award wage or average weekly earnings. The benefits are generally designed to replace up to one hundred percent of the lost wages, up to a maximum.

In some jurisdictions there are limits both in terms of the maximum rate of weekly compensation paid and total payment of this benefit. In other jurisdictions, the payments are made in the form of a pension payable until recovery has been achieved or retirement age is reached.

Most jurisdictions contain one or a number of step downs in weekly compensation on the presumption that it is a motivating factor to encourage an early return to work.

Weekly compensation benefits are payable, until the injured worker is able to return to work or until the injured workers' condition becomes permanent and stationary-
Permanent

Disability Benefits

Injured workers who are permanently disabled - those who have a permanent impairment - are entitled to receive a permanent disability benefit.

The percentage of permanent disability is determined by using one of a number of variations of the American Guidelines for the Evaluation of Permanent Impairment or state based variations following an assessment of the injured worker's permanent impairment and limitations.

³²For a detailed comparison of the workers compensation schemes in Australia and New Zealand, see Heads of Workers' Compensation Authorities, comparison of Workers' Compensation Arrangements in Australian Jurisdictions, July 2001, at www.hwca.org.au, HWCA (1997) Promoting Excellence: Final Report, Industry Commission (1994) Workers' Compensation in Australia, Report No. 36

The American Guidelines for the Evaluation of Permanent Impairment specifies standard percentage ratings for permanent impairments and limitations, and provides for the modification of these standard ratings based on the injured worker's age and occupation. The standard rating is adjusted for age by lowering the rating for younger workers and increasing it for older workers on the theory that it is easier for younger people to adjust to a permanent handicap. The standard rating is adjusted for occupation by increasing the rating if the permanent impairment or limitation will be more of an impediment in performing the worker's occupation, and lowering the rating if it will have a lesser impact.

The assessment of the injured worker's permanent impairment and limitations is made by either the treating provider or an Approved Medical Specialist. The state based regulators appoint and regulates Approved Medical Specialists.

Disagreements can arise from the interpretation of medical guidelines or an individual's disability. If there is disagreement with the treating provider's opinion and the worker the matter may be referred to a medical panel convened by the state regulator. If the evaluations are disparate, the amount of permanent disability will be determined by negotiation or, if necessary, litigation.

Some schemes also include a component for the calculation of pain and suffering using an ad-hoc and subjective assessment.

Vocational Rehabilitation Services

Injured workers who are unable to return to their former type of work are entitled to vocational rehabilitation services if these services can reasonably be expected to return the worker to suitable gainful employment. This includes the development of a suitable plan and the cost of any training.

Once an injured worker is determined unable to return to his or her previous type of work, a rehabilitation provider who will determine whether vocational rehabilitation is feasible, and if appropriate, develop a suitable rehabilitation plan. The goal of a rehabilitation plan is to return the injured worker to suitable gainful employment - employment or self-employment that is reasonably attainable and which offers an opportunity to restore the

injured worker as soon as practicable and as near as possible to maximum self-support.

Weekly compensation continues to be payable to an injured worker while participating in rehabilitation. Total costs for rehabilitation may be limited or unlimited depending on the jurisdiction.

Death Benefits

In the event a worker is fatally injured, reasonable burial expenses, up to a fixed amount, are paid and may be determined by whether the worker is survived by dependants.

In addition, the worker's dependents may receive weekly compensation payments for a period of time. The total aggregate amount of support payments depends on the number of dependents and the extent of their dependency. Generally, the maximum is paid as a lump sum, though additional benefits are payable if there continues to be any dependent children up until the time they cease to be dependant or reach the age of up to 21 after the basic death benefit has been paid.

The Benefit Delivery System

Unlike most social programs (e.g., social security), workers' compensation in Australia, is administered by either a state government agency or a private insurer.

Workers' compensation benefits are administered primarily by private parties - insurance companies authorised to transact workers' compensation either in their own right or as an agent of the regulator and those employers secure enough to be permitted to self-insure their workers' compensation liability.

When an employer becomes aware of an on the job injury, the employer is expected to begin the process of providing the injured worker the benefits to which he or she is entitled under the law. The benefits are paid by either the employer (if the employer is authorised to self-insure) or the employer's insurer/managed fund.

The state's role in benefit delivery is to oversee the provision of workers' compensation benefits, provide information and assistance to employees,

employers, and others involved in the system, and to resolve disputes that arise in the process.

The vast majority of workers' compensation claims are handled expeditiously and are administered without dispute or litigation. These are, for the most part, the smaller claims, those in which only medical care is provided and those in which the injured worker is disabled for only a few weeks before returning to work.

Smaller claims account for more than 90% of all workers' compensation claims. The balance of the claims, those in which there are significant periods of incapacity or permanent disability, account for the vast majority of costs and litigation.

There is a tendency to associate the overall performance of workers' compensations scheme to the small percentage of claims as the sole indicator for change. One of the elements that is regularly overlooked in these claims is the motivation of those providers who advocate the change to the dynamics of the scheme and extent to which they would profit.

The vast majority of claims for injured workers resulting in a successful return to work demonstrate that the operation of the scheme is meeting their needs, those of employers and the community. Too often the needs of a few are addressed at the expense of the majority.

Rehabilitation and Return to Work

Approaches to rehabilitation and return to work differ among schemes in terms of aspects such as who provides rehabilitation services and the incentives for employees and employers to become involved.

Currently, employers and the injured worker are confronted with an increasingly confusing array of service providers offering to assist with rehabilitation and return to work issues and questions about the effectiveness of both clinical and workplace interventions abound.

The central goal of managing a workplace injury is to return the injured worker to his/her job as early as is safely possible.

Apart from humanitarian concerns and financial incentives, employers have some legal responsibilities related to the return to work of an injured worker. In most schemes employers are obliged to re-engage injured workers who have either totally or partially recovered from their injury and there are time frames stipulating how long an injured workers position shall remain available to them.

There are compelling reasons for employers to implement effective injury management and return to work programs. The presence of such programs can contribute to a safer work environment thus reducing the incidence of other injuries involving time lost from the job." and at the same time reducing employer costs. Employers and employees both gain from maintaining the employment of a skilled workforce."

In addition from the perspective of employees, successful programs can assist with reemployment, help meet their financial needs, and reduce negative personal impacts. Researchers generally agree that employee injuries caused by work related events are the result of a complex interaction of a number of factors including: the workers condition and how it is managed; the workers physical capabilities; ergonomic workplace demands; a wide range of psychosocial factors ; and the broader socio-economic and legislative environment ³⁵

The legislative environment is a major inhibitor to successful programs, ideally the legislative environment should not influence reemployment to the degree it currently does.

Overall evidence suggests that an effective injury management program can help address many of the problems that we currently face in maintaining a healthy and involved workforce, yet many organisations in Australia have not yet adopted the type of multi-faceted approach that is required for optimal return to work programs. The problem is complex and requires all

³⁷ Yassi A. Early intervention for back injured nurses at a large Canadian tertiary care hospital: an evaluation of the effectiveness and cost benefit of a two year pilot project. *Occupational Medicine* 45(4), 1995

³⁸ Butler RJ, Johnson WG & Baldwin MJ. Managing work disability: why first return to work is not a measure of success. *Industrial Labor Relations Review* 48(3), 1995

³⁵ Sinclair SJ, Sullivan TJ, Clakre JA et al. A framework for examining return to work in workers' compensation: a review from one North American jurisdiction.: Yates EH, Burton JF, Eds. *International examinations of medical-legal aspects of work injuries*. London 1998

those with a stake in the problem to bring their efforts in a coordinated fashion to reduce the burden of occupational disability.

Rehabilitation Programs

Rehabilitation services can be provided in-house, usually overseen by individuals employed at the workplace within the provider of workers' compensation services or by external providers accredited by the workers' compensation authority, or a combination of all.

Workers' compensation authorities coordinate and oversee the rehabilitation process to varying degrees. This ranges from mandating the contracting of case managers and advisers to plan rehabilitation programs for injured workers, to the implementation of specific return to work programs.

Often, the regulatory approach to working with individuals creates unnecessary levels of administration and subsequent increased to the financial cost of the injury.

There is now an increasing emphasis on employers assuming responsibility for rehabilitation in some jurisdictions.

Employer and employee incentives

Incentives for both employers and employees to become involved in the rehabilitation and return to work process vary among schemes.

Employees are protected under some schemes from losing their compensation entitlement in the event that their return to work is unsuccessful. Some schemes enhance weekly benefits limits for injured workers while they are undertaking rehabilitation.

All schemes provide the opportunity to suspend an employee's benefits if they do not undertake rehabilitation once directed to do so by the scheme administrator.

Dispute Resolution

In most jurisdictions, disputes over worker's compensation matters are handled by an external administrative review process. Reconsideration usually involves an appeal to a compensation court or tribunal and potentially to the supreme court on points of law. In most jurisdictions, medical questions may be referred to a medical panel or tribunal, which may operate in either an advisory or legal capacity."

Existing dispute resolution processes differ in the emphasis they place on conciliation/arbitration and the hierarchy of appeals and the extent to which lawyers or other representation may be involved at each stage.

A number of attempts have been made to introduce an alternate framework for dispute resolution. Several approaches have been developed in a shift away from a judicially based system to an alternative framework for measuring dispute resolution procedures. Some attempts have include a move towards a formal mediation system."

3. QBE's Approach to National Consistency

Introduction

QBE acknowledges that there are a number of current and previous inquiries into workers' compensation arrangements. The matter has been debated extensively in the last two decades and many workable solutions proposed." It is unfortunate that the majority of the recommendations have not been adopted.

QBE's Commitment to National Consistency

In 2001, QBE made a commitment to moving towards a simplified approach to workers' compensation. It launched its own change initiative committed to achieving greater consistency in claims administration and service delivery.

QBE Connect returned to the basics of the workers' compensation model. It stripped away the layers of complexity to ask the fundamental question. Why do we have workers' compensation?

The outcome was a simplified approach to workers' compensation founded upon the pillars of social responsibility and financial sustainability.

QBE took each state model and looked for the consistent themes across all schemes. It used these common elements as a baseline in the development of our case management program. QBE developed an integrated and holistic program based on service delivery to support all stakeholders. It then looked for the elements unique to each scheme and built these into the model. These elements formed the basis of a nationally consistent methodology that is applied across all schemes.

³⁸ Industry Commission, *Workers' Compensation in Australia*, Report No. 36, February 1994; General Purpose Standing Committee, *Review and Monitoring of the NSW Workers' Compensation Scheme*, September 2002; WorkCover Queensland, *Restoring the balance: Delivering a fair and equitable system of workers compensation in Queensland*, March 1999; Heads of Workers' Compensation Authorities *Promoting Excellence Report: Inquiry into Workers' Compensation, System 1997*; *The Guthrie Report*, July 2001; *The Cole Report*, 2002; House of Representatives Standing Committee, *Back on the job* 2003).

QBE Connect was able to establish a core methodology aimed at providing injured workers and employer with greatly improved service quality through improved consistency. This change has reset the focus in each claim to better understand the needs of the employer and the injured worker.

QBE is committed to achieving greater national consistency in schemes to provide compensation at a reasonable cost through active claims management and argues that a nationally consistent framework should achieve a balance between the level of premiums paid by employers and the appropriate, adequate, fair and equitable benefits available to the injured worker.

Models for Greater National Consistency

Numerous recommendations and models have been proposed over the past two decades to address national consistency. These represent a continuum of the degree to which national consistency should be applied. Three broad approaches can be distilled, with all other models forming a variation of one or more of these models.

The three broad approaches are:

- Single national scheme
- National uniform legislation
- National consistency based on consistent principles

A Single National Scheme

A single national scheme is the most direct means of achieving national consistency. However, it is the most disruptive to the current environment. The practical application of such a model would either require the transposition of an entire exiting scheme to the national level or via the creation of an entirely new national scheme drawing upon best practice features of existing schemes."

QBE believes that a single national scheme has the potential to lead to the explosion of costs - including substantial implementation and transitional

costs as well as operational costs and would be unresponsive to pressure for improvement from industry in any one State or Territory, thus weakening incentives for improved performance.

A single national scheme has the potential to preclude the benefits of ongoing improvements in workers compensation arrangement from beneficial competition between schemes in areas such as prevention, rehabilitation and return to work⁴¹.

National Uniform Legislation

A second approach to national consistency would involve achieving uniformity through common legislation. This model would involve the development of "template legislation" or the "applied law regime" whereby legislation enacted in one jurisdiction is applied through complementary legislation enacted in other jurisdictions.

Such a model would require joint Commonwealth, State and Territory co-operation, co-ordination and agreement similar to what has attempted to be achieved through reform to civil liability laws.

National Consistency Based on Uniform Principles

The third broad approach is that of national consistency based on practices identified as supporting consistency in service delivery. Most calls for greater national uniformity support this route of achieving such a goal.

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QBE's Preferred Action - A Principled Approach

QBE's approach to national consistency is based on cooperative national framework founded on a set of uniform principles. This approach is based upon providing the most effective mechanism for producing and maintaining equitable and sustainable outcomes.

QBE advocates a principles approach on the basis that it:

- has the effect of systematising the workers' compensation process. It provides a formal mechanism for identifying the fundamental feature of workers' compensation
- provides a sound base to build uniformity and predictability in the structural elements of the workers' compensation system
- provides a flexible and adaptable framework in a changing socio cultural, political and economic environment.

QBE proposes a principled approach over other models because it promotes the constant refinement of workers' compensation arrangements in a process of continuous improvement". The model also promotes competition between the States and Territories in delivering ongoing improvements.

There is the potential that a principled approach can be seen to work against national consistency. At first glance, the potential for variation across jurisdictions can be seen as detracting from greater consistency. A principled approach can also be viewed as problematic in terms of its maintenance as schemes evolve". For example, interpretation of the principles may differ across jurisdiction over time.

Variations can be managed if they are subject of the principles that regional differences should be accommodated only where such differences do not adversely affect arrangements in other jurisdictions.

National Principles

The framework that is proposed by QBE is underpinned by five key principles which together constitute QBE's shared visions for workers' compensation systems in all Australian jurisdictions.

⁴² Woodhouse Inquiry (1967NZ) Woodhouse Inquiry (1974Aus), HWCA (1997) *Promoting Excellence: Final Report*.

⁴³ HWCA (1997) *Promoting Excellence: Final Report*

The five principles are:

- Clarity
- Equity
- Sustainability
- Workplace Focus
- Administrative Efficiency"

Clarity

The principle attests to the value of a clearly defined system that is free from ambiguity. This has the ability to provide greater stability to workers' compensation arrangements through a clear recognition of the system boundaries and reduce disputation.

Equity

The principle of equity relates to both the interest of the employer and the worker. For example, the allocation of costs of workplace injuries must be equitable in terms of employers liabilities and workers' entitlements. For example, comprehensive entitlement for injured workers based on equitable grounds with a range of affordable purchasing opportunities for employers.

Sustainability

The principle is directed as securing quality outcomes which will endure over time rather than establishing quick fixes that have only short-term value.

Workplace Focus

Workers' compensation systems must reinforce the primacy of the employer/employee relationship in preventing and managing workplace injuries and ensuring that injured workers are returned to work. The principle is directed a building workplace responsibility for workplace injury and illness on the premise that the work community owes a moral duty to and has a vested interest in looking after injured workers. Workplace injury must not be considered a cost of business, but a preventable event that impacts more than the bottom-line.

Administrative Efficiency

The principles refer not only to the administrative costs of the system but also the service quality that is provided.

A number of these principles interact with each other to provide a matrix of sustaining features.

Relationship of Principles to Scheme Goals

Coverage and Access to the scheme

The element of scheme coverage concerns the area of system definitions and establishment of gate-keeping principles governing the conditions of access and entitlement to benefits. In part, this involves the setting the boundaries of the system, for instance, in terms of who is covered, who is not. Within these parameters, this element of scheme design also operates in terms of providing guiding principles directed to enhance the nature of scheme operation, for instance, qualifying a general coverage of injuries through an insistence upon a significant or substantial employment contribution to the injury.

This element is invested with the role of providing the greatest possible clarity to scheme boundaries in order to increase the certainty of the operation of workers' compensation systems and to reduce areas of ambiguity. This aim is often difficult to achieve in some areas, such as the coverage of "worker" or "employees", given the complexity of modern social relations.

As well as clarity, the establishment of a fair and equitable balance between the interests of employer and injured worker.

Injury Management, Rehabilitation, and Return to Work

Rehabilitation, like accident prevention is a relatively recent concern of workers' compensation. Initially, it made its place in terms of recognizing certain forms of quasi-medical expense, and the provision of support such as prostheses, as being compensable items under the scheme.

It has been only in recent times that a more systems-based approach has been taken to rehabilitation. It is now seen as a broader injury management

process by actively linking its operation with return-to-work goals. In particular this has involved a system of identifying realistic vocational and social outcomes and supporting these thorough the injury management process.

Effective return to work initiatives serves to embrace both the social and financial aims of workers' compensation scheme. The significance of the workplace for a range of intangible factors related to individual selffulfilment and well-being, as well as being a source of economic security, is now well recognised. The impact of extended claims duration and the proportion of long tail claims to overall claims, constitute extremely important features for the current financial sustainability of the scheme.

Premium Setting

In one sense the premium system can be regarded simply as a pool of money which exists to pay the costs of scheme operations. In former times this was, indeed, largely the case. It is now recognized that the premium system can provide powerful economic incentives in support of other scheme goals such as prevention and injury management.

There are important design considerations concerning the manner in which the premium system is itself structured. Worker's compensation insurance systems contain an inherent conflict between two fundamental principles - the insurance risk and the concept of user pays.

Insurance by its very nature involves sharing of risk and cost. This acts against the principles that a party incurring costs will only respond in the proper way to reduce these costs if the full impact of its behaviour is allocated to it.

Premiums must ensure equity between employers in similar situations and the avoidance of leakage and fraud. At the moment at a more technical level there is a host of matters which operate to promote equity, including consistent definition of remuneration and the basis of employer classification for premium purposes.

Benefits and Entitlements

Workers' compensation benefits operate to meet the losses flowing from the consequences of occupational injury and illness. These may include the loss of earnings as a result of not being able to undertake either pre-injury employment or, in the case of total incapacity, any employment whatsoever, the cost of medical and allied services which are required as a result of the injury, and loss of amenity and enjoyments of life which flow from the injury.

The design of such structures in accord with scheme goals, requires that issues concerning the form, adequacy and sustainability of benefits be taken into account and balanced with questions of costs and scheme affordability. The form of benefit structures and the level of benefits provided by them, have consequences, in terms of behavioural motivation, with significant implications for scheme performance. While the adequacy of benefits is an important social consideration, system design has to guard against introducing elements of dependency and other forms of social dysfunction.

4. Structural Elements of Workers' Compensation

Coverage and Access

The workers' compensation system needs to establish a basic definition of who is entitled to workers' compensation and in which circumstances there is coverage under the scheme, in order to access the benefits provided by the scheme.

Naturally scheme coverage should reflect the role and function of workers' compensation.

All definitions should be cognisant of the realities of the modern work environment and flexible enough to adapt to the changing nature of the labour market and development of new risks.

To this end, QBE recommends a broad approach to developing consistent national definitions. QBE argues that it is in line with the spirit and intent of beneficial legislation to adopt such an approach.

Achieving a consistent set of definitions can improve predictability, stability and the ability to appropriately price (defined risks). It provides the additional benefits of:

- overcoming the problems associated with determining the boundaries of the employer/independent contractor distinction
- removing anomalies that the employment situation of many employees currently deemed to be workers is essentially the same as that of the self-employed.
- addressing the moral hazard arguments that coverage of self-employed is not essentially different from many existing situations of coverage
- allow premiums to be set according to the nature of employment.

Principles

A number of principles should operate in relation to this area. These include:

Clarity	Since the task of scheme definition in terms of boundary setting, falls heavily within the areas of resolution of scheme coverage, one of the important principles should be the attainment of maximum clarity so that, as far as possible, people are able to determine their rights and obligations in advance. ⁴⁵
Equity	There should be comprehensiveness of coverage ⁴⁶ . There should be universal coverage for all employers and workers who come within the defining characteristics. Similarly broad comprehensive eligibility criteria should apply which encompasses all work related injuries. ⁴⁷
Recommendations	
Administrative Efficiency	<p>A broad approach to consistent definitions delivers a more flexible and robust to solution to meet the challenges of a changing and more mobile workforce and the changing nature of risk.</p> <p>The principle of administrative efficiency is best achieved by ensuring certainty and minimisation of transaction costs. ⁴⁸</p>

Coverage of Workers

QBE submits that there is a need for a clear and consistent definition of who is covered by workers' compensation. There need to be a consistent approach to the definitions of worker and employer. This should reflect the

⁴⁵ HWCA (1997) *Promoting Excellence: Final Report*

⁴⁷ Industry Commission (1994) *Workers' Compensation in Australia*, Report No. 36, House of Representative Standing Committee on Employment and Workplace Relation (2003) *Back to the Job* HWCA (1997) *Promoting Excellence: Final Report*

⁴⁸ HWCA (1997) *Promoting Excellence: Final Report*

role and function of workers' compensation and the changing nature of employment relationships.

To this end, QBE recommends:

- Definitions take into account changes in the labour market (i.e. increased contracting out of services) and develop and evolve to reflect the realities of change in the workforce.
- The boundaries of eligibility should be broadened to include contractors in the instance where they receive their income from predominantly one organisation.

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- The boundaries of eligibility should be broadened to provide the flexibility to deal with new employment arrangements through deeming provisions. Jurisdictions should have the ability to add to this list in light of local conditions and cultural traditions without undermining the notion of national consistency on the basis of the principle that regional differences should be accommodated where such differences do not adversely impact arrangements in other regions.
- A broader more inclusive test of "arising out of or the course of employment" be considered.

Coverage of Injuries

QBE proposes the adoption of a comprehensive definition to injuries which encompass:

- all workplace injuries and illness, including physiological and psychological in nature and which has the ability to extend to those industrial and modern diseases currently at the margins of workers compensation.
- A test for work-relatedness
- Subsidiary or qualifying elements that apply to particular injury types, and particular features of occurrences.

QBE suggests:

- Definitions need to be flexible enough to adapt to the changing nature of risk. New challenges to safety are emerging. Definitions should be flexible enough to deal with them before they reach a critical stage.
- Consideration needs to be given to the access and entitlements that will be provided for in the future by acknowledging those risks that currently lie at the periphery of workers' compensations claims and making provisions for them now.

⁴⁹Accident Compensation Act 1995. Victoria

- Definitions should be broad enough to encapsulate changes so that courts do not need to interpret new risks as injuries allowing definitions to develop on a structured and ad hoc basis.
- QBE Connect recommends a broad definition of workplace be adopted in the workers' compensation system, incorporating the definitions of 'Premises', 'Place' and 'Persons'.
- Consideration should be given to whether journey claims should be adopted nationally. The socio-economic and lifestyle trends of workers commuting from different areas and the added occupational dislocation caused by outsourcing needs to be factored into the review.
- The approach to recess claims needs to be reviewed. Scheduled breaks are essential to any risk arrangement strategy, promoted through O&HS.
- Definitions need to look at how to cover those injuries that are clearly work related - as well as those that have a tenuous link.

Until recently the injuries that legislation sought to compensate were relatively easy to identify; they were acute and traumatic and appeared to be the product of discrete and observable incidents. This is no longer the case.

Since the end of the Second World War, the work we do, the risks we face and the people who do the work have all changed dramatically. At the same time new knowledge of the long-term effects of occupational hazards has expanded the definition of "occupational injury" from a medical perspective, and somewhat to the mind of the judiciary far beyond what the original vision underlying compensation legislation. Changes in the field of healthcare have revolutionised the way we treat injuries and the way we fund the treatment. The legislation however, remains locked in definitions established nearly half a century ago.

A consistent definition of injuries must be flexible enough to incorporate the changing nature of risk in a proactive rather than retrospective way. A broad approach to injuries to allow for new and emerging risks.

⁴ACT, NSW, Tasmania and Western Australia,

⁵¹Commonwealth, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia

Injury Management, Rehabilitation and Return to Work

Injury management, rehabilitation and return to work operate as an integrated system. The development and consistent implementation of quality injury management practices constitutes one of the essential element of a socially and financially sustainable workers' compensation system.

Best practice approaches within the context of injury management, rehabilitation and return to work provide a fundamental for basis developing a model for national consistency. Best practices provides a core methodology on which ~~consistency can be achieved in light of policy and legislative variations.~~

Principles

A number of principles should operate in relations to this area. These include:

Principle

Relationship to Injury Management, Rehabilitation and Return to Work

⁵²Eakin et al (2002) *Return to Work in Small Workplaces*, Holmes and Gifford (1997) *Narrative of risk in occupational health and safety: why the "good" boss blames his transman and the "good" tradesman blames his tools*, Australian

and New Zealand Journal of Public Health, 21(1).

Workplace Focus

⁵³HWCA (2001) *Return to Work Monitor*, Eakin et al (2002) *Return to Work in Small Workplaces*, Workplace Visions

www.shrm.org, Institute of Work and Health (2002) *Insuring the Health of our workforce: a look at experience*

Injury and illness constitute a serious threat to the employment relationship, sometimes to the point of terminating it. ⁵²

Consequently injury management and return to work programmes are integrally related to fostering communication

and transparency to better develop workplace relationships. For injury management to be successful there must be a culture that supports return to work.⁵³ *rating programs*, Infocus, Issue 30a

Principle	Relationship to Access and Coverage
Sustainability	<p>Injury management systems and their application to return to work programmes constitute a vital component of sustainable and durable outcomes at the individual, business and scheme level. For the individual, it provides the basis for maintaining the social and economic benefits of employment which the injury or illness would otherwise threaten⁵⁴. For business, it minimizes, the disruption and cost associated with the lengthy absence of an injured worker, the need to recruit and train replacement personnel; and intangible costs such as lowered morale.</p> <p>A number of studies have shown that the indirect costs associated with workplace illness are far in excess of actual compensation costs.⁵⁵ For the scheme, successful applications of quality injury management provides a basis for dealing with one of the most significant system cost drivers.</p>
Equity	<p>The ongoing performance of workers' compensation schemes is crucially a matter of balance in particular in relation to the competing yet parallel interests of the parties. The total management approach adopted must encapsulate the balance in terms of the mutual rights and responsibilities in creating sustained and durable return to work.</p>
Administrative Efficiency	<p>Quality total injury management principles and practices are aimed at addressing the waste and inefficiency, both in human and economic terms, resulting from challenges in the existing workforce and workers' compensation.</p>

⁵⁴ HWCA (2001) *Return to Work Monitor*, Eakin et al (2002) *Return to Work in Small Workplaces*, Institute of Work and Health (2002) *Insuring the Health of our workforce: a look at experience rating programs*, Infocus, Issue 30a, Drury (1991) *Disability management in small firms*, Rehabilitation Counselling Bulletin, 334(3), Eakin and

⁵⁵ MacEachen (1998) *Health and social relations of Work* Sociology of Health and Illness.
See HWCA (2001) *Return to Work Monitor*, Industry Commission (1994) *Workers' Compensation in Australia*, Report No. 36 for more findings in relation to different studies into the hidden costs of workers' compensation arrangements.

Recommendations

QBE proposes a best practice model for achieving national consistency with regard to injury management, rehabilitation and return to work to eliminate inequity and promote best practice across all schemes.

A total injury management approach must inform all levels of scheme operation, including claims management, but in particular directed at developing occupational rehabilitation and return to work.

A "best practice" approach

Workplace based programs should remain the cornerstone of injury management with an emphasis on restoring the injured worker to the fullest physical, psychological, social and economic usefulness of which they are capable, consistent with pre-injury duties.

QBE believes that the key considerations of developing a "best practice" model for workers' compensation injury management rehabilitation and RTW include:

- Promoting early and intensive intervention
- Application of evidence-based medicine to facilitate timely recovery from injury
- Promoting workplace-based programs that are supported by strong financial incentives and obligations on workers, employers and healthcare providers
- Establishing open and regular communication systems between all stakeholders
- Implementing case management approaches that recognise and address psychosocial factors and their impact on RTW outcomes.

Provisions in the legislation need to be directive towards best practice case management by compelling early intervention and the implementation of planning processes that involve all parties.

Outcome Based Focus

Greater consideration needs to be given to a solutions based approach to injury management with a greater focus on return to work.

Occupational rehabilitation has not delivered the outcomes that might have been expected, in respect of RTW outcomes. Rehabilitation costs have escalated, generally correlated with claims durations statistics.

Rehabilitation needs to be considered in a case by case basis. There needs to be a shift in thinking away from rehabilitation as the primary answer to addressing return to work. A holistic approach needs to be taken.

Consideration needs to be given to the types of measures that are employed to benchmark performance, and focus more on outcome measures with less focus on and enforcement of process measures.

Greater Collaboration between stakeholders

Collaborative processes need to be given more legislative force in general. The roles and responsibilities of the employer, worker, service providers, and regulator need to be clearly outlined.

Clear definitions need to be provided relating to the circumstances that constitute non-compliance within injury management provisions as well as the consequences for non -compliance

Mechanisms need to be put in place to align stakeholders goals. Encouraging employers to provide, as far as practicable, suitable duties for an injured worker for an appropriate period of time, but at the same time recognizing the difficulties faced by small and medium sized businesses in meeting this objective.

Employer Responsibility

The workplace should remain the cornerstone of total injury management, as such the prime responsibility for return to work outcomes must lie with the workplace partners, employers and workers.

QBE recommends that the employer should:

- be responsible for assisting in the occupational rehabilitation and return to work of their injured workers, including the active involvement in the development of workplace focused return to work plan
- be encouraged to establish rehabilitation programs for their workplaces and implement return to work plans for injured workers.
- keep the worker's position available for a reasonable period. This responsibility should extend to assisting in the reintegration of the worker into the workforce through including providing suitable duties if appropriate as well as job modification, such as graduated hours.

This approach recognises the basic responsibility of an employer to assist the worker re-enter the workforce and the importance of their active involvement. It reinforces the fundamental legal and moral responsibility of the employer in relation to the role and function of workers compensation.

Worker Responsibilities

Workers' Compensation systems should provide an environment where an early return to work is viewed by the injured worker as the most appropriate outcome. This involves an obligation on behalf of the injured worker to actively participate in the injury management, rehabilitation and return to work process.

An injured worker's willingness and commitment to participate in the injury management process is a key determinant of a sustainable return to work outcome.

Insurers Responsibilities

Injury management, rehabilitation and return to work are strongly integrated into claims management processes and practices. In turn, insurers, statutory authority managers and fund agents should ensure that there is a clear focus on return to work as part of the worker compensation management process.

It is the responsibility of insurers to support quality injury management practices, return to work outcomes, as well as focussing on appropriate occupational rehabilitation assessment and intervention in return to work considerations.

Insurers have a central role in influencing a culture which strongly supports and reinforces the expectation of return to work through their interactions with workers and employers.

QBE recommends that insurers should facilitate the injury management process by:

- promoting workplace-based programs that are supported by strong financial incentives and obligations on workers, employers and healthcare providers
- establishing open and regular communication systems between all stakeholders

- develop a collaborative approach to claims management
- implementing case management approaches that recognise and address psychosocial factors and their impact on RTW outcomes
- maintaining an appropriately skilled workforce to ensure integrity in the service delivery and return to work solution and benefits.

Service Provider Responsibilities

The involvement of external providers, particular in the areas of medicine and rehabilitation, is a feature of total injury management. Service provider information is most effective when the employer, worker, medical and rehabilitation providers (where involved) jointly develop, implement and show a commitment to return to work programmes.

Medical practitioners have a responsibility to the injured worker and the employer to take an active role in return to work by providing direct advice regarding work capacity.

Regulators Responsibilities

QBE see the regulators function being to promote and enforce the legislative framework required to achieve return to work. The regulator holds the central position with respect to establishing overall performance of the system. Regulators should have the fundamental responsibility of implementing the infrastructure which will perpetuate a culture that strongly support and reinforces expectation about injury management and return to work. This culture should be reinforced at each level of the workers' compensation scheme.

Among the range of factors which the regulator must consider are:

- ensuring appropriate levels of legislation/policy requirement are in place for the operation of best practice approaches ensuring appropriate information and educational services are available and accessible to all parties
- developing outcome-focused and financially sustainable and nationally consistent performance standards and monitoring the implantation and operation of standards
- introduce programs to encourage initiatives which assist employers to develop effective injury management approaches.

(general Considerations)

General considerations for developing a best practice model include:

Re-evaluating the Rehabilitation Industry

QBE argues that the rehabilitation industry needs re-inventing to align rehabilitation to the goals of the scheme.

QBE recommends the:

- adoption of a set of National definitions, standards of accreditation and measurement
- regular assessment for relevance, effectiveness and results public access to rehabilitation provider outcome data to encourage greater transparency and accountability in rehabilitation providers.

Rehabilitation services are not required for all injured workers, but, when they are they are most effective when delivered as soon as possible after the injury."⁵⁶ Early intervention is a primary consideration for QBE and we believe it provides a guiding principle for an effective total management approach."

Early Assessment and Intervention

There is a need to explore incentives and disincentives to achieve early intervention, rehabilitation and RTW."

Injury management should be linked to injury prevention and safe workplaces. Performance measures that have a link to the calculation of premiums should be used to reinforce expected employer behaviours.

Provisional Payment

The principle of making provisional payments for treatment and wages for a time-limited period (regardless of the ultimate liability decision) is consistent with best practice injury arrangement and facilitates an early focus on recovery and return to work.

⁵⁶ HWCA (2001) Return to Work Monitor, Campbell Research and Consulting

⁵⁷ Glen Roberts-Pitruzzello, *The High Cost of Delays: Findings on a Lag-Time Study*, Summer 2000 Issues Report, The Hartford Financial Services Group, Hartford, CT, Intracorp, Communication, Caring and Concern: A Study of Injured Workers and Their Experiences with the Workers' Compensation System, Intracorp & The Gallup Organization, 1997
Gard and Sandberg (1998) *Motivating factors for return to work*. *Physiotherapy Research International* 3(2).

The Concept of Reasonable Treatment

QBE propose that the concept of 'reasonable' treatment should apply to all jurisdictions to prevent over servicing.

Guidelines should be developed involving all parties to assist providers to determine what is 'reasonable' and what is 'unreasonable'. The parameters should be within a range of parameters rather than having these matters decided on a case-by-case basis to provide an equitable system. It will also result in reducing litigation arising from inconsistent interpretation.

Vocational Re-training

QBE considers that vocational re-training is a vital part of total injury management practice. Given the semi-skilled nature of large number of workers injured on the job in manual roles this is a real issue that needs to be addressed to achieve sustainable outcomes.

There are situations where transitional jobs do not solve the return to work problems for some injured workers and there needs to be a permanent change of job. Ideally an infrastructure needs to be put in place training services and skills as part of the total approach to injury management.

An unique set of skills are required to help an injured worker develop a positive career plan, adequate self esteem, self efficacy and understanding the mechanisms involved in accessing new areas of the labour market. Particular skills and expertise required in supporting injured workers to change careers and employment options".

Currently there is a gap in the interface between the workers' compensation and wider social policy to address the issue of vocational re-training and relocation for those injured workers where transitional jobs do not solve the return to work problem, or for those who are left permanent disabled following a workplace injury or illness.

Any rehabilitation approach should incorporate not only the physical rehabilitation of an injured worker, but also social rehabilitation of the worker as well.

Consideration needs to be given to how we address issues of social rehabilitation and re-location for those permanently injured in the workforce. This raises broader issues of who is responsible for the infrastructure required to support the system and who ultimately is responsible for funding.

At present, those unable to return to their previous work often present as feeling helpless and lack insight into alternative options or methods to find other work.⁶⁰ With time many will be subsumed within the social security system creating the transfer of cost to the wider community at large.

Dispute Resolution

QBE submits that there is need to establish forums for mediation and dispute resolution. A re-evaluation of existing structures needs to take place. Steps should be made to remove penalties for the use of dispute resolution systems. For example, insurers who are acting on behalf of employers for use of the Workers' Compensation Commission should not be subject to penalties in NSW.

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Industry Commission (1994) *Workers' Compensation in Australia*, Report No. 36, Gunderson, King and Gildiner (1998) *Job Retention and Return to Work Strategies for Disabled Persons*, International Labour Organisation, Johnson, (1987) *Return to Work After Severe Head Injuries*, International Disability Studies 9(2),

Premiums

The premium setting system provides the financial underpinnings of a workers' compensation scheme. In order to do this in an equitable and financially sustainable manner it must take into consideration a number of factors.

In setting premiums consideration must be given to:

- ensure that employers are not crippled by a single claim, or a series of claims on balance through providing a pricing system that works to encourage accountability and responsibility for accident prevention, workplace culture, transparent IR/HR practices and effective return to work initiatives
- ensure that the interests of current employers are balanced against the needs of future employers and is reflected in the overall level of scheme funding.

Principles

A number of principles should operate in relations to this area. These include:

One of the needs of business is for a reasonable degree of transparency, predictability and consistency in the operating environment in order to assist budgeting and planning. A feature

Principle	Relationship to Access and Coverage
Sustainability	which has characterised most, if not all, Australian and North American workers' compensation jurisdictions over the past two decades ⁶¹ , has been periods of extreme volatility in insurance premium rates ⁶² . A key design feature, therefore, should be to devise premium arrangements which are characterised by <u>reasonable stability and predictability</u> .

⁶¹ HWCA (1997) Promoting Excellence: Final Report

⁶² Workplace Relations Ministers' Council (2002), "Comparative Performance Monitoring", 4th Report

Clarity	An important feature of premium system design is that it should be capable of easy comprehension by employers. Undue complexity in premium measures, as in similar revenue systems, can lead to increased legalism and the search for loopholes. ⁶³ As well, such complexity can also blunt any message, such as an incentive for prevention, which the system can be designed to deliver.
Equity	While the concept of insurance inherently involves the notion of pooling of risk, the interest of equity between employers points towards the principle of minimalisation, as far as possible, of the element of cross subsidisation between employers.
Administrative Efficiency	The principle of administrative efficiency parallels some of the considerations noted under the heading of 'Clarity' in terms of the minimalisation of avoidance and abuse. As well, administrative efficiency also serves the interests of economic efficiency through a reduction of transaction costs.

Recommendations

QBE recommends that to achieve greater consistency in premium settings the key principles of equity, sustainability, prevention incentives and simplicity apply.

QBE submits that the premiums should:

- be contained at an affordable and stable level to continue sustainability and viability of employers.
- be closely align to true risk to provide incentives for injury prevention and reduction in injuries

The essential elements of the premium setting process in QBE's consideration are:

- full funding
- transparency in premium setting
an equitable balance between the provision of stable premiums and incentives for employers to exceed the statutory requirements in respect of accident prevention, workplace culture, transparent IR/HR practices return to work and injury management

⁶³ HWCA (1997) Promoting Excellence: Final Report A

- system delivery in the most economically efficient manner
- the delivery of an understandable rating and pricing system coexisting with the parameters of underlying technical complexity.

Full Funding

QBE and the broader community demand that there is the need for full funding as the cornerstone for an enduring insurance market and economic efficiency⁴. Sustained (insurance) losses may result in the withdrawal of the private sector, with the resultant loss of competition. In managed fund environments, the unfunded liability can sit outside government accounts with no accountability attached to any stakeholders to seek to have it managed and returned to a fully funded state.

Further, there will result a misallocation of resources, which would also ensue from cross subsidisation of industry groups.

The premium rate setting system should reflect the twin goals of a fully funded scheme with minimal cross subsidization:

- Elimination of cross subsidisation with other classes of insurance,
- Minimisation of cross subsidisation between industries and employers of different sizes
- Provide benchmarking of industry rates to promote competition
- Providing mechanism to control volatility of industry rates without unduly limited industry rate levels or create cross subsidisation
- Setting adequate minimum premiums.

Transparency in Premium Setting

Premium settings should be built on a foundation of fact. Workers' compensation is the insurance class where a factual base is most crucial. Workers' compensation sits at the junction of Industrial Relations, Social Welfare and Insurance. It is politically sensitive and subject to ongoing government scrutiny (intervention) and politicisation. It is a subject of contention for employer and employee, for Employer Associations and Trade Unions. It engages the attention of the legal and medical professions together with numerous other parties. In order to objectify data collection

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HWCA (1997) Promoting Excellence: Final Report, Industry Commission (1994) Workers' Compensation in Australia, Report No. 36

inherent in price determination there is a need for greater emphasis on data definitions, and a uniform approach to data collection and analysis. A factual basis for premium setting is the foundation of building greater equity and transparency in premium setting. It provides a direct relationship between the employers responsibility and liability for work related injury and workplace illness.

Few employers are able to clearly and empirically link workplace health and safety culture and the cost of their premiums. QBE advocates greater education and clarity in the link between the two. Determining premiums on the basis of fact provides a platform for greater communication and more significant illustration of the relationship between the two.

A Social and Financially Sustainable Model

QBE argues for a structured, sliding or tiered approach whereby:

- smaller employers premiums should be based on a "pool" of small business risks, such that the premium level reflects a category based on some common element
- larger employers, premiums should be based on claims or risk experience so as to provide an incentive to employers to prevent workplace injuries - this should reduce cross- subsidization and provide a framework within which all employers pay their true-risk premium.

It is important to understand the differing risk properties of small and large employers when setting rules for premium calculation. Premium setting methods often affect small and large employers differently⁶⁵

Small employers suffer from the problem known as "credibility", which presents challenges for risk or experience based ratings. Analysis of claims statistics show that as a group, small businesses are expected to have a low frequency number of claims, with an even smaller proportion of large claims". These ratios are relatively stable. Individual businesses face far more changeable claims experience. In turn, small businesses receive base rates from insurers/regulators that may not have a high degree of flexibility. While this is sufficient from an insurance/funding perspective, it does not generate prevention incentives for employers.

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⁶⁶ HWCA (1997) *Promoting Excellence: Final Report*, Industry Commission (1994) *Workers' Compensation in Australia*, Report No. 36, Eakin et al (2001) *Return to Work in Small Workplaces*

QBE argues for a pooled approach to premium rating for smaller employers with bonus/penalty schemes designed to provide reasonably predictable, transparent and consistent premium changes. These should be built around an employers actions and claims experiences, for example, consideration should be given to delays in reporting or delivery of provisional return to work alternatives.

Large employers for whom experience is a good proxy for risk, premiums should be based on claims or risk experience. Claims should be based on use of a base rate and adjusted according to a employers experience (past performance, current workplace safety ratings, expected future claims and delays in reporting). The 'true risk' should be reflected in larger employer premiums to provide an incentive to employers to prevent workplace injuries - this should reduce cross-subsidisation and provide a framework within which all employers pay their true-risk premium.

QBE argues that a clear link needs to be made to between premium rating and the prevention of workplace accidents. Setting premium rates must be aimed at providing incentives to build a workplace culture, by linking injury prevention and workplace injury to the calculation of premium ratings in regard to the different risk properties of small and large business. This is the primary mechanism to ensure that employers have an incentive to improve safety performance and workplace culture.

In relation to premium setting QBE recommends:

- There is a need to encourage uniformity in industry classification (the ANZSIC base is not universal within jurisdictions, the industry code being determined by the relevant authority) and on these principles of classification⁶⁷.
- Removal of mechanisms that retard risk based pricing where appropriate. Mechanisms retard economic incentives and rewards that otherwise operate in an environment where premiums reflect actual risk and demonstrated safety performance.
- Avoid imposing flat pricing structures that alienate a significant proportion of the insuring community. Further, it does create an

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HWCA (1997) Promoting Excellence: Final Report, Industry Commission (1994) Workers' Compensation in Australia, Report No. 36, Institute of Work and Health (2002) *Insuring the Health of our workforce: a look at experience rating programs*, Infocus, Issue 30a

incentive for employers to improve their safety record thus reducing workplace injuries and lowering claim costs and promotes a more equitable system whereby employers with good safety records are rewarded whilst those with a poor history are penalized.

Benefits and Entitlements

QBE strongly urges the Productivity Commission to recommend and facilitate a process for bringing about a common and consistent regime of access to entitlements and levels of entitlements across all jurisdictions.

The variation of entitlement and the access to entitlements by workers across Australia creates inequalities which work against the Australian traditions of fairness and equality.

Principles

A number of principles should operate in relation to this area. These include:

Principle	Relationship to
Equity	<p>Benefits structures need to achieve equity at the scheme level and address the issue of proper balance within the chosen benefit structure.</p> <p>The benefits structure should embody a balance between the interests of employers and workers, reflecting their relative rights and responsibilities. The benefit structure should address the concerns of both workers and employers. It should address workers through the notion of benefit adequacy and employers through the notion of scheme affordability.</p> <p>If benefits structures depart too far, in one direction it will result in the one of the parties interest being elevated. Given time the political system will react to this inequality. The general reaction is to push the pendulum back past the equilibrium point, producing further instability.⁶⁸ For the ongoing viability and sustainability of the system , it is essential that the balance is even between benefit adequacy and scheme affordability .</p> <p>There is a need for balance within the benefit structure as well. In particular with concern regarding the rights and responsibilities between severely disabled workers and those sustaining more minor injuries and illness. It is important that <u>resources are allocated on an equitable basis.</u></p>

⁶⁸ HWCA (1997) Promoting Excellence: Final Report

Principle	Relationship to Access and Coverage	
Administrative Efficiency	This is closely linked to the idea of achieving an equilibrium of balance and the efficient allocation of resources with regard to the needs and interests of the worker and employer ⁶⁹ .	

Recommendations

Statutory benefits can be paid in a number of forms to meet different needs. In relation to benefit systems, there are a number of principles that should be taken into consideration.

- Based on the principle of equity there is a greater need for benefits to accurately relate to loss suffered by the injured worker. i.e. benefit design should not limit all workers to the same amount of time for which they can be paid compensation but should reflect and respond to the true nature of their injury.
- QBE recommends that there should be a common non-economic loss payment based on an impairment table across all schemes that is adjusted for the living cost or average weekly wages of each state.
- Tort law principles should be regarded with caution since they appear to place considerable emphasis on not benefiting a wrongdoer, and there is no wrongdoer in a workers' compensation scheme where fault is irrelevant.

Weekly payments

QBE supports that a weekly benefits structure be developed and agreed upon in consultation with existing schemes, to apply a nationally consistent framework to all jurisdictions.

QBE recommends that a weekly benefits framework should be based on a workers' pre-injury average weekly earnings.

When deciding on the level and duration of compensation payable to those suffering work-related injury or illness for lost earnings, consideration should include:

- The nature of the injury/illness and prospects for rehabilitation/return to work; and
- The incentives effects compensation is likely to on the behaviour of the employer, worker⁷⁰

⁶⁹ HWCA (1997) Promoting Excellence: Final Report
⁷⁰

Benefits levels, influence the behaviours of the worker and employers. Evidence suggests that benefit increases can result in a greater incidence and duration of claims." Workers' feelings about adequacy of compensation will condition their attitudes towards return to work.

Non - economic loss

QBE connect supports that there should be a common non-economic loss payment based on an impairment table across all schemes. 72 A potential model for calculating non-economic loss should include:

- Incorporating all non -economic losses
- Is based on whole person impairment
- Provided a common percentage attribution to the same impairment
- Provides a common assessment method. 73

The use of a model that incorporates both an assessment methodology as well as relative values provides a sound model for determining non-economic loss.

Medical costs

QBEs supports the HWCA position that people who are suffering a work-related injury or illness should not be disadvantaged when it comes to paying for directly attributable medical costs.

The danger of this approach is that any good or service which are free invite overuse. QBE believes that over servicing is best tackled via best practice rather than reducing worker's entitlements.

QBE recommends that:

- there should be no dollar or time limit on legitimate medical expenses in respect of successful workers compensation claims
- employer excesses for medical costs should be removed because of the ease with which these costs could be passed into the health care-system."

" Worrall and Butler 1986, Queensland Law Society, Moore and Viscusi 1989
72 HWCA (1997) Promoting Excellence: Final Report, Industry

Commission (1994) Workers' Compensation in Australia, 73 Report No. 36
HWCA (1997) Promoting Excellence: Final Report, Industry Commission
(1994) Workers' Compensation in Australia, 74 Report No. 36
HWCA (1997) Promoting Excellence: Final Report, Industry Commission
(1994) Workers' Compensation in Australia, Report No. 36

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Common Law

Considerable research over many years in a number of compensation systems has demonstrated that lump sum payments are generally contrary to the principles of occupational rehabilitation and ultimately to return to work." Payments made under common law for lost earnings or lost capacity to earn are frequently used for purposes other than those for which they were intended. In many cases, the method of distributing common law payments has proven inadequate to meet the future needs of the recipients who then resort to other social welfare schemes for their ongoing support. These factors combine to impede both the motivation and ability to return to work.

In turn, it is argued that it is that common law is an inappropriate channel for the receiving compensation, except for in the circumstances of noneconomic losses.

Common law also introduces an element of uncertainty in that damages are awarded only if the plaintiff can prove fault. In view of the impact outlined above, the HWCA emphasises the importance of insuring that any common law payments for economic loss be in the form of structured payments over the life of the worker. QBE supports this view.

Service Delivery

QBE Connect take an integrated approach to service delivery with an emphasis on best practice claims management, the delivery of a quality selfinsurance product and the reduction of dispute resolution.

Principles

A number of principles should operate in relation to this area. These include:

Principle	Relationship to
Workplace Focus	Building a culture of service begins in the workplace. The workplace is an essential criteria that the quality of service delivery elements can be judged. At the heart of service delivery is the employer-worker relationship. Service providers of insurers and self insurers, medical and allied health and rehabilitation and the dispute resolution system must be clearly directed to the achievement of key scheme goals such as early and durable return to work.
Sustainability	Service delivery arrangements should be enduring over time and provide for continuous improvement. Service delivery need to include standards of service (both outcome and process) against which current practice can be measured (benchmarked) and improvements identified.
Equity	A logical structure should underpin the determination of service I standards. This is especially in relation to considerations such as data provisions and quality of service issues. Users need to be sure that they receive consistent and predictable treatment directed towards agreed outcomes from all service providers.
Administrative Efficiency	<p>Quality service delivery outcomes, by definition satisfies the principles of best practice and administrative efficiency.</p> <p>Administrative efficiency in service delivery will minimise some of the weaker elements in scheme operation like delay and undue complexity and contribute bwards the social goals of the scheme.</p> <p>Best practice service delivery should minimise the administrative costs associated with such service provision.</p>

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Self Insurance

The most sustainable and effective solution for self insurance would be to establish a national self insurance licencing and management criteria for self insurers across each of the State and Territory schemes

The development and implementation of national licencing criteria for self insurers would provide consistency for organisations entering into self insurance and current self insurers.

QBE believes consistency would be achieved through:

- Nationally consistent OH&S standards for self insurers
- Prudential requirement uniformity
- Consistency of WorkCover levies
- Re-insurance requirements
- National data management and reporting standards
- Consistent claim management standards for self insurers that are measured against national performance indicators
- OH&S and claim and injury management auditing applied consistently and transparently
- Measures which encourage the integration of OH&S and workers compensation with regard to prevention activity and continuous improvement

A nationally consistent licencing criteria for self insurers would permit an organization to self insure in one or more jurisdiction through identical criteria. The State or Territory regulators would assess and determine ultimate self insurance eligibility based on these criteria.

An organisation that successfully self insures in one State and then seeks to gain self insurance in multiple States or Territories would be immediately eligible to do so as they have met the respective criteria in the first self insured state. As the self insured risk increases into multiple self insured states and territories, financial protection items such as bank guarantees and Re-insurance are scaled accordingly.

The administration burden for the self insured employer is reduced whilst meeting the requisite national prudential requirements. The state and

territory regulators continue their monitoring role albeit in a consistent fashion.

Dispute Resolution

QBE believes there is an opportunity for the development of a system that initiates the prevention and quickly resolves disputes through pragmatic intervention in the workplace. This process must involve the full participation of all parties.

The dispute resolution practice should be approached sensitively with regard for the environment and early targeted intervention.

The process should be grounded in the workplace with a focus on dispute prevention. Key to this process would be open communication and full participation of all parties.

An adverse decision on a claim should be

- Based on all known facts
- Reviewed internally before being communicated to the worker
- Communication in a manner that it is able to be understood by the worker and include advice of all appeal rights

QBE recommends that the dispute resolution service should appoint experienced gatekeepers to screen and stream disputes to maximise the prospects of resolution.

Naturally some matters will appropriately proceed as a dispute should be subject to a singular, national process. QBE sees the opportunity for the development of a system that is administered Federally to bring about the consistency in the dispute resolution process. At present, each of the states are using their own model which only reinforces the differences and reinforces a tort based system.

ADR should be the cornerstone of this process, and members who are engaged to perform the work should have fixed term contracts, to allow for review.

In order to deliver the best level of advice, the dispute resolution body should have an advocates office that is funded on a user pays system. This would

work on the premises that matters that were appropriate to proceed as a dispute would be assigned an advocate who would represent the injured worker and their work would be chargeable according to a set scale of fees that would be payable by the party that was unsuccessful in the action.

5. Conclusion

QBE is committed to the achievement of greater national consistency in workers' compensation schemes in order to ensure equity and financial sustainability.

This conclusion provides a summary of the efforts by QBE Insurance to address some of the major issues confronting existing Australian workers compensation systems by addressing the inconsistencies inherent in the multi jurisdictional regime.

The QBE Approach

Workers' compensation systems are extremely complex and volatile entities that have developed on an ad hoc basis. Existing Workers' represent ambiguous, inconsistent and often nonsensical arrangements characterised by multiple regimes. The differences across jurisdictions produce potential inequities between workers in different jurisdictions and added costs for employers operating nationally.

In such a volatile environment, it is sometimes difficult to identify the key elements of workers compensation systems.

QBE advocates a return to the practical adoption of the fundamental principles of workers' compensation to develop a basic approach for moving towards greater national consistency. This will require stripping away the layers of complexity to create transparent, equitable and sustainable arrangements.

The essential message in the adoption of basic model is the centrality of the employer/worker relationship. Worker compensation systems exist for no other purpose than to support this relationship. Both principle and successful operation show that the successful operation of workers' compensation schemes is crucially dependent upon the quality of this primary relationship and the measure provided to support and enhance it.

Surrounding this employer/worker arrangements are set of fundamental principles that should be applied to the structural elements of the system.

Key Principles	
Clarity	The degree to which workers compensation is understood. The transparency of the system in respect of the scheme elements.
Equity	The question of fairness and balance in respect of the interest of employers and workers.
Sustainability	The way in which the scheme elements contribute to the financial and quality performance overtime.
Workplace Focus	The manner and degree to which the primary employer/worker relationship can be enhanced.
Administrative Efficiency	The extent to which scheme resource flow between parties.

This report focuses primarily upon six terms of reference with regard to these principles. It illustrates how these principles can be used to enhance the relationship between workers and employers to achieve social and financially sustainable outcomes for the workers' compensation arrangements.

Key Principles	
Coverage and Access	Who (workers) has access to the system and what (injuries) are covered by the system. To what degree are they elements linked.
Premiums	How to rate premiums in a way that incorporates a balance between the employers obligation to pay and the principle of financial sustainability.
Benefits and Entitlements	What is the most appropriate mix of benefits for injuries suffered by the worker to ensure a sustainable outcome. Injury
Management, and Return to managed to achieve recovery and return to work.	How can injuries and their consequences be best Rehabilitation
Work Selfinsurance	What steps can be taken to reduce the regulatory burden and compliance costs for national and multi-state employers.
Dispute Resolution	To provide a disputation framework that works in an efficient and effective manner for employers and workers.

Around this dynamic system impinge other elements of political, social and economic life that interacts with workers' compensation schemes. Human relations and industrial relation practices, the social security system, the labour market and health and safety regimes all impact in one way or another. The boundary and relationships between workers' compensation schemes and these systems are constantly changing in a continual process of interaction.

One of the greatest challenges ahead is the management of the impact of this interaction and establishing a clear and transparent interface which provides a safety net for injured workers will avoiding long terms cost for the community at large.

Workers' Compensation schemes should aim to provide workers with a meaningful and sustainable outcome following a workplace injury. The best long term prospects for an injured worker lie in a safe and timely return to work with reasonable compensation for medical costs, work time lost and for non-economic loss in the event of an injury.

Schemes should provide compensation at a reasonable cost through active claims management and should achieve a balance between the levels of premiums paid by the employer and the appropriate, adequate, fair and equitable benefits that are available to injured workers.

Appendix 1 Historical Development and Political Trends in the evolution of the Victorian Workers' Compensation System

The worker's compensation market in Victoria has developed in four broad stages, consistent with the periodic introduction of legislation establishing government institutions and an evolving regulatory framework for the market.

Prior to the introduction of compulsory insurance, a range of institutional mechanisms to support injured workers were developed, including friendly societies and trade union funds. Compensation could only be claimed under a common law action where an employer was found to be negligent.

1914/1975: Compulsory scheme comprising **private** insurers/underwriters with statutory benefits and common law remedies.

1975-1985 Market volatility

In Victoria, compulsory worker's compensation insurance was first introduced by the Workers' Compensation Act 1914. This Act established a system of private insurers, with certain enterprises permitted to self insure. The legislation also established a government insurer that functioned as an insurer of last resort. This compulsory private insurer model was characterized by statutory benefits and common law remedies.

In 1937, the Workers' Compensation Board was established under legislation to determine contested claims with the aim of reducing reliance on the general court system. From 1975-76 to 1983, the workers' compensation insurance market experienced substantial premium volatility. There was considerable competition for market share amongst insurers, and this in combinations with a number of other factors (discussed in section 7.1) led to heavy discounting and 'mispricing' of premiums. Insurers suffered large losses and this resulted in considerable premium surcharges and restrictions on benefit pay-outs in the early 1980's. From 1981-83, annual average increases in premiums were around 50 per cent. This volatility was not a result of volatile underlying insurance risks, but unrelated factors such as the investment performance and market share ambitions of insurers over the period.

Volatility in premiums from 1975-1983 created a degree of uncertainty among employers, particularly in relation to their expected future payroll liability. In addition, employees were dissatisfied with scheme arrangements, especially in respect of the nature and delivery of benefits. The loss in confidence expressed by market participants in the scheme was a significant catalyst for the establishment of the WorkCare scheme. The Accident Compensation Act 1985 established the workers' compensation scheme 'WorkCare'. This scheme ended private underwriting, eliminated common law claims in relation to income loss, directed substantial resources into rehabilitation and included the employers were not free to switch insurers. The scheme also placed an emphasis on weekly, no fault benefits rather than lump-sum payments.

1985-1992: WorkCare as government insurer/underwriter with private insurers/claims-agents

Over time, it became apparent that a major problem with the WorkCare system was its inability to control costs. For instance, under WorkCare, claimants could sue at common law for non-pecuniary loss, and WorkCare would bear all costs regardless of the outcome. This created an incentive for claimants to take claims to court for relatively small amounts. In addition, the high number (and cost) of long term claims was perceived to result from having a separate organization administering rehabilitation and the lack of employer involvement. These problems resulted in a deteriorating funding position - the scheme was only 40 per cent funded as at July 1992.

1992: The current WorkCover scheme	<p>In 1992, the WorkCover scheme was introduced to avoid a number of outcomes generated by the market under the previous scheme, with the Accident Compensation Act 1985 (as amended), the Accident Compensation (WorkCover) Act 1992 and the Accident Compensation (WorkCover Insurance) Act 1993 providing the legislative framework for the new workers' compensation scheme.</p> <p>The Accident Compensation Act 1985 (as amended by the WorkCover Act 1992 and subsequent amendments) imposes a mandatory liability on employers to pay compensation to injured workers and specifies the Governments' objectives, the scope of compensation, the circumstances under which it arises (Part 4, Divisions 1-9) dispute resolution processes (Part 3, Divisions 1, 2, 3) and the powers and functions of the Victorian WorkCover Authority, the sole administrator of WorkCover (Part 2, Divisions 1,2 and 3).</p> <p>The Accident Compensation (WorkCover Insurance) Act 1993:</p> <ul style="list-style-type: none">• Requires employers to hold WorkCover insurance policies against their contingent liability (section 7);• Provides for the licensing of authorized insurers for the purpose of issuing and renewing WorkCover insurance policies (Part 3);• Provides for the levying and collection of premiums (Part 2); and• Requires authorized authorised insurers to reinsure against their liability with the Authority (section 34) <p>Under these Acts, an employer who in any financial year employs a worker within the meaning of section 5(1) of the Accident Compensation Act 1985 (as amended) must obtain and keep in force a WorkCover insurance policy with an authorised insurer in respect of all the employer's liability under the Act (Accident Compensation (WorkCover Insurance) Act 1993m, section 7).</p> <p>As indicated above, authorised insurers collect premiums paid by employers, issue insurance policies, and undertake claims management. Insurers do not perform insurance functions retained by the VWA which include underwriting and pricing, nor do they manage and invest premium funds. Authorised insurers must place all premiums collected from employers within statutory accounts under WorkCover. The authorised insurer effectively cedes all premium revenue by the VWA - not the insurer. Insurers must also reinsure all liabilities with the VWA.</p> <p>Under the WorkCover scheme, employers may self insure where they employ at least 500 employees. In addition, employers must have a minimum net asset base of \$200m. At present, 23 employers in Victoria self insure.</p>
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Appendix 2: Fundamental Characteristics of Schemes for Addressing Costs to Individuals of Long Term Disability Arising from Work Injuries

Design Element	Universal Scheme	No Fault Work Injury Scheme	Traditional Workers' Compensation Scheme	Pure Fault Model	Personal
Who's Responsible	Government	14	Legislated Responsibility		Personal responsibility
Who's In	No limit	All workers, including self employed	Workers determined by statute	Common law definition of worker	Individuals
Basis of Entitlements	Inability to engage fully in work by reason of incapacity arising from work injury including disease. Scheme also covers all people unable to engage fully in work because of non-work injury, age, caring responsibilities, unemployment	Work incapacity arising from work injury including disease, broadly defined - neither party needs to prove fault	Work injury including disease, tightly defined to embody concept of employer-controllable risk - relationship to OHS legislation	Work injury arising from work or workplace - negligence must be proved	No entitlement. Individuals can choose to indemnify against risk through insurance policy; insurance may be refunded.
	Need	Need	Need/compensation for loss	Compensation for loss	Only if insured, then benefit based on need/compensation for loss - depends on contract
Type of Benefit	Flat rate income benefit plus non-cash social assistance	As for universal scheme	Earnings related plus common law damages	Common law damages	Only if insured, then earnings -related and/or lump sum -depends on contract
Who Funds	Taxpayers	Employers and earners	Employers	Employers	Individual
How Funded	Consolidated revenue fund	Flatrate or risk-rated premium	Mix of risk-rated and experience-rated premium	Assets or can insure indemnity with premium methodology determined by insurer	If insured, premium according to contract. Otherwise, individual bears costs through private means.
Interaction with Social Welfare Programs	Total	Integrated	Unclear	Separate	None

Appendix %: Variation y Access and Entitlements across Australia's Workers'
Compensation System

Loss Type	Commonwealth	Victoria	New South Wales	South Australia	Western Australia	Queensland	Tasmania	Northern Territory	£ Australian' Capital Territory
Definition of Injury for the purpose of coverage. i.e. is it a claim in that jurisdiction									
The level to which employment contributed to an injury	To a material degree (disease only)	Significant contributing factor	Significant contributing factor	A substantial cause. (Stress Only)	To a significant degree. (Disease only)	Significant contributing factor	To a substantial degree if it is the "major or most significant factor" (for disease only)	Included for diseases and injuries that occur gradually	Not included
Recess Claims.	On/off worksite	On/off worksite	On/off worksite	On worksite only	On/off worksite	On/off worksite	On worksite only	On/off worksite	On/off worksite
Journey Claims	Included	Not Included	Included	Not included unless there is a real and substantial connection between the employment and the accident	Not included, however workers are covered for injury during journeys in the course of employment or at the direction of the employer	Included (but some restrictions)	Not Included	Included (but some restrictions)	Included
Industrial deafness threshold	20%	10%	6%	5%	10% (above previous baseline assessment)	5% (with opportunity for further benefit possible in 3 years)	5%	5% Binaural hearing impairment	Nil

Access or entitlement issue	Commonwealth	Victoria	NSW	South Australia	Western Australia	Queensland	Tasmania	Northern Territory	Australian Capital Territory
Worker entitlements to compensation, treatment or support									
Weekly benefit rates	< 45 weeks NEW (Normal weekly earnings) > 45 weeks 75% of NWE NB Limited to 150% average ordinary time earnings per ABS	< 13 weeks 95% PI/AWE (Pre-Injury average weekly earnings) > 13 weeks 75% of PI/AWE with some limitations > 104 weeks benefits cease although there are safety nets	< 26 weeks 80% AWE or award > 26 weeks 90% of AWE (maximum \$296.20) plus dependant loadings > 104 weeks can be reduced depending on labour market and RTW support	< 52 weeks AWE limited to \$1,649.60 > 52 weeks 80% AWE limited to \$1,319.68 > 104 weeks 80% of diff between NWE and earning capacity	< 4 weeks AWE or award limited to \$927.40 > 5 weeks 85% AWE or award excluding O/T, bonus and allowances	< 26 weeks Greater of 85% NWE or award for award employees or greater of 85% of NWE or 70% of \$760.10 > 26 weeks Greater of 65% NWE or 60% of \$760.10 > 104 weeks 65% NWE or 60% of \$760.10 or DSS single pension dependant upon level of impairment	< 13 weeks The greater of 12 mth avg NWE or normal weekly rate > 13 weeks 85% of above > 52 weeks 70% of < 13 week payment Entitlement expires after 10 years	< 26 weeks NWE > 26 weeks 75% of above limited to \$1200.15, or \$400.15 plus spouse and dependant loadings	< 26 weeks NWE > 26 weeks \$295.02 plus spouse and dependant loadings
Medical and Hospital	No limits - All reasonable costs	\$37,043.50 with ability of the Directorate to approve an additional	\$50,000 or as prescribed or directed by WorkCover or Compensation	No limits - All reasonable costs		Medical - No limit. Private hospital	No limits - All reasonable costs	No limits - All reasonable costs	No limits - All reasonable costs
	Cease 52 weeks after weekly								

			entitlement date	court		\$50,000	\$10,000 per incident A further \$10,000 may be granted			
Death Benefits {	\$181,864.84 plus dependent child allowance \$61.61 per week	\$190,900 plus 3 year spouse pension and child pension until 16 or 21 if studying	\$266,800 plus dependent child allowance \$83.90 per week	\$189,275.00 plus weekly benefits to spouse and dependents linked to WAVE	\$126,145 plus funeral expenses of \$4427 less any weekly payments. Dependent child allowance of 33.15 per week until 16 or 21 if studying	\$204,645 less any weekly benefits plus \$7,670 per dependent child plus \$53.20 per week until 16 or 21 if studying	\$162,795.00 plus pension to spouse for 2 years and allowance for dependent children until 16 or 21 if studying	\$124,815.60 Plus \$80.01 per week for up to 10 dependent children	\$103,514.26 plus funeral expenses of \$2,329.07 plus 36.23 per week for each dependent child	
Common Law Access	Most access rights abolished	Open access with capped awards	Election to be made between Table of disabilities or modified common law access	None	16% to 30% permanent disability election required between statutory benefits and common law. Above 30% disability full common law access	Above 20% permanent impairment	Above 30% whole of person impairment	None	Full access	