

Jurisdictional comments

New South Wales

New South Wales has experienced a consistent improvement in its workers' compensation, injury management and occupational health and safety statistics over the past four years. This has included reductions in injury/disease incidence and fatality rates, as well as improved benefits to workers, improved injury management and viability of the Workers Compensation Scheme.

These improvements have resulted from WorkCover NSW working in partnership with a wide range of stakeholders, as well as from the significant changes made to workers' compensation, injury management and occupational health and safety strategies and requirements since 2000.

Workers Compensation strategies have included an enhanced focus on improving the performance of the scheme, including better return to work rates and tail claim management.

Disputes continue to be reduced through the ongoing operation of the Claims Assistance Service and the Workers Compensation Commission. Changes that have increased the level of statutory permanent impairment benefits and better focused the availability of common law benefits for serious cases have continued to deliver considerable savings to the scheme, principally through reductions in legal costs.

Analysis undertaken demonstrates that claims are being notified earlier, paid earlier and resolved earlier, indicating that these reforms appear to be achieving their objectives. However, given the early stages of the reform, care should be taken when interpreting the information contained in the CPM report.

A primary focus moving forward will be the implementation of the Scheme Design program which will help to deliver improved outcomes to injured workers through the introduction of greater competition and choice for employers in workers compensation provision, as well as helping to reduce the WorkCover Scheme deficit.

For Occupational Health and Safety, a multifaceted approach including information, advice, assistance and consultation has been adopted and incorporated within the design and delivery of all NSW prevention programs and projects. The balance between WorkCover's consultative, advisory and enforcement functions are aimed at supporting industry's capacity to improve its OHS performance.

Interventions have targeted high-risk industries, occupations and employee groups that require the greatest level of attention and would benefit the most from WorkCover's assistance. Major initiatives that have been conducted over this reporting period include the:

- OHS Safety Summit 2002;
- Small Business Assistance Strategy;
- Falls Prevention Campaign in the Residential Construction Industry and the Heavy Vehicle Sector;
- Asbestos/demolition strategy;
- Roll-over Protective Structures on Tractors Program;
- ShearSafe and the SchoolSafe Programs.

WorkCover NSW's approach has created objective standards and benchmarks to guide industry's actions and provide greater community confidence that appropriate safety standards are in place. This has led to continued reductions in both injury and fatality rates.

It should be noted that due to the many differences that exist across jurisdictions in regards to the structure, requirements and benefits of workers compensation and occupational health and safety, it is not possible to make fully accurate, meaningful and definitive comparisons across jurisdiction. NSW believes that continuing attention to improving the comparability of data is essential to the future of the CPM.

Jurisdictional data has been adjusted in this report in an attempt to make the data more comparable across jurisdictions. In addition, data quality issues continue to exist and therefore, interpretation of the data should be treated with caution. The CPM report also uses a different time period for extracting and reporting the data than does NSW WorkCover and so data presented in this report may differ from the WorkCover New South Wales published data.

Note too that the premium rates and incidents included in the report reflect not only the New South Wales WorkCover Scheme that is available to all employers, but also the activities of self-insurers and specialised insurers. This includes the Treasury Managed Fund (TMF) that covers most New South Wales Government employees.

Interpretation of results should be treated with caution. Please refer to the comments at the end of each section for additional information related to techniques used to compare the data and for differences across jurisdictions.

Victoria

Victoria would like to caution against too literal comparisons between the jurisdictions as the systems vary so greatly that strictly comparative data is not possible. Some standardisations are applied to the data in an attempt to smooth out these differences, but it is not possible to standardise for all differences. This standardisation of the data results in CPM data for Victoria that is inconsistent with similar data normally produced by the Victorian Workcover Authority.

Users are urged to consider the jurisdictional differences and all relevant explanatory notes when CPM data is used.

The 5-10 day factor adjustment for claim numbers

The Victorian Scheme operates on a basis whereby the employer is liable for the first 10 days time, unless the employer has chosen the buyout option. The employer is also liable for the first \$495 (for 2003–04) of medical & like expenses. As a result some employers, although required to lodge a claim, may not do so if they anticipate that these thresholds will not be exceeded.

Note that a 5-10 day adjustment factor (based on averaged experience across other jurisdictions) has been applied to the data provided by Victoria, to derive an estimate of “claims” with 5 days or more lost. The factor, which inflates the number of actual claims for Victoria by 24%, in order to align the statistic with other jurisdictions, is very approximate and ignores jurisdictional differences in claims patterns.

Further, the scope of the data provided for this report does not match the criteria used for normal statistical reporting in Victoria. As a consequence, care should be taken in interpreting these figures, noting that they will differ from actual claims numbers reported by the Victorian Workcover Authority.

Disputes

Common Law ceased in Victoria in November 1997 and was restored in October 1999. These changes have resulted in changes in the pattern of claims data and therefore data may be observed to change over time as development progresses.

Premium

The standardisation for premium rates, as discussed in the explanatory note to Section B1, only takes into consideration some of the issues affecting the comparison of premium rates across the Schemes. There are numerous variations within the Schemes including the terms of benefits paid, coverage, access to dispute resolution processes and ease of access to benefits, and these have not been fully allowed for in the standardisation approach adopted.

Other

Victoria also notes that, as delays have occurred in the release of this analysis, significant changes have occurred within the Victorian jurisdiction during this period which have impacted premium rates, claims management, safety initiatives and liability estimates. Readers should consult the VWA website at www.workcover.vic.gov.au for more up to date information.

Queensland

On 14 May 2003, the Queensland Parliament passed the Workers' Compensation and Rehabilitation Act 2003. This Act commenced on 1 July 2003 and formally separated WorkCover Queensland's regulatory functions from its insurance functions. The objectives of the Act are met through a workers' compensation scheme, which consists of three parts: WorkCover the insurer; Q-COMP the regulator; and the Department of Industrial Relations – policy and legislation development. With the exception of 25 licensed self-insurers, WorkCover is the exclusive provider of workers' compensation insurance in Queensland.

Also effective from 1 July 2003 was a new definition of 'worker' which includes a three-part results test. The new definition uses more objective criteria which provide certainty to both workers and employers, in particular labour-only subcontractors.

When reading this report, caution must be exercised with the data because:

- other than Part B3, data is for the whole of Queensland scheme – part B3 does not include self-insurers.
- the Queensland Government implemented changes in the benefit limits and access to common law provision effective from 1 July 2001.
- information and data published elsewhere by WorkCover Queensland or Q-COMP may differ from information and data in this report because of standardisation by the publisher and alternative treatment of data in the way the individual schemes report.

Western Australia

Western Australia recommends caution when interpreting the data provided in this report. This is primarily due to:

1. There are fundamental differences between each state jurisdiction in terms of how their workers' compensation schemes are funded.
2. There are significant difficulties associated with standardising data from three different sources - privately underwritten funds, managed funds and central funds.
3. There are also differences in workers' compensation policies between each jurisdiction which impacts significantly on system costs and outcomes.

Consequently, the standardisation methodologies applied to each scheme need to be fully understood before any comparisons can be made between state jurisdictions.

Particular care should be taken with regard to comparing data on premium rates. In Western Australia, approved insurers can discount recommended rates without limitations and surcharge by a maximum of 100 % of the applicable rate (surcharging beyond 100 % requires the approval of WorkCover WA).

As Western Australia has a multi-insurer system, detailed information is not readily available on aspects of the scheme that are the responsibility of insurers. This limits data related to matters such as return on investments or details of administrative costs, which may be spread across the range of an insurer's insurance business.

Similarly, data reported to WorkCover WA does not necessarily conform to the categories identified for the CPM report and adjustments have been made to accommodate different reporting requirements. In some instances, cost or income data could not be identified, which affects the usefulness of the data for comparative purposes.

Access to damages at common law differs between jurisdictions and affects significantly the usefulness of comparisons of scheme performance. Because of the highly significant impact of common law claims on costs and outcomes, it is recommended that readers consider the policies related to common law for each jurisdiction when interpreting all comparisons contained in the report.

Note: Due to standardisation of data presented in this report, figures will differ from those presented for Western Australia in other reports (e.g., WorkCover WA Annual Report and Annual Statistical Report).

South Australia

Data within this CPM report relates to the 2003–04 financial year.

In March 2003, the previous WorkCover Board raised the average levy rate in South Australia to 3%, increasing from 2.46%. This rate was effective from 1 July 2003 and is the rate upon which the data for this report is based.

The increase in the average levy rate was in response to the significant reassessments of scheme funding which became evident in the June 2003 actuarial review. The reassessment of scheme funding was demonstrated in the previous (CPM6) report.

The assets to liability ratio provided in part B2 demonstrates a measured improvement in scheme funding at June 2004 compared with June 2003. As articulated in part B2, the results within the CPM report will differ from those outlined in the 2003–04 WorkCover annual report.

The current WorkCover Board and newly appointed Executive Management Team have developed the 2004–2007 WorkCover Strategic Plan, which provides a thorough and robust foundation for the improvement of the South Australian scheme. The strategic plan targets a return to full scheme funding by 2013.

Northern Territory

The Northern Territory acknowledges that the data contained within this report relates to the 2003-04 financial year. The Work Health Act underpins both occupational health and safety and rehabilitation and workers' compensation regulation and compliance within the Northern Territory.

Targeted prevention programs have been implemented in the agriculture, road transport, building and construction, gas, retail, public sector, childcare and tourism and hospitality industries and have been characterised by a significant ongoing increase in proactive workplace interventions particularly in the building and construction industry.

Improved industry performance in both the occupational health and safety and workers' compensation areas within the Northern Territory has been sustained by a collaborative approach by government, industry, unions, employers and workers to promoting injury prevention and return to work efforts as key objectives.

Key highlights in the rehabilitation and workers' compensation areas over the past year in the Northern Territory have included a trend for reduced insurance premiums coupled with strong, ongoing and durable return to work rates which form a central objective of the Northern Territory's 'no-fault', pension based, workers' compensation scheme.

Key initiatives which have been explored by the Northern Territory Government during 2003–04, resulted in draft legislation to:

- ensure that employer financed superannuation contributions do not form part of the incapacity benefit payable to injured workers;
- limit applications by claimants for mediation to 90 days with a protection for claimants should they be able to demonstrate reasonable circumstances for a delay in requests for mediation;
- focus on early medical review by limiting the currency of the initial medical certificate to 14 days;
- ensure that the treating medical practitioner be consulted where medical information is required early in the claims management process;
- notify the treating medical practitioner of proposals for independent specialist review including contact details of that specialist; and
- provide independent medical specialist reports obtained in the claims management process to the treating medical practitioner.

Other workers' compensation related reforms under consideration but yet to be finalised by government include:

- introduction of a new, broader based definition of worker for workers' compensation purposes;
- implementation of new cross border legislation; and
- a stakeholder review of 'non cash' benefits for inclusion in the calculation of normal weekly earnings for workers' compensation benefit purposes.

Australian Capital Territory

The private sector in the Australian Capital Territory is covered by the Australian Capital Territory Workers Compensation Act 1951 and the Australian Capital Territory Occupational Health and Safety Act 1989.

The data contained in this report for the Australian Capital Territory private sector is based on information provided by the Australian Capital Territory approved insurers who underwrite the scheme privately. At the date of the compilation of this report, the data has not been independently audited or verified by the Australian Capital Territory. The data is indicative only. Accordingly, it should not be relied on for predictive purposes in the making of any decision or forming any judgment.

The Australian Capital Territory Government Sector includes all bodies established by Australian Capital Territory enactments. Employees of the Australian Capital Territory Government Sector are covered by Comcare for workers compensation purposes under the Commonwealth's Safety, Rehabilitation and Compensation Act 1988 (SRC Act). Comcare collects a workers compensation premium and workers compensation data for Australian Capital Territory Government Sector employees.

The Australian Capital Territory's Occupational Health and Safety Act 1989 (OHS Act) applies to all Australian Capital Territory Government Sector employees but does not extend to Commonwealth employees working in the Territory who are covered separately by the Commonwealth's Occupational Health and Safety (Commonwealth Employment) Act 1991.

The OHS Act is modified in its application to the Australian Capital Territory Government Sector and has additional provisions for matters such as workplace arrangements and inquiries. In this report, the Australian Capital Territory Government Sector and the Australian Capital Territory private sector occupational health and safety data is combined. Previously these two sectors were reported separately in Part A. However, as the OHS Act covers both sectors it is appropriate to combine the jurisdictional information on occupational health and safety.

Due to the significant difference in the workers' compensation schemes that operate for the Australian Capital Territory Government and private sectors, the information in the report that deals with workers compensation is still presented separately for the Australian Capital Territory private sector from Part B2 through to Part B5 and Part D. In those parts the Australian Capital Territory Government Sector performance is reported as part of the Comcare scheme. It is noted that whilst the Australian Capital Territory Government Sector has been declared to be a Commonwealth Authority for the purposes of the Safety, Rehabilitation and Compensation Act 1988 and part of the Comcare scheme, its data has been excluded from Part B1 of the report.

The Australian Capital Territory private sector data for Part B of the report could not be subjected to independent actuarial assessment for accuracy or consistency. Accordingly, the data provided is only indicative of trends that may be developing within the scheme. No reliance should be placed on the data without first seeking the advice or assistance of the Australian Capital Territory Government.

In Part D of the report where an industry classification has been identified as representing less than 5 per cent of the total workforce of the Australian Capital Territory private sector, data has been excluded. In some cases, this exclusion has occurred in response to privacy concerns, while in other industries concerns relate more directly to the accuracy and reliability of the available data.

Australian Government

The Safety, Rehabilitation and Compensation Act 1988 (SRC Act) establishes a national scheme to provide for rehabilitation and compensation for mainly Australian Government employees, including members of the Australian Defence Force (ADF). It also covers employees of the ACT public sector and certain private sector corporations which have a licence to self-insure under the SRC Act. In 2003-2004, there were 306,353 full-time equivalent (FTE) employees covered by the SRC Act.

The Occupational Health and Safety (Commonwealth Employment) Act 1991 applies only to Australian Government employees. It excludes employees working in the ACT public sector as well as those employed by private corporations licensed to self-insure under the SRC Act.

The Australian Government's workers' compensation scheme is a no-fault scheme with a comprehensive and, in comparison to many Australian schemes, generous benefit structure balanced by very limited access to common law.

The Safety, Rehabilitation and Compensation Commission plays an important role in monitoring the performance of self-insurers, other determining authorities and premium paying agencies against a range of key performance indicators. The Commission has adopted the National OHS Strategy targets and has incorporated them into its own indicators. Annual performance targets are set by the Commission to promote the Commission's principles of continuous improvement and management accountability for outcomes.

Enforcement data

Comcare recommends caution in interpreting comparative enforcement data. As noted in Part A2, the Australian Government cannot be compared directly with other jurisdictions as its enforcement data does not correspond with the data definitions. Comcare has less than 20 staff appointed as investigators and contracts with state and territory OHS authorities and private sector firms to undertake required reactive investigations.

Comcare's annual planned investigation program also differs markedly from investigations conducted by other states and territories. This program involves detailed evaluation of particular organisations' OHS management systems. Comcare also monitors a number of organisations that have been granted self audit status.

Disputation

Comcare recommends caution in interpreting comparative disputation data in the report. Part B4 includes data on the number of formal disputes against an insurer's decision relating to compensation, with the reported disputation rate showing the proportion of new disputes to new claims lodged in the reference year.

Provision exists under the SRC Act for a claimant to seek a formal reconsideration of a determination made by Comcare. However, provision also exists for a claims manager to reconsider a determination on his/her own motion as new information comes to light. In either case, the resultant decision is issued to the claimant as a reviewable decision. Accordingly, the total number of reviewable decisions made by Comcare include a certain proportion of

reconsiderations of own motion. Technically, while the absolute number of reviewable decisions provides an indication of the level of disputes, it over-estimates the actual level of disputation by including the significant number of reviewable decisions that resulted from reconsiderations of own motion.

The comparison of time taken to resolve disputes is another area where Comcare recommends caution in interpreting the reported data. It should be noted that the SRC Act provides for a two-tiered formal dispute resolution process. The first tier enables a claimant to seek a reconsideration of any determination issued by a Comcare claims manager. Once a reviewable decision has been made by Comcare, the claimant has a further option of lodging an appeal with the Administrative Appeals Tribunal (AAT). While Comcare has a degree of control in terms of the time taken to review a request for reconsideration, it has no control over the time taken by the AAT to complete its review of an appeal.

The significant percentage of disputes reported by Comcare that took longer than nine months to resolve reflects the lengthy delays experienced in gaining resolution at the AAT.

Seacare

The Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) continues to focus on data quality and reliability, to ensure that data inputs used in the CPM report are robust and reliable for national comparative purposes. However, some data sets and data collection processes are still maturing. In a small scheme such as Seacare, small variations in data can have significant statistical implications. Additionally, there are a number of unique features of the Seacare scheme that could impact on the data inputs, and the use of the data for comparative purposes. Some of these are:

Seacare scheme characteristics

The Seacare scheme (maritime industry) represents only one part of an ANZSIC division (Transport and Storage) and includes a narrow band of occupations, all of whom work on a moving workplace subject to the vagaries of the weather. The scheme does not cover on shore occupations associated with the maritime industry. For this reason, care needs to be taken when comparing Seacare scheme performance with other schemes, which cover a wider range of occupations and therefore risk factors, and with other ANZSIC industries, which cover the full spectrum of occupations in an industry and associated risk factors across those occupations within the industry.

Insurance premiums

Several points need to be made about the premium in the Seacare scheme:

- the premium rate quoted in Part B1 has not been standardized – it is the raw premium covering seafarers only within the maritime industry;
- the premium and policies cover employers for each 24 hours the employee is on board, not just for time at work;
- the premium often covers liabilities in addition to those under the Seafarers Rehabilitation and Compensation Act 1992, such as the return to home port provisions in the Navigation Act 1912;
- on the other hand, the premium does not support regulatory costs such as the cost of occupational health and safety inspectorate services, which are funded from maritime safety levies paid separately by maritime industry employers.

OHS performance – the injury frequency rate

The injury frequency rate reported in CPM is not accepted by the maritime industry as a true reflection of injury frequency rates across individual employers or the industry as a whole. The main reason for this relates to the 24 hour nature of the employment arrangements. Hours worked data used as the denominator in CPM frequency rate calculations for Seacare is adjusted by Seacare to reflect average shift duration (accepted by industry as 12 hours per day in the trading fleet sector, and 14 hours per day in the offshore fleet sector), while employers invariably use 24 hour per day data to calculate their own Lost Time Injury Frequency Rates, resulting in considerably lower injury frequency rates.

Scheme administration costs

Given the role of the employer as claims manager, the Seacare Authority has not yet been able to accurately identify claim administration costs by each employer or by insurance companies. This data in Part B3 has been estimated.

New Zealand

Before 1 July 1999, workers' compensation in New Zealand was covered by the Employers' Account administered by the Accident Rehabilitation and Compensation Insurance Corporation (commonly known as ACC), a Crown entity. This account also covered the work injuries of self-employed people and shareholder employees.

On 1 July 1999, the *Accident Insurance Act 1998* came into effect. Under this Act, employers were required to buy workers' compensation cover from private insurers, or from @Work Insurance, a state-owned enterprise. Employers could not continue to buy workers' compensation insurance from ACC. Self-employed people could either continue to be covered by ACC or buy work and non-work cover privately. Premium setting was not regulated.

ACC continued to manage the continuing rehabilitation and provision of entitlements to existing claimants (that is, accidents that occurred before 1 July 1999). Employers are required to fund these costs according to premiums set on an industry basis.

ACC continued also to be the sole provider of accident-insurance cover in all non-work contexts. This included cover for earners' non-work injuries, motor-vehicle injuries and non-earners' injuries.

A change of government in November 1999 resulted in amendments to the *Accident Insurance Act*. From 1 July 2000, cover for all accidents (work, non-work and motor vehicle) became the responsibility again of ACC. The private insurers who entered the market on 1 July 1999 continue to manage their existing work-injury claims.

ACC established a new, fully funded scheme to manage accident-compensation insurance from 1 July 2000 – the employers' scheme. Many of the ratios reported in Part B of this report are distorted because the scheme is new. For example, its costs of compensating injured employees are small, as all claims are in their first development year. Total scheme costs are therefore artificially low, so medical and rehabilitation costs as a percentage of the total seem high compared with the Australian schemes.

On 1 April 2002, the *Accident Insurance Act* (and associated amendments) was replaced by the *Injury Prevention Rehabilitation and Compensation (IPRC) Act 2001*. Under it, ACC continues to provide compensation for all accidents (work, non-work and motor-vehicle). The IPRC gives injury prevention high priority for ACC. Other changes include:

- the introduction of lump-sum compensation for permanent impairment;
- a revision of the rehabilitation process to focus on jobs suited to the skills of individuals and the areas they live in;
- minor changes in weekly compensation for those in marginal employment situations (temporary and seasonal work); and
- the ability of ACC to develop individually tailored products for the self-employed.