

**DEPARTMENT OF FAMILY
AND
COMMUNITY SERVICES**

**SUBMISSION
TO**

**PRODUCTIVITY COMMISSION
INQUIRY INTO NATIONAL
WORKERS' COMPENSATION AND
OCCUPATIONAL HEALTH AND
SAFETY FRAMEWORKS**

AUGUST 2003

Executive Summary

The primary responsibility for workers' compensation and occupational health and safety rests with the relevant state and territory schemes and not with taxpayer funded social security programs. For this reason the *Social Security Act (1991)* incorporates provisions that seek to limit access to Commonwealth income support payments by workers' compensation recipients.

Cost Shifting

However, there are many circumstances when an ill or injured person may turn to the Commonwealth for support following a work injury. For example they may be waiting for periodic compensation payments to start; periodic payments may be insufficient so that they remain eligible for partial income support; the claim for compensation may be challenged by a workers compensation scheme; or they may be waiting settlement of a lump sum payment. Each of these can result in **cost shifting** to the Commonwealth.

Commonwealth Department of Family and Community Services (FaCS) data shows that around 250,000 people currently receiving income support have claimed compensation at some time. On current estimates, each year around 36,000 people affected by workers' compensation payments receive social security at a cost to the Commonwealth of \$180m per annum. An additional (unquantified) number of people ill and injured in the workplace who are not covered by the statutory schemes, self-insurers or private insurance also turn to the income support system for assistance. Social security income support remains a safety net for people that are ill or injured at work but its purpose is not to be de-facto workers compensation scheme. People who become ill or injured as a result of a their employment should be supported by workers' compensation schemes and occupational health and safety arrangements.

Of concern is that failure of workers compensation arrangements can result in long-term income support receipt for some individuals. Of all customers receiving DSP, 13.2% have claimed compensation at some point, raising questions both about the adequacy of workers' compensation payments and the effectiveness of rehabilitation.

It is recognised that the framework for some Commonwealth programs, including both taxation and social security arrangements, may also inadvertently provide incentives for cost shifting.

Prevention - Occupational Health and Safety

Prevention of injury through compliance with Occupational Health and Safety (OH&S) arrangements is the first line of defence in limiting the incidence of illness and injury in the workplace and any flow on to the social security system. Annually about 5% of the Australian workforce (under 500,000 workers) experiences a workplace illness or injury. Injury prevention reduces costs and minimises productivity losses to employers. There needs to be a balance between regulations and

incentives to ensure that employers manage and maintain safe workplaces that comply with national OH&S arrangements.

Early Intervention - Rehabilitation And Return To Work

Early return to work following illness or injury leads to positive social and economic outcomes, including maintaining pre injury standard of living and continuing ability to **save for retirement**. Ill or injured workers who access the social security system often do so some time after interacting with a workers compensation scheme and by then the opportunity for early intervention to rehabilitate and return to work is past. Facilitating return to work becomes much harder and more costly. Any workers compensation system should focus on early assessment of injury and appropriate access to rehabilitation with a focus on prompt return to economic and social participation.

Coverage and Consistency

Changes in the nature and patterns of employment and relationships between employers and employees in Australia can make it difficult to determine whether an employee has a contract of service that meets the existing requirement for coverage under statutory workers compensation schemes. The Department of Employment and Workplace Relations estimates that 40% of the Australian workforce is not covered by statutory workers compensation schemes. While some may take out private insurance, many risk lost wages in the event of workplace illness or injury and rely on accessing the safety net provided by the social security income support system.

Workers with the same injuries can receive different levels, forms and duration of assistance depending upon their state of residence. This is clearly inequitable. For national employers who operate across jurisdictions it can also mean that premiums and conditions of employment vary for their employees.

A workers' compensation and occupational health and safety framework that

- protects against the incidence of injury and illness to the broadest definition of employee in the workplace;
- balances regulation with financial incentives for employers to provide safe workplaces under such a framework;
- maintains responsibility for an effective continuum of benefits, rehabilitation and return to work;

are the desired outcomes of any review of the current system.

THE SOCIAL SECURITY SYSTEM AND WORKERS COMPENSATION

1. The *Social Security Act (1991)* incorporates provisions that seek to limit recipients' of workers' compensation access to Commonwealth income support. For recipients of periodic compensation payments that contain economic loss, compensation paid is deducted dollar for dollar from the amount of income support otherwise payable. A person whose fortnightly compensation income exceeds \$446.10 will not receive any pension payment.
2. Recipients of lump sum compensation that contains an economic loss component are subject to a social security preclusion period during which time they cannot access income support. When a matter settles by consent, half the gross settlement money is divided by the amount a single person can earn under the social security income test before pension is not payable. A preclusion period (in weeks) is calculated this way. As a rule of thumb, each \$32,000 of assessable lump sum compensation income will preclude social security income support payments for 12 months.
3. Periodic payments provide a continued and reliable source of income, whereas lump sums often prove inadequate and are frequently mismanaged. Periodic payments enable injured workers to remain connected to support services aimed at returning them to employment and longer-term financial security. The Commonwealth generally supports the use of periodic payments or purchased annuities, particularly for people receiving large compensation payouts. Periodic payments provide better long-term security for the individual and prevent the early transfer of individuals to the social security system due to hardship.
4. However, different parts of the Commonwealth treat compensation payments differently, leading to mixed signals for insurers, lawyers and individuals. The taxation system and parts of Social Security law provide incentives for people to take a lump sum. For example, lump sum payments are not taxed while periodic payments are taxed on the same basis as wages. Similarly, the social security system deducts periodic compensation dollar-for-dollar from income support entitlements of the recipient and income tests any excess compensation for the partner; in contrast, only the compensation recipient is precluded from payment because of a lump sum and because the preclusion period calculation treats lump sum compensation as ordinary income, the net impact on income support is less than it would be if the same amount of periodic payments were received.
 - For example, a single person receiving \$447 per fortnight in periodic compensation for three years would be ineligible for most social security payments during that time. However, if the person were to redeem the same amount into a lump sum, \$34,866 (\$447 x 78 fortnights) it would only result in a six month preclusion period. In this case, the person would be eligible for income support, including concessions, two and a half years earlier than they would have, had they received the same amount in regular instalments.

COST SHIFTING

5. Cost shifting can provide a disincentive for employers to promote and maintain safe workplaces. Where scope exists for employers not to bear the full cost of employees' illness or injuries benefit, incentives to ensure safe workplaces and effective rehabilitation are reduced.
6. Although State compensation schemes are responsible for supporting injured workers from the time of injury, where an individual is unable to attribute responsibility for an accident or illness, the social security system effectively becomes a de facto compensation scheme. Definitional exclusion of many persons from the workers compensation system and the changing nature and form of workplace relations are resulting in a significant number of workers falling outside the scope and coverage of the traditional workers compensation systems. The self-employed are, in most cases, excluded from coverage and left to make their own personal accident compensation insurance arrangements¹. For those that fail to take up a personal insurance policy, or for those that fall through the cracks of the workers compensation system for a number of other reasons, the income support system is often the only recourse.
7. As such, a number of provisions in the Social Security law operate to prevent the costs of compensable injury being shifted to the social security system, or more correctly, the taxpayer. Income support is generally only available before liability is accepted or as a 'top-up' for injured persons or their partners where the financial support provided by the compensation scheme is less than the maximum rate of social security otherwise payable.

PREVENTION - OCCUPATIONAL HEALTH AND SAFETY

8. A major issue is whether workplace safety programs are appropriately focused. An Australian survey undertaken in 1999 found that over 40% of workers reported a workplace hazard to their employer², yet 25% of workers reported that no action was taken to reduce the reported hazard³. Evidence from the survey indicated that a previously identified workplace hazard was responsible for injury in over 30% of injuries reported⁴. Of equal concern is that just over 50% of workers received any workplace safety training⁵.
9. This evidence needs to be considered in the context of the legislative framework covering workplace health and safety. Across Australia there are over 200 pieces of statute covering provisions on workplace health and safety. Each State and Territory, and the Commonwealth government provide workers compensation coverage and regulate health and safety at work for employees that fall within their jurisdiction. This creates a multiplicity of OHS programs for a relatively small workforce.

¹ Alan Clayton, Current Issues In Australian Workers' Compensation, Review of the Workers Compensation and Occupational Health, Safety & Welfare Systems in South Australia.

² CPM Report

³ CPM Report

⁴ CPM Report

⁵ CPM Report

10. In order to address such inconsistency, the Workplace Relations Ministers Council endorsed a landmark National OHS Strategy in May 2002 that envisages Australian workplaces free in the long-term from work-related death, injury and disease. There is agreement to review and develop the National OHS Strategy in light of experience and evidence of what procedures are effective and ineffective to improve OHS performance⁶.
11. Any National OHS Strategy is unlikely to be completely effective unless it recognises the role financial incentives play in determining the level of workplace health and safety. Governments may therefore improve the incentive to provide safe and healthy workplaces by ensuring that employers bear an equitable proportion of the costs of workplace injury and disease. Reduced premiums for employers who adhere to higher standards of Occupational Health and Safety could be one such strategy. However, there is also potential to create perverse financial incentives that promote unsafe workplaces. For example, workplaces with poor safety records may employ workers on non-standard employment contracts to reduce exposure to workers compensation claims and reducing premium penalties.
12. Poor workplace safety is often linked to poor worker morale, reflected in absenteeism, high level of staff turnover, lower levels of worker motivation and industrial unrest – all factors that lead to lower productivity for a business and higher costs per unit of output. Employers can also face costs such as lost working time, the need to replace staff and most likely, increased workers compensation premiums. This is not in the best interests of the business and certainly not in the best interest of the overall economy.

EARLY INTERVENTION - REHABILITATION AND RETURN TO WORK

13. In 1998-1999 Australian workers compensation schemes reported that 76% of injured employees returned to durable employment⁷. This means that there are potentially up to 24% of injured workers that do not return to work. In a period of slowing workforce growth and ageing of the workforce this represents a significant loss of skills and high replacement costs to employers. From a social security perspective there is clear benefit in ensuring that injured people access rehabilitation services at the earliest stage possible. An Australian report published in 1993 (Anutech) found that every dollar spent on rehabilitation returned almost \$9 to the Commonwealth government via increased taxes and reduced outlays.
14. Early rehabilitation is a cost-effective means of achieving more durable return to work outcomes, reduce claims duration, lower premiums, and ultimately lower scheme costs⁸. At the National Workers Compensation Symposium in 2000 the importance of returning injured people to work within six months of

⁶ NOHSC News, Volume 3, Number 2, Summer 2002.

⁷ Workplace Relations Ministers' Council – Comparative Performance Monitoring – Return to Work Report, April 2000.

⁸ 'A Financial Analysis of the Costs and Returns of the Commonwealth Rehabilitation Service Program' ANUTECH, February 1993.

injury was affirmed by NSW data indicating that two-thirds of workers compensation payments were for claims over six months duration⁹. Earlier referral to vocational rehabilitation (within 6 months of injury) was found to save employers and insurers \$6 million each year (around 21% of scheme vocational rehabilitation costs)¹⁰ and increased injured peoples' earnings by \$9 million¹¹.

15. The importance of early access to rehabilitation was recognised by state workers compensation authorities in their 1997 report (HWCA, 1997) that found rehabilitation services are most effective when delivered as soon as possible after injury¹². Unfortunately not all states have made changes to facilitate early access to rehabilitation, although NSW Workcover and WorkCover WA have done so.
16. The long-term interests of the individual and the community generally are best served by a quick return to suitable employment, either to full capabilities, redeployment or outplacement. The result of a customer compensation survey in 1992 (Ford) confirm that lack of access to work-related rehabilitation increases the likelihood of a worker eventually resorting to the social security system with a resultant shift of costs to the Commonwealth in providing income support to people who might otherwise have been able to return to work¹³.
17. The Commonwealth and most compensation schemes share the same goals regarding access to early rehabilitation to improve injured people's participation in society and the economy. However, achieving these goals is complicated by the operation of a number of individual systems within the workers' compensation arena. Workers employed by the same organisation, with identical injuries, in different states, may be eligible for vastly different rehabilitation services, with different time and cost limits applying. Not surprisingly rehabilitation and return to work outcomes may vary across jurisdictions.
18. Inconsistent rehabilitation requirements across state jurisdictions mean that national employers confront immense difficulties in formulating and administering a workplace rehabilitation policy that supports best practice and is compliant in every jurisdiction in which they operate. Economies of scale in rehabilitation programs are rendered virtually unattainable when a national employer must comply with the obligations imposed by up to eight different systems. It has been asserted that 'the main problem with the fractured

⁹ Susan Kable, National Manager, Injury Management, MMI at the 2000 National Workers' Compensation Symposium, Sydney, February 2000.

¹⁰ John A Gardner, Improving Vocational Rehabilitation Outcomes: Opportunities for Earlier Intervention, re Florida Compensation Scheme, August 1998 (Excerpt from WCRI Annual Report, p56).

¹¹ John A Gardner, Early Referral and Other Factors Affecting Vocational Rehabilitation Outcomes for Earlier Intervention, 1991, Rehabilitation Counselling Bulletin, 34, pp197-209.

¹² Promoting Excellence – National Consistency in Australian Worker's Compensation, May 1997, Heads of Workers Compensation Authorities.

¹³ Worker' and Transport Accident Compensation and Social Security in Australia, John Ford and Associates, June 1992

national framework is that it diverts employer resources away from helping injured workers' (Hawkins, 2001, p. 6). The potential efficiencies and benefits for all compensation stakeholders that would be associated with a nationally consistent approach to rehabilitation are affirmed by the support for a more coordinated national approach expressed by both employer and worker groups (A.C.C.I, 1999).

19. The Commonwealth Government funds CRS Australia to deliver vocational rehabilitation services within the parameters established by Part III of the Disability Services Act 1986 (the Act). The Act establishes a number of different treatments to funding rehabilitation programs depending upon the nature of the individual receiving the program:
 - if the individual is a Commonwealth pensioner or beneficiary, the cost of the rehabilitation program is borne by the Commonwealth;
 - if the individual is receiving payment by way of compensation or damages for a disability or injury that is the reason for needing a rehabilitation program, the Act enables CRS Australia to recover the cost of the rehabilitation program from the compensation or damages payment.
20. The CRS Australia experience is that the average gap between date of injury and date of referral are:
 - for return to work with same (ie. the injury) employer – 4.5 months
 - for return to work with new employer – 8.4 months.
21. Despite the long delays before most referrals are made, CRS Australia has been able to effect return to work rates of 84% (same employer) and 56% (new employer) in this scheme. Additional investment in rehabilitation programs by the Commonwealth Government in its *Australians Working Together* package announced in the 2001 Budget recognised the importance of early identification and access to rehabilitation in returning income support recipients to pre-injury levels of participation. One limitation of these arrangements is that people who receive a lump sum compensation payment and are precluded from income support are also ineligible for ancillary benefits including funded rehabilitation and Job Network assistance. This arises from targeting of Commonwealth employment-related programs to those who have limited capacity to procure those services themselves.
22. This highlights that, for injured workers, State compensation authorities remain best placed to provide early intervention and rehabilitation to improve the prospects of return to work. However, such services should be directed to the employee's general employability potential, rather than narrowly focusing upon the skills deemed necessary for re-employment in the injured worker's last workplace. Even where an employee is assessed as having a diminished capacity, the worker may retain an ability to be able to engage in a wide range of other employment, and this ability should be developed and utilized¹⁴.

¹⁴ Alan Clayton, Current Issues In Australian Workers' Compensation, Review of the Workers Compensation and Occupational Health, Safety & Welfare Systems in South Australia.

23. Clear financial incentives for paid work or participation in rehabilitation programs can contribute to people making the best choices in favour of participation. For this reason periodic payments of workers' compensation for which participation in return to work and rehabilitation programs is required, should exceed the amount available to injured workers through income support and be available for longer periods or until injury or illness stabilises.

COVERAGE AND CONSISTENCY

24. The workers compensation system does not provide coverage for all those who are engaged in work. Rather it is a more restrictive and outmoded system in which coverage depends upon the definition of 'worker' contained in the relevant statute¹⁵. The composition of the Australian labour market has increasingly become a mix of full-time employees, part-time employees, casual employees, contract employees and the self-employed. However, each of the workers' compensation statutes specifically excludes certain categories of persons from the definition of 'worker'¹⁶.
25. When employees who become ill or injured in the workplace are not covered by a statutory workers compensation scheme or private insurance arrangements and have no other alternative means of financial support the social security income support system becomes their means of support and acts as a de-facto workers compensation scheme.
26. Variation in policies across schemes means that individuals will be entitled to different levels and forms of Commonwealth assistance depending upon their state of residence. For example, some States (such as South Australia) include medical expenses in lump sums paid to injured workers, thereby increasing the social security preclusion period for that individual. Other States do not include medical expenses in the lump sum. Individuals and employers in similar circumstances should be treated in the same way to ensure a fairer, simpler, more transparent system. A workers' compensation scheme with a nationally consistent framework would provide benefits for both employees and employers by reducing costs, reduce complexity, remove cross-border coverage issues and improve incentives for employers to develop strategies to reduce workplace injuries and illnesses, and as a result reduce premiums.

SUPERANNUATION

27. For workers (and their families), the consequences of long-term unemployment as a result of injury in the workplace can be severe. Long periods out of paid work reduce lifetime earnings and lead to loss of skills and self-confidence. This in turn increases the risk of longer-term poverty and decreases the probability of a successful return to work in the future. When people remain on income support for long periods they are prevented from

¹⁵ Alan Clayton, Current Issues In Australian Workers' Compensation, Review of the Workers Compensation and Occupational Health, Safety & Welfare Systems in South Australia.

¹⁶ Alan Clayton, Current Issues In Australian Workers' Compensation, Review of the Workers Compensation and Occupational Health, Safety & Welfare Systems in South Australia.

making the best of their abilities and opportunities and may ultimately face long-term disadvantage. Long-term reliance on income support can be harmful for individuals, their families and for the communities in which they live.

28. The introduction of compulsory superannuation aims to improve the incomes of people in retirement. Long-term unemployment can have significant implications on superannuation for both workers and their families. As injured workers that have not returned to work have a decreased amount of superannuation, many will have increased reliance on age pension in retirement and lower overall income, as age pension only provides a basic level of support. The following example demonstrates the far-reaching effect of decreased participation during working years on a worker's superannuation.
- A person earning \$45,000 per year will have accumulated \$521,000 in superannuation by the time they retire at 65. However they were to leave the workforce for 5 years at age 30 and then return part time they will only accumulate just over \$300,000. For someone earning \$23,000 the amounts are \$254,000 and \$144,000.

CONCLUSION

29. Inefficiencies and inconsistencies in the current system of workers compensation arrangements indisputably contribute to poorer outcomes for Australian workers and employers, and increased risk of long-term reliance on the Commonwealth income support system. Ideally, to ensure prevention of work-place injury or illness and assistance (including rehabilitation) the following principles should underpin the design of workers' compensation arrangements in Australia:
- Employers should have adequate incentives to ensure workplace injury illness and injury is minimised. These incentives could take the form of premium reductions when lower rates of workplace illness and injury are achieved.
 - Incentives, in the form of reduced premiums, could be applied to employers who deliver high rehabilitation and return to work outcomes for injured workers.
 - Ill or injured workers should be covered by statutory compensation schemes that aim to return the worker to their pre injury work capacity or standard of living.
 - In order to improve economic and social participation outcomes through rehabilitation, such services should be directed to the employee's general employability potential, rather than narrowly focusing on re-employment in the injured worker's last workplace.
 - Occupational Health and Safety and Workers' Compensation should be nationally consistent, so that an injured worker in one jurisdiction is not disadvantaged in relation to a similarly injured worker in another jurisdiction. This relates to both the benefits and services they are entitled to receive under statutory arrangements, and the interaction of their statutory provisions with Commonwealth funded programs.