

Department of Employment, Training and Industrial Relations

National Competition Policy Legislation Review

of the

WorkCover Queensland Act 1996

Report of the InterDepartmental Review Committee

December 2000

Table of Contents

<i>Executive Summary</i>	2
<i>Background</i>	12
<i>Identified Provision 1 – Employers must maintain compulsory accident insurance for their workers</i>	20
<i>Identified Provision 2 – WorkCover as principal provider of accident insurance</i>	22
<i>Identified Provision 3 – Self Insurance licensing criteria</i>	38
<i>Identified Provision 4 – Maximum benefit levels for hospitalisation costs</i>	46
<i>Identified Provisions 5 and 7 – Maximum benefit levels for medical and rehabilitation costs</i>	50
<i>Identified Provision 6 – WorkCover sole approver of rehabilitation training</i>	56
<i>Identified Provision 8 – Workplaces with 30+ employees must have a rehabilitation coordinator</i>	59
<i>Identified Provision 9 – Premium setting mechanism</i>	64
<i>References</i>	67
<i>Appendix A – Public Notification</i>	68
<i>Appendix B – Terms of Reference – Abridged Version</i>	69
<i>Appendix C – Organisations Representing Key Stakeholder Groups</i>	70
<i>Appendix D – Schedule of Submissions</i>	71
<i>Appendix E – Stakeholder Meetings</i>	72

Executive Summary

Nine provisions of the *WorkCover Queensland Act 1996* have been identified for review under the terms of National Competition Policy. The Review has been classed as a major review due to the nature of some of the restrictions (e.g. legislated monopoly) and the large number of stakeholders which include employers, workers, WorkCover, private insurance industry and medical, allied health and rehabilitation service providers. The Review has been conducted by an Interdepartmental Committee comprised of representatives from the Department of Employment, Training and Industrial Relations, Queensland Treasury and the Department of Premier and Cabinet.

The first stage of the Review process involved conducting a Public Benefit Test (PBT) to measure the relative costs and benefits of the existing regulated state with alternative states. The PBT was conducted in accordance with Treasury's PBT Guidelines by an independent consultant (AECgroup), selected from Treasury's list of pre-approved consultants. The results of the PBT were released to stakeholders and the Committee then met with stakeholders to clarify their positions on the PBT findings.

The Committee based its findings on the results of the PBT, stakeholder consultations, independent research and consideration of the seven Government Priority Outcomes. In reaching its conclusions the Committee considered the effect of each proposed change in the context of a number of recent and proposed changes introduced into the Queensland workers' compensation system and the combined effect of these changes. The PBT has approached each of the issues under review in isolation, while the Committee has considered the potential effect on the market of a package of reforms which will have to be integrated at one time. Workers' compensation insurance markets are typically volatile and extremely sensitive to apparently minor adjustments. While the findings of the Committee differ in some important areas from the findings of the PBT, the members are confident that these findings are consistent with maximising the benefit to the Queensland public from workers' compensation insurance and rehabilitation arrangements.

Queensland's workers' compensation legislation is designed to:

- Provide benefits/income support and fair treatment including medical treatment and rehabilitation services, to injured workers and their dependants
- Indemnify employers against the cost of workplace injuries, including damages claims, at cost effective premium rates
- Regulate access to damages
- Be maintained in a fully funded state that meets insurance industry solvency standards
- Encourage improved health and safety performance by employers
- Provide for employers and injured workers to participate in effective return to work programs; and

- Provide some flexibility in insurance arrangements through the capacity to self-insure.

IP1 – Employers must maintain compulsory accident insurance for their workers

This requirement of the Act fulfils important social and economic objectives of the Act. First it protects injured workers and their dependants from the hardships that could otherwise arise as a result of workplace injury, disease or illness. In addition, the requirement assists with maintaining business stability by helping businesses absorb the costs of compensating injured workers. The premium calculation method penalises employers with a poor claims performance thereby enhancing workplace health and safety outcomes. Given the objectives of the Act, no alternative state was considered viable. All stakeholders and the PBT analysis supported the retention of this provision.

Recommendation

That the requirement contained in the *WorkCover Queensland Act 1996* that employers must maintain accident insurance for their workers be retained.

IP2- WorkCover as principal provider of accident insurance, licensed self-insurers may also provide accident insurance. (Chapter 2, Part 2; Chapter 6, Part 2)

With the exception of those businesses operating as self-insurers, the Act provides exclusive power to WorkCover as the provider of workplace injury accident insurance, claims management and premium setting. This represents a legislated monopoly, which is isolated from the forces of competition. Competition may provide additional pressure to improve efficiency and drive down premium prices or increase benefits for workers. This represents the major area of the Act under review and has elicited widely differing stakeholder views.

IP2 deals with a number of major review alternatives including varying combinations of private and public underwriting, claims and case management and regulatory issues. In addition to factors discussed in the PBT, the Committee has considered factors such as the relative efficiency and effectiveness of the private insurance market in setting risk reflective premiums in workers' compensation markets, stability, unique factors associated with the delivery of workers' compensation insurance, and the factors contributing to higher premiums in other states.

Competitive Underwriting

The PBT has recommended the retention of public underwriting of the Queensland workers' compensation scheme. This recommendation is based on the grounds of:

- recent strong financial performance
- relatively recent return to full solvency
- evidence that administrative arrangements are more important than underwriting arrangements in determining scheme efficiency

- potential premium volatility and scheme instability in competitively underwritten schemes
- relatively high levels of customer satisfaction with current arrangements
- lack of evidence to support increased efficiency with the introduction of competitive underwriting.

In addition, the Committee notes that the Queensland scheme:

- sets premiums which are adequately reflective of risk
- offers significant advantages to both workers and employers through the maintenance of its regional network
- is free of profit motive
- includes a large pool size, enhancing stability and the ability to set risk reflective premiums
- is efficient in terms of scheme monitoring costs
- effectively maintains links between government determination of benefits and scheme operation.

With the exception of the private insurance industry, some employer groups and employees, all stakeholders supported the retention of public underwriting of the insurance industry, emphasising the good performance of the current scheme and the importance of stability for all stakeholders. While there was some desire for WorkCover be more exposed to market forces in order to ensure appropriate benchmarking, there was a consensus that this should only be done in areas which would not threaten the stability of the scheme.

Private Claims Management

The PBT has recommended that Q-COMP investigate the possibility of introducing private claims management to the Queensland workers' compensation system. This recommendation is based on the potential advantages private claims management offers such as increased efficiency, specialised claims management, economies of scope offered by insurance companies and greater choice for consumers of these services. On the negative side, there are concerns that private claims management could lead to increased legal action due to disputed claims, a reduction in regional employment and high regulation and monitoring costs. However it was also evident in the PBT that the distinction between claims management and case management was blurred leading to confusion about the validity of the finding.

As well as considering the findings of the PBT, the Committee has considered factors such as quality of information available to the regulator, regional employment impacts, additional regulatory costs of a split system, interstate experience with the introduction of private claims management and the introduction of profit requirement into the claims management system.

WorkCover Queensland currently has a strong regional network which benefits both workers and employers by providing accessible service and information. This

regional presence is also an important consideration for both regional employment and development. Government's seven priority outcomes put regional Queensland and employment as major concerns in the development of any policy initiatives. Potential staff cutbacks in WorkCover's 23 regional offices as a result of the introduction of private claims management are therefore viewed by the Committee as an unacceptable outcome.

Stakeholder consultations have revealed more interest in the potential benefits arising from the outsourcing of case management than the introduction of private claims management. Outsourcing of case management allows specialised treatments in certain areas such as stress and could lead to better rehabilitation and return to work outcomes for both injured workers and employers. The Committee notes that WorkCover is currently able to outsource case management under the legislation.

Benefits from private claims management are far less clear cut and are accompanied by the possibility of reduced service, reduced variable outcomes and regional employment. In the broader context of other changes arising from the outcomes of this Review, the Committee is of the view that the introduction of private claims management would be premature at this stage. While there is support from some stakeholders to increase competitive pressures on WorkCover, recent changes to the definition of workers and Government proposals to review access to damages under common law will impact on the scheme and may affect its financial status. Consequently, the Committee recommends that this issue be reviewed in three years' time when recent and proposed changes have been integrated and the impact on the scheme assessed.

Separation of Q-COMP

In examining the monopoly provider issue, the PBT has recommended that WorkCover's commercial and regulatory functions be formally separated in order to ensure truly independent regulation of the market for workers' compensation. While WorkCover took a step towards this position in May this year by physically relocating its regulatory functions unit and renaming it Q-COMP, many stakeholders are of the view that the separation does not go far enough, as the General Manager of Q-COMP continues to report to WorkCover's CEO, who in turn reports to the Board. Other concerns include:

- WorkCover not required to meet the same requirement/standards as self-insurers such as auditing and review requirements
- Information about the performance of self-insurers can currently be communicated to WorkCover without the self-insurers' consent, while self-insurers do not have the same access to information on Workcover's performance
- Decisions on issues such as benefit levels, and conditions for medical, allied health and rehabilitation costs are currently controlled by Q-COMP, which remains subject to the commercial imperatives of WorkCover due to the reporting arrangements.

The Committee is of the view that despite WorkCover's assurances that Q-COMP is now operating completely independently, there are still "cultural" ties between the two organisations and a perception amongst stakeholders that there are conflicts of interest. Self-insurers and medical and rehabilitation service providers in particular voiced concerns that the commercial imperative of WorkCover affects regulatory decisions. This concern applies to the setting and assessment of self-insurance criteria as well as the determination of medical and rehabilitation benefit levels.

Accordingly the Committee is of the view that, for both practical and transparency reasons, Q-COMP should be legally separated from WorkCover. This will facilitate independent regulation of the Queensland workers' compensation system as well as adding transparency and improving confidence in the system. The move will also establish the groundwork for WorkCover to become an independent statutory authority, should Government decide to give it full GOC status in the future.

Recommendations

That the public monopoly for the Queensland workers' compensation system be retained.

WorkCover retain its exclusive claims management role but the issue of claims management be reviewed in three years time.

That Q-COMP become a completely separate entity from WorkCover to ensure independent regulation of the market.

IP3 - Self-insurance licensing arrangements. (Chapter 2, Part 5)

The option to self-insure was introduced with the 1996 Act following the recommendations of the Kennedy inquiry and was a considerable liberalisation of previous arrangements, introducing a competitive element to the legislated monopoly arrangement. In order to obtain a self-insurance licence, single and group employers must satisfy prudential and performance licensing criteria stipulated in the Act as well as additional criteria that may be set by WorkCover under section 112. This represents a restriction on entry to the insurance business and also a restriction on the conduct of such a business and is the second major area of the Review.

Licensing criteria

The PBT recommended that, as WorkCover is now at full solvency, that self-insurance licensing criteria be relaxed in line with other jurisdictions. There is considerable variation in self-insurance requirements across Australian jurisdictions, as well as recommended standards developed by the Heads of Workers' Compensation Authority. While Queensland's requirements are the most stringent of any Australian jurisdiction, the PBT is not specific in terms of how the criteria should be relaxed.

Existing and potential self-insurers both support a relaxation in the requirements. Equally however, other employers who contributed to the Review emphasised the need for stability in workers' compensation premiums to allow them to plan more effectively. These employers lobbied for a "steady as she goes" approach to change, preferring the option of allowing the changes brought about by the Kennedy Review and this Government's legislative changes to be fully absorbed by the scheme.

As self-insurance is a relatively recent concept, and has only been in operation in Queensland for two years, the full implications of self-insurance have not yet flowed through to workers, employers or the operation of alternative funds. In particular, most self-insurers have not yet developed their common law claims experience sufficiently. Due to the statutory limitation period, according to WorkCover, this experience is often first evident in the third to fifth years of operation and a comprehensive claims experience is not evident for some years. With proposed changes in access to damages under common law, the effect of common law on self-insurers will be even greater, and it would be prudent to allow this experience to develop before making further changes.

Two issues of particular concern to many self-insurers are the increase in minimum employee numbers from 500 to 2000 and the rigorous WHS auditing requirements introduced with the 1999 amendments.

Stakeholders argue that the increase in employee numbers is arbitrary and out of step with arrangements in other states. Q-COMP has argued that reducing minimum employee numbers 500 would allow a potential increase in workers covered by self-insurance as opposed to WorkCover of almost 50 per cent, placing additional strain on the fund and having potential implications for both workers and employers in terms of effective outcomes. The Committee considers that as any change in this area could affect the balance of the fund, it should be maintained for the time being.

WHS requirements were introduced on the basis that the Government has to ensure that all employers maintain appropriate standards and that as self-insurers are not subject to EBR, an additional mechanism is required to enhance WHS outcomes. Self-insurers argue that as they bear the full cost of any claim, they have the highest possible incentive to take precautions against workplace incidents. In addition, they claim that they already have appropriate monitoring systems in place and that the additional burden imposed by the Act merely adds to administrative costs without actually enhancing WHS outcomes. In consultations following the release of the PBT, the Chair of the Committee agreed that alternative methods of addressing WHS concerns could be investigated such as assessing self-insurers' internal WHS standards and substituting these for the rigorous auditing program currently proposed.

Claims Management Outsourcing

The PBT has argued that if private claims management were allowed for WorkCover, self-insurers should be able to outsource their claims management function on the basis of competitive neutrality. Many self-insurers regard claims management

outsourcing as an efficient alternative to internal claims management, as specialist claims managers in insurance companies could handle claims on behalf of self-insurers, thereby minimising the administrative burden. Self-insurers would be free to negotiate their own terms with the claims managers in order to ensure that an appropriate balance was struck between outcomes and efficiency.

While the Committee is cautious about the introduction of private claims management into the general scheme due to concerns over scheme stability, regional employment and implementation issues, these issues do not present such potential problems in the self-insurance market due its smaller size and tight regulation. Consequently the Committee supports the notion that self-insurers be allowed to outsource their claims management function.

Recommendations

That the self-insurance licensing criteria be retained for a further three years at which time the full impact of self-insurance on the Queensland workers' compensation market can be better assessed.

That self-insurance licensing criteria be reviewed in three years time.

That while maintaining the requirement for self-insurers to maintain workplace health and safety standards, Q-COMP in conjunction with the Division of Workplace Health and Safety, examine alternative methods of achieving workplace health and safety outcomes.

That subsection 119(4) of the *WorkCover Queensland Act 1996* be amended to allow self-insurers to outsource their claims management function.

IP4 - WorkCover sets benefit levels for hospitalisation costs

By setting maximum benefit levels for hospitalisation costs WorkCover effectively creates a ceiling on the fees private hospitals can charge injured workers for treatment. IP4 can be classified as a restriction on competition as it represents a form of legislative price control enforced by WorkCover. It could be argued that price controls on hospitalisation costs is an attempt at balancing the two major objectives of the Act, namely to ensure fair treatment for injured workers, whilst maintaining reasonable premium levels for employers. At the same time the restriction has the potential to alter the dynamic characteristics of the market, or affect the market's economic activity. While other jurisdictions do not have such stringent controls on access to private hospitalisation, most stakeholders agreed that it was important for WorkCover to maintain control over costs and had no objection to the maintenance of this restriction.

The PBT has supported the retention of price controls on treatment in private hospitals. Queensland is the only state that explicitly places price controls on this type of treatment, however most stakeholders support the view that restrictions are

required in order to contain scheme costs. While there is some evidence to suggest that workers may receive more appropriate treatment if allowed easier access to private hospital facilities, it is considered that the potential for cost blowouts associated with over-servicing, overcharging and unethical practices outweighs this potential benefit. The safeguards that currently exist in the Act to ensure that injured workers have access to private hospital facilities in the event that such access will relieve prolonged pain and suffering or a public hospital is not reasonably available, ensure that workers will continue to receive appropriate treatment.

Recommendation

That the amount WorkCover is liable for to pay in the event of private hospitalisation continues to be prescribed by regulation and that this amount be regularly reviewed to ensure it is consistent with current costs.

IP5 - WorkCover sets benefit levels for medical treatment, and chiropractic/osteopathic costs and IP7 - WorkCover sets benefit levels for rehabilitation costs (Chapter 4, Part 3)

IP5 and IP7 raise similar issues in that they both involve the right of WorkCover to set conditions on the provision of services. The Act empowers WorkCover to set benefit levels and conditions for medical treatment and rehabilitation service under a Table of Costs.

The use of Tables of Costs to set conditions for medical and rehabilitation services interferes with the operation of the market in terms of prices and potential supply and types of service providers. IP5 and IP7 are classified as price controls and restrictions on conduct of a business. While they could be viewed as a potentially significant restrictive provision, stakeholders generally agreed on the need to control costs in the interest of scheme stability.

The PBT has supported the maintenance of benefit levels in these areas in order to allow for effective cost management however it has also recommended that the requirement for treatments to be specifically referred by a registered medical practitioner be examined.

Most stakeholders supported some price control as it allows WorkCover to plan effectively and control costs. However decisions regarding the type and quantity of treatment is arguably outside the scope of what is required to plan effectively. Chiropractors in particular are concerned about the referral requirement because of a perceived bias in the medical profession against alternative therapies. They also believe that it lowers outcomes for injured workers, and employers by resulting in less effective treatments being provided.

The Committee is of the view that while WorkCover, or Q-COMP needs to be able to set conditions to some extent in order to control costs, the extent of this power needs to be reviewed as to specific issues such as referrals, managed health care plans etc.

Recommendations

That the capping of benefit levels for medical, allied health and rehabilitation costs be retained.

That Q- Comp and DETIR review the conditions that can be applied to the use of allied health professional and rehabilitation service providers, including the matter of the referral requirement.

IP6 - Workplace rehabilitation training courses to be approved by WorkCover

WorkCover has several responsibilities for worker's rehabilitation, including the approval of workplace rehabilitation training courses designed for rehabilitation coordinators (refer IP8). Until 1997 WorkCover was the sole provider of workplace rehabilitation coordinator training. WorkCover no longer provides training services, but rather accredits external training providers. To become an approved training organisation, an organisation must make application to WorkCover, complete with a training course designed around minimum syllabus standards. No other authorities are permitted to approve training organisations or accredit a training organisation's workplace rehabilitation coordinator training course. The Act contains no reference to limits on the number of rehabilitation coordinator training provider or courses that can be accredited.

All stakeholders and the consultants agreed that some form of regulation of training courses is necessary to ensure that certain standards and curricula are met. As such, some body needs to ensure that the requirements are being met. WorkCover has been the regulatory body in the past but this responsibility will fall under the responsibilities of Q-COMP following the separation.

Recommendation

That the requirement for workplace rehabilitation courses to be approved by Q-COMP continue.

IP8 - Workplaces with 30 or more workers must have a rehabilitation coordinator

Queensland employers must take all reasonable steps to assist and provide injured workers with rehabilitation for the period for which the worker is entitled for compensation. A fundamental part of the employer's obligation is the appointment of a rehabilitation coordinator and establishment of workplace rehabilitation policy and procedures if the employer employs 30 or more workers at a workplace for a total of any 40 days during the year. The rehabilitation coordinator must be employed under a contract of service and should assist the employer in minimising the costs of the

injury by facilitating return to work outcomes. An employer can apply to WorkCover to appoint one rehabilitation coordinator for more than one workplace. IP8 is regarded as restriction on the conduct of a business as employers face a statutory requirement affecting their business operations and are compelled to operate in a particular manner.

The Committee has examined the options of all workplaces requiring access to an onsite rehabilitation coordinator, or abolishing or outsourcing the requirement. While the first option has the potential to improve outcomes for injured workers, and would level the playing field for employers, it is considered that the additional costs of training and maintaining rehabilitation coordinators in all workplaces would outweigh the benefits.

One option involves outsourcing the requirement. This has many more potential benefits in that it allows equal access for all injured workers to rehabilitation coordinators, and minimises the costs to employers by only requiring them to pay for services as they are used, rather than maintaining a permanent presence in the workplace. Stakeholder consultation largely supported this view.

Accordingly the Committee is of the view that alternatives to the current requirement be further examined in order to develop a more effective and equitable approach to ensuring all injured workers have reasonable access to a rehabilitation coordinator at reasonable cost to employers.

Recommendation

That the requirement for employers to participate in effective return to work programs be retained but that a review be undertaken by Q-COMP, with industry input, to examine alternative methods of achieving improved return-to-work outcomes for workers and employers.

IP9 - Price setting mechanism for premiums and associated costs

As noted above under IP2, competitive premium setting only becomes an issue for consideration in the event that private underwriting should be introduced. As the PBT has recommended the retention of the public monopoly and the Committee supports this view, it is recommended that the method for premium setting and associated costs remain in the Act.

Recommendation

That the price setting mechanism for premiums and associated costs be retained.

Background

Reasons for Review

In 1995, all Australian Governments agreed to implement a package of reforms aimed at developing a more open and integrated Australian market. In particular, the measures aim to limit anti-competitive conduct and remove the special advantage previously enjoyed by government business activities. A major activity associated with this National Competition Policy (NCP) is the legislative review program whereby all levels of government agreed to review inconsistent, ineffective and/or anti-competitive legislation within their jurisdictions. All such legislation must be reformed where it is clearly in the public interest to do so.

The question of whether a legislative restriction is in the public interest is examined through the conduct of a Public Benefit Test (PBT). A PBT is designed to assess whether the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the legislation can be achieved by means other than restricting competition.

Queensland Treasury¹ has produced a set of guidelines for the conduct of Public Benefit Tests in Queensland. These note, “NCP reviews must not only consider whether an existing/proposed restriction provides a public benefit, but also whether other options would achieve a greater public benefit”. The Guidelines go on to say “while the Government is well aware of the potential benefits that competition can bring to the community [there is a need to ensure that] competition is not pursued for competition’s sake, and that a considered and pragmatic approach is taken to NCP”.

Certain provisions of the *WorkCover Queensland Act 1996* have been identified as being potentially anti-competitive. Consequently a Legislative Review incorporating a Public Benefit Test (PBT) has been conducted.

Process of Review/Format Used

The Public Benefit Test Guidelines produced by Queensland Treasury and published in October 1999 outline the basic process to be followed in Legislative Reviews under NCP. Most importantly, such reviews must be conducted in an open and transparent manner, with adequate opportunity for stakeholder input into the review process.

Under the Guidelines, possible models for NCP Reviews vary from internal or “desktop” reviews conducted by the relevant line department, to full-scale national reviews conducted by the National Competition Council. Arrangements are agreed on a case-by-case basis through consultation between the line department and the NCP Unit of Treasury.

¹ Queensland Treasury (1999, p7)

The NCP Review of WorkCover has been identified as a major Review due to both the nature of the restrictions (e.g. legislated monopoly, compulsory insurance requirement) and the number of stakeholders – encompassing workers, employers, business and the community at large. Accordingly the Review requires:

- An independent panel
- Publicity about the review
- Publication of the Terms of Reference
- Wide consultation during the review including a call for public submissions
- Where diverse impacts have been identified, the process may include a reference group representing key stakeholders to assist the review panel
- May commission specialist consultants for specific aspects of the review
- Publication of issues paper and/or interim report

An interdepartmental committee comprised of representatives from the Department of Employment, Training and Industrial Relations, Queensland Treasury and the Department of Premier and Cabinet conducted the Review. None of these representatives are involved in directly administering the Act, as required by the Guidelines. This mix of representatives has maintained independence whilst also ensuring ready access to expertise in the field under review.

The Review has been widely advertised with a public notification published in major and regional Queensland newspapers on or around June 2000 (refer Appendix A), which invited interested parties to make submissions based on the Terms of Reference prior to 21 July 2000. The Terms of Reference, attached in Appendix B, were available through the mail or internet. In addition, key stakeholders, identified in Appendix C, were individually notified of the Review and invited to make submissions to the process. Ten written submissions (see Appendix D) were received in response to the Terms of Reference.

The PBT was conducted by AECgroup, an independent consultancy chosen by the Committee from Treasury's pre-approved list. The consultants have considerable expertise in legislative reviews, workers' compensation and cost benefit analysis. The PBT was distributed to key stakeholders and formed the basis for discussions between Committee members and stakeholders. This Report is based on the findings of the PBT, combined with the results of the consultation process (as per Appendix E) and consideration of Government Priority Outcomes.

Industry Background

The Market for Workers' Compensation Insurance

All Australian jurisdictions require employers to maintain compulsory accident insurance for their workers. This concept is not universal however, and in some overseas jurisdictions, workers may have no entitlement to compensation or damages if they are injured or made ill in the course of their employment. Legislation such as the *WorkCover Queensland Act 1996* has two main aims. The first objective, which is principally social

is to enshrine the right of workers to fair compensation in the event of workplace death, injury or illness. The second is to protect employers from the financial burden liability for such compensation may place on their businesses. Compulsory insurance against injury in employment should not impose too heavy a burden on employers so that industry remains locally, nationally and internationally competitive. In this way such legislation is aimed at benefiting the whole community. The system must be fair in balancing the rights of injured workers with the need for competitive and affordable premiums for employers, while maintaining a secure and viable workers' compensation system.

The insurance market generally and the market for workers' compensation insurance in particular have characteristics that make their operation different from other markets.

It is the nature of insurance to pool costs, and distribute them fairly across the contributors to the scheme. Contributors pay a relatively small amount to cover themselves, should an unlikely but potentially expensive incident occur. In theory, the risk is the same for all policy holders and the average premium reflects this risk. In actuality however some policy holders will have a higher propensity to claim than others. Higher risk policy holders have a greater incentive to maintain insurance because the cost of their premium is lower than the perceived benefits they stand to receive in the event of a claim. Lower risk policy holders however may find that the cost of the premium exceeds the expected benefits from insurance coverage and leave the scheme. The loss of low risk policy holders from the pool then further drives up pool costs relative to returns, with a further rise in premiums resulting and more lower risk policy holders leaving the scheme. This behaviour, known as **adverse selection**, destabilises the insurance fund and can result in the scheme becoming non-viable.

In addition to the problem of adverse selection, the problem of **moral hazard** also arises. Where contributors have no control over the likelihood of an incident necessitating a claim, the pool should operate in a stable fashion, with the incentives to contribute and the propensity to claim in balance. However, in most cases, policyholders do hold some power over the likelihood of a claim being made. For example, a car owner who holds insurance has less incentive to ensure the car remains undamaged than they would if they did not have insurance. They may decide the additional effort required to ensure their car remains undamaged is worth less to them than the cost of insurance. This increases the likelihood that the car will be damaged and therefore the likelihood of a claim. The propensity of holders of policies to make claims tends to drive pool costs up, causing lower risk policy holders to leave the pool as the cost of their policy exceeds their perceived benefit.

Various approaches have been developed to deal with the problem of adverse selection and moral hazard. These include the charging of "excess" to discourage policy holders from making claims, risk rating policy holders through, for example, Experience Based Rating (EBR) which increases the cost of a policy to claimants with higher propensity to make claims, and compulsory insurance which prevents low risk policy holders from leaving the scheme and helps maintain its stability. In general, the larger the pool is, the more stable the scheme will be.

In addition to these features, which affect all insurance markets, workers' compensation has the feature that the insured party is not the party who actually receives the payments in the event of a claim and the objectives of these two parties differ. The employer, who pays the premium, is the insured party, however benefits are paid to injured workers. Pressure to keep premiums low comes from employers, however employees seek fair compensation for injuries.

This means that the party who benefits from the insurance coverage does not have the same financial incentive (in the form of increased premium due to EBR or excess payments) to minimise claims costs. In addition, while most forms of insurance take the form of a one off payment to reimburse a claimant for loss of property for example, in the case of an injured worker, compensation and rehabilitation costs may go on for years.

It is the government's objective that all workers and their dependents have access to fair and reasonable compensation in the event of workplace injury, illness or death. Where an injured worker is not covered due to employer avoidance of payment or confusion over the need to take out insurance, there must be a **nominal insurer** to ensure equal coverage and pay compensation and rehabilitation costs to the claimant. In a competitive market, to ensure coverage there must also be arrangements for an **insurer of last resort** that will insure high risk employers which other insurers are unwilling to cover.

Traditionally, these problems have been dealt with in the Queensland market for workers' compensation insurance by making insurance compulsory with a single insurer. The Act establishes WorkCover as an independent statutory body to manage the workers' compensation scheme and deliver insurance as a commercial enterprise. This approach has ensured a large and viable pool to adequately spread risk across a large number of policy holders. Over the years refinements have been made to introduce incentives to minimise claim costs through the introduction of EBR and making provision for rehabilitation, which decreases the total costs of the scheme by improving return to work outcomes.

The workers' compensation market in Queensland comprises employers, contract of service workers, medical and allied health professionals, the legal profession, WorkCover and self-insurers. Due to the monopoly position created by the Act there is no role in the current system for private insurers. WorkCover's legislated responsibilities include underwriting, scheme management, premium collection and claims administration.

All Queensland employers are required to maintain compulsory accident insurance to insure against the employer's legal liability for compensation and damages resulting from injuries sustained by their workers. The employer's liability must be provided for by a WorkCover policy or under a licence as a self-insurer. For an employer to be issued a self-insurer licence they must meet stipulated performance and prudential criteria (discussed in Identified Provision 3 below), which in effect eliminates small and medium sized employers from the self-insurance option. Self-insurers represent just 0.02% of policies, but more than 12% of wages declared to the scheme.

In 1999/2000 WorkCover collected \$532 million in premium revenue, incurred net claims of \$377 million and provided insurance services to 134 127 policyholders². WorkCover's solvency requirements (net assets as a proportion of total outstanding claims) are established under the *WorkCover Queensland Act 1996*, *WorkCover Queensland Regulation 1997*, and the *Insurance Act 1973*. Together, these require that WorkCover maintain a solvency rate of 20 per cent. WorkCover has recently moved from an under-funded position in 1995/96 and 1996/7, to its target solvency rate at June 2000. The return to solvency has been facilitated by a number of factors including:

- Higher than expected investment returns
- A ten percent surcharge imposed on employer premiums from 1995 to 1999
- State Government equity contributions to WorkCover with successive Governments providing \$105 million by way of capital injections and \$158 million by way of tax equivalent payments
- A slow down in the flow to self-insurance following the tightening of the licensing criteria in 1999.

History of Workers' Compensation in Queensland

Workers' compensation legislation in some form has existed in Queensland since the *Employers' Liability Act of 1886*. Prior to this Act, workers had been deemed to accept the ordinary risks of employment and were prevented from obtaining compensation for injuries due to the negligence of a fellow employee. This Act enshrined the important social objective that workers' income, and that of their dependents should be protected in the event of workplace death or injury.

A no-fault system was introduced in the 1905 Act, and workers' compensation insurance, administered through a single government authority, became compulsory for all employers in 1916. Compensation responsibilities were transferred from the State Government Insurance Office to the newly established Workers' Compensation Board of Queensland in 1978 on the basis that workers' compensation insurance was an essential social service and as such should be administered independently.

Notwithstanding numerous reviews that have been undertaken, workers' compensation insurance has retained certain basic features to this day, namely it is a no-fault compulsory insurance scheme, funded by employers and underwritten and administered by the State. Fundamentally workers' compensation in Queensland has sought to ensure the rights and income of workers who become ill or injured in the course of their work, and their families, are protected, while also protecting employers from the risk of sudden financial drain caused by large compensation or common law claims.

Over the years legislation has been developed to address issues such as rehabilitation, workplace health and safety and the commercial objectives of the scheme. Legislation governing workers' compensation has been reviewed numerous times in the last ten years in an attempt to refine the approach to these issues.

² WorkCover Queensland (2000).

The last major review was the 1996 Commission of Inquiry into Workers' Compensation and Related Matters, known as the Kennedy Inquiry. This review was prompted by the high level of unfunded liability being experienced by the scheme at the time. The Kennedy Inquiry investigated the causes of this unfunded liability and made a series of recommendations, culminating in an overhaul of workers' compensation legislation. The current Act emerged from this overhaul and introduced a number of new factors into the market. Most significantly, the *WorkCover Queensland Act 1996*:

- Established WorkCover Queensland as an independent, commercially oriented statutory body
- Introduced the option to self-insure for some large employers
- Introduced greater incentives to pursue workplace health and safety outcomes by introducing Experience Based Rating (EBR) for premium calculations.

With the election of the Labor Government in 1998 the *WorkCover Queensland Act 1996* was reviewed and amended to address some of the perceived inequities in the original Act. Major amendments included:

- Changes to the definition of 'injury', so injuries were deemed to be compensable if employment was a significant contributing factor
- Changes to the definition of a worker, which effectively broadened eligibility for workers' compensation to all people who work under a contract of service, regardless of tax paying status
- Strengthening of self-insurer prudential requirements and the inclusion of specified performance criteria.

EBR was reviewed in 1999 following a high level of industry concern about premium volatility and other transitional issues. This review outcomes were also assessed by Jim Kennedy and the resulting recommendations aim to smooth premium volatility and policyholder dissatisfaction by providing a more equitable relationship between premium and claims experience.

The Kennedy Inquiry anticipated the current review, predicting that the scheme would be solvent by the time the NCP review took place. He felt that with the reforms he recommended, the scheme would be in a strong financial position, capable of withstanding any likely outcomes from this review. WorkCover is a candidate Government Owned Corporation (GOC) but continues to function as both regulator and sole provider of workplace accident insurance, with the exception of self-insurers. In June 2000, the Regulatory Functions Division of WorkCover was separated from WorkCover and became established as a separate entity known as Q-COMP. The move was aimed at addressing any perceived conflict of interest within WorkCover. Despite the physical move and name change however, the head of Q-COMP continues to report to the WorkCover Board through the Chief Executive Officer.

Restrictions and Objectives

Objectives of the Act

The *WorkCover Queensland Act 1996* provides “for the workers’ compensation scheme and other matters”. The Act binds all persons including the State in achieving its objectives, which are outlined in Chapter 1, Part 2. Broadly, Queensland’s workers’ compensation legislation is designed to:

- Provide benefits/income support and fair treatment including medical treatment and rehabilitation services, to injured workers and their dependants
- Indemnify employers against the cost of workplace injuries, including damages claims, at cost effective premium rates
- Regulate access to damages
- Be maintained in a fully funded state that meets insurance industry solvency standards
- Encourage improved health and safety performance by employers
- Provide for employers and injured workers to participate in effective return to work programs; and
- Provide some flexibility in insurance arrangements through the capacity to self-insure.

In relation to injuries, the Act specifically deals with a range of issues including compensation, regulation of access to damages, employers’ liability for compensation, employers’ obligation to be covered, claims management, injury management, rehabilitation, injury assessment and right of appeal.

In these ways the Act aims to ensure that the Queensland workers’ compensation system is fair, balancing the rights of injured workers against the need for competitive and affordable premiums for employers, while simultaneously maintaining a secure and viable workers’ compensation system.

Provisions Identified as Potentially Restrictive

The Public Benefit Test Guidelines discuss various ways in which legislation may be regarded as anti-competitive ranging from anti-competitive conduct (under the *Trade Practices Act*) through to licensing requirements and legislated monopolies. Nine provisions of the *WorkCover Queensland Act 1996* have been identified as potentially anti-competitive. These vary in the extent of their importance from relatively minor (because of the nature of the restriction, number of stakeholders or community perception of the restriction) through to major restrictions in the case of the WorkCover’s monopoly provider status (which affects a large number of stakeholders and is the subject of widely differing views).

The Identified Provisions (IPs) are discussed in the following chapters. Each Chapter is divided into sections on:

- Why the provision has been identified and its significance to the review as a whole
- Issues that have emerged during the review process in relation to the identified provision.
- A description of realistic alternatives to the identified provision
- A summary of the independent Public Benefit Test assessment of the alternative state
- Conclusions and recommendations for each state.

Issues that are considered “major” for the purposes of the review are discussed in considerably more detail than those which are considered minor.

Identified Provision 1

Employers must maintain compulsory accident insurance for their workers (Chapter 2 Part 2)

Employers are required to maintain compulsory accident insurance to insure against the employer's legal liability for compensation and damages that can arise from injuries or death sustained by their workers. This provision has been identified in the Terms of Reference as a restriction on the conduct of a business as employers face a statutory requirement affecting their business operations and the Act prescribes a single way in which employers can provide for their injured workers.

This requirement aims to fulfil the Act's objectives of providing benefits and fair treatment for workers, and protecting employers' interests from damages claims.

Issues

A key objective of the Act is to ensure that workers and their dependents are protected financially in the event of workplace death, injury or illness. Compulsory insurance ensures that this support is available to workers whilst simultaneously ensuring that employers and their businesses are protected from the uncertainties that could arise in the event of workplace injury including statutory and common law claims. In the event that an employer did not have workers' compensation insurance to safeguard the stability of their business, they could face insolvency, also leading to unacceptable outcomes for injured workers. Essentially the objective of ensuring workers are protected from the consequences of workplace injury is a social one, and all other Australian jurisdictions and many overseas jurisdictions maintain similar requirements. During public consultation all stakeholder groups supported the retention of the restriction and no group identified any other means by which the main objective of the Act could be delivered.

Options

All Australian jurisdictions require employers to hold workers' compensation insurance although the method of delivery varies from state to state. In addition to ensuring that both workers and employers are protected financially in the event of workplace injury, the compulsory nature of workers' compensation insurance promotes a level playing field for Queensland business by ensuring that all businesses are subject to the same requirements, and that responsible employers are not disadvantaged by bearing a cost that others with less concern for the welfare of their workers would bear. In addition, the use of experience based ratings in the calculation of premiums provides built-in mechanisms to encourage employers to maintain and improve safety standards, fulfilling another objective of the Act. As this requirement fulfils vital social and economic objectives of the Government, no alternative state is considered viable.

PBT Analysis

Alternative State 1.1 - Employers do not have to Maintain Accident Insurance for their Workers.

The PBT analysis examined an alternative state whereby employers did not have to hold compulsory insurance for their workers, however the alternative state does not meet the objectives of the Act. Firstly, workers injured whilst working for an employer would not have access to benefits/income support resulting in additional pain, suffering and economic loss. Secondly, employers would no longer be indemnified against the cost of workplace injuries and would have to bear the full cost of legal defence and damages awarded to injured workers. Thirdly, the incentive to improve workplace health and safety would be removed leading to an increase in unsafe workplaces. It is recommended that the requirement for employers to maintain accident insurance be retained.

Conclusion and Recommendations

Discussion

This requirement of the Act fulfils important social and economic objectives of the Act. As well as protecting injured workers and their dependants from the hardships that could arise as a result of workplace injury, disease or illness, the requirement helps businesses absorb the costs of compensating injured workers and contains a built-in incentive for the enhancement of workplace health and safety outcomes through its premium calculation method.

Recommendation

That the requirement contained in the *WorkCover Queensland Act 1996* that employers must maintain accident insurance for their workers be retained.

Legislative Changes Required

nil

Implementation Issues

nil

Transitional Arrangements

nil

Identified Provision 2

WorkCover as principal provider of accident insurance, licensed self-insurers may also provide accident insurance (Chapter 2, Part 2; Chapter 6, Part 2)

With the exception of those businesses operating as self-insurers, the Act provides exclusive power to WorkCover as the provider of workplace injury accident insurance, claims management and premium setting. This represents a legislated monopoly, which is isolated from the forces of competition. Competition may provide additional pressure to improve efficiency and drive down premium prices or increase benefits for workers. This represents the major area of the Act under review and has elicited widely differing stakeholder views.

Issues

In general it can be argued that while monopoly providers have access to considerable economies of scale and may be able to supply services at a lower cost, it is often the case that the lack of competition removes the incentive for the monopoly provider to operate at maximum efficiency or to introduce appropriate innovations. As such, a monopoly could be imposing significantly higher costs on both employers and employees.

The insurance business for workers' compensation involves a number of "markets" including underwriting, claims management, case management, premium setting and scheme management. In particular, the issue of privatisation of claims management and case management have been raised as potentially viable options. Claims management is the administrative management of a claim, including initial determination of liability, payment, coordination of rehabilitation and return to work plans and finalisation. Case management is the planning, coordinated implementation, monitoring and evaluation of rehabilitation and return to work plans.

The number of stakeholders is large and diverse with varying degrees of vested interest in the outcomes of the review.

Proponents of the legislated monopoly argue that it is the most appropriate as:

- Workers' compensation differs from other forms of insurance managed by the general insurance market and should not be run on a profit basis
- Private insurers could use workers' compensation as leverage to secure other forms of general insurance from larger, more profitable employers, to the exclusion of small business
- Private insurers may refuse to insure employers in high risk industries or enter premium discount wars, resulting in quickly re-inflating premiums and destabilising the scheme as a whole

- Multiple providers in the market increase the potential for variance in legislative interpretation and inconsistent claims management, and difficulties in identifying and investigating uninsured employers
- Economies of scale are vital in the insurance business as it allows the insurer to absorb and distribute fairly any claims on the system. This ensures long run system viability and stability.

If competition were introduced into the market, it could be introduced on a number of different levels. Examples of different combinations exist in other jurisdictions in Australia. For example, the Tasmanian system is fully privatised with all aspects of the insurance business privatised. Victoria, New South Wales and South Australia have centrally managed funds with private claims management (although NSW has mooted the introduction of private underwriting in the future). Western Australia has a privately underwritten and managed system with premium levels recommended by a central body.

Proponents of a competitive system argue that competition allows employers more choice in obtaining workers' compensation insurance which will be flexible, workplace focused and meet a range of insurance needs, leading to lower costs.

The private insurance industry has argued strenuously that the entire system should be privatised so that the advantages of competition such as innovation and efficiency will be achieved along with the appropriate incentives to reduce costs. They have developed a model which espouses "total risk management" i.e. where claimants (in this case employers) bear the entire cost of claims through adjustments to their premium. The insurance industry argues that this provides maximum incentive for employers to minimise their claims costs and ensures that they have safe work places and practices by eliminating cross subsidisation. However it is the nature of insurance to allow some degree of cross subsidisation between policy holders.

In the event that public underwriting for the Queensland workers' compensation market were retained, other elements of WorkCover's business could be administered privately as is the case in other states. In particular, claims management under different guises could be privatised to take advantage of existing insurance company networks and economies of scope. Depending on the mechanism of remuneration for private claims management, incentives may be developed which would maximise the efficiency with which this was conducted and allow innovation in the marketplace.

Experience in other states with privatised claims management has varied, with some jurisdictions experiencing increased scheme costs because the claims managers do not bear the cost of claims. Performance targets framed in terms of processing time can lead to a lack of due care in determining the validity of claims with consequent scheme cost increases. Conversely, if incentives are developed to encourage claims managers to minimise costs, workers may be faced with an unreasonable level of claim rejections and an eventual increase in legal action and costs to the system.

Many stakeholders were concerned that WorkCover currently acts as both insurer and regulator of the workers' compensation insurance industry. Self-insurers and the private

insurance industry in particular, viewed this as a conflict of roles for a commercially oriented organisation in that WorkCover administers the Act as well as operating in the market. Earlier this year the regulatory and commercial functions of WorkCover were separated when the former regulatory functions unit was relocated to separate premises and renamed Q-COMP. However, the head of Q-COMP continues to report to the Chief Executive Officer of WorkCover, who in turn reports to the Board. This is widely regarded as an inadequate separation of powers, and a call has been made for a truly independent regulator so that WorkCover's commercial objectives do not interfere with the administration of the scheme. This lack of independence is of particular concern to self-insurers who regard WorkCover as a competitor, who as regulator also has access to commercially sensitive information. Access to this type of information gives WorkCover, as an insurer, an inordinate amount of control over the insurance business of these other companies, as Q-COMP continues to regulate their activities in this area.

Options

Alternative State 2.1 - Introduction of Competitive Private Underwriting with WorkCover Retained as a Government Owned Corporation.

The alternative state of competitive private underwriting proposes that the statutory monopoly for public underwriting be removed and private insurers be allowed to underwrite workers' compensation insurance for employers. The commercial business operations of WorkCover would be retained but registered as a Government Owned Corporation (GOC) and would operate in direct competition with private insurers. It is assumed that the regulatory body for the workers' compensation scheme, Q-COMP, would be completely separated from the commercial and business operations of WorkCover. Self-insurers would also remain as part of the scheme.

With the introduction of competitive private underwriting, the market for workers' compensation insurance would consist of a number of approved private insurers, the commercial and business operations of WorkCover as a GOC, self-insurers and some form of nominal insurer to act as an "insurer of last resort".

The proposed alternative of competitive private underwriting for workers' compensation insurance is similar to that in Western Australia, Tasmania, Northern Territory and ACT. Queensland also has a recently deregulated Compulsory Third Party (CTP) insurance market for motor vehicles. An insight into the prevailing market structure under the proposed alternative may be gained from an examination of the market structures in those states.

The main feature of the Western Australian workers' compensation scheme is that it is a private scheme with employers required to take out insurance through an approved insurer, or to self-insure. In 1998/99 there were 16 approved insurance offices with 78% of insurance being handled by seven insurers. Premiums in Western Australia are based on rates recommended by a Premium Rates Committee. Insurers can vary premiums from the recommended rates for individual employers, but increases are capped at 50%

(i.e. an employer's premium cannot increase in any one year by more than 50%). There are no restrictions on premium discounts.³

Tasmania has a privately underwritten scheme with monitored premium setting. In 1998/99, there were thirteen insurers with market shares ranging from 0.1% to 33.2%. Two insurers control more than 50% of the market.⁴

The Northern Territory has a privately underwritten scheme with unregulated premium setting. Currently there are five private insurers with three of those having market share of approximately 75%.⁵

ACT currently has a privately underwritten scheme with unregulated premium setting. There are currently 11 insurers in the market.⁶

In the Queensland CTP insurance market there are six licensed insurers under the *Motor Accident Insurance Act 1994*. Two of those have a market share of 80%. Insurers in the CTP market must reach a market share of 5% within five years and maintain market share above 5% to retain a licence.⁷

Most of the above markets are characterised by the dominance of a few large companies. With the introduction of private competitive underwriting the incumbent, the commercial and business operation of WorkCover, would initially dominate the market, although its market share would erode as new competitors established competing businesses.

Alternative State 2.2 - Private claims management (i.e. to allow private providers to undertake the claims management on behalf of an insurer).

The issue of privatised claims management was raised in the original Terms of Reference for the Review, however in the process of examining the issues, case management has also emerged as a potential privatisation option. Claims management is the administrative management of a claim including initial determination of liability and payment. Case management includes the planning, coordinated implementation, monitoring and evaluation of rehabilitation and return to work plans. WorkCover currently undertakes both of these functions almost exclusively. External case management services may be sought in a very limited number of situations, such as complex injuries and interstate cases.

If competition were introduced into the underwriting area, claims management could also be done on a competitive basis, however private companies could also manage WorkCover's claims function on an outsourced basis. The objectives of the legislation could continue to be met as long as arrangements continued to ensure benefits/income

³ Pearson, McCarthy and Guthrie (1999; pp 21-22).

⁴ Bendzulla (1999; Section 4).

⁵ AEC group (2000; p93).

⁶ *ibid* (2000; p93).

⁷ Argyle Capital (1999; p 42).

support and fair treatment including medical treatment, to injured workers and their dependents.

Experience in other states demonstrates varying degrees of success in the introduction of private claims management. The Kennedy Report⁸ noted that the outcomes based system introduced in Victoria led to an overly harsh attitude to claims resulting in less than optimal outcomes for injured workers and an increase in disputed claims, which in turn led to an increase in legal action at an overall cost to the system. Alternatively, payment systems for claims management services based on number of claims processed may lead to a lax attitude to processing resulting in more fraudulent claims being allowed, again increasing costs to the system.

Alternative State 2.3 - Private Premium Setting with Competition.

The introduction of private premium setting with competition is similar to that proposed by the alternatives for competitive private underwriting with the commercial and business operations of WorkCover as a GOC, or competitive private underwriting with WorkCover abolished.

In each of these cases, it has been assumed that private underwriters would calculate premiums for employers using their own methodology. This scenario therefore contains potential benefits such as innovation and competitive pressures being introduced.

PBT Analysis

Competitive Private Underwriting

The potential benefits of the Total Injury Management Model as proposed by the private insurance industry are:

- Reduced number and severity of workplace injuries
- Increased level of service to injured workers
- A greater choice of insurance provider
- Increased operational efficiency for the commercial and business operations of WorkCover
- Increased economies of scale for private workers' compensation insurers;
- Contracts with medical providers
- Shifting of risk from tax payers to shareholders; and
- Increase in competitiveness of Queensland employers.

These benefits are supported by the HIA, one of the strongest advocates of removing the legislated monopoly.

⁸ Kennedy Inquiry (1999; p99).

Other stakeholders, however have major concerns regarding the negative impacts that will be felt by injured workers and employers from the introduction of competitive private underwriting. Potential costs include:

- Increased number and severity of workplace injuries
- Reduced pool size potentially leading to instability
- Reduced information availability
- Decreased levels of service to injured workers
- Increased premium volatility
- Possible increase in insurance pool risk for WorkCover through adverse selection
- Non-inclusion of long tail liabilities in premiums
- Increased rejection of claims resulting in increased legal activity
- Misdirected claims from medical providers
- Possible moves towards managed health care
- Requirement for a nominal insurer function
- Increases in regulation and monitoring activity
- Loss of premium pool from Queensland
- Responsibility for injured workers shifted to taxpayers; and
- Reductions in regional employment.

Of the above costs, the central concern is that the commercial considerations of private insurers will introduce behaviour into the market that does not send the correct price signal to employers regarding the appropriate level of workplace health and safety. The major implication of this behaviour is on reduced workplace health and safety, reduced services to injured workers and premium instability.

Distorting the incentives to improve safety by not having a risk reflective premium conflicts with the legislative objective of encouraging improved health and safety performance of employers and introduces significant efficiency losses manifested in increases in the number and severity of workplace injuries.

The presence in the Queensland market of a legislated monopoly with no commercial imperative using an EBR mechanism to set premiums ensures that the correct price signals are sent to employers and that the optimum bearing of costs resulting from workplace injuries follows.

The social cost of injured workers on the community is significant and thus one of the key objectives of the legislation is to provide benefits and income support and fair treatment including medical treatment to injured workers and their dependants. Should private insurers seek to avoid meeting this objective due to commercial considerations then the objective is clearly not met.

Commercial behaviour of private insurers in premium setting is likely to lead to increases premium volatility as has been the case in Tasmania. Excessive premium volatility conflicts with the legislative objective of indemnifying employers against the cost of workplace injuries at cost effective premium rates, as well as creating other distortions as

discussed above. In recent years the Queensland workers' compensation scheme has demonstrated the lowest average workers' compensation premium rate of any state, and is also one of the most stable.

Another major benefit of a centralised scheme is specialisation and consistency in legislative interpretation and decision-making.

An examination of studies of workers' compensation schemes throughout the world has revealed that it is the level of benefits and quality of administration that determines the success of a scheme in terms of stability and low employer costs.

In summary it must be concluded that the benefits from the introduction of competitive private underwriting are outweighed by the costs that would be introduced into the market by commercial considerations. That is, that premiums will be set based on factors other than risk, hence distorting the price signal to employers regarding their level of workplace health and safety.

The combined effects of factors such as increased premium volatility, and profit motive may reduce the ability of the system to meet the objectives of the Act.

Therefore, the alternative state of competitive private underwriting is rejected and the current legislative monopoly in conjunction with self-insurers, should be retained.

Introduction of Competitive Private Underwriting with WorkCover Abolished

In addition to the assessment of impacts from the introduction of competitive private underwriting retaining WorkCover, the alternative of competitive private underwriting with the abolition of WorkCover introduces further net costs to the community.

Opening the whole market to private insurers is likely to increase the level of choice, based on price and service competition. Furthermore, the full transfer of insurance risk from taxpayers to shareholders is a definite benefit.

On the other hand a greater grab for market share is likely to exacerbate premium volatility, further distorting the incentives for workplace health and safety. In addition, the closure of WorkCover is likely to significantly impact employers and workers in regional Queensland and would meet strong opposition from the community. While most employers would welcome the increase in competition none of the written submissions advocated the abolition of WorkCover.

Overall, it must be concluded that the benefits from the introduction of competitive private underwriting and abolishing WorkCover, are more heavily outweighed by the identified costs than for the competitive private underwriting retaining the commercial and business operations of WorkCover as a GOC.

Therefore, the alternative state of competitive private underwriting abolishing WorkCover is rejected.

Introduction of Private Claims Management

All employers and self-insurers support the introduction of private claims management for WorkCover and self-insurers. The assessment of impacts on stakeholders indicates that the introduction of private claims management based on improved choice and efficiency could hold substantial benefits for the community as a whole.

Potential benefits of introducing private claims management include:

- Increased level of service to injured workers
- A greater choice of claims manager for employers and self-insurers
- Increased claims management efficiency
- Increased competition and economies of scale for private claims managers
- Contracts with medical providers
- Increased volume of performance information; and
- Increase in competitiveness of Queensland employers.

However, there are several concerns from stakeholders regarding the negative impacts from the introduction of private claims management. The potential costs include:

- Decreased level of service to injured workers
- Increase in insurance pool risk for WorkCover
- Costs to WorkCover associated with outsourcing and competition
- Increased legal activity
- Misdirected claims from medical providers
- Possible moves towards managed health care
- Increases in regulation and monitoring; and
- Reductions in regional employment.

The majority of impacts would be felt by injured workers, WorkCover, the legal profession and medical and allied health workers.

Of the above costs, the central concern is that there will be reduced services provided to injured workers through the ability of employers to influence claims managers to reject claims and hence avoid premium increases based on increased claims costs. This is unlikely to occur for several reasons. Firstly, the employer has no financial link with the claims manager, as the claims manager would be paid from Q-COMP. There exists no direct financial incentive for the claims manager to comply with the employer's request other than to retain it as a client. Secondly, Q-COMP can closely monitor claims management behaviour in the market with private claims managers. This monitoring is even closer with WorkCover clients than with self-insurers because it is Q-COMP that would authorise payments to private claims managers rather than the self-insurer.

There are further concerns that the use of private claims managers will increase the costs of the scheme and hence premiums. Whilst this is always a possibility, an appropriately

designed payment system for private claims managers might be based on achieving key scheme outcomes rather than on volume of claims, although it is vital that both financial and service factors are taken into account in developing these outcomes.

Recent research commissioned by WorkCover and carried out by Colmar Brunton⁹ indicated that injured workers' overall satisfaction with WorkCover had slipped from 7.56 out of 10 in 1999 to 7.16 in 2000. In 2000, 69% of injured workers surveyed rated the organisation a 7 out of 10 compared with 71% in 1999. These figures indicate that service levels have room for improvement.

The PBT concluded that benefits from the introduction of private claims management may outweigh the costs and that most of the costs can be mitigated in some form or another. Furthermore, the introduction of private claims management appears to meet the objectives of the legislation.

Thus, the alternative state of private claims management is one that has potential provided that an appropriate model, based on the recommendations of the HWCA, can be designed and implemented efficiently and with little disruption to the scheme. It is therefore recommended that Q-COMP investigate the possibility of introducing private claims management to the Queensland workers' compensation scheme.

Private Premium Setting with Competition

The discussion of a potentially competitive market above assumes that private insurers would be calculating premiums using their own methodology. The PBT did not discuss the implied alternative of competitive underwriting with centrally regulated premium setting. However, since the recommendation is for the retention of the monopoly, it is a moot point as WorkCover has its own mechanism for calculating premiums.

Conclusion and Recommendations

Discussion

Since the Kennedy Inquiry the Queensland workers' compensation scheme has gone from a significantly under-funded position to its currently fully funded state in a period of four years. In addition Queensland has one of the lowest average premium rates in Australia at \$1.75 per \$100 of wages and retains full access to common law for injured workers.

While some changes access to damages under common law, competitive pressures arising from the introduction of self-insurance and the introduction of Experience Based Rating have contributed to this turnaround, other factors such as a higher than expected return on investments and equity contributions from the state government have also made a substantial contribution.

⁹ Colmar Brunton Research (2000).

Full solvency has been achieved for the first time in 1999/2000, and uncertainty about the continued contribution of factors such as investment returns means that a continuation of this financial position is by no means guaranteed. Many stakeholders who provided input to the Review argued that the scheme should be given the opportunity to fully absorb the impact of relatively recent changes to the system to ensure continued scheme and premium stability.

The private insurance industry has argued strenuously that, above all, employers seek greater choice in meeting their workers' compensation obligations. However, in stakeholder consultations, stability emerged as an even greater concern. Given the stability of the Queensland scheme and the notorious sensitivity of workers' compensation funds to alterations, the consensus seems to be that employers are more concerned with being able to plan effectively and would like to see the system fully absorb recent changes before any other major changes are undertaken. In view of the Government's commitment to further changes in access to common law action, the effects of other significant changes at this time would be difficult to predict and measure, and may erode employer confidence in the stability of the scheme.

The Committee has considered the results of the PBT and stakeholder input to the Review. It has also considered other factors such as the relative efficiency and effectiveness of the private insurance market in setting risk reflective premiums in workers' compensation markets, stability, unique factors associated with the delivery of workers' compensation insurance, and the factors contributing to higher premiums in other states.

Competitive Underwriting

Proponents of competitive underwriting have argued that it would bring further competitive pressures to bear and therefore lead to greater efficiency in the provision of workers' compensation. They propose a fully risk reflective model which would reinforce the link between incidents of workplace injury and illness and significantly decrease the incidence of cross subsidisation between employers. In addition they argue that they could offer economies of scope by providing a range of insurance products for their clients. The unique nature of workers' compensation insurance in terms of the long tail of claims and particular requirements of claimants in terms of injury management and rehabilitation mitigate these arguments to some extent however, as it can equally be argued that workers' compensation is a specialist industry in which economies of scope have little value to add. In addition, it is the nature of insurance to allow some degree of cross subsidisation between clients in order to offer protection to the insured party without the full financial burden. Small business in particular would be potentially worse off under this model as claims costs would be passed on to the employer concerned to a greater degree than is currently the case under EBR.

While there is a need for premiums to reflect risk, experience in other jurisdictions has indicated that in the initial phase of competitive underwriting for workers' compensation, there is often a "grab" for market share resulting in unsustainably low premiums being offered by insurance companies. This instability may also emerge when one company

tries to capture new markets within a relatively stable scheme. Inevitably, the shortfall in revenue in relation to claims outlays has to be regained resulting in inflated premium rates in the longer term. As many employers emphasised the need for stability in workers' compensation premiums this scenario seems undesirable.

Competitive insurers also face additional problems in determining risk reflective premiums, including changes introduced by governments (which take a large element of management power away from the insurer), the state of the economy in general, changes in marketing strategies, and the size of the data pool from which they draw their information. Typically, the larger the pool, the better the information which can be drawn from it and the splitting up of a market such as Queensland's into smaller pools for individual insurance companies would not only lead to poorer information quality for each scheme, but could lead to instability in general.

In addition to concerns over the issue of choice for employers in the provision of workers' compensation insurance, the private insurance industry has expressed concerns over a perceived failure to fully assess the costs to the community of public underwriting of workers' compensation insurance including the opportunity cost of alternative uses of the investment involved and potential costs of systemic management failures such as those identified in the Kennedy Report. Offsetting these arguments however is the fact that, were the market for workers' compensation insurance privately underwritten, a profit motive would also be introduced, introducing further costs to industry or putting downward pressure on benefits for workers. The Committee does not consider that potential efficiency gains from increased competition would outweigh this cost.

In the PBT, AECgroup have cited a United States survey which has demonstrated that "insurance arrangements are of secondary importance in understanding important market outcomes, including the employers' cost of workers' compensation and injury rates. Rather it is the administration of the state's workers' compensation law...that determine the costs of a state's program and, by inference, the adequacy of benefits in a state."¹⁰. As noted above, the Queensland workers' compensation scheme has introduced significant changes to its administrative structure over recent years, not least of which is its relatively recent establishment as a statutory authority and candidate Government Owned Corporation (GOC). WorkCover's status as a candidate GOC imposes significant commercial imperatives and accordingly, WorkCover has undertaken substantial reviews of its structure and processes which are designed to reduce administrative costs and increase efficiency and outcomes for both workers and employers.

The PBT has recommended the retention of public underwriting of the Queensland workers' compensation scheme. This recommendation is based on the grounds of:

- Recent strong financial performance
- Relatively recent return to full solvency
- Evidence that administration arrangements are more important than underwriting arrangements in determining scheme efficiency

¹⁰ Burton (1999), cited in AECgroup (2000; p114).

- Potential premium volatility and scheme instability in competitively underwritten schemes
- Relatively high levels of customer satisfaction with current arrangements
- Lack of evidence to support increased efficiency with the introduction of competitive underwriting.

In addition, the Committee considers that Queensland's scheme:

- Sets premiums which are adequately reflective of risk
- Offers significant advantages to both workers and employers through the maintenance of its regional network
- Has an absence of profit motive
- Through a large pool size ensures stability and enhanced ability to set risk reflective premiums
- Saves scheme monitoring costs
- Management advantages of link between government determination of benefits and scheme operation.

Private Claims Management

The PBT has recommended that Q-COMP investigate the possibility of introducing private claims management to the Queensland workers' compensation system. This recommendation is based on the potential advantages private claims management offers such as increased efficiency, specialised claims management, economies of scope offered by insurance companies and greater choice for consumers of these services. On the negative side, there are concerns that outsourcing claims management could lead to increased legal action due to disputed claims, a reduction in regional employment and high regulation and monitoring costs. However there was some confusion in the PBT as to whether claims management or case management was under consideration. Claims management is the administrative management of a claim including initial determination of liability and payment. Case management includes the planning, coordinated implementation, monitoring and evaluation of rehabilitation and return to work plans. While the Committee attempted to clarify these issues with the consultants, the degree of influence was limited by the need to ensure that the independence of the process was maintained.

The Committee considered not only the conclusions of the PBT, but numerous other factors such as quality of information available to the regulator, experience in other jurisdictions, costs of any move towards the introduction of managed health care, additional regulatory costs of a split system and the introduction of profit motive into the system.

Experience in other states has indicated that private claims management needs to be approached with caution to ensure that losses do not outweigh the gains. Remuneration systems need to be designed carefully to ensure a balance between efficient processing and appropriate assessment. Where processing is based purely on payment per claim or

an hourly rate, it can lead to a lack of care in assessing the validity of claims and less than optimal procedures. This can lead to scheme cost increases. On the other hand, an outcomes based approach may lead to an overly harsh approach to claims processing with consequent disputed claims, increased legal action and overall cost increases to the scheme. Any model for private claims management would have to be carefully designed to ensure it satisfies both service and financial requirements and based on a balanced set of performance requirements. Experience in other states indicates that this is difficult to achieve.

The PBT fails to acknowledge that private claims managers will expect to make a profit from their services. The current scheme reflects a low cost operation in comparison to other states in terms of both premiums and costs of administration as a percentage of total income. This has been achieved despite the Queensland population being geographically widely dispersed and Workcover maintaining a strong regional network benefiting both workers and employers by providing accessible service and information. This regional presence is also an important consideration for both regional employment and development. The Government's seven priority outcomes put regional Queensland and employment as major concerns in the development of any policy initiatives. Potential staff cutbacks, and reduction in service levels for workers and employers in WorkCover's 23 regional offices as a result of the introduction of private claims management, are viewed by the Committee, as unacceptable. It is unlikely that private claims managers would voluntarily match WorkCover's coverage and the current network provides advantages to both employers and injured employees in terms of services and support.

Stakeholder consultations have revealed more interest in the potential benefits arising from the outsourcing of case management as distinct from claims management. Outsourcing of case management allows specialised treatments in certain areas such as stress and can lead to better rehabilitation and return to work outcomes for both injured workers and employers. However, private case management also has serious potential disadvantages in that, unless it is regulated in some way it can lead to managed health care outcomes, which is of concern to numerous stakeholders including medical and rehabilitation service providers and workers.

Overseas experience (especially in the United States) has shown a correlation between managed health care and privatised markets. Although the PBT does not discuss the disadvantages of managed health care at any length, the Committee is concerned over the possible effects of the view rigorous claims monitoring would be necessary to mitigate possible negative effects from a more managed style of healthcare. Managed health care can be described as any attempt to control the price, location, mode of delivery, use and quality of health care. In the United States there has been rapid growth in the number of organisations that enter into contracts with employers to provide health services, and claims and rehabilitation management for workers. Contracts are usually based on a standard payment, rather than the traditional fee for service, which may result in over-zealous gatekeeping, standardised treatments, early discharge and denial of benefits¹¹.

¹¹ Marcus (2000).

The PBT describes several possible positive impacts of private claims management, which can be linked to a managed health care approach. For instance the PBT anticipates increased level of service to injured workers through greater levels of innovation and specialised skills, assumed to be brought about by private claims companies specialising in the management of particular ailments. However the PBT fails to note that decreased service to workers could equally arise from requiring injured workers to use participating health service providers, restricting specialist referrals, and a biased selection of clients towards less-expensive and less risk industries.

The Committee notes that the current legislation already allows WorkCover to outsource case management as required. WorkCover currently engage external case management in a limited number of situations (e.g. interstate cases, very complex cases) with the need being determined on a case by case basis. Limited use of outsourcing allows potential problems such as patient choice and confidentiality, access to quality services, clinical autonomy and data collection methodologies to be resolved.

While acknowledging the potential efficiency gains private claims management may bring to the workers' compensation market in Queensland, the Committee is cautious about its introduction at this stage. The PBT has approached each of the issues under review in isolation, while the Committee has considered the potential effect on the market of a package of reforms which will have to be integrated at one time. Workers' compensation insurance markets are typically volatile and extremely sensitive to apparently minor adjustments. Given the range of adjustments that have been recently introduced to the scheme, as well as proposed changes in access to common law claims and other changes arising from this Review, the Committee considers that altering the claims management structure, in concert with other changes would be inappropriate at this time. Most stakeholders emphasised the stability of the fund as the most important issue and the Committee considers that while progress towards the most efficient possible scheme is vital, it should not be at the expense of scheme stability, business confidence or regional development.

However, given that there is some stakeholder support for the idea of privatised claims management, the Committee recommends that this issue be reviewed in three years' time to allow the effect of recent changes to the primary legislation, and proposed changes to access, management and costs relating to common law to fully absorbed into the scheme and their impact on the market fully gauged.

Competitive Premium Setting

As the PBT has recommended the retention of the public monopoly and the Committee supports this view, there is no scope within the proposed arrangements for the introduction of competitive premium setting.

Separation of Q-COMP

While WorkCover claims that Q-COMP is now operating as an independent organisation, the current arrangements are widely regarded by stakeholders as inadequate with the head

of Q-COMP continuing to report to WorkCover's CEO, who in turn reports to the Board. Concerned stakeholders supported the recent separation of Q-COMP from WorkCover, but argue that it does not go far enough and remains anti-competitive in a number of areas including:

- Reporting arrangements
- WorkCover is not required to meet the same requirement/standards as self-insurers such as auditing and review requirements
- Information about the performance of self-insurers can currently be communicated to WorkCover without the self-insurers' consent, while Self-insurers do not have the same access to information on WorkCover's performance
- Decisions on issues such as benefit levels, and conditions for medical, allied health and rehabilitation costs are currently controlled by Q-COMP, which remains subject to the commercial imperatives of WorkCover due to the reporting arrangements
- Despite assurances that Q-COMP is now operating completely independently of WorkCover there are still "cultural" ties between the two organisations and a perception amongst stakeholders that there are conflicts of interest. Self-insurers and medical and rehabilitation service providers in particular, voiced concerns that the commercial imperative of WorkCover affects impartial regulation. This concern applies to the setting and assessment of self-insurance criteria as well as the determination of medical and rehabilitation benefit levels.

Accordingly the Committee is of the view that, for both practical and transparency reasons, Q-COMP should be legally separated from WorkCover. This will facilitate both the perception and actual independent regulation of the Queensland workers' compensation system and boost confidence in the system. The move will also establish the groundwork for WorkCover to become a truly independent statutory authority, should Government decide to give it full GOC status in the future.

Recommendations

That the public monopoly for the Queensland workers' compensation system be retained.

WorkCover retain its exclusive claims management role but the issue of claims management be reviewed in three years time.

That Q-COMP become a completely separate entity from WorkCover to ensure independent regulation of the market.

Legislative Changes Required

Both the Act and Regulation will need to be reviewed substantially to separate regulatory and commercial functions of WorkCover. The current Act refers to WorkCover throughout with no distinction between these functions.

In addition Q-COMP will need to be given legal status and a reporting function, whether as a separate unit within the Department of Employment, Training and Industrial Relations, an independent regulatory authority or attached to some other organisation such as the Motor Accident Insurance Council which currently regulates the market for Compulsory Third Party insurance.

Implementation Issues

Fully developing and refining the changes arising from the recommendation to separate WorkCover's commercial and regulatory functions will require significant research on alternative models (including legal status and reporting requirements), a thorough analysis of the current Act to separate commercial and regulatory functions, and development and enactment of alternative legislation. It is not expected that these changes would be able to be fully implemented for at least six months.

In addition a review unit will need to be established either within the Department or Q-COMP to assess the implications of claims management outsourcing. Since the PBT did not define in any detail which elements of claims management should be reviewed, an extensive review process will be required to determine the practicalities of outsourcing different elements.

Transitional Arrangements

The process will take time and arrangements need to be made for the interim period. It is suggested that in the interim, the General Manager of Q-Comp report directly to the Minister for Employment, Training and Industrial Relations rather than to the CEO of WorkCover.

Identified Provision 3

Self-insurance licensing criteria

(Chapter 2, Part 5)

The option to self-insure was introduced with the 1996 Act following the recommendations of the Kennedy inquiry and was a considerable liberalisation of previous arrangements, introducing a competitive element to the legislated monopoly arrangement. In order to obtain a self-insurance licence, single and group employers must satisfy prudential and performance licensing criteria stipulated in the Act as well as additional criteria that may be set by WorkCover under section 112. This represents a restriction on entry to the insurance business and also a restriction on the conduct of such a business and is the second major area of the Review.

Issues

Since the introduction of the self-insurance option in July 1997, 22 employers in Queensland have gained self-insurance licences. This represents 0.02 per cent of policies but over 9 per cent of wage and salary earners in the state.^{12 13}

In order for a licence to be issued or renewed a single or group employer must have:

- 2000 full-time workers employed in Queensland by the employer
- Net tangible assets of at least \$100M
- Satisfactory occupational health and safety performance
- An unconditional bank guarantee or cash deposit of \$5M or 150% of the self-insurer's estimated claims liability
- Provision of adequate resources for administering claims and rehabilitating workers
- Other matters considered relevant by WorkCover including financial viability, the employer's resources and systems for managing rehabilitation and compensation, and information systems.

Restrictions on self-insurance licences were introduced to ensure that only employers who are large enough to support the costs and infrastructure of an insurance business are eligible. Equally, it is vital that adequate health and safety standards are maintained in order to protect workers and to protect the businesses concerned from any increase in costs related to workplace injury. In addition, limiting the number of policyholders who take up the self-insurance option enhances scheme stability as a whole, because it keeps the size of the general scheme at a large enough level to maximise financial stability.

Employer groups, the insurance industry and self-insurers are of the view that self-insurance criteria should be relaxed in order to allow more employers to take up this option. It is argued the minimum worker requirement is arbitrary and neither an

¹² WorkCover Qld (2000; p30).

¹³ ABS (1999; p9).

indication of financial nor administrative capacity. Other financial safeguards, such as the required bank guarantee are seen as rendering the \$100M net tangible assets redundant. Self-insurers and potential self-insurers regard WorkCover as a competitor in the workers' compensation insurance market and do not perceive the conditions they operate under as providing a "level playing field". In particular, as WorkCover is both competitor and regulator in the workers' compensation insurance market, self-insurers regard it as unfair that WorkCover is the body that assesses applications for self-insurance licences.

Self-insurers also face additional obstacles which do not apply equally to other participants such as only having their licences valid for two years, inability to outsource claims managements and rigorous health and safety requirements. They argue that as they must foot the entire bill for any claims made on their schemes they have more incentive than other employers to maximise health and safety precautions.

Options

Alternative State 3.1 Relax Self-insurance Criteria to Enable More Businesses to Take Up this Option.

If self-insurance criteria were relaxed, more organisations would be able to control and manage their own workers' compensation insurance and existing self-insurers may benefit from a reduction in administrative costs associated with the current arrangements.

Some form of market regulation would still be required to ensure that licensing criteria were met and that adequate performance monitoring took place. However, any increase in the number of self-insurers would place additional competitive pressures on the commercial operations of WorkCover, and may place a strain on the viability of the scheme due to adverse selection.

The main reason employers choose to self-insure is that they expect, over the long term, to reduce costs, with the cost of self-insuring considered by many large employers to be less than WorkCover premiums. In addition, more diverse strategies may be introduced to combat workplace injuries and the cost of those injuries in order to improve rehabilitation and return to work outcomes.

WorkCover's performance has significantly improved since the introduction of self-insurance in 1997. The competition created by the option to self insure for larger employers has assisted in ensuring that WorkCover Queensland reviews scheme costs in order to maintain its attractiveness to larger employers.

The alternative market structure would be dependent on the revised criteria and the administration of those criteria. For example, by allowing the claims management function of self-insurers to be outsourced, a further competitive element would be introduced through potential providers of such services.

Given the high set up costs involved with self-insurance, as well as the lack of long-term information on the performance of self-insurers and evidence of the actual benefits of self-insurance, it is difficult to say whether companies eligible under relaxed criteria would immediately apply to become self-insurers. Given WorkCover's recently improved performance, with average premiums now 1.75 per cent any potential self-insurer would have to ensure that it has sufficient knowledge and/or experience to perform the self-insurance function more efficiently.

Increasing the opportunities for employers to undertake self-insurance may alleviate the inequities generally characterised by a central insurance scheme, such as cross-subsidisation. However, increases in the number of self-insurers could lead to adverse selection, with large, low-risk employers potentially being removed from the central scheme, increasing costs to smaller employers and threatening the stability of the scheme. The EBR mechanism would assist in minimising adverse selection, but there would still be some impacts due to the capping of premium rates.

Self-insurance criteria across Australia vary, although Queensland's are currently the most restrictive.

New South Wales has not made any recent adjustments to its self-insurance criteria, although the current 1,000 worker limit may be reduced to 750 workers (more in line with the HWCA suggested level of 500 workers), which may increase the size of the market.

Victoria relaxed its self-insurance requirements in 1997, with the changes involving the removal of a fixed capital threshold and minimum employee requirements as preconditions of eligibility for self-insurance. Employers are now eligible to apply if they satisfy prescribed minimum requirements regarding financial strength and viability. No real impact has been felt in scheme coverage, nor stability in scheme fund pools, as a result of the relaxation of the self-insurance requirements; and

South Australia has not made any significant changes to their self-insurance criteria. However, it has recently introduced self management, allowing certain employers to manage their own claims.

Western Australia has implemented tougher restrictions on self-insurance in the last 16 to 18 months, with the requirement for bank guarantees becoming stricter and the dollar amount of the guarantees also increasing. However, this has not had any great impact on the size of the self-insurance market, with the number of self-insurers actually increasing from 14 to 19 over the past 12 months.

Tasmania has implemented tougher restrictions on entry, with self-insurers audited against set performance standards on a regular basis since 1996. Despite the changes and a current review of self-insurance requirements, it was noted that Tasmania probably remains the most relaxed jurisdiction in terms of self-insurance.

The Northern Territory has not made any recent adjustments to its self-insurance criteria.

PBT Analysis

Relax Self-insurance Criteria to Enable More Businesses to take up this Option

The assessment of impacts on stakeholders indicates that there may be a net benefit to the Queensland community from relaxing the criteria required for self-insurance in the Queensland workers' compensation market. Potential benefits include:

- Improvements to workplace health and safety
- Potential for reduced number and severity of injuries
- Greater choice for larger employers over workers' compensation
- Increase in competitive pressures in the market
- Cost savings to existing self-insurers and new self-insurer
- Increase in competitiveness of Queensland businesses
- Greater efficiency in service delivery
- Downward pressure on costs of monitoring compliance
- Additional revenue generated for regulatory functions
- Employment gains in the area of claims management.

However, a number of concerns were highlighted regarding the relaxation of the self-insurance criteria, primarily by WorkCover. The potential costs include:

- Possible increase in risk of unfair treatment of injured workers
- Possible increase in self-insurer insolvency risk and adverse selection in the WorkCover fund pool
- Possible increase in claims disputes
- Increased confusion for workers over coverage
- Inefficiencies in payments processes
- Reduced pool size leading to potential instability
- Direct relationships between self-insurers and medical and allied health professionals may act as barriers to entry; and
- Costs associated with monitoring more self-insurers.

While it is essential for the fair treatment of injured workers that some form of eligibility criteria, including prudential requirements, be maintained in the allocation and renewal of self-insurance licences, the current eligibility criteria may be considered unnecessarily stringent when compared with other jurisdictions. Queensland maintains unlimited access to common law, which may justify some additional caution, however, consultation with employer associations indicates that the self-insurance requirements are considered too restrictive and may actually hamper the effective management of workers' compensation in Queensland.

Experiences in other jurisdictions suggest that minimum employee requirements and fixed capital thresholds may not be as important as ensuring financial strength and viability as criteria for self-insurance. Any tightening of restrictions outside of

Queensland (eg. Western Australia and Tasmania) has been through financial requirements and performance standards.

Ongoing performance monitoring should provide some assurance that self-insurers remain able to meet their financial commitments and, as such, licence periods could be lengthened to minimise the administrative burden on self-insurers. In addition, WorkCover should be subject to the same performance monitoring regime as self-insurers to ensure fair treatment and enhance competitive pressures in the market place. This will require the effective separation of Q-COMP from WorkCover.

There is also considerable concern over the legislated requirement that employers demonstrate “satisfactory” occupational health and safety performance, as determined by the Chief Executive of DETIR, as a condition of obtaining or holding a self-insurance licence. It is argued that this is a restriction on competition as it entails significant compliance costs and does not apply equally to other employers who are insured with WorkCover.

The benefits to the Queensland community may outweigh the costs from relaxing the criteria required for self-insurance in the Queensland workers’ compensation market. As long as certain standards are maintained for self-insurance and effective ongoing performance monitoring exists for self-insurers, the objectives of the legislation would continue to be met under the proposed alternative state.

Therefore, it is recommended that the eligibility criteria for self-insurers be relaxed to previous levels and more in line with other jurisdictions. Consideration should also be given to relaxing aspects of the performance monitoring regime to allow self-insurers to concentrate more on outcomes rather than dictated rules and procedures. All insurers should also be subject to the same performance monitoring regime. An appropriate performance monitoring regime should be determined between Q-COMP, self-insurers and insurers, once Q-COMP is separated from the commercial and business operations of WorkCover.

Conclusion and Recommendations

Discussion

While self-insurance is in operation in all Australian jurisdictions, it is a relatively recent concept, particularly in Queensland. The long-term effects of self-insurance are not yet clear for workers, employers nor the operation of alternative schemes whether they be centrally or competitively based.

In addition, while the majority of licenses have now been in place for two years, most self-insurers have not yet developed their common law claims experience sufficiently. Due to the statutory limitation period, according to WorkCover, this experience is often first evident in the third to fifth years of operation and a comprehensive claims experience is not evident for some years.

The tightening of the restrictions on self-insurance licences was introduced as part of the 1999 amendments to the Act, and included transitional arrangements, in particular in relation to the workplace health and safety auditing function. While employers who were self insurers prior to the 1999 amendments are not to be subject to all the new requirements (such as employee numbers), all employers were given a two year period in which to implement workplace health and safety requirements. Preparations are now well underway for these employers at considerable administrative cost. However, self-insurers continue to be concerned about the workplace health and safety requirements, arguing that as they bear the full cost of any claim, they have the highest possible incentive to take precautions against workplace incidents by ensuring that their workplace health and safety standards are high and that they already have systems in place to determine the adequacy of these standards. While it is vital that the government ensure adequate standards are maintained in all workplaces and improved workplace health and safety standards are a stated objective of the Act, it was agreed in consultations following the release of the PBT that these requirements may be met in other ways. To this end it was proposed that alternative methods of addressing workplace health and safety concerns should be investigated.

The PBT for the Review has recommended that, as WorkCover is now at full solvency, that self-insurance licensing criteria be relaxed in line with other jurisdictions. There is considerable variation in place across Australian jurisdictions, as well as recommended standards developed by the HWCA and the PBT is not specific in terms of how the criteria should be relaxed.

Existing and potential self-insurers both support a relaxation in the requirements. Equally however, other employers who contributed to the Review emphasised the need for stability in workers' compensation premiums to allow them to plan more effectively. These employers lobbied for a "steady as she goes" approach to change, preferring the option of allowing the changes brought about by the Kennedy Review and previous changes to the self-insurance licensing criteria to be fully absorbed by the scheme. In addition self-insurers are still developing their common law claims experience and further changes are proposed in this area adding to the uncertainty. Once again, the Committee has considered any proposed changes suggested in the PBT as an element in a raft of changes that will emerge from the Review and other policy developments not known to the consultants, rather than in isolation. The Committee is of the view that for the sake of the whole scheme and in the interest of business and scheme stability, as well as in the interests of self-insurers themselves, a period of consolidation, assessment and evaluation is required.

Claims Management Outsourcing

Self-insurers (with the exception of group employers such as the Local Government Authority of Queensland) are currently restricted by the Act to managing their own insurance claims processes. Many self-insurers see the option of outsourcing claims management as a potentially significant saving on administrative costs. Claims management is a specialist area which requires a company whose main line of business is not insurance to effectively maintain not only the financial resources, but the

administrative infrastructure to support an insurance operation. Claims management outsourcing is regarded as an efficient alternative to internal claims management, as specialist claims managers in insurance companies could handle claims on behalf of self-insurers, thereby minimising the administrative burden. Self-insurers would be free to negotiate their own terms with the claims managers in order to ensure that an appropriate balance was struck between outcomes and efficiency. The Committee can identify no compelling reasons to maintain the current restriction which prohibits the exercising of the functions and powers of a self-insurer by anyone other than the self-insurer or a person employed under a contract of service by the self-insurer.

While the Committee is cautious about the introduction of private claims management into the general scheme due to concerns over scheme stability, regional employment and implementation issues, these issues do not present such potential problems in the self-insurance market due its smaller size and tight regulation. As WorkCover represents such a large proportion of the Queensland market, the Committee does not consider that WorkCover's continuing obligation to manage its own claims will significantly disadvantage it. Consequently the Committee supports the notion that self-insurers be allowed to outsource their claims management function.

Recommendation

That the self-insurance licensing criteria be retained for a further three years at which time the full impact of self-insurance on the Queensland workers' compensation market can be better assessed.

That self-insurance licensing criteria be reviewed in three years time.

That while maintaining the requirement for self-insurers to maintain workplace health and safety standards, Q-COMP in conjunction with the Division of Workplace Health and Safety, examine alternative methods of achieving workplace health and safety outcomes.

That subsection 119(4) of the *WorkCover Queensland Act 1996* be amended to allow self-insurers to outsource their claims management function.

Legislative Changes Required

No changes will be required for the licensing criteria, with the exception of the need to relocate these matters to Q-COMP's jurisdiction rather than WorkCover.

The Act will further need to be amended to reflect the ability of self-insurers to outsource their claims management function.

Any necessary changes will be done in conjunction with the separation of Q-COMP's role from WorkCover.

Implementation Issues

A review unit will need to be established in three years to assess the impact of self-insurance on the Queensland workers' compensation market and make recommendations accordingly.

Transitional Arrangements

nil

Identified Provision 4

IP4 - WorkCover sets benefit levels for hospitalisation costs

(Chapter 4, Part 2)

Schedule 3 of the Act defines “hospitalisation” as treatment as an in-patient at a private hospital. WorkCover is liable to pay hospitalisation costs for injured workers if WorkCover is satisfied that treatment at a public hospital is not reasonably available, and admission to a private hospital would relieve prolonged pain and suffering, or save costs. The maximum amount that WorkCover is liable to pay for hospitalisation of a worker, as per the *WorkCover Queensland Regulation 1997* is \$10 000. The Regulation makes also makes provision for an additional \$10 000 for “special hospitalisation” needs, to be assessed on an individual basis, and made in arrangement with WorkCover. WorkCover imposes conditions on the provision of the private hospital services, including fees and costs for specified services, through a Medical Tables of Costs, which is developed in conjunction with service providers.

Issues

By setting maximum benefit levels for hospitalisation costs WorkCover effectively creates a ceiling on the fees private hospitals can charge injured workers for treatment. IP4 can be classified as a restriction on competition as it represents a form of legislative price control enforced by WorkCover. It could be argued that price controls on hospitalisation costs is an attempt at balancing the two major objectives of the Act, namely to ensure fair treatment for injured workers, whilst maintaining reasonable premium levels for employers. At the same time the restriction has the potential to alter the dynamic characteristics of the market, or affect the market’s economic activity. While other jurisdictions do not have such stringent controls on access to private hospitalisation, most stakeholders agreed that it was important for WorkCover to maintain control over costs and had no objection to the maintenance of this restriction.

Options

Alternative State 4.1 – Deregulation of private hospitalisation costs.

The alternative state of deregulating benefits for private hospitalisation costs proposes that prescribed maximum levels for hospitalisation costs be abandoned and that costs be determined solely by prevailing market forces. It is assumed that WorkCover would be liable to pay for all costs associated with the private hospitalisation of an injured worker insured under the scheme.

The alternative state would remove the price ceiling currently in place for private hospitalisation costs of compensable patients. The removal of this price control would allow private hospitals to charge for care and treatment above the currently prescribed level of \$10,000. This may alleviate any non-preference for treating compensable clients

by private hospitals and allow freedom of treatment choice by the treating medical professional.

Queensland is the only state that explicitly places price controls on treatments in a private hospital. However Queensland also has one of the lowest average premium rates.

The deregulation of hospitalisation costs would enable Queensland to establish a similar market structure to other Australian jurisdictions that do not place a restriction on the amount of private hospitalisation costs. Jurisdictions in which there are no limits placed on reasonable hospitalisation costs include South Australia, Tasmania, the ACT, Northern Territory and Comcare. New South Wales, Victoria and Western Australia all vary in the amount of benefits they allow for hospital care.

Alternative State 4.2 - In the event of private underwriting, private underwriters may set the level of reimbursement for hospitalisation costs, with injured workers able to chose a public or private hospital if there is an option to do so.

In the event of private underwriting, there may be a ‘gap’ between the level of reimbursement offered by the private insurer and the cost of hospitalisation, whether at a private or a public hospital. This cost may be passed on to the employer or the worker and thus provide less protection for workers, or impose an additional burden on employers. Additionally, even if an injured worker can be treated more quickly at a private hospital, there may be overt or implied pressure placed on the worker not to choose this option if there is an extra cost to the employer involved.

PBT Analysis

Deregulation of Benefit Levels for Private Hospitalisation Costs

The potential benefits from deregulating benefits for private hospitalisation costs in the Queensland workers’ compensation scheme are:

- No restrictions on the nature and amount of treatment received in private hospitals
- Reduced over-servicing within prescribed benefit levels
- Increased efficiency and improved service delivery for compensable patients
- More effective treatment in certain cases, and
- Reimbursement of all costs associated with providing treatment at private hospitals.

In contrast, the potential costs of unrestricted private hospitalisation expenses include a possible increase in premium levels due to:

- Increases in exposure for WorkCover and policy holders to possible over-servicing, overcharging and unethical practices
- Potential increases in scheme costs due to higher costs associated with private hospitals, and
- Potential for an increase in disputed claims.

The assessment of the impacts on stakeholders from deregulating benefits for private hospitalisation costs in the Queensland workers' compensation market as detailed above indicates that there is minimal net benefit.

The requirement for prescription of maximum benefit levels for private hospitalisation costs is considered necessary to avoid exposure for WorkCover, its policy holders and self-insurers to overcharging and over servicing by private hospitals for compensable patients. The requirement to control costs and premiums needs to be traded off against the most effective treatment for the injured worker.

The current system of allowing emergent and non-emergent treatment at private hospitals if there is a delay in the public system may reduce future economic and social costs through an earlier return to work, or significant progress to rehabilitation, achieves the objectives of the Act and complies with HWCA's critical principles underpinning the provision of medical services.

Over the longer term, removing maximum benefit levels may lead to insurers negotiating with private hospitals a managed care outcome that not only sets maximum benefit levels, but also dictates the type of treatments allowed. Whilst the current restrictions set a maximum benefit level, they do not dictate the treatment (although the level of the maximum benefit may restrict the range of treatments available at private hospitals). From a medical practitioner's point of view, the end result may even be more restrictive than the current arrangements.

If a substantial increase in scheme costs were to occur, policy holders would experience increased premium costs, or workers may experience benefit cuts in other areas. Quantifying the impact of transition is difficult, due to current restrictions on access to private hospital services.

In summary, there is minimal overall benefit to the Queensland community from the deregulation of maximum benefit levels for private hospitalisation costs and the alternative state of deregulating benefit levels for private hospitalisation costs is rejected allowing maximum benefit levels to be retained. However, these should be regularly reviewed by Q-COMP in order to determine their adequacy. To minimise the extent of over-servicing, it is also suggested that all claims up to the maximum continue to be monitored to identify and act upon ambit claims.

Conclusion and Recommendations

Discussion

Queensland is the only state that explicitly places price controls on treatment in private hospitals. However most stakeholders support the view that restrictions are required in order to contain scheme costs. While there is some evidence to suggest that workers may receive more appropriate treatment if allowed easier access to private hospital facilities, it is considered that the potential for cost blowouts associated with over-servicing,

overcharging and unethical practices outweighs this potential benefit. The safeguards that currently exist in the Act to ensure that injured workers have access to private hospital facilities in the event that such access will relieve prolonged pain and suffering or a public hospital is not reasonably available, ensure that workers will continue to receive appropriate treatment.

Recommendation

That the amount WorkCover is liable for to pay in the event of private hospitalisation continues to be prescribed by regulation and that this amount be regularly reviewed to ensure it is consistent with current costs.

Legislative Changes Required

nil

Implementation Issues

nil

Transitional Arrangements

nil

Identified Provision 5
WorkCover sets benefit levels for medical treatment, and chiropractic/osteopathic costs (Chapter 4, Part 2) and

Identified Provision 7
WorkCover sets benefit levels for rehabilitation costs (Chapter 4, Part 3)

In the original Terms of Reference for the Review, IPs 5 and 7 were identified as separate issues. The Review process has clarified the issues and it is recognised that these two IPs raise essentially the same question namely, whether WorkCover should have the right to set conditions for these types of services.

The Act gives WorkCover the power to set conditions for medical treatment and rehabilitation costs through subsections 228(2), 239(3) respectively. Specifically:

- 228(2). *Under the Table of Costs, WorkCover may impose conditions on the provision of medical treatment.*
- 239(3) *Under the Table of Costs, WorkCover may impose conditions on the provision of rehabilitation.*

Tables of Costs are developed by WorkCover/Q-COMP and cover issues such as the need for referrals, treatment types, benefit levels and types of injuries.

WorkCover's liability to pay for medical costs extends only to treatment provided by "registered persons" and the costs WorkCover considers reasonable, having regard to the relevant Table of Costs. The term "registered persons" mainly encompasses doctors, dentists, physiotherapists, occupational therapists, psychologists, chiropractors, osteopaths, podiatrists, speech pathologists, and audiologists.

WorkCover is liable to pay rehabilitation costs for the costs of rehabilitation that considered reasonable by WorkCover, having regard to the worker's injury.

Tables of Costs for both medical treatment and rehabilitation are developed by WorkCover in conjunction with various professional bodies.

The use of Tables of Costs to set conditions for medical and rehabilitation services interferes with the operation of the market in terms of prices and potential supply and types of service providers. IP5 and IP7 are classified as price controls and restrictions on conduct of a business. While they could be viewed as a potentially significant restrictive

provision, stakeholders generally agreed on the need to control costs in the interest of scheme stability.

Issues

An issue of ongoing concern for the Chiropractors' Association of Australia (Queensland) Ltd (CAA) is the requirement for a specific referral from a registered medical practitioner before WorkCover will meet the cost of a claim. Under the Queensland workers' compensation system primary care status is reserved for registered medical practitioners only and as such all claims for treatment provided by allied health professionals will only be paid upon referral from, and with a medical certificate issued by, a registered medical practitioner. This requirement applies to all allied health professionals such as physiotherapists, speech therapists and psychologists and is set out in the Table of Costs. Despite the fact that this requirement applies equally to all allied health professionals, the CAA regards the requirement as a distinct and identifiable restriction of trade against the chiropractic profession and an access restriction for injured workers.

Chiropractors and osteopaths are specifically mentioned only in subsection 229(2) of the Act, limiting WorkCover's liability for costs to treatment involving the manipulation, mobilisation and managements of the neuromusculoskeletal system of the human body. This subsection does not mention the referral issue. However the Terms of Reference noted the issues of cost capping for medical practitioners and private hospital treatment as well as the referral issue.

Crown Law advice was sought by the Review Committee to help clarify the issues under consideration. Crown Law advice that as the referral and cost capping issues are effectively captured by subsections 228(2) and 239(3), these subsections should be reviewed as part of the process.

The central issue then is whether WorkCover has the right to impose conditions on the provision of medical and rehabilitation services. Should this condition, contained in subsections 228(2) and 239(3) be found to be in the public interest, the issue of referrals becomes a question of WorkCover policy rather than a legislated restriction. Equally the specific reference limiting the treatment provided by chiropractors and osteopaths in subsection 229(2) could be contained within the Table of Costs.

The majority of stakeholders support the continued regulation of medical and rehabilitation benefit levels, provided capped costs allow for quality treatment of injured workers. Fees are indexed annually to CPI with a review every three years. According to WorkCover the Table of Costs is intended to prevent overcharging, over-servicing and unethical practices. However, rehabilitation providers argue that the Table of Costs has worked to lower the quality of rehabilitation services available to injured workers resulting in reduced outcomes for workers. The basis of the argument is that the efficacy of rehabilitation services relies on individualised case management and current fee structure does not recognise the value of effort and time, and restricts access to external

case managers or professions not registered by Queensland Health such as exercise physiologists or social workers.

Options

Alternative State 5.1 – WorkCover does not have the power to set conditions for medical and allied health professionals under the Table of Costs.

The alternative state of deregulating benefits and conditions for medical would see costs and services being determined solely by market forces. WorkCover would continue to be liable to pay the full costs associated with the medical treatment of an injured worker insured under the scheme. WorkCover currently bases the benefit levels for medical and allied health professionals treatments on the Table of Costs which is developed in conjunction with professional bodies and is regularly reviewed to ensure its continued relevance.

Deregulating benefits for medical and allied health professionals would remove the price ceiling currently in place for those costs for injured workers. The removal of this price control would allow medical and allied health practitioners to charge for care and treatment above the prescribed fees currently scheduled in the Table of Costs, thus alleviating any non-preference for treating compensable clients.

Australian jurisdictions vary in the restrictions they place on provision and payment of medical treatments. However, Queensland's costs are typically lower in this area.

Proponents of the removal of these restrictions argue that the current maximum benefit levels do not allow injured workers to receive a high level of service due to the opportunity cost associated with treating compensable clients. Further, it may be argued that inefficiencies exist in the current system and that medical professionals and general practitioners may not be able to effectively diagnose and/or treat certain injuries. On the other hand treatment providers may charge in excess of the market rate for the service, undertake more unnecessary, inappropriate or expensive treatments than are required for the type of injury, thereby potentially increasing the financial burden on the scheme and its policy holders.

Similar to alternatives to IP4 above, a removal of the restriction on benefit levels for rehabilitation costs raises the possibility of over servicing and proliferation of service providers. On the other hand, supporters of deregulation in this area are of the view that it would provide better outcomes for both workers and employers in terms of enhanced return to work outcomes. Most other Australian jurisdictions do not have specific cost capping measures in place but do have mechanisms for determining the “reasonableness” of claims.

Alternative State 5.2 – WorkCover/Q-COMP be allowed to set benefit levels for medical and rehabilitation services, but other conditions be governed by legislation or regulation.

This option, while not discussed in the PBT would allow WorkCover to maintain some control over costs by establishing benefit levels, but would move decision making on other conditions such as referrals and types of treatments into the government sphere rather than commercial. This could be achieved by a relatively simple amendment to the Act stipulating that WorkCover/Q-COMP may determine benefit levels rather than the current provision which gives WorkCover a free hand to set any conditions on the provision of medical and rehabilitation services.

An alteration of this nature would allow WorkCover to plan on a commercial basis because benefit levels would be set independently by Q-COMP and known to WorkCover in advance. Other issues such as which providers are able to supply services and whether a referral is required for treatment are arguably too important to be left up to possibly arbitrary decisions of the regulator or provider of services. Conditions such as these could be determined by the Government under the legislation or regulation with appropriate gatekeeping arrangements enforced.

PBT Analysis

Deregulation of Benefit Levels for Medical Costs

The potential benefits from the deregulation of benefits for the cost of services provided by medical and allied health practitioners within the Queensland workers' compensation scheme are, broadly:

- Reduced over-servicing within prescribed benefit levels
- Increased efficiency and improved service delivery for compensable patients
- More effective treatment in certain cases
- Recoupment of all costs associated with providing treatment by practitioners.

In contrast, the potential costs of unrestricted costs of services provided by medical and allied health practitioners include a possible increase in premium levels due to:

- Increases in exposure for insurers and policy holders to over-servicing, overcharging and unethical practices
- Potential increase in scheme costs due to the removal of price caps
- Increased cost of injured worker rehabilitative treatment
- Potential for an increase in disputed claims.

The requirement for prescription of maximum benefit levels for medical and chiropractic/osteopathic costs is considered necessary to avoid exposure for WorkCover, its employers and self-insurers to overcharging and over-servicing. Additional costs above the maximum level tend to increase overall scheme costs, which filter through to increased premium levels for policy holders. A large increase in medical costs would threaten the schemes financial viability and lead to significant increases in premiums.

The requirement to control costs and premiums needs to be traded off against the most effective treatment for the injured worker. In submissions price controls were strongly supported by employer groups and opposed by worker representatives and the Australian Medical Association.

In summary, there is no overall benefit to the Queensland community from the deregulation of maximum benefit levels for medical and chiropractic/ osteopathic costs.

Therefore, the alternative state of deregulating benefit levels for medical and chiropractic/osteopathic costs is rejected allowing maximum benefit levels to be retained, however, these should continue to be regularly reviewed by Q-COMP in order to ensure that the objectives of the legislation are being met and that the treatment provided to injured workers by medical and allied health

Deregulation of Benefit Levels for Rehabilitation Costs

Similarly, the alternative state of deregulating benefit levels for rehabilitation costs is rejected allowing maximum benefit levels to be retained, however, these should continue to be regularly reviewed by Q-COMP in order to ensure that the objectives of the legislation are being met and that the rehabilitation treatment provided to injured workers is at a high level.

Referral Issue

In addition to examining the issues of the deregulation of benefit levels for medical and rehabilitation costs, the PBT examined the concerns of the CAA regarding the requirement for a medical referral before WorkCover would meet the costs of a claim.

The PBT has recommended that following separation of Q-COMP, an independent review be undertaken to assess the costs and benefits of the removal of the referral requirement for allied health professionals.

Conclusion and Recommendations

Discussion

IP5 and IP7 raise similar issues in that they both involve the right of WorkCover to set conditions on the provision of services.

Most stakeholders supported the idea that WorkCover should be able to control services for which it provides benefits in order to plan effectively and control costs. However, decisions regarding the type and quantity of treatment are arguably outside the scope of what is required to plan effectively. Chiropractors in particular are concerned about the referral requirement because of a perceived bias in the medical profession against alternative therapies. They also believe that it lowers outcomes for injured workers, and employers by resulting in less effective treatments being provided.

Interstate comparisons indicate that Queensland maintains the strictest referral requirements for allied health professionals. In other states injured workers may be able to self-refer, with costs being paid on the basis that they are “reasonable” for the type of injury.

The Committee is of the view that while WorkCover, or Q-COMP needs to be able to set conditions to some extent in order to control costs, the extent of this power needs to be reviewed as to specific issues such as referrals, managed health care plans etc.

Recommendation

That the capping of benefit levels for medical, allied health and rehabilitation costs be retained.

That Q-COMP and DETIR review the conditions that can be applied to the use of allied health professionals and rehabilitation service providers, including the matter of the referral requirement.

Legislative Changes Required

Any necessary changes will be done in conjunction with the separation of Q-COMP’s role from WorkCover.

The substance of subsections 228(2) and 239(3) be changed to allow Q-COMP to set benefit levels for medical and rehabilitation costs rather than conditions.

Other conditions such as referrals and medical treatment plans to be determined separately under regulation.

Implementation Issues

The Q-COMP review of the Table of Costs should be done after Q-COMP’s new structure and reporting arrangements are finalised in order to ensure independence.

Transitional Arrangements

In the interim, the current arrangements will stand.

Identified Provision 6

IP6 - Workplace rehabilitation training courses to be approved by WorkCover (Chapter 4, Part 3)

WorkCover has several responsibilities for worker's rehabilitation, including the approval of workplace rehabilitation training courses designed for rehabilitation coordinators (refer IP8). Until 1997 WorkCover was the sole provider of workplace rehabilitation coordinator training. WorkCover no longer provides training services, but rather accredits external training providers. To become an approved training organisation, an organisation must make application to WorkCover, complete with a training course designed around minimum syllabus standards. No other authorities are permitted to approve training organisations or accredit a training organisation's workplace rehabilitation coordinator training course. The Act contains no reference to limits on the number of rehabilitation coordinator training provider or courses that can be accredited.

However the current requirements can be considered as a restriction on entry to the market place.

Issues

All stakeholders supported the continuation of the regulator's role as the sole approver of rehabilitation training in order to ensure consistency of approach and basic level of competency.

Options

Alternative State 6.1 - Approval of Rehabilitation Training Deregulated.

The alternative state of deregulating rehabilitation training accreditation suggests that the process of accreditation for rehabilitation training providers currently administered by Q-COMP be opened up for competition. The provision would allow for a higher degree of price and service competition amongst providers and may result in a proliferation of services offered to clients employers.

The requirement for rehabilitation training providers to be accredited in other jurisdictions is dependent upon return to work policies, although most other Australian jurisdictions require that rehabilitation providers be accredited by a central body.

While there would be a need to maintain high standards of training to meet employer needs, price may become the most important factor in differentiating between rehabilitation training providers. Many employers may take the short-term view of minimising operational costs and maximising profits perhaps at the expense of return to work outcomes.

PBT Analysis

Deregulation of Rehabilitation Training Accreditation

The major potential benefit from deregulating rehabilitation training accreditation is potentially lower prices and greater choice in service delivery due to increased competition.

In contrast, the potential costs of deregulating rehabilitation training accreditation include:

- Reduced certainty over ensuring an adequate level and quality of service for rehabilitation training
- Short-term instability in training provision

Removing the current accreditation requirements could result in a loss of control for Q-COMP in ensuring adequate standards are maintained by rehabilitation training providers. Maintaining minimum standards is not an issue unique to WorkCover, as other training organisations (e.g. within Vocational Education and Training) are also required to meet minimum standards.

Outcomes for injured workers may be adversely affected by competition amongst training providers in a deregulated market, as the focus may be taken away from quality of care for workers. Whilst employers may benefit from price and service competition, the potential lowering of standards could ultimately result in higher claims costs and, therefore, increased future premiums.

All stakeholders consulted as part of the Review support the current restriction on competition.

Overall, it may be argued that the benefits to the Queensland community of the current provision far outweigh the costs. Net benefits are likely to remain, while employers are required to appoint rehabilitation coordinators in workplaces where 30 or more workers are employed and no competition exists in the market for the provision of workers' compensation.

Therefore, the alternative state of deregulating rehabilitation training accreditation is rejected and Q-COMP should be retained as the only approver of rehabilitation training providers.

Conclusion and Recommendations

Discussion

All stakeholders and the consultants agreed that some form of regulation of training courses is necessary to ensure that certain standards and curricula are met. As such, a

central body needs to ensure that the requirements are being met. WorkCover has been the regulatory body in the past but this responsibility will fall under the responsibilities of Q-COMP following the separation.

Recommendation

That the requirement for workplace rehabilitation courses to be approved by Q-COMP continue.

Legislative Changes Required

Any necessary changes will be done in conjunction with the separation of Q-COMP's role from WorkCover.

Implementation Issues

nil

Transitional Arrangements

nil

Identified Provision 8

IP8 - Workplaces with 30 or more workers must have a rehabilitation coordinator (Chapter 4, Part 4)

Queensland employers must take all reasonable steps to assist and provide injured workers with rehabilitation for the period for which the worker is entitled for compensation. A fundamental part of the employer's obligation is the appointment of a rehabilitation coordinator and establishment of workplace rehabilitation policy and procedures if the employer employs 30 or more workers at a workplace for a total of any 40 days during the year. The rehabilitation coordinator must be employed under a contract of service and should assist the employer in minimising the costs of the injury by facilitating return to work outcomes. An employer can apply to WorkCover to appoint one rehabilitation coordinator for more than one workplace.

IP8 is regarded as restriction on the conduct of a business as employers face a statutory requirement affecting their business operations and are compelled to operate in a particular manner.

Issues

Although all stakeholders recognised the importance of rehabilitation in expediting return to work outcomes there was some criticism that the application of the restriction to all workplaces with 30 or more workers was arbitrary, giving no consideration to the type of workplace or associated level of risk. Employers, self-insurers and the insurance industry questioned whether the same or better rehabilitation outcomes could be achieved if all workplaces were required to have access rehabilitation services, which could include a third party provider.

Options

Alternative State 8.1 - All employers to provide access to a rehabilitation coordinator.

For the purposes of this discussion, it is assumed that the alternative state requires that the rehabilitation coordinator must be a worker employed under a contract of service. The alternative state is still classified as a restriction on the conduct of a business, because businesses are not free to operate in their preferred manner. Effectively, one worker at each workplace must be an approved rehabilitation coordinator. This requirement would significantly increase the market for rehabilitation training providers, due to the increased number of rehabilitation coordinators required.

The introduction of the requirement that all workplaces provide access to a rehabilitation coordinator would increase the cost to employers of operating a business because of additional training and maintenance costs, in particular for businesses which had a large

number of smaller premises. Consequently, it is possible that the restriction may lead to a reduced number of offices or branches for some businesses. Decisions to expand operations to new areas may also be impacted by the requirement to maintain a rehabilitation coordinator at each workplace. There may also be increased levels of non-compliance, particularly by smaller businesses, as employers strive to minimise the costs of operation and maximise profits.

Injured workers on the other hand would be better off with guaranteed access to a rehabilitation coordinator at all workplaces.

Alternative State 8.2 - Rehabilitation Coordinator Function Outsourced or Abolished.

The market structure prevalent under outsourcing or scrapping the rehabilitation coordinator function would be openly competitive in terms of the provision of rehabilitation coordination within a workplace. Employers would therefore be free to decide how to provide rehabilitation services across their workplaces, including whether rehabilitation be undertaken in-house or outsourced to an external provider. Employers would retain the responsibility to provide rehabilitation services to injured workers either to meet legislation obligations or to minimise the costs of return to work outcomes.

The alternative state would allow employers to determine the cost effectiveness of whether to outsource the rehabilitation coordination function, or to maintain an in-house rehabilitation coordinator. The impact on the social objectives of the legislation would be dependent on whether the employer simply opts for the lowest price alternative, without taking in to account the costs to injured workers (and therefore the longer-term impact on premiums).

Removal of the requirement for onsite rehabilitation co-ordinators in medium-large businesses could lead to less satisfactory return-to-work and rehabilitation outcomes depending on the type of business. This could lead to increased costs as injuries, and thus less than optimal staffing arrangements are prolonged.

PBT Analysis

All Workplaces be required to have access to a Rehabilitation Coordinator.

The potential benefits from the introduction of the requirement for all workplaces to have access to a rehabilitation coordinator are:

- Improved return to work outcomes due to greater access to rehabilitation coordinators, and
- Wider understanding and greater knowledge of the rehabilitation process throughout the workplace and the community.

In contrast, the potential costs of the requirement for all workplaces to have access to a rehabilitation coordinator include:

- Increased costs for employers and, consequently, possible reduced outcomes for employment
- Increased non-compliance, particularly by smaller businesses, and
- Increased monitoring requirements of ATOs due to expansion of training market.

The restriction on competition imposed by the requirement for workplaces with 30 or more workers to have a rehabilitation coordinator, limits the flexibility of employers and does not allow for differentiation in workplace type and/or nature, i.e. it does not recognise varying degrees of risk of injury attributable to different workplaces.

In line with the objectives of the Act to provide for employers and injured workers to participate in effective return to work programs, the appropriate change would seem to suggest that all workplaces should have access to a rehabilitation coordinator. However, this change would further restrict the conduct of business and significantly increase the costs of running a small to medium-sized business in Queensland.

Given this, there may need to be a more flexible approach in the provision of rehabilitation coordinators based on employee size, nature/type of workplace and size of workplace. Furthermore, flexible approaches should be similar for companies in similar industries so as not to create competitive advantages/ disadvantages.

Therefore, the alternative state requiring all workplaces to have access to a rehabilitation coordinator should be considered in more detail. Further, Q-COMP should consult with stakeholders as to how best deliver the rehabilitation coordinator role, having regard to the size and nature/type of workplaces and restrictions on conduct of business.

Rehabilitation Coordination Function Outsourced or Abolished

The potential benefits from the outsourcing or complete removal of the rehabilitation coordination function are:

- Potentially lower prices and greater choice in service delivery due to increased competition, and
- Potentially higher skill levels and more effective practices from use of professional rehabilitation providers.

In contrast, the potential costs of the outsourcing or complete removal of the rehabilitation coordination function include:

- Increased risk of less satisfactory return to work and rehabilitation outcomes if employers take account of price only, and
- Rehabilitation training providers may experience a loss of revenue from reduced training opportunities due to price and service competition.

In line with the objectives of the Act, the appropriate change would seem to suggest that all workplaces should have access to a rehabilitation coordinator. However, this change

would further restrict the conduct of business and significantly increase the costs of running a small to medium-sized business in Queensland.

Accordingly, there may need to be a more flexible approach in the provision of rehabilitation coordinators based on employee size, nature/type of workplace and size of workplace. Furthermore, flexible approaches should be similar for companies in similar industries so as not to create competitive advantages/ disadvantages.

The current provision for all workplaces with more than 30 employees to have a rehabilitation coordinator seems arbitrary and limits the flexibility of employers. It is unclear whether there are any net benefits from the alternative of outsourcing the rehabilitation coordinator role.

Therefore, the alternative state for the requirement of outsourcing or complete removal of the rehabilitation coordination function is rejected. However, Q-COMP should further consult with stakeholders as to how best deliver the rehabilitation coordinator role, having regard to the size and nature/type of workplaces and restrictions on conduct of business.

Conclusion and Recommendations

Discussion

The role of rehabilitation in expediting return to work outcomes is vital. Although the 30 worker threshold has practical application, in terms of the interface with the workplace health and safety officer requirement, there was widespread criticism that the level was arbitrary, giving no consideration to the type of workplace or associated level of risk.

The Committee has examined the options of all workplaces requiring access to an onsite rehabilitation coordinator, or abolishing or outsourcing the requirement. While the first option has the potential to improve outcomes for injured workers, and would level the playing field for employers, it is considered that the additional costs of training and maintaining rehabilitation coordinators in all workplaces would outweigh the benefits.

Outsourcing the requirement has many more potential benefits in that it allows equal access for all injured workers to rehabilitation coordinators, and minimises the costs to employers by only requiring them to pay for services as they are used, rather than maintaining a permanent presence in the workplace. Stakeholder consultation largely supported the view that alternative means of achieving employer involvement in rehabilitation are required.

Accordingly the Committee is of the view that alternatives to the current requirement be further examined in order to develop a more effective and equitable approach to ensuring all injured workers have reasonable access to a rehabilitation coordinator at reasonable cost to employers.

Recommendation

That the requirement for employers to participate in effective return to work programs be retained but that a review be undertaken by Q-COMP, with industry input, to examine alternative methods of achieving improved return-to-work outcomes for workers and employers.

Legislative Changes Required

Chapter 4, Part 4 of the Act deals with employers' obligations in relation to rehabilitation. Section 243 specifies that a rehabilitation coordinator must be appointed and section 244 only applies if an employer employs more than 30 workers.

These sections need to be revised in order to ensure that the Act reflects the requirement that all employees must have suitable access to a rehabilitation coordinator in the case of injury, but not necessarily on site.

Implementation Issues

A suitable framework will need to be developed to establish a level playing field for employers and workers in the provision of, and access to rehabilitation coordination services. This should be designed in such a way as to ensure that workers are no worse off.

Any legislative changes would be incorporated into the legislation governing Q-COMP.

Transitional Arrangements

nil

Identified Provision 9

IP9 Price setting mechanism for premiums and associated costs (Chapter 2, Part 3)

WorkCover establishes premiums payable under policies based on an assessment of the method and the rate specified in the industrial gazette notice. The Act provides a mechanism for reassessment of policy premium and associated costs payable under WorkCover policies. Centralised premium setting precludes price competition between insurers.

The legislative provision for WorkCover to have exclusive control of premium setting within the workers' compensation system in Queensland is a restriction on competition as it represents a form of price control by which employers have no choice other than to accept the premium rate offered by WorkCover.

Issues

The method for setting premiums is currently specified by WorkCover by industrial gazette notice.

WorkCover premiums reflect the level of wages and the level of industry risk by applying higher rates to industries with higher claims levels. The classifications from which these rates are drawn, are known as WorkCover Industry Classification (WIC) codes. Within this structure, experience based ratings are applied to individual employers to reflect their claims record and further increase incentives to introduce safer work practices. Sizing factors also apply so that larger businesses bear a larger proportion of their individual claims cost than do smaller businesses. Maximum premium is set at twice the WIC code.

The premium setting mechanism only becomes an issue in the event that competition is introduced into the market, because it assumes that WorkCover is the only provider. Premium setting issues are discussed above under IP2.

Options

As WorkCover is currently the only provider of workers' compensation insurance in the Queensland market, whether the mechanism for premium setting is enshrined in the Act or a matter of policy is of little consequence. However if competition were to be introduced, all providers would want to develop their own premium setting mechanisms and the method of premium calculation could no longer be determined under the provisions of the Act.

Issues raised in this area are therefore discussed under IP2.

PBT Analysis

The objective of the current Experience Based Rating (EBR) system used by WorkCover is to provide a more direct relationship between premium and claims experience with the ultimate aim of providing an incentive to employers to prevent and manage workplace injury in accordance with the objectives of the Act. The basic principles of EBR are:

- A base premium rate adjusted by claims experience
- Claims costs for the past three to five years used to calculate premium, and
- The impact of claims costs dependent upon the size of the business.

Other jurisdictions calculate premiums in a similar fashion to the EBR used in Queensland but with several refinements. These refinements include: calculating premium rates for an employers individual workplaces, buy-out options, recovery rebates and surcharges.

The introduction of an EBR system has generally been well received by employers but has also received some criticism due to significant premium volatility in the early stage of its introduction.

The current system has also been criticised because it does not differentiate between different activities at one workplace, and because of the degree of cross subsidisation between large and small employers.

Initial premium volatility associated with the introduction of EBR, prompted a review of the arrangements in 1999/2000. WorkCover is currently working towards implementation of the recommendations of the review to provide greater stability of premium rates for employers.

Assuming that WorkCover remains the sole provider of workplace accident insurance, there is no benefit in the introduction of competitive premium setting and the current method should be retained.

Conclusion and Recommendations

Discussion

As noted above, competitive premium setting only becomes an issue for consideration in the event that private underwriting should be introduced. As the PBT has recommended the retention of the public monopoly and the Committee supports this view, it is recommended that the method for premium setting and associated costs remain in the Act.

Recommendation

That the price setting mechanism for premiums and associated costs be retained.

Legislative Changes Required.

nil

Implementation Issues

nil

Transitional Arrangements

nil

References

- AECgroup (2000). *Public Benefit Test: National Competition Policy Review – WorkCover Queensland Act 1996*, AECgroup, Brisbane.
- Argyle Capital (1999). *Compulsory Third Party Legislation in Queensland: National Competition Policy Review*, Report Prepared for Queensland Government Compulsory Third Party Committee.
- Australian Bureau of Statistics (1999). *Wage and Salary Earners*, Cat. No.6248.
- Bendzulla, B. (1999). *Workers' Compensation Premium Analysis*, Report Prepared for the Workplace Safety Board of Tasmania,
- Colmar Brunton Research (2000). *Customer Satisfaction Research: Injured Worker Report*, Report Prepared for WorkCover Queensland.
- Marcus, D. (2000). *Prospects for Managed Health Care in Australia*, Research Paper, www.aph.gov.au/library/pubs/rp/1999-2000/2000rp25.htm
- Pearson, D., McCarthy, B. & Guthrie, R. (1999). *Report of the Review of the Western Australian Workers' Compensation System*, Report Prepared for Minister for Labour Relations, Western Australian State Government.
- Kennedy Inquiry (1996). *Report of the Commission of Inquiry into Workers' Compensation and Related Matters in Queensland*, Report Prepared for the Minister for Training and Industrial Relations, Queensland State Government.
- Queensland Treasury (1999). *Public Benefit Test Guidelines: Approach to Undertaking Public Benefits Test Assessments for Legislation Reviews Under National Competition Policy*, Queensland Treasury, Brisbane.
- WorkCover Queensland (2000). *WorkCover Queensland Annual Report 1999-2000*, WorkCover Queensland, Brisbane.

Legislation

Insurance Act 1973

Motor Accident Insurance Act 1994

WorkCover Queensland Act 1996

WorkCover Queensland Regulation 1997

Appendix A

Public Notification

A public notice advising of the Review of the *WorkCover Queensland Act 1996* appeared in the following newspapers on or around 17 June 2000:

- Courier Mail
- Bundaberg News Mail
- Cairns Post
- Emerald Central Queensland
- Fraser Coast Chronicle
- Gold Coast Bulletin
- Gladstone Observer
- Longreach Leader
- Mackay Daily Mercury
- Mt Isa North West Star
- Queensland Times
- Rockhampton Morning Bulletin
- Roma Western Star
- Sunshine Coast Daily
- Townsville Bulletin
- Toowoomba Chronicle

Appendix B

Terms of Reference – Abridged Version

Identified Provision	Section	Provides For	NCP Category
IP1	Chapter 2, Parts 1 and 2	Employers must maintain compulsory accident insurance for their workers	Restrictions on conduct of a business
IP2	Chapter 2, Part 2; Chapter 6, Part 2	WorkCover as principal provider of accident insurance, licensed self-insurers may also provide accident insurance	Legislated monopoly
IP3	Chapter 2, Part 5	Self-insurance licensing criteria	Restrictions on entry; Restrictions on conduct of a business
IP4	Chapter 4, Part 2	WorkCover sets benefit levels and a maximum level for hospitalisation costs	Price controls
IP5	Chapter 4, Part 2	WorkCover sets benefit levels for medical treatment and chiropractic/osteopathic costs	Restrictions on conduct of a business; Price controls
IP6	Chapter 4, Part 3	Workplace rehabilitation training courses to be approved by WorkCover	Restrictions on entry
IP7	Chapter 4, Part 3	WorkCover sets benefit levels for rehabilitation costs	Price controls
IP8	Chapter 4, Part 4	Workplaces with 30+ workers must have a rehabilitation co-ordinator	Restrictions on conduct of a business
IP9	Chapter 2, Part 3	Price setting mechanism for premiums and associated costs	Price controls

Appendix C

Organisations Representing Key Stakeholder Groups

- Australian Industry Group
- Australian Workers' Union
- Housing Industry Association (Queensland)
- Insurance Council of Australia
- Local Government Association of Queensland
- Medical and Allied Health Professionals:
 - Association of Occupational Therapists (Queensland Branch)
 - Australian Dental Association (Queensland Branch)
 - Australian Medical Association of Queensland
 - Australian Physiotherapy Association (Queensland Branch)
 - Australian Podiatry Association (Queensland) Inc
 - Australian Psychology Society (Queensland Branch)
 - Chiropractors Association of Australia (Queensland Branch)
 - Department of Human Movement Studies, University of Queensland
 - Dietitian Association of Australia (Queensland Branch)
 - Optometrists Association of Australia (Queensland Division)
 - Queensland Social Workers Association
 - Speech Pathology Australia (Queensland Branch)
- Queensland Chamber of Commerce and Industry
- Queensland Council of Trade Unions
- Queensland Law Society Incorporated
- Queensland Farmer's Federation
- Queensland Master Builders Association
- Queensland Mining Council
- Queensland Workers' Compensation Self Insurer's Association
- WorkCover Queensland

Appendix D

Schedule of Submissions

Organisation	Stakeholder Group
Australian Industry Group	Employers
Chiropractors Association of Australia (Queensland) Limited	Medical and Allied Health Professionals
Housing Industry Association	Employers
Hyne & Son Pty Ltd	Employers
Insurance Council of Australia	Insurance Industry
Local Government Association of Queensland Inc.	Self-Insurers
Queensland Chamber of Commerce and Industry	Employers
Queensland Workers Compensation Self Insurers Association	Self-Insurers
The Working Edge	Medical and Allied Health Professionals
WorkCover Queensland	WorkCover

Appendix E ***Stakeholder Meetings***

The Public Benefit Test was circulated to stakeholders in November with an invitation to discuss the recommendations with representatives of the Committee. The following organisations participated in the stakeholder consultation process.

- Australian Industry Group
- Australian Workers' Union
- Housing Industry Association (Queensland)
- Insurance Council of Australia
- Local Government Association of Queensland
- Medical and Allied Health Professionals:
 - Australian Medical Association of Queensland
 - Chiropractors Association of Australia (Queensland Branch)
 - Department of Human Movement Studies, University of Queensland
 - Speech Pathology Australia (Queensland Branch)
- Queensland Chamber of Commerce and Industry
- Queensland Council of Unions
- Queensland Master Builders Association
- Queensland Workers' Compensation Self Insurer's Association
- WorkCover Queensland
- WorkDirections