Report of the National Competition Policy Review of Certain Aspects of the *Workers' Compensation and Rehabilitation Act 2003*

August 2005

Queensland **the Smart State**

Queensland Government
Department of Industrial Relations

EXECUTIVE SUMMARY

This report implements outstanding recommendations of a National Competition Policy (NCP) Legislation Review undertaken in 2000 of the then *WorkCover Queensland Act 1996* (now the *Workers' Compensation and Rehabilitation Act 2003*). The outstanding recommendations required further reviews to be undertaken of the following aspects of the workers' compensation scheme:

- exclusive claims management by WorkCover Queensland;
- the self-insurance licensing criteria;
- the use of allied health professionals; and
- workplace rehabilitation requirements.

The Department of Industrial Relations (the Review Committee), in consultation with Queensland Treasury, oversaw a Public Benefit Test (PBT) of the four outstanding elements of Queensland's workers' compensation legislation requiring further review.

Consultants, Synergies Economic Solutions, were engaged to assist with the analysis of the public benefit for those areas under review that relate to restrictions on competition. In undertaking the PBT, the consultants held briefing/feedback sessions with key stakeholders and drew on stakeholder comments submitted in response to a discussion paper released by the Department of Industrial Relations in March 2005 covering the same broad areas of the scheme.

A discussion paper seeking feedback on possible policy directions and administrative changes relating to the four matters requiring subsequent review was prepared by a Steering Committee consisting of officers from the Department of Industrial Relations, the Workers' Compensation Regulatory Authority (Q-COMP), and WorkCover Queensland. WorkCover Queensland did not participate in making decisions relating to the self-insurance licensing criteria due to the potential for conflict of interest.

Thirty-four submissions were received in response to the discussion paper from a wide range of stakeholders including unions, employer groups, self-insurers, insurance companies, peak medical groups, rehabilitation providers, and legal groups. A Consultation Report was prepared by the portfolio Steering Committee based on these submissions and recommendations presented to the Minister on the policy options canvassed in the discussion paper. The Consultation Report is at Appendix A.

The Review Committee has prepared this Review Report and recommendations for Government based on the findings of the PBT and the Consultation Report. The Committee recommends:

Exclusive claims management by WorkCover Queensland

1. That WorkCover Queensland retain its exclusive claims management role.

Self-insurance licensing criteria

2. That the current suite of self-insurance criteria be retained.

3. That sections 71 and 72 of the *Workers' Compensation and Rehabilitation Act 2003* [the Act] be amended to enable the Q-COMP Board to issue a provisional licence to existing

self-insurers whose net tangible assets fall below the required level but are within 10% and can demonstrate that they have a strategy to improve their financial position in the short-term.

4. That the Department of Industrial Relations investigate the development of specific threshold requirements for multi-state employers in consultation with Queensland Treasury and the Department of the Premier and Cabinet.

5. That self-insurers be given the option of outsourcing their claims management function to a provider with Queensland-based claims managers.

6. That a Code of Practice be developed to regulate the standard of claims management services.

7. That section 78 of the Act be amended to allow self-insurance licences to be issued for periods up to 4 years.

8. That Workplace Health and Safety Queensland update the Performance Criteria and Guidelines for Workers' Compensation Self-Insurers to reflect AS/NZS 4801.

9. That independent third party occupational health and safety audits be undertaken at the time of licence renewal.

10. That self-insurers with a four year licence undertake self-audits (using the same audit system used for external audits) two years after licence renewal and report the results to Workplace Health and Safety Queensland and Q-COMP.

Use of allied health professionals

11. That the requirement for a referral by a medical practitioner for treatment by an allied health professional be retained; and

12. That the requirement for approval to be obtained from the insurer prior to commencing further treatment exceeding ten consultations be retained.

Workplace rehabilitation requirements

13. That employers be permitted to outsource the position of rehabilitation coordinator under section 226 of the Act; and

14. That the current requirement for a workplace with more than 30 workers to have a rehabilitation coordinator and workplace rehabilitation policies and procedures be removed, and be replaced by the following criteria –

    (a) employers with an annual payroll of more than $4.9 million indexed annually to any changes in the Queensland Ordinary Time Earnings (QOTE), and

    (b) employers in high-risk industries (e.g. the building and construction industry or transport and storage industry) or those with poor occupational health and safety records/comparatively long claim durations, regardless of whether their payroll exceeds $4.9 million.

15. That the Department of Industrial Relations develop a methodology to be included in the Regulation for determining which employers are required to engage a rehabilitation and return to work coordinator based on the above criteria, in consultation with WorkCover Queensland and Q-COMP.

16. That the recommendations of the Consultation Report relating to workplace rehabilitation administrative matters be adopted including a recommendation to extend employment security provisions from six to twelve months.

COMPETITION IMPACT STATEMENT

Title of the legislation
Workers' Compensation and Rehabilitation Act 2003

Restriction 1 - WorkCover Queensland as the exclusive manager of claims

Background
Chapter 1, Part 2 (Objects) and Chapter 8, Part 2 (WorkCover Queensland's Functions and Powers) of the Act provide exclusive power to manage claims, other than those made by employees of self-insurers, to WorkCover Queensland. The provisions reserving WorkCover Queensland's exclusive right to manage claims have been identified as a restriction on competition precluding claims managers from competing for claims management contracts.

Policy objectives
Some of the reasons for WorkCover Queensland being the sole provider of claims management have been:

- that economies of scope and scale achieved by WorkCover Queensland as the sole claims manager allow services to be delivered at a lower administration cost thereby benefiting employers' premiums;
- the need to ensure (to the greatest extent possible) that consistent claims outcomes are achieved;
- to ensure the quality of services provided in regional areas; and
- to provide impartial claims management services to injured workers as opposed to the inherent conflict of interest of a private claims manager to make commercially driven decisions which may not be in the best interests of an injured worker.

Alternative options
Two alternatives to the status quo were considered, including:

- private claims management – where WorkCover Queensland ceases to provide claims management services directly and instead these services are outsourced to specialist providers, most likely insurance companies. Employers would be free to contract with a claims manager approved by WorkCover Queensland; and
- mixed (public and private claims management) – where employers choose either WorkCover Queensland or a private claims manager. Any licensing or certification of claims managers would have to be approved by Q-COMP or other agency independent from WorkCover Queensland.

Costs and benefits
The PBT concluded that there is no conclusive evidence of greater efficiency from outsourcing claims management than retaining a bundled monopoly supply, nor is there conclusive evidence in favour of monopoly provisions. Competitive outsourcing has reduced prices in a range of other markets, however the key risk remains the inability to specify and manage contracts with claims agents to maximise the social benefits from workers' compensation arrangements. The PBT suggests there may be advantages in delaying the decision to open claims management to competition until there is a greater degree of understanding about how contracts with claims agents should be designed and managed.

Consultation
Private claims managers and insurance companies have been consulted as part of the review process. These groups made representations to the effect that private claims management could deliver greater efficiencies for the Queensland workers' compensation scheme through the introduction of competitive forces and innovations from interstate. The PBT was unable to substantiate this position, and endorsed concerns raised by unions and lawyer groups about potential conflicts of interest for private claims managers and the adverse impact this may have on injured workers and scheme performance.

Restriction 2 - Conditions placed on self-insurance

Background
Employers are permitted to self-insure for workers' compensation in Queensland provided they meet a number of conditions set by the legislation (Chapter 2, Part 4 of the Act). The conditions allow some, but not all, employers to compete with WorkCover Queensland in the provision of workers' compensation insurance and place some constraint on how self-insurers conduct their business. The restriction primarily affects smaller employers who do not have substantial resources or are not of sufficient size to meet the existing prudential, size, and capability criteria.

Policy objectives
Conditions are placed on self-insurance to ensure that employers granted a self-insurance licence have the capacity and resources to manage their workers' compensation claims and that WorkCover Queensland, as the insurer of last resort, is protected in the event of a self-insurer's insolvency.

Alternative options
Three alternative options to the current state have been considered including:

- no restrictions – where any employer can self-insure;
- prudential and OHS system requirements only – where the criteria for number of Queensland employees, net tangible assets, and the restriction on outsourcing of claims management would be removed; and
- reducing thresholds for self-insurance – where the current suite of conditions for self-insurance are maintained but with reduced threshold values, including options to deal with firms with workforces in more than one jurisdiction but with fewer employees than the threshold requirement in Queensland and options to introduce greater flexibility into the licence renewal arrangements.

Costs and benefits
The PBT found that there is a case for reform in self-insurance arrangements, particularly in relation to facilitating recognition of self-insurance arrangements in other jurisdictions for employers operating across several jurisdictions. However, the PBT determined that a conservative approach to self-insurance reform is required given that liability for workers' compensation ultimately lies with the WorkCover Queensland scheme in the event of self-insurer failure.

The PBT concluded that the greatest gain could be achieved through relaxing those requirements that are relatively expensive to comply with without increasing the risks that arise from self-insurer insolvency. The PBT concluded that the Steering Committee's proposal to allow licensing periods of up to four years and allowing net tangible asset values to fluctuate during the licensing period would improve the flexibility of the arrangements without significantly impacting on competition.

Consultation
Employer groups, self-insurers, and unions have been consulted as part of the review process. Unions expressed a view that there is an inherent conflict of interest in self-insurance because the insurer is also the insured and this results in a more aggressive approach to claims management. Self-insurers regarded the OHS requirements associated with self-insurance as an unjustifiable impost.

Restriction 3 - Conditions placed on the use of allied health services by the Table of Costs

Background
Sections 210(2) and 222(3) of the Act enable Q-COMP, to impose conditions on the provision of medical treatment and rehabilitation services under the Table of Costs. The main conditions imposed under the Table of Costs are:

- the requirement for a referral by a medical practitioner; and
- prior approval by the insurer before services are provided, with exceptions in certain circumstances where a limited number of treatments or services are allowed without prior approval by the insurer.

The conditions under the Table of Costs restrict injured workers from directly seeking treatment from allied health professionals. Services to injured workers by allied health professionals are vetted by a complementary (and potentially competing) service provider, namely medical practitioners.

The restriction exists primarily in the health services market rather than workers' compensation insurance markets and is unlikely to have a material impact on competition.

Policy objectives
The conditions under the Table of Costs establish 'gatekeeper' measures to ensure that all treatment received by an injured worker is necessary and related to their injury, thereby keeping costs to the scheme at a minimum.

Alternative options
The PBT found that the key issue is that the role of 'gatekeeper' needs to be performed by a qualified professional. The PBT determined that the identity of the party to perform the role is not a competition issue, therefore no alternative states were considered.

Costs and benefits
The costs and benefits were not considered in the PBT, but the restrictions are seen as consistent with similar types of arrangements used to control moral hazard in health insurance markets.

Consultation
The views of peak medical groups were sought in response to the discussion paper released in March and as part of the PBT process. Most stakeholders agreed with the PBT assessment that there was no competition issue and that a medical gatekeeper was necessary to control cost and ensure effective rehabilitation outcomes. There was some disagreement among certain allied health professionals about whether medical practitioners were best placed to fulfil this gatekeeping role.

Stakeholders also raised wether the role of case manager could be separated from claims manager. However, WorkCover Queensland already has scope under the Act to outsource case management and thus it is not a matter for consideration in the competition context.

Restriction 4 - A requirement that a workplace has a workplace rehabilitation coordinator once it has 30 or more employees

Background
Under the Act, workplaces with more than 30 workers are required to appoint a rehabilitation coordinator. This is a restriction regulating an input mix.

Policy objectives
The restriction has traditionally been in place to ensure rapid and successful rehabilitation of injured employees, thereby contributing to a reduction in lost productivity and improving the emotional and psychological wellbeing of the injured worker.

Alternative options
The PBT considered a number of alternatives to the competitive restriction including:

- regulating a duty to provide rehabilitation services – where the method of regulation is changed to outcomes based rather than input based;
- outsourcing of rehabilitation services – where employers purchase the services of a rehabilitation coordinator on an as needs basis; and
- increasing the threshold – where the threshold for appointing a rehabilitation coordinator would be increased.

Costs and benefits
The PBT concluded that the restrictions on competition relating to the appointment of rehabilitation coordinators are slight in nature, but that some reduction in regulatory costs may be achieved through amending thresholds and input regulation.

Consultation
Unions, employers, and rehabilitation providers were consulted on the proposed changes. Stakeholders expressed satisfaction that this restriction was not a major competition issue and were primarily concerned with introducing strategies which encouraged improvements in rehabilitation and return to work outcomes.

Restriction 5 - An employment guarantee for injured workers for a period of six months

Background
The *Industrial Relations Act 1999* requires employers to hold open an injured workers' position for them for a period of six months following injury. This restriction is one which reduces the flexibility of a business to adjust its inputs. The employment guarantee for injured workers is a constraint on the absolute level of managerial action in terms of labour force flexibility, but this restraint applies to all businesses with employees that have the potential to be injured at work and in this sense, is not discriminatory.

Policy objectives
The restriction has traditionally been in place to ensure rapid and successful rehabilitation of injured employees thereby contributing to a reduction in lost productivity and improving the emotional and psychological wellbeing of the injured worker.

Alternative options
Two alternatives were considered to the current employment security arrangements:

- removing employment security; and
- extending employment security to 12 months.

Costs and benefits
The PBT concluded that the restrictions on competition relating to employment security for injured workers are slight in nature, but that some reduction in regulatory costs may be achieved through amending input regulation.

Consultation
Unions, employers, and rehabilitation providers were consulted on the proposed changes. Stakeholders expressed satisfaction that this restriction was not a competition issue and were primarily concerned with introducing strategies which encouraged improvements in rehabilitation and return to work outcomes.

Sunset/Review for all restrictions

As it is proposed that all competitive restrictions identified during this review process be retained (although in some cases relaxed), the provisions will require further reviews to be undertaken 10 years from the completion of assessment in line with National Competition Policy requirements.

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BACKGROUND

This report implements outstanding recommendations of a National Competition Policy (NCP) Legislation Review undertaken in 2000 of the then *WorkCover Queensland Act 1996* (now the *Workers' Compensation and Rehabilitation Act 2003*). That Review found, among other things, that the public monopoly for the Queensland workers' compensation system be retained, that the price setting mechanism for premiums and associated costs be retained, and that the regulatory and insurance arms of the scheme should be completely separated.

Outstanding recommendations from the 2000 review include:

> *That the 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 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.*
>
> *WorkCover retain its exclusive claims management role but the issue of claims management be reviewed in three years time.*
>
> *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.*
>
> *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.*
> (The issue of private hospitalisation was resolved in 2004 when amendments to the *Workers' Compensation and Rehabilitation Act 2003* [the Act] removed the provision limiting payments by WorkCover Queensland for private hospitalisation.)

The Department of Industrial Relations (the Review Committee), in consultation with Queensland Treasury, oversaw a Public Benefit Test (PBT) of the four outstanding elements of Queensland's workers' compensation legislation requiring further review.:

- the self-insurance licensing criteria;
- the use of allied health professionals;
- exclusive claims management by WorkCover Queensland; and
- workplace rehabilitation requirements.

The Review process was conducted in accordance with the overriding principles of the National Competition Policy that legislation should not restrict competition unless it can be shown that:

- the benefits of the restriction to the community as a whole outweigh the costs; and

- the objectives of the legislation can only be achieved by restricting competition.

Section 5(4) of the Act states the objectives of Queensland's workers' compensation system are to:

(a) maintain a balance between—

(i) providing fair and appropriate benefits for injured workers or dependants and persons other than workers; and

(ii) ensuring reasonable premium levels for employers; and

(b) ensure that injured workers or dependants are treated fairly by insurers; and

(c) provide for the protection of employers' interests in relation to claims for damages for workers' injuries; and

(d) provide for employers and injured workers to participate in effective return to work programs; and

(e) provide for flexible insurance arrangements suited to the particular needs of industry.

Consultants, Synergies Economic Solutions, were engaged to assist with the analysis of the public benefit for those areas under review that relate to restrictions on competition. A minor Public Benefit Test (PBT) has been conducted as the review is reassessing aspects which were previously covered by a major PBT and recommended for further review.

In undertaking the PBT, the consultants held briefing/feedback sessions with key stakeholders and drew on stakeholder comments submitted in response to a discussion paper released in March 2005 covering the same broad areas of the scheme.

The discussion paper was prepared by a portfolio Steering Committee consisting of officers from the Department of Industrial Relations, Q-COMP, and WorkCover Queensland and sought feedback on possible policy directions and administrative changes relating to the four matters requiring subsequent review. Thirty-four submissions were received in response to the discussion paper from a wide range of stakeholders including unions, employer groups, self-insurers, insurance companies, peak medical groups, rehabilitation providers, and legal groups. A Consultation Report was prepared by the portfolio Steering Committee based on these submissions and recommendations presented to the Minister on the policy options canvassed in the discussion paper. The Consultation Report is at Appendix A.

The Review Committee has prepared this Review Report and recommendations for Government based on the findings of the PBT and the Consultation Report.

It is anticipated that recommendations requiring legislative amendments will be implemented by the end of 2005 with other administrative changes being phased in over the next 18 months.

CLAIMS MANAGEMENT

ISSUES

Chapter 1, Part 2 (Objects) and Chapter 8, Part 2 (WorkCover Queensland's Functions and Powers) of the Act provide exclusive power to manage claims, other than those made by employees of self-insurers, to WorkCover Queensland. Self-insurers are responsible for managing their own claims with only group self-insurers currently permitted to outsource their claims management function.

WorkCover Queensland's claims management services are currently divided into two distinct functions:

- assessing – this involves assessing and deciding claims, accepting liability (if appropriate), paying claims, managing short duration claims, and referring claims to case management or closing claims as appropriate. Under the Act, this aspect must be undertaken by WorkCover Queensland; and
- case management – this involves proactively rehabilitating injured workers to ensure an early and safe return to work whenever possible. Under particular circumstances, such as interstate or very complex cases, WorkCover Queensland may engage external case managers to perform the case management function.

The provisions reserving WorkCover Queensland's exclusive right to manage claims have been identified as a restriction on competition precluding claims managers from competing for claims management contracts. The restriction was considered as part of the 2000 NCP Review of the then *WorkCover Queensland Act 1996*. Following a PBT and consultation with stakeholders, the 2000 Review Steering Committee recommended that 'WorkCover retain its exclusive claims management role but the issue of claims management be reviewed in three years time'.

Some of the reasons for WorkCover Queensland being the sole provider of claims management have been:

- that economies of scope and scale achieved by WorkCover as the sole claims manager allow services to be delivered at a lower administration cost thereby benefiting employers' premiums;
- the need to ensure (to the greatest extent possible) that consistent claims outcomes are achieved;
- to ensure the quality of services provided in regional areas; and
- to provide impartial claims management services to injured workers as opposed to the inherent conflict of interest of a private claims manager to make commercially driven decisions which may not be in the best interests of an injured worker.

The strong performance of Queensland's workers' compensation scheme was also a key consideration during the current review, particularly the notion that private claims management would introduce a profit requirement into the claims management system which has not previously existed in Queensland. Queensland currently has the lowest premium rate and the lowest claims management costs of all Australian State and Territory workers' compensation schemes. In their submissions to the review, the majority of stakeholders

including employer groups and unions indicated a preference for maintaining the low cost delivery of services over any particular model of claims management services. The relatively high levels of employer and injured worker satisfaction with the current system of claims management were another important consideration during the review process.

OPTIONS/SUMMARY OF PBT ANALYSIS

The PBT considered a number of alternatives to the status quo including:

- private claims management; and
- mixed (public and private claims management).

These are discussed in more detail below.

The PBT also gave significant consideration to the claims management models in other Australian jurisdictions and their relative effectiveness in meeting the needs of both injured workers and employers. In the Northern Territory, Australian Capital Territory, Tasmania and the Australian Government's Seacare scheme, private sector insurers provide a full range of insurer's functions. In New South Wales, Victoria and South Australia some or all of the claims management functions described above are undertaken by private insurers operating as agents for a public monopoly.

The PBT presented evidence of significant problems with the private claims management models in these other jurisdictions, particularly in New South Wales where considerable restructuring of the system has been recommended and in South Australia where a return to claims management by the public monopoly insurer has been recommended. At the heart of the challenges experienced with private claims management in other jurisdictions has been overcoming principal-agent issues through the design and monitoring of contracts and incentives.

Another option considered during the current review process at the request of stakeholders, was the option of 'self-rating' as a potential alternative to completely privatising claims management. Self-rating was an option under the Queensland workers' compensation scheme between 1996 and 1999 which involved employers:

- funding their own liability for workers' compensation claims within their own separate pool on the central workers' compensation authority system;
- paying an annual premium to cover their full injury year costs (including claims liabilities) and workers' compensation authority fees, depending upon the level of employer input;
- undertaking to implement claims management/rehabilitation procedures at a certain standard;
- having the option of:
    - WorkCover Queensland providing all claims management/rehabilitation/return to work input; or
    - WorkCover Queensland providing claims management with rehabilitation/return to work input provided by the employer; or
    - the employer providing all claims management/rehabilitation/return to work input with audit oversight by WorkCover Queensland.

Self-rating was recommended for removal from the scheme in the Government's Restoring the Balance Policy Platform in 1999 because it created potential for companies to opt into the system if their they had poor claims history and to opt out of the system if their claims

experience was could. This created inequities between employers in terms of how their claims history impacted premiums depending on whether they elected to self-rate or use experience-based rating system (EBR). Furthermore, as of March 1999, only one employer was self-rating and one other had applied.

The Steering Committee believed that the potential costs of reintroducing self-rating outweigh any potential benefits of allowing employers to manage their own claims.

Private claims management

Under the private claims management option, WorkCover Queensland would cease to provide claims management services and these would instead be outsourced to specialist providers. Employers would be free to contract with a claims manager approved by WorkCover Queensland.

The PBT identified a number of potential benefits to this model over the existing claims management arrangement namely:

- the potential for innovations from other jurisdictions to be introduced into Queensland;
- the potential for competition in the claims management market to introduce commercial pressure and reduce costs;
- the potential for competitive discounting of claims management as an inducement to purchase other insurance products; and
- the emergence of a more valued model of customer service.

However, the PBT highlighted major concerns with the principal-agent relationship in terms of the incentives provided to private claims agents not aligning with the objectives of the scheme. The Victorian, New South Wales and South Australian schemes have shown this to be a significant problem which impacts on the provision of services to injured workers and scheme outcomes.

Unions, legal groups and WorkCover Queensland strongly supported the PBT findings that the principal-agent issues are cause for concern with private claims management. WorkCover Queensland further indicated that there would be significant challenges involved in it retaining the premium setting aspect of the workers' compensation insurance business without control over the claims management aspect.

On the other hand, private claims agents believe there are models of outsourced claims management that can overcome the principal-agent problem and pointed to Victoria as a successful example.

The PBT was unable to conclusively predict whether costs of claims management are likely to fall dramatically with the introduction of greater competition, but suggested there would be greater incentive to reduce costs by virtue of the competitive dynamic. The major risk with this option was seen to be the consequences if agency contracts are poorly specified and managed.

Mixed (public and private claims management)

The second option of a mix of both public and private claims management services gives employers the choice between WorkCover Queensland or a private claims manager.

Licensing or certification of claims managers would have to be approved by Q-COMP or another similarly independent agency.

The same benefits were identified for this option as for the previous option, with the exception that greater monitoring may be required to ensure WorkCover Queensland does not unfairly advantage its own claims management function.

The PBT identified the potential for WorkCover Queensland's costs to rise under this option through the loss of economies of scale placing it under greater pressure to achieve efficiencies. This outcome is likely to be incompatible with the government's objectives of maintaining a strong regional presence.

This option would have the same impacts on stakeholders as the previous option.

As with the previous option, this option would provide greater incentive to reduce costs than the current model by virtue of the competitive dynamic, yet the issues with the principal-agent relationship are still an important consideration.

Net benefit assessment

The PBT concluded that there is no conclusive evidence of greater efficiency from outsourcing claims management than retaining a bundled monopoly supply, nor is there conclusive evidence in favour of monopoly provisions. Competitive outsourcing has reduced prices in a range of other markets, however the key risk remains the inability to specify and manage contracts with claims agents to maximise the social benefits from workers' compensation arrangements. The PBT indicates that the issues identified with the principal-agent relationship remain the single greatest obstacle to there being a greater community benefit from private claims management than from the current arrangements. This suggests there may be advantages in delaying the decision to open claims management to competition until there is a greater degree of understanding about how contracts with claims agents should be designed and managed.

CONCLUSION

The review process has found no conclusive evidence of greater efficiency from outsourcing claims management, nor from monopoly provision of these services.

Queensland currently has a high performing scheme and the lowest claims management costs of all Australian States and Territories which suggests that policy conservatism on this issue may be warranted.

Of particular concern to the Review Committee was evidence of the challenges associated with managing the principal-agent relationship from other jurisdictions which have outsourced claims management. Various reviews of contract arrangements and agent incentives in these jurisdictions have, as yet, failed to resolve these issues.

The Review Committee agrees with the PBT conclusion that there may be advantages in delaying the decision to open claims management to competition until there is a greater degree of understanding about how contracts with claims agents should be designed and managed to ensure the best outcomes for injured workers. The Committee notes the suggestion in the PBT that once the principal-agent issues are resolved, there should be no

further barriers to privatisation of claims management. The Government should continue to monitor this situation and should recommend a move to open claims management only when it is completely satisfied that a robust model for managing principal-agent issues exists which will not result in detrimental impacts for injured workers. It is not envisaged that a further PBT will be required to make this assessment.

The majority of stakeholders (unions, employers, legal groups, and the monopoly insurer) support this approach.

RECOMMENDATION

The Review Committee recommends that WorkCover Queensland retain its exclusive claims management role.

SELF-INSURANCE CRITERIA

ISSUES

Chapter 2, Part 4 of the Act exempts certain employers from taking out compulsory insurance with WorkCover Queensland by allowing the provision of a licence to self-insure. The Act establishes the criteria determining eligibility for a self-insurance licence.

Applicants for self-insurance must meet legislative criteria set under the Act. These criteria set restrictions on entry to the insurance market and restrictions on the conduct of businesses in the insurance market.

The Act outlines the following criteria to be met by employers (single and group) seeking to self-insure:

- net tangible assets of at least $100 million; and
- satisfactory occupational health and safety performance; and
- licence coverage of all the employer's workers employed in Queensland; and
- an unconditional bank guarantee or cash deposit that is greater than $5 million or 150% of the estimated claims liability; and
- reinsurance cover with a liability between $300,000 and $1 million and a contract for an unlimited amount above the self-insurer's liability; and
- all the employer's workplaces to be accredited or serviced by a rehabilitation coordinator under a contract of service and have workplace rehabilitation policies and procedures; and
- employ at least 2000 full-time workers in Queensland; and
- be fit and proper to be a self-insurer.

The PBT undertaken on the self-insurance licensing criteria in 2000 recommended a relaxation of the criteria in line with other jurisdictions. However, as self-insurance was a relatively new concept to Queensland in 2000, the 2000 Review Steering Committee found that the full implications of relaxing the criteria could not be comprehensively assessed and there was considerable uncertainty about the impact that relaxing thresholds would have on the stability and viability of the workers' compensation scheme.

A primary purpose of the self-insurance licensing criteria is to protect the viability of the workers' compensation scheme by protecting it from situations where self-insurers become insolvent. In these situations WorkCover Queensland covers any outstanding liabilities owed to injured workers above and beyond the bank guarantee. These liabilities may be considerable and could affect premium rates for all employers insured under the State scheme and ultimately the provision of rehabilitation services to injured workers.

Prudential requirements

To protect the WorkCover Queensland fund from the corporate failure of a self-insurer, Queensland has in place stringent prudential safeguards. Under the Act self-insurers are required to lodge an unconditional bank guarantee or cash deposit with Q-COMP before the issue or renewal of a licence. The guarantee must be the greater of $5 million or 150% of the estimated claims liability. The bank guarantee or cash deposit lodged with Q-COMP is actuarially adjusted on an annual basis and is assignable to WorkCover Queensland.

In response to the discussion paper, the majority of stakeholders supported the retention of the current bank guarantee arrangements.

Section 86 of the Act specifies the requirements for self-insurers in relation to reinsurance. Under this provision, before the issue or renewal of a licence, a self-insurer must provide to Q-COMP evidence of a contract for reinsurance between $300,000 and $1 million. Reinsurance ensures the liabilities associated with workers' compensation insurance can be spread or shared amongst insurers. Reinsurance provides protection for a self-insurer against the costs of unexpected major disasters.

Because these levels of reinsurance have remained unchanged since the commencement of the *WorkCover Queensland Act 1996*, the discussion paper sought the views of stakeholders on whether the levels are still appropriate to protect self-insurers.

The Steering Committee found that the current reinsurance retention levels per event ensure that self-insurers should be able to afford substantial or catastrophic claims from their workers' compensation provisions on their balance sheet without impacting their net tangible assets or requiring the call up of a bank guarantee.

An additional issue raised by stakeholders in relation to reinsurance was their inability to obtain terrorism cover as part of their reinsurance policy since the events of 11 September 2001. Self-insurers expressed concern that this breached their obligations under section 86(3) of the Act requiring a contract of reinsurance to be for an unlimited amount in excess of the self-insurer's liability. The Steering Committee was of the view that section 86(1)(a) of the Act gives Q-COMP adequate power to approve appropriate reinsurance contracts under section 86(3), taking into consideration insurance market realities at the time the reinsurance is acquired. The Queensland Government has also been party to discussions at the national level to address this issue and is continuing to monitor developments.

Non-prudential requirements

Net tangible assets

The Act prescribes that in order to be eligible for self-insurance an employer must have net tangible assets of at least $100 million. This criterion exists as an indication or assurance of long-term financial viability.

Concerns have been raised regarding circumstances where an existing self-insurer's net tangible assets become marginally less than $100 million. Under the current requirements, a self-insurer would be ineligible for licence renewal if they do not reach this $100 million minimum, regardless of performance in occupational health and safety, claims management, return to work outcomes, or other measures.

The criteria Queensland has imposed relating to size of the employer, such as total net tangible assets and long-term financial viability, also assists in alleviating prudential risk. Likewise the WorkCover Queensland fund becomes more volatile and more vulnerable as it diminishes in size. A large number of employers leaving the premium pool would directly contribute to increased risk and volatility in that scheme, increasing the burden for those employers remaining in the scheme.

The discussion paper proposed that the Q-COMP Board could be given the flexibility to issue provisional self-insurance licences to existing self-insurers who drop to within 5% of the $100 million level, provided the self-insurer could demonstrate that they have a strategy to improve their financial position in the short term. The reasoning behind this proposal was to recognise that the asset holdings of self-insurers will fluctuate but that continuity of insurance is desirable in these situations provided self-insurers still have substantial net tangible assets.

In response to the discussion paper, all but one stakeholder supported the move to allow some relaxation of this criterion. Some stakeholders were of the view that an employer's net tangible assets should not be considered during the licensing process, while others argued that greater flexibility was required in the region of 10% to 15%.

Number of Queensland workers

Under section 71 of the Act, employers must have at least 2000 full-time workers[1] in Queensland to be eligible for a self-insurance licence. This provision is one of several indicators used by the Q-COMP Board to ensure that only large, well-established employers who possess the necessary infrastructure to meet their obligations as a self-insurer are granted a licence. It is a cornerstone of the Queensland workers' compensation scheme that only large, viable employers are permitted to self-insure, thereby protecting the statutory scheme from excessive volatility and small employers from premium increases.

Concerns have been raised, however, that the minimum 2000 worker threshold is arbitrary and excludes many employers from becoming self-insurers. This particularly appears to be an issue for multi-state employers who are able to self-insure in other jurisdictions because of their less rigid self-insurance criteria, but are required to insure with WorkCover Queensland in this State because they do not meet the minimum 2000 worker criteria.

In response to the discussion paper, a large proportion of stakeholders sought a reduction in the minimum number of employees required to obtain a licence; some suggesting that as little as 200 workers would be an appropriate threshold. Arguments for the reduction included that the 2000 worker limit is arbitrary, does not give any indication of financial viability and discriminates against many businesses.

Other stakeholders, including unions, an employer and allied health professionals, strongly supported the retention of the 2000 worker limit as they believed any reduction would result in:

- large employers leaving the WorkCover Queensland pool meaning the remaining employers would have to fund any reduction in premium income for the scheme; and
- smaller companies which may not have the necessary resources to manage and/or fund self-insurance, claims and rehabilitation becoming self-insurers.

Claims management capability

At present, self-insurers are required to manage claims in-house with the exception of group self-insurers who are permitted to outsource their claims management function.

[1] Under the Act the number of full-time workers is calculated by calculating the total number of ordinary time hours worked by the workers employed during a continuous 6 month period in the 1 year immediately before the application is given to the Authority and by dividing the number of hours by 910.

Many self-insurers regard claims management outsourcing as an efficient alternative to internal claims management as the use of specialist claims managers in insurance companies for handling claims on behalf of the self-insurer is seen as streamlining relevant administrative functions.

There are concerns that multi-state employers may centralise their claims management in an effort to reduce operation costs and streamline processes. This is a concern because it may lead to a reduced service provision to injured workers who cannot physically access claims management staff.

The discussion paper canvassed the option of allowing all claims managers to outsource their claims management function to a Queensland-based provider. The option of outsourcing claims management received overwhelming support from stakeholders. Some of the benefits identified include:

- third party independence would be achieved;
- self-insurers would have access to expertise in claims and injury management – this is particularly important for self-insurers that do not manage many claims;
- allowing self-insurers to focus on their core business; and
- allowing self-insurers to organise claims management in a way that meets their business needs.

Some stakeholders indicated that even greater benefits could be achieved for self-insurers if they were able to centralise their claims management (i.e. that the claims management services could be based interstate). The Steering Committee had significant reservations about this option and is supported by a number of stakeholder submissions which emphasise the importance of claims managers being in close proximity to injured workers. Furthermore, one stakeholder (a claims manager) identified the benefits to Queensland as a whole of retaining employment and business opportunities within the State – these are key priorities of the Government.

Several stakeholders supported self-insurers outsourcing their claims management function provided that the claims managers were accredited.

<u>OHS performance</u>

As the self-insurer is both the insurer and employer there is an expectation that they should be able to demonstrate established occupational health and safety systems that will minimise their claims liability exposure and risk of injury to workers. The rate at which compensation claims are generated in self-insuring companies directly impacts on the capacity of employers to fund and manage claims as well as on the wellbeing of the workers concerned.

Applicants for self-insurance are required to demonstrate their occupational health and safety performance to be eligible for a self-insurance licence (section 71 and 72 of the Act). Satisfactory performance must also be demonstrated against the audit criteria prior to licence renewal. Predetermined performance standards must be met and an audit against these standards maximises the potential for these employers to focus on both claims management and prevention.

Self-insurers are currently audited against the 'TRI-SAFE Management System Audit', which measures the effectiveness of management systems by examining workplace outcomes.

Concern has been raised that these occupational health and safety obligations impose higher obligations on self-insurers than compared to other employers.

Renewal periods

Under the Act, licences which allow employers to self-insure are valid for a maximum of two years. Q-COMP annually carries out assessments of self-insurers in order to assess licence holders as a part of regular monitoring to assess compliance with the conditions of the licence. Prior to renewal biennially, a more detailed assessment is undertaken to determine whether the applicant meets the legislative criteria for self-insurance.

Concerns have been raised by self-insurers that a two-year licence period does not allow them to make long term business decisions. Employers insured under the WorkCover Queensland scheme are not subject to conditions for continued insurance and it has therefore been argued that inconsistent requirements apply between the two groups of employers.

The discussion paper proposed an option whereby a self-insurer would have an initial licence period of two years, with subsequent licence renewal periods being up to four years.

Stakeholders overwhelmingly supported this option in their submissions and cited reduced administrative costs and more time to implement quality claims and injury management programmes as potential benefits of pursuing this option.

Some stakeholders sought an even longer licensing period or the provision of an ongoing licence. The Steering Committee believed, however, that it is important to strike a balance between relieving the administrative burden on self-insurers of frequent renewal requirements and ensuring that self-insurers continue to meet the high standards that are required of them to qualify for a licence.

Only one stakeholder did not support an extension of the self-insurance licensing period on the grounds that Q-COMP needs to monitor performance on a regular basis. If licence periods were to be extended to four years, Q-COMP would continue to conduct comprehensive assessments of self-insurers' performance at renewal time and monitor their performance on an annual basis. Q-COMP's annual performance monitoring requirements for self-insurers include:

- reviewing the controlled entities and ensuring all are covered by the licence;
- reviewing self-insurers annual reports to ensure workers' compensation liabilities are appropriately provisioned;
- assessing the valuation of the estimated claims liability submitted in the self-insurer's actuarial report:
    - is reasonable, if over $5 million,
    - complies with Actuaries of Australia Professional Standard 300,
    - complies with AASB1023/ASS26, and
    - complies with Section 84(6) of the *WC&R Act*;
- assessing net tangible assets of self-insurers; and
- ensuring adequate reinsurance cover is in place.

Public Benefit Test consultation

During consultation regarding the preliminary findings of the PBT, the unions and representatives of the legal profession expressed its opposition to any relaxation of the self-insurance criteria on the basis that an inherent conflict of interest exists because the insurer is

also an insured. These stakeholders believe that this results in a more aggressive claims management approach.

OPTIONS/SUMMARY OF PBT ANALYSIS

In addition to the status quo, the following alternatives were assessed in the PBT:

- No restrictions;
- Prudential and OHS system requirements; and
- Reducing thresholds for self-insurance.

No restrictions

The alternative state of no restrictions to self-insurance would enable all employers to self-insure for workers' compensation.

The PBT identified the following impacts:

- Increased number of self-insurers;
- Increased risk of employer default;
- Increased costs to Government resulting from insolvency of self-insurers and increased monitoring and regulatory activities;
- Potential premium increases due to risk pooling and adverse selection.

The PBT determined that the removal of all self-insurance restrictions will not impact on competition.

The PBT concluded that this option is inconsistent with the government's objectives for workers' compensation and is likely to result in an inefficient level of self-insurance.

Prudential and OHS system requirements

This alternative state would retain the current prudential and occupational health and safety system requirements but would remove the restrictions relating to minimum number of Queensland employees, net tangible assets and restrictions to outsourcing of claims management.

The PBT found that the removal of the net tangible asset and employee number thresholds may result in an increase in the number of self-insurers. However, the prudential requirements would prevent large numbers of small employers from seeking a licence.

While the removal of these requirements could bring Queensland's self-insurance arrangements more in line with those in other jurisdictions, the self-insurance arrangements across the jurisdictions vary to a significant degree. A reduction in costs for business operating across multiple jurisdictions may be achieved where consistency is achieved with other jurisdiction's self-insurance criteria.

Other impacts identified by the PBT included increased regulatory costs for Q-COMP resulting from an increase in self-insurers and possible increases to WorkCover Queensland premiums if a significant number of employers became self-insured.

Outsourcing of claims management would enable self-insurers to negotiate their own terms with the claims managers to ensure that an appropriate balance was struck between outcomes and efficiency. Outsourcing of claims management has the capacity to improve claims

administration and injury management outcomes by taking advantage of the services of companies with specialist skills in these areas. It may be a more effective option for self-insurers who have few claims and therefore whose officers have few opportunities to build experience in managing claims or facilitating return to work arrangements.

One of the key issues raised by self-insurers in response to the PBT was the requirement for self-insurers to undertake independent occupational health and safety audits. In relation to the current occupational health and safety audit requirements, the PBT determined that the audit requirement is a reasonable due diligence measure and that it is unlikely to significantly impact on the ability of a self-insurer to compete with employers in their relevant markets.

The PBT concluded that while there may be some reduction in costs for business from this alternative state, the costs savings are likely to be small.

Reducing the thresholds for self-insurance

The PBT assessed the alternative state of maintaining the current suite of conditions for self-insurance but with reduced threshold values. This included examining proposals to facilitate self-insurance options for multi-state employers. In addition, this alternative state assessed the competition impacts of allowing four year renewal periods for self-insurers, and allowing some flexibility to issue a provisional licence upon renewal where the self-insurer's net tangible assets fall below the current threshold and the self-insurer can demonstrate a sound strategy to achieve the required net tangible asset level.

The PBT assessed the impacts of this alternative state to be similar to the previous alternative state. However, it did consider this option to be less efficient than removing the non-prudential criteria.

In relation to providing greater flexibility into the licensing arrangements, the PBT found that this may create some inequity for those businesses that would otherwise qualify for self-insurance if not for the net tangible asset threshold. However, this needs to be balanced with the requirement proposed by the Department of Industrial Relations that in order for the licence to be renewed under this condition, the self-insurer must demonstrate a sound strategy to regain the required net tangible asset position in the short-term. The PBT determined that "the impact of competition between firms that self-insure and those that can't [sic] is an empirical question" and that it would be unusual for such a small part of a business's cost structure to be a major influence.

The PBT concluded that the optimum thresholds would:

- minimise risk of default;
- minimise risk of inadequate service being provided to injured employees;
- incorporate measures to assess overall capacity including recognising diversification across jurisdictions; and
- encourage efficient pricing structures by WorkCover Queensland.

Net Benefit Assessment

The PBT found that there is a case for reform in self-insurance arrangements, particularly in relation to facilitating recognition of self-insurance arrangements in other jurisdictions for employers operating across several jurisdictions. However, the PBT determined that a conservative approach to self-insurance reform is required given that liability for workers' compensation lies with the WorkCover Queensland scheme in the event of self-insurer

failure. The PBT concluded that the greatest gain could be achieved through relaxing those requirements that are relatively expensive to comply with without increasing the risks that arise from self-insurer insolvency. The PBT concluded that the Steering Committee's proposal to allow licensing periods of up to four years and allowing net tangible asset values to fluctuate during the licensing period would improve the flexibility of the arrangements without significantly impacting on competition.

CONCLUSION

The Review Committee supports the findings of the PBT and therefore recommends that a conservative approach be taken to reforming the self-insurance licensing criteria. Based on the findings of the Public Benefit, the Review Committee recommends that the current suite of conditions be retained, but that some flexibility be introduced into the self-insurance licensing arrangements.

Net tangible assets

In the Consultation Report, the Steering Committee recommended that the Q-COMP Board be permitted to issue provisional licences to self-insurers who are within 10% (or $10 million) of the net tangible asset threshold. The Review Committee supports this recommendation.

This recommendation will require an amendment to the *Workers' Compensation and Rehabilitation Act 2003.* It is proposed to commence this amendment on assent of the amending legislation.

Multi-state employers

The Review Committee is of the opinion that self-insurance arrangements catering for multi-state employers would be beneficial in the national interest. Given the significant variance in self-insurance arrangements between jurisdictions, it is not possible to achieve national consistency without agreement from all jurisdictions. In the absence of nationally consistent arrangements, the Review Committee believes that an approach that recognises self-insurance in other jurisdictions as a criteria for self-insurance in Queensland to be more appropriate. Given that some States criteria are substantially lower than Queensland's criteria, it is recommended that the Department of Industrial Relations develop specific threshold requirements for multi-state employers in consultation with Queensland Treasury and the Department of the Premier and Cabinet.

Claims management

The Steering Committee recommended that self-insurers be allowed to outsource their claims management function to Queensland-based claims management providers. This recommendation was supported by the PBT.

In its consultation report, the Steering Committee recommended that systems should be put in place to ensure that the services provided by claims managers are of an adequate standard. The development of a Code of Practice under the Act for claims management applying to all insurers would establish 'benchmarks'. Self-insurers would be required to ensure their claims managers met these benchmarks, regardless of whether the claims management function was outsourced or delivered in-house.

The Review Committee agrees that there are benefits for self-insurers and workers from allowing outsourcing to specialist claims managers, provided workers have ready access to

the claims managers. The Review Committee therefore supports the recommendations of the Steering Committee that:

- self-insurers be given the option of outsourcing their claims management function to a provider with Queensland-based claims managers; and
- a Code of Practice be developed to regulate the standard of claims management services.

Legislative amendment is required to enable self-insurers to outsource their claims management function. It is proposed to commence this amendment on assent of the amending legislation.

Licence renewal periods

The Review Committee recommends that the Act be amended to allow self-insurance licences to be issued for periods up to four years on renewal on the basis that the majority of stakeholders support an extension of the self-insurance licensing period to four years and it eases the administrative costs associated with renewal for self-insurers,. It is important to note that the Q-COMP Board would continue to have the discretion to issue licences for shorter periods if it has concerns about the performance of a particular self-insurer. It is proposed to commence this amendment on assent of the amending legislation.

Administrative matters

The Consultation Report prepared by the Steering Committee also made recommendations relating to the frequency of occupational health and safety audits and the occupational health and safety audit system used by the Department of Industrial Relations. As these issues were of an administrative nature and not anti-competitive, they were not assessed through the PBT. The Steering Committee recommended:

- that Workplace Health and Safety Queensland update the Performance Criteria and Guidelines for Workers' Compensation Self-Insurers to reflect AS/NZS 4801;
- that independent third party occupational health and safety audits be undertaken at the time of licence renewal; and
- that self-insurers undertake self-audits (using the same audit system used for external audits) on a two-yearly basis and report the results to Workplace Health and Safety Queensland and Q-COMP.

The Review Committee supports these recommendations.

No legislative amendments are required to implement these recommendations.

RECOMMENDATIONS

The Review Committee recommends:

- That the current suite of self-insurance criteria be retained.
- That sections 71 and 72 of the Act be amended to enable the Q-COMP Board to issue a provisional licence to existing self-insurers whose net tangible assets fall below the required level but are within 10% and can demonstrate that they have a strategy to improve their financial position in the short-term.
- That the Department of Industrial Relations investigate the development of specific threshold requirements for multi-state employers in consultation with Queensland Treasury and the Department of the Premier and Cabinet.

- That self-insurers be given the option of outsourcing their claims management function to a provider with Queensland-based claims managers.
- That a Code of Practice be developed to regulate the standard of claims management services.
- That section 78 of the Act be amended to allow self-insurance licences to be issued for periods up to 4 years.
- That Workplace Health and Safety Queensland update the Performance Criteria and Guidelines for Workers' Compensation Self-Insurers to reflect AS/NZS 4801.
- That independent third party occupational health and safety audits be undertaken at the time of licence renewal.
- That self-insurers with a four year licence undertake self-audits (using the same audit system used for external audits) two years after licence renewal and report the results to Workplace Health and Safety Queensland and Q-COMP.

ALLIED HEALTH PROFESSIONALS

ISSUES

Sections 210(2) and 222(3) of the Act enable Q-COMP to impose conditions on the provision of medical treatment and rehabilitation services under the Table of Costs.

The Table of Costs is developed by Q-COMP to establish fees and outline conditions for the provision of services by medical practitioners and allied health professionals to injured workers in Queensland.

The NCP Review conducted in 2000 acknowledged that while the Table of Costs imposes a restriction on the market, the benefits to the community outweighed the costs and therefore its continuation was supported. However, it was recommended that the conditions applied to the use of allied health professionals be the subject of a further review.

The main conditions imposed on treatment and rehabilitation services under the Table of Costs are:

- the requirement for a referral by a medical practitioner; and
- prior approval by the insurer before services are provided with exceptions in certain circumstances where a limited number of treatments or services are allowed without prior approval by the insurer (eg. Chiropractic, Occupational Therapy, Osteopathy and Physiotherapy).

The requirement for a referral by a medical practitioner for treatment

The Table of Costs requires all allied health professionals to have a referral from a medical practitioner as a prerequisite to treating or providing services to an injured worker. The only exceptions are the Tables of Costs for Occupational Therapy, Physiotherapy, Psychology and Speech Pathology where an accredited workplace may refer an injured worker for an initial assessment and report, for example, to implement early workplace based programs.

This requirement in the Table of Costs is based on a medically driven model consistent with Queensland Health practices which gives the medical practitioner primary care status. Under this model, it is the medical practitioner's role to issue medical certificates and to provide case management advice and direction on rehabilitation.

The referral requirement was introduced so that all treatment and rehabilitation for a worker's injury would be consistent with the medical diagnosis and could be monitored medically. It also minimises the risk of conflicting treatments being provided by different practitioners.

In some jurisdictions, injured workers are able to self-refer for physiotherapy, chiropractic and osteopathic services. However, verification of the nature of the injury, causation and appropriate treatment is still required to determine liability for the claim. It is general practice to require this verification from a medical practitioner.

Some of the potential implications of removing the referral requirement include:

- difficulties in coordinating the medical management of a claim so that the worker's medical practitioner is aware and supportive of the rehabilitation strategies;

- treatment for non-compensable injury or non-compensable elements of an injury for which the insurer is not liable;
- litigation which may ensue where inappropriate medical treatment is undertaken that is not supported by the worker's treating medical practitioner;
- workers may elect to undergo inappropriate, inconsistent and possibly conflicting treatment modalities.

In response to the discussion paper the majority of stakeholders, including allied health professionals, employers, unions and insurers, supported the retention of this requirement on the basis that it is essential to achieving early, accurate diagnoses and appropriately coordinated treatment.

The Chiropractors Association of Australia (CAA) was the only stakeholder to oppose the retention of the referral requirement. The CAA raised concerns that chiropractors are disadvantaged by the referral requirement due to a perceived bias against the chiropractic profession by the medical profession. The CAA's submission argued that chiropractors' training enables them to determine when an injury falls outside of their area of expertise, therefore allaying any concerns that inappropriate treatment would be provided to injured workers.

Prior approval by the insurer before treatment commences

The Table of Costs allows for payment of up to ten sessions for professional treatment by some allied health professionals, including physiotherapy, osteopathy or chiropractic and payment of up to two sessions of critical incident counselling. The Table of Costs stipulates that an insurer is not liable for paying for consultations exceeding ten sessions unless the allied health professional has gained prior approval from the insurer.

This requirement allows the insurer to monitor the cost and to coordinate with the treating medical practitioner in relation to the need for on-going treatment and continuing liability for treatment. This also allows the insurer to verify that the treatment is relevant to the component of the injury for which liability has been accepted.

The Table of Costs does not impose limits on the type of treatment recommended to an injured worker by a medical practitioner. However, the treatment recommended should demonstrate a positive impact on, and contribute towards, the worker's recovery and ability to resume an appropriate level of work duties.

In response to the discussion paper, the majority of stakeholders viewed this requirement as essential to ensuring appropriate and effective treatment is provided to injured workers under the Act. It also avoids the potential for overcharging and over-servicing where treatment undertaken is inappropriate, unwarranted or unrelated to the compensable workplace injury.

OPTIONS/SUMMARY OF PBT ANALYSIS

The PBT determined that it is necessary to establish "gatekeeper" measures to address the moral hazard issue that arises because employees are the beneficiary under the workers' compensation policy, rather than the insured.

The PBT concluded that the impact of the restriction on competition is in the health services market and are unlikely to have a material impact on competition in that market. Further, the

PBT found that these restrictions are consistent with similar controls in health insurance markets.

Net benefit assessment
The PBT found that the public benefit of controlling costs in a manner consistent with good rehabilitation and return to work outcomes outweighs any impacts on competition between different types of health service providers.

CONCLUSION

The Review Committee supports the findings of the PBT. It is acknowledged that removing the referral requirement may provide workers with a greater choice of services as they could refer themselves for their choice of treatment. However, without the medical practitioner's referral, reliance would necessarily be placed on the worker's ability to self-diagnose and determine an appropriate course of treatment. In addition, the requirement for a referral does not prevent workers from requesting a referral for a specific type of treatment from medical practitioners. The strategies currently in place for all allied health professional service providers through the requirements in the Table of Costs have been instrumental in containing medical and rehabilitation costs, while maintaining quality of services and a return to work rate comparable with other jurisdictions.

The Review Committee considers it appropriate for a medical practitioner to perform the role of "gatekeeper". The model is medically driven and is consistent with Queensland Health practices.

In addition, the Review Committee considers it is reasonable for the insurer to be involved in making decisions about treatments for which the insurer is liable for payment. As all allied health professionals are subject to the same conditions, this requirement does not impede competition amongst service providers. This requirement provides significant benefits to the community by ensuring that workers receive appropriate treatment for work-related injuries and employers' premiums are not adversely affected by over-servicing.

RECOMMENDATIONS

The Review Committee recommends:

- that the requirement for a referral by a medical practitioner for treatment by an allied health professional be retained; and
- that the requirement for approval to be obtained from the insurer prior to commencing further treatment exceeding ten consultations be retained.

WORKPLACE REHABILITATION REQUIREMENTS

ISSUES

The Report of the 2000 NCP Review of Queensland's workers' compensation legislation recommended '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'.

The PBT conducted in July 2005 considered whether any outstanding competition issues remained in the area of workplace rehabilitation and found that only two issues have potential competition implications:

- the requirement that a workplace with more than 30 workers has a workplace rehabilitation coordinator; and
- an employment guarantee for injured workers for a period of six months.

The restrictions were defined as regulating an input mix (in the case of the rehabilitation coordinator) or reducing the flexibility of a firm to adjust its inputs (in the case of security of employment provisions). While these two restrictions may have competitive implications, the extent to which these restrictions place some firms at a competitive disadvantage and the extent to which these are even restrictions in the workers' compensation insurance market are questionable.

Of the two, the size related requirement of engaging rehabilitation coordinators has the greater potential to bring a cost disadvantage to firms with more than 30 employees in comparison to those with less than 30 employees. However, the existence of such a cost disadvantage is certainly not clear. All firms, including small firms will need to devote time to coordinating rehabilitation activities, whether this is done in a specialist way or indirectly through the diversion of existing staff.

In terms of the restriction on employment security, this is not seen as a discriminatory policy as it applies to all employers but it is acknowledged that it is likely to have a greater impact on small business where each injured worker constitutes a greater share the workforce.

The restrictions have traditionally been in place to ensure rapid and successful rehabilitation of injured employees thereby contributing to a reduction in lost productivity and improving the emotional and psychological wellbeing of the injured worker.

To address the 2000 NCP Review recommendation, a committee of officers from the Department of Industrial Relations, Q-COMP, and WorkCover Queensland with expertise in rehabilitation was established to develop options for achieving improved return to work outcomes for workers and employers. These options were presented to industry in the discussion paper released in March 2005 and feedback invited.

The key strategies for improving workplace rehabilitation and return to work outcomes canvassed in the discussion paper included:

- amending rehabilitation terminology and definitions to place greater emphasis on return to work outcomes;
- encouraging early reporting and intervention of injuries;
- clearly assigning responsibility for preparing rehabilitation and return to work plans;
- specifying the core functions of rehabilitation and return to work coordinators in the *Workers' Compensation and Rehabilitation Regulation 2003*;
- increasing the threshold and introducing a risk-based methodology to determine which employers are required to engage a rehabilitation coordinator; and
- extending the period of time an injured workers' position is held open for them from 6 to 12 months.

As a result of consultation on the options included in the discussion paper, a number of stakeholders noted the arbitrary nature of the current requirement for every workplace with more than 30 workers to have a rehabilitation coordinator and rehabilitation policy and procedures. The majority supported the introduction of new criteria for determining which employers should engage rehabilitation and return to work coordinators and develop workplace rehabilitation policy and procedures as follows:

- employers with an annual payroll of more than $4.9 million indexed annually to any changes in the Queensland Ordinary Time Earnings (QOTE); and
- employers in high-risk industries (e.g. the building and construction industry or transport and storage industry) or those with poor occupational health and safety records/comparatively long claim durations, regardless of whether their payroll exceeds $4.9 million.

There was also strong support among stakeholders for allowing the role of rehabilitation and return to work coordinator to be outsourced by employers. Benefits identified include:

- access to greater rehabilitation expertise (particularly for employers with infrequent claims);
- reduction in rehabilitation coordinator training costs for employers; and
- reduction in 'downtime' for those staff who currently act as rehabilitation coordinators in addition to other duties.

Those who opposed outsourcing had concerns about accreditation and monitoring, and the possibility of outsourced rehabilitation and return to work coordinators making commercially-driven decisions.

Stakeholders were clearly divided on the option proposed in the discussion paper to extend employment security from 6 to 12 months. The majority of stakeholders did however agree that the majority of injured workers are able to return to work within the first six months of an injury. Some stakeholders suggested that the six month security of employment provision contributes to Queensland's below average return to work rates and that extending the period of employment security may contribute to an improvement in this area.

It is also important to note that under section 95 of the *Industrial Relations Act 1999*, employees who have been dismissed from a position because they have incurred an injury which makes them unfit for employment are entitled to reinstatement to that position within 12 months of the injury if they recover. Extending security of employment provisions under section 93 would give greater certainty to workers and employers about employment security, and alleviate costly and time consuming dismissal and reinstatement proceedings if a worker is able to return to their position within 12 months following an injury.

OPTIONS/SUMMARY OF PBT ANALYSIS

The PBT considered a number of alternatives to the two competitive restrictions identified in the area of workplace rehabilitation:

- regulate a duty to provide rehabilitation services;
- outsourcing of rehabilitation services;
- increasing the threshold;
- removing employment security; and
- extending employment security to 12 months.

The workplace rehabilitation arrangements in other jurisdictions were also considered as part of the review. Currently, New South Wales, Victoria, and Tasmania have provisions relating to the appointment of a return to work or rehabilitation coordinator although the thresholds vary considerably from the Queensland position. All jurisdictions with the exception of South Australia, Western Australia, and the Northern Territory have requirements relating to the development of return to work or rehabilitation policies, procedures, or programs in the workplace.

Queensland's current six month security of employment provision is inconsistent with the majority of other Australian jurisdictions. Only New South Wales and the Territories do not guarantee employment in the pre-injury position for up to 12 months (Tasmania, Victoria, and Western Australia guarantee employment for 12 months; South Australia guarantees employment indefinitely or for 12 months if the employer has less than 10 workers). A move to 12 months security of employment would bring Queensland into line with the majority of States.

Regulate a duty to provide rehabilitation services

This option proposes that the method of regulation be changed to an outcomes rather than an input based regulation. The PBT suggested that this would broaden the regulation of rehabilitation services to all employers but in a less prescriptive manner. For many firms it would involve no additional cost as it reflects the time that existing staff spend on rehabilitation. It was recognised, however, that this option would have significant costs associated with monitoring and would be likely to result in an increase in the variability of rehabilitation outcomes.

Outsourcing of rehabilitation services

This option would allow employers to purchase the services of a rehabilitation coordinator on an as needs basis rather than providing them in-house. The PBT found that under this option rehabilitation outcomes are likely to improve through greater knowledge and learning of specialist providers. Injured workers would also be likely to benefit from greater access to specialist rehabilitation advice. Costs would be unlikely to increase for employers as they would assess whether outsourcing produces a net gain to the firm.

Rehabilitation professionals indicated that superior outcomes could be delivered more efficiently by trained professionals rather than by full time employees dealing with rehabilitation issues on an ad hoc basis.

The PBT concluded that this option is likely to improve the efficiency of the current regulation and result in improved rehabilitation outcomes.

Increasing the threshold for appointing coordinators
This option would provide for an increase in the threshold before a rehabilitation coordinator must be appointed. The PBT found that this option would alleviate the impact on competition but may impose costs without offsetting benefits in low risk injuries and conversely, result in worse rehabilitation outcomes in high risk injuries. The PBT concluded that there was significant difficulty in determining the optimal level for the threshold and adjusting it through time.

Remove employment security
This option would remove provisions guaranteeing injured workers a certain period of time in which to return to their pre-injury position. The PBT identified that removing these provisions is likely to result in an increase in compensation by employees to compensation for their increase in risk. However, the effects are likely to be small given the evidence of the size of compensation wage differentials. It would increase the difficulty of return to work and therefore is likely to increase the duration and cost of workplace injury. The PBT concluded that this option would be likely to result in higher social costs of workplace injury and possibly have some workplace productivity impacts, but that for the most part, this is not a competition issue.

Extend employment security to 12 months
This option would extend the period of time an injured worker's position is held open for them following injury to 12 months. The PBT found that this option would reduce an employee's level of compensation for risk of injury but may impose some costs on employers to the extent that temporary staff impose higher wage and hiring costs on firms. No stakeholder comments were received in response to this proposal. The PBT concluded that the proposed changes would primarily impact labour markets rather than product markets and therefore are not regarded as affecting competition.

Net benefit assessment
The PBT concluded that the restrictions on competition relating to the appointment of rehabilitation coordinators are slight in nature but that some reduction in regulatory costs may be achieved through amending thresholds and input regulation. Relaxing the restriction on outsourcing would improve the efficiency of the current regulation and result in improved rehabilitation outcomes. The employment security provision was not regarded as affecting competition.

CONCLUSION

The Review Committee endorses the PBT findings with regard to the appointment of rehabilitation coordinators not being a significant competition issue and employment security for injured workers not affecting competition.

It is noted in relation to the appointment of rehabilitation coordinators that it is unclear to what extent these provisions prevent competition between businesses insofar that there may be significant cost benefits for employers to have a rehabilitation coordinator. However, in recognition of the PBT finding that reduced regulatory costs may result from amendments to thresholds and input regulation, the Review Committee recommends that employers be given

the option of outsourcing the role of rehabilitation coordinator and the threshold for appointing these coordinators be raised. The option canvassed in the discussion paper to introduce a threshold affecting employers with in excess of $4.9 million in wages annually and in high-risk industries seems appropriate and consistent with the PBT findings. Legislative amendments will be required to give effect to these changes.

As per the recommendation of the 2000 NCP Review, the Consultation Report resulting from the discussion paper released in March recommended the adoption of a range of strategies to improve rehabilitation and return to work outcomes. As these issues were of an administrative nature and not anti-competitive, they were not assessed through the PBT. The administrative changes recommended by the Steering Committee included:

- that the definition of rehabilitation be amended to have a greater emphasis on return to work.
- that rehabilitation terminology be clearly defined in the Act, Regulation, and administrative guidelines.
- in relation to early intervention and injury reporting requirements, that:
    - WorkCover continue to investigate options which would make the lodgement of injury reports more convenient for employers;
    - a review be undertaken of the written notice required under section 133 and 133A to ensure it includes all essential information required by WorkCover;
    - compliance with section 133 be actively monitored;
    - injured workers and employers be made aware of the potential benefits of early intervention, including guidance on easy and effective early intervention strategies; and
    - employers be required to give insurers evidence 'in writing' under section 228(3) of the Act that suitable duties are not practicable.
- in relation to rehabilitation case management plans, that:
    - 'rehabilitation plans' be renamed 'rehabilitation and return to work plans';
    - insurers have the ultimate responsibility for co-ordinating the development and maintenance of a rehabilitation and return to work plan in consultation with the injured worker, the employer, treating practitioners, and any other relevant stakeholders;
    - employers have the ultimate responsibility for the development of the suitable duties component of the rehabilitation and return to work plan in consultation with the worker, insurer, medical practitioner, and other relevant stakeholders; and
    - the Performance Standards and Benchmarks for Insurers include a requirement for insurers to develop a rehabilitation and return to work plan for each accepted time lost claim greater than two weeks within 10 business days of the claim acceptance and that performance against the Standard/Benchmark be monitored by Q-COMP.
- in relation to the role of rehabilitation coordinator, that:
    - the title of rehabilitation coordinator be changed to rehabilitation and return to work coordinator;
    - core functions of rehabilitation and return to work coordinators be included in the regulation;
    - accreditation of workplace rehabilitation training providers and courses be transitioned to the VET sector.

- that employers and insurers have access to education and advisory services regarding rehabilitation and return to work matters, particularly any changes that are implemented as a result of this review.

The Review Committee supports these recommendations. Minor amendments to the Act and *Workers' Compensation and Rehabilitation Regulation 2003*, and changes to administrative policies will be required to give effect to these recommendations.

The Steering Committee also made a recommendation that security of employment provisions in the *Industrial Relations Act 1999* should be extended from 6 to 12 months. This was based on policy grounds that extending the period of time an injured workers' position is held open for them following injury may contribute to improved return to work outcomes and clarifies the existing legislative framework. As the PBT process determined that the employment security provisions were not a competition issue, the Review Committee also supports adopting this recommendation.

RECOMMENDATIONS

The Review Committee recommends:

- that employers be permitted to outsource the position of rehabilitation coordinator;
- that the current requirement for a workplace with more than 30 workers to have a rehabilitation coordinator and workplace rehabilitation policies and procedures be removed, and be replaced by the following criteria –

  (c) employers with an annual payroll of more than $4.9 million indexed annually to any changes in the Queensland Ordinary Time Earnings (QOTE), and

  (d) employers in high-risk industries (e.g. the building and construction industry or transport and storage industry) or those with poor occupational health and safety records/comparatively long claim durations, regardless of whether their payroll exceeds $4.9 million; and

- that the Department of Industrial Relations develop a methodology to be included in the Regulation for determining which employers are required to engage a rehabilitation and return to work coordinator based on the above criteria, in consultation with WorkCover Queensland and Q-COMP.
- that the recommendations of the Consultation Report relating to workplace rehabilitation administrative matters be adopted including a recommendation to extend employment security provisions from six to twelve months.

APPENDIX A

Consultation Report

Review of Certain Aspects of the *Workers' Compensation and Rehabilitation Act 2003*

June 2005

Queensland **the Smart State**

Queensland Government
Department of Industrial Relations

Executive Summary and Recommendations

The purpose of this report is to make recommendations to the Minister for Employment, Training, and Industrial Relations resulting from consultation during the review of certain aspects of the *Workers' Compensation and Rehabilitation Act 2003*. The review covered the following aspects of the workers' compensation scheme:

- the self-insurance licensing criteria;
- the use of allied health professionals;
- exclusive claims management by WorkCover Queensland; and
- workplace rehabilitation and return-to-work outcomes.

The Steering Committee consisted of officers from the Department of Industrial Relations, WorkCover Queensland, and Q-COMP. WorkCover Queensland did not participate in making decisions relating to the self-insurance licensing criteria.

Thirty-four submissions were received in response to a discussion paper, released between 1 and 31 March 2005, canvassing options for reform and identifying potential costs and benefits of increasing competition in the areas under review. In addition to views expressed in stakeholder submissions, when forming its recommendations, the Steering Committee also took into consideration the strong performance of the Queensland workers' compensation scheme, moves to achieve national consistency in workers' compensation where possible, and the importance of ensuring that the objectives of the Act are not compromised by any changes to remove restrictions on competition.

The Steering Committee has recommended:

Self-insurance licensing criteria

17. That the Q-COMP Board be given the power to issue a provisional licence to existing self-insurers whose net tangible assets fall below the required level but are within 10% and can demonstrate that they have a strategy to improve their financial position in the short-term.

18. That the current arrangements for the provision of a bank guarantee or cash deposit are retained.

19. That the current levels of reinsurance be retained.

20. That the minimum number of employees required to qualify for a self-insurance licence remains at 2000 full-time workers.

21. That the requirement for employers to be fit and proper to self-insure remain unchanged.

22. That the requirement for a self-insurance licence to cover all of the self-insurer's Queensland workers be retained.

23. That section 78 of the Act be amended to allow self-insurance licences to be issued for periods up to 4 years.

24. That Workplace Health and Safety Queensland update the Performance Criteria and Guidelines for Workers' Compensation Self-Insurers to reflect AS/NZS 4801.

25. That independent third party occupational health and safety audits be undertaken at the time of licence renewal.

26. That self-insurers with a four year licence undertake self-audits (using the same audit system used for external audits) two years after licence renewal and report the results to Workplace Health and Safety Queensland and Q-COMP.

27. That self-insurers be given the option of outsourcing their claims management function to a provider with Queensland-based claims managers.

28. That a Code of Practice be developed to regulate the standard of claims management services.

Services by Allied Health Professionals

29. That the requirement for a referral by a medical practitioner for treatment by an allied health professional be retained.

30. That the requirement for approval to be obtained from the insurer prior to commencing further treatment exceeding ten consultations be retained.

Exclusive Claims Management by WorkCover Queensland

31. That WorkCover Queensland retain its exclusive claims management role.

Workplace Rehabilitation Requirements

32. That the definition of rehabilitation be amended to have a greater emphasis on return to work.

33. That rehabilitation terminology be clearly defined in the Act, Regulation, and administrative guidelines.

34. In relation to early intervention and injury reporting requirements, it is recommended that:
    - WorkCover continue to investigate options which would make the lodgement of injury reports more convenient for employers;
    - a review be undertaken of the written notice required under section 133 and 133A to ensure it includes all essential information required by WorkCover;
    - compliance with section 133 be actively monitored;
    - injured workers and employers be made aware of the potential benefits of early intervention, including guidance on easy and effective early intervention strategies; and
    - employers be required to give insurers evidence 'in writing' under section 228(3) of the Act that suitable duties are not practicable.

35. In relation to rehabilitation case management plans, it is recommended that:
    - 'rehabilitation plans' be renamed 'rehabilitation and return to work plans';
    - insurers have the ultimate responsibility for co-ordinating the development and maintenance of a rehabilitation and return to work plan in consultation with the

injured worker, the employer, treating practitioners, and any other relevant stakeholders;

- employers have the ultimate responsibility for the development of the suitable duties component of the rehabilitation and return to work plan in consultation with the worker, insurer, medical practitioner, and other relevant stakeholders; and
- the Performance Standards and Benchmarks for Insurers include a requirement for insurers to develop a rehabilitation and return to work plan for each accepted time lost claim greater than two weeks within 10 business days of the claim acceptance and that performance against the Standard / Benchmark be monitored by Q-COMP.

36. In relation to the role of rehabilitation coordinator, it is recommended that:
    - the title of rehabilitation coordinator be changed to rehabilitation and return to work coordinator;
    - core functions of rehabilitation and return to work coordinators be included in the regulation;
    - the current requirement for a workplace with more than 30 workers to have a rehabilitation coordinator and workplace rehabilitation policies and procedures be removed, and be replaced by the following criteria –
        (a) employers with an annual payroll of more than $4.9 million indexed annually to any changes in the Queensland Ordinary Time Earnings (QOTE), and
        (b) employers in high-risk industries (e.g. the building and construction industry or transport and storage industry) or those with poor occupational health and safety records, regardless of whether their payroll exceeds $4.9 million;
    - the Department of Industrial Relations develop a methodology to be included in the Regulation for determining which employers are required to engage a rehabilitation and return to work coordinator based on the above criteria, in consultation with WorkCover Queensland and Q-COMP;
    - employers be permitted to outsource the position of rehabilitation and return to work coordinator under section 226 of the Act; and
    - accreditation of workplace rehabilitation training providers and courses be transitioned to the VET sector.

37. That security of employment provisions in the *Industrial Relations Act 1999* be extended from 6 to 12 months.

38. That employers and insurers have access to education and advisory services regarding rehabilitation and return to work matters, particularly any changes that are implemented as a result of this review.

Contents

Introduction

The purpose of this report is to make recommendations to the Minister for Employment, Training, and Industrial Relations resulting from consultation during the review of certain aspects of the *Workers' Compensation and Rehabilitation Act 2003* (the Act). The review considered a number of outstanding elements of a National Competition Policy (NCP) Legislation Review of the Queensland worker's compensation legislation conducted in 2000, and covers the following aspects:

- the self-insurance licensing criteria;
- the use of allied health professionals;
- exclusive claims management by WorkCover Queensland; and
- workplace rehabilitation and return-to-work outcomes.

This Review was undertaken by the Department of Industrial Relations, overseen by a Review Steering Committee comprising representatives from the Department of Industrial Relations, WorkCover Queensland, and Q-COMP (scheme regulator). WorkCover Queensland did not participate in making decisions relating to the self-insurance licensing criteria.

A discussion paper highlighting the key issues under review and canvassing options for reform was released for public comment from 1 to 31 March 2005. Identified stakeholders were sent a copy of the discussion paper by direct mail and an advertisement was placed in *The Courier-Mail* on Thursday, 3 March 2005 calling for submissions from interested groups or individuals. Thirty-four submissions from a broad cross-section of the workers' compensation community were received in response (Appendix A includes a list of submissions).

In addition to issues raised by stakeholders, the Steering Committee also took into consideration the performance of Queensland's workers' compensation scheme when forming its recommendations. Queensland, with an average premium rate of 1.43%, continues to lead Australia with the lowest average workers' compensation premium in the nation: South Australia 3.00%; Western Australia 2.25%; New South Wales 2.57%; Tasmania 2.62%; and Victoria 1.99%.[2] The Queensland scheme also has the highest proportion of scheme expenditure going towards direct compensation compared to all other State and Territory schemes and has the lowest disputation rate of all Australian jurisdictions.[3] Not only is this testament to the strength of the fundamentals underpinning the fund, but also contributes to the Queensland Government achieving its Priority of 'maintaining a competitive tax environment for business development and job growth'.

Other key factors which the Steering Committee considered in the preparation of this report include Queensland's commitment to achieve national consistency in workers' compensation where possible, and the importance of ensuring that the objectives of the Act are not compromised by any changes to remove restrictions on competition.

Issues outside the scope of review

A number of stakeholders raised issues which fell outside the scope of this review which is limited to implementing the recommendations of the 2000 NCP Review of Queensland's workers' compensation legislation. The Steering Committee recognises that these are important issues and the Department of Industrial Relations may consider these during any future legislative changes.

[2] 2004-05 premium rates
[3] Workplace Relations' Ministers' Council, 2004, *Comparative Performance Monitoring Report*, p73 & 82.

Self-Insurance Licensing Criteria

Employers are permitted to self-insure in Queensland provided that they meet a number of criteria set by the legislation (Chapter 2, Part 4 of the Act).

The 2000 National Competition Policy Review of the Queensland workers' compensation legislation identified these criteria as potentially restricting competition. Following a Public Benefit Test and consultation with stakeholders, the Review Steering Committee concluded that the self-insurance licensing criteria should be retained for a further three years at which time the full impact of self-insurance on the Queensland workers' compensation market could be better assessed.

As part of the current review of the self-insurance licensing criteria, a number of options for reform were included in the discussion paper for stakeholder comment. Following is an analysis of views expressed in stakeholder submissions in response to the options proposed in the discussion paper and other relevant factors including the desire to achieve national consistency where possible and whether the costs of introducing greater competition outweigh the benefits. The WorkCover Queensland representative on the Steering Committee did not participate in making decisions relating to the self-insurance criteria.

Net tangible assets

At present, self-insurers are required to have $100 million in net tangible assets (section 71(1)(b)). The net tangible asset criterion plays an important role in ensuring that self-insurers have access to substantial capital to cover their outstanding and future claims liability, and provides an indication or assurance of long-term financial viability.

The discussion paper proposed that the Q-COMP Board could be given the flexibility to issue provisional self-insurance licences to existing self-insurers who drop to within 5% of the $100 million level provided the self-insurer could demonstrate that they have a strategy to improve their financial position in the short term. The reasoning behind this proposal was to recognise that the asset holdings of self-insurers will fluctuate but that continuity of insurance is desirable in these situations provided self-insurers still have substantial net tangible assets.

All but one stakeholder supported the move to allow some relaxation of this criterion. Some stakeholders were of the view that an employer's net tangible assets should not be considered during the licensing process, while others argued that greater flexibility was required in the region of 10 to 15%.

The Steering Committee acknowledges that in the current fluid business environment a fluctuation of $5 million in net tangible assets (5% of the required $100 million) is a relatively small amount and does not necessarily provide much more flexibility to self-insurers than the current regime. The Committee therefore recommends that the Q-COMP Board be permitted to issue provisional licences to self-insurers who are within 10% (or $10 million) of the net tangible asset threshold.

Recommendation: That the Q-COMP Board be given the power to issue a provisional licence to existing self-insurers whose net tangible assets fall below the required level but are within 10% and can demonstrate that they have a strategy to improve their financial position in the short-term.

Bank guarantee and cash deposit

The Act currently requires self-insurers to lodge an unconditional bank guarantee or cash deposit with Q-COMP that is the greater of $5 million or 150% of the self-insurer's estimated claims liability (section 71(1)(e)). This requirement exists to protect the scheme from the event of insolvency of self-insurers. In such instances WorkCover Queensland is the insurer of last resort and covers any outstanding claims.

Only two stakeholders sought an amendment to the current arrangements – one favouring a relaxation of the arrangements to 75% of sufficiency and the other recommending an increase to 175% in line with recent moves by the South Australian Government. The Steering Committee considers that the current levels specified for the bank guarantee are adequate and this view is supported by the majority of stakeholder submissions.

Recommendation: That the current arrangements for the provision of a bank guarantee or cash deposit are retained.

Reinsurance cover

The Act requires that an employer has a current policy of reinsurance in order to qualify for a self-insurance licence (section 71(1)(f)). The reinsurance policy must be for an unlimited amount with the self-insurer's liability under the contract not less than $300,000 or more than $1 million. Reinsurance provides protection for a self-insurer against catastrophic or unforeseen events.

Because these levels of reinsurance have remained unchanged since the commencement of the *WorkCover Queensland Act 1996*, the views of stakeholders were sought on whether the levels are still appropriate to protect self-insurers. A number of issues were raised in response including:

- a proposal to cap the amount of reinsurance per policy at $50 million as opposed to an unlimited amount;
- proposals to extend the maximum amount of liability to $1.5 or $2 million;
- a proposal to increase the minimum amount of liability to $500,000; and
- a proposal to remove the maximum amount of liability.

The reasoning behind these proposals was primarily to allow employers greater flexibility in acquiring reinsurance that suited their particular business needs and to make the limits more appealing for reinsurers to take on as a risk, therefore making reinsurance more affordable for employers.

The level of reinsurance is intended to strike a balance between protecting self-insurers from excessive costs of unexpected major disasters while having a minimum limit high enough to ensure that the self-insurer is genuinely self-insured rather than using the reinsurer as an alternative to WorkCover Queensland.

When assessing the adequacy of the level of reinsurance it is important to consider it in relation to the other protections such as the level of bank guarantees required in the scheme. The level of the retention amount for a single event is a maximum of $1 million, which is less than the prudential component of the amount of bank guarantee held for each self-insurer. (The prudential component is the difference between the estimated claims liabilities and the

actual amount of the bank guarantee). The average ratio of bank guarantee to estimated claims liability is 2.5 times and the minimum ratio is 1.5 times.

In addition almost all of the self-insurers in Queensland have substantial net tangible assets in their businesses that far exceed their estimated claims liability. The average ratio is that net tangible assets are 754.3 times greater than estimated claims liability, with the lowest ratio being 15.2 times.

The current reinsurance retention levels per event ensure that self-insurers should be able to afford substantial or catastrophic claims from their workers' compensation provisions on their balance sheet without impacting their net tangible assets or requiring the call up of a bank guarantee. The above ratios indicate an adequate level of protection for self-insurers and the scheme as a whole afforded by reinsurance and bank guarantees.

An additional issue raised by stakeholders in relation to reinsurance was their inability to obtain terrorism cover as part of their reinsurance policy since the events of 11 September 2001. Self-insurers expressed concern that this breached their obligations under section 86(3) of the Act requiring a contract of reinsurance to be for an unlimited amount in excess of the self-insurer's liability. The Steering Committee is of the view that section 86(1)(a) of the Act gives Q-COMP adequate power to approve appropriate reinsurance contracts under section 86(3), taking into consideration insurance market realities at the time the reinsurance is acquired. The Queensland Government has also been party to discussions at the national level to address this issue and is continuing to monitor developments.

Recommendation: That the current levels of reinsurance be retained.

Number of full-time workers

The Act specifies that a self-insurer must have at least 2000 full-time workers employed in Queensland to be eligible for a self-insurance licence (section 71(1)(a)). This provision is intended to be one of several indicators used by the Q-COMP Board to ensure that only large, well-established employers who possess the necessary infrastructure to meet their obligations as a self-insurer are granted a licence.

A large proportion of stakeholders sought a reduction in the minimum number of employees required to obtain a licence; some suggesting that as little as 200 workers would be an appropriate threshold. Arguments for the reduction included that the 2000 worker limit is arbitrary, does not give any indication of financial viability, and discriminates against many businesses.

Other stakeholders, including unions, an employer, and allied health professionals, strongly supported the retention of the 2000 worker limit as they believed any reduction would result in:

- large employers leaving the WorkCover Queensland pool meaning the remaining employers would have to fund any reduction in premium income for the scheme; and
- smaller companies becoming self-insurers which may not have the necessary resources to manage and/or fund self-insurance, claims, and rehabilitation.

The Steering Committee is of the opinion that self-insurance continues to present a fundamental conflict of interest in that employers make decisions about the validity of their own workers' claims and their workers entitlements. However, the Steering Committee

recognises that self-insurance permits the introduction of some competition into the Queensland workers' compensation scheme while still providing adequate protection to the benefits and services provided to injured workers and the interests of employers remaining in the statutory scheme.

Any decision to open the market up for more employers to self-insure must take into account the increased costs associated with monitoring additional insurers and the potential for increased confusion from injured workers and medical professionals about who the relevant insurer for a particular worker is. In addition, one stakeholder mentioned the challenges it had experienced in building relationships with self-insurers because of the large number of contacts they needed to deal with as opposed to employers insured with WorkCover Queensland.

Furthermore, it is almost impossible for small businesses to possess the necessary resources and infrastructure to sustain an effective and efficient self-insurance scheme. Reducing the 2000 minimum worker threshold for all employers therefore creates an environment where competitiveness between large businesses may increase, but that smaller businesses find it increasingly difficult to compete with larger businesses. Small business is a key contributor to Queensland's economy and the Queensland Government is committed to providing a business environment that is conducive to starting and growing small businesses.

Another concern is the potential for WorkCover Queensland as the insurer of last resort to have to bear a self-insurer's liabilities in the event of insolvency. It is for this reason that, in addition to prudential requirements, the 2000 worker threshold is used as an indication of the size, viability, and longevity of an employer applying to be a self-insurer.

The Steering Committee has therefore concluded that it is in the best interests of the Queensland workers' compensation scheme for the minimum worker threshold to remain at 2000. In the Committee's opinion, this ensures satisfactory levels of service are provided to injured workers, that employers remaining in the WorkCover Queensland scheme still have relatively low premiums, and that the largest and most capable employers are given the opportunity to self-insure.

For these reasons, the Steering Committee also recommends not supporting the option canvassed in the discussion paper to waive the minimum 2000 worker threshold where an employer is self-insured in every other Australian jurisdiction in which they operate and meet all other self-insurance licensing criteria. While this option may reduce administrative burdens for multi-state employers and was largely supported by stakeholders, several submissions highlighted how this proposal discriminates against Queensland-based employers who may also fall short of the 2000 worker threshold. Another concern raised in submissions was the implications of linking self-insurance eligibility in Queensland to eligibility in other States. This would effectively mean Queensland could not control the quality of self-insurers in Queensland if other states were to relax their criteria.

Recommendation: That the minimum number of employees required to qualify for a self-insurance licence remains at 2000 full-time workers.

Employers are fit and proper to be self-insurers

The Act currently requires applicants for a self-insurance licence to be fit and proper to be a self-insurer (section 71(1)(h)). In determining this, the Q-COMP Board may take into consideration the following:

- whether the employer is likely to meet its liabilities;
- the long term financial viability of the employer, evidenced by any relevant consideration (e.g. level of capitalisation, profitability and liquidity);
- the resources and systems that the employer has in Queensland for administering claims for compensation and managing rehabilitation of workers;
- whether the employer will be able to give the information Q-COMP requires; and
- for application renewal, whether the employer has exercised all its required functions and powers.

Only one stakeholder raised a concern with this criterion and that related to claims management practices not being included in section 75 (Whether applicant fit and proper). It is noted that the above factors detailed in section 75 of the Act are not an exclusive list of what the Q-COMP Board can take into consideration when assessing whether an applicant is fit and proper. Furthermore, the Steering Committee is of the opinion that a Code of Practice detailing acceptable claims management practices may be a more appropriate avenue for addressing these concerns than the legislation.

Recommendation: That the requirement for employers to be fit and proper to self-insure remain unchanged.

Licence coverage

Section 71(1)(d) of the Act requires a self-insurance licence to cover all workers of the employer employed in Queensland. This criterion exists to ensure that a self-insurer cannot exclude high-risk occupations from the cover.

All stakeholder submissions support retention of this criterion.

Recommendation: That the requirement for a self-insurance licence to cover all of the self-insurer's Queensland workers be retained.

Licence renewal periods

At present, self-insurance licences are issued for periods not exceeding two years (section 78). The discussion paper proposed an option whereby a self-insurer would have an initial licence period of two years, with subsequent licence renewal periods being up to four years.

Stakeholders overwhelmingly supported this option in their submissions and cited reduced administrative costs and more time to implement quality claims and injury management programmes as potential benefits of pursuing this option.

Some stakeholders sought an even longer licensing period or the provision of an ongoing licence. The Steering Committee believes, however, that it is important to strike a balance between relieving the administrative burden on self-insurers of frequent renewal requirements and ensuring that self-insurers continue to meet the high standards that are required of them to qualify for a licence.

Only one stakeholder did not support an extension of the self-insurance licensing period on the grounds that Q-COMP needs to monitor performance on a regular basis. If licence periods were to be extended to four years, Q-COMP would not only undertake a comprehensive assessment of the self-insurer's performance at renewal time but also monitor this on an annual basis as part of ongoing performance monitoring requirements. These include:

- reviewing the controlled entities and ensuring all are covered by the licence;
- reviewing self-insurers annual reports to ensure workers' compensation liabilities are appropriately provisioned;
- assessing the valuation of the estimated claims liability submitted in the self-insurer's actuarial report:
    - is reasonable if over $5m,
    - complies with Actuaries of Australia Professional Standard 300,
    - complies with AASB1023/ASS26, and
    - complies with Section 84(6) of the *WC&R Act;*
- assessing net tangible assets of self-insurers; and
- ensuring adequate reinsurance cover is in place.

On the basis that the majority of stakeholders support an extension of the self-insurance licensing period to four years and it eases the administrative costs associated with renewal for self-insurers, the Steering Committee recommends that the option canvassed in the discussion paper be implemented. It is important to note that the Q-COMP Board should continue to have the discretion to issue licences for shorter periods if it has concerns about the performance of a particular self-insurer.

Recommendation: That section 78 of the Act be amended to allow self-insurance licences to be issued for periods up to 4 years.

Occupational health and safety performance

Requirement to conduct OHS audits

Section 71(1)(c) and section 72(1)(d) require an applicant for self-insurance to demonstrate satisfactory occupational health and safety performance in order to qualify for a licence. At present, self-insurers are independently audited on a two-yearly basis at licence renewal time against the Performance Criteria and Guidelines for Workers' Compensation Self-Insurers (based on the Tri-Safe Management System). The Performance Criteria and Guidelines require an achievement of 70% of the available score in order to meet the minimum acceptable standard.

Several self-insurers indicated in their submissions to the review that the occupational health and safety auditing requirements placed on self-insurers were onerous, discriminatory, and costly. Many pointed to the fact that employers insured through WorkCover are not required to conduct such audits and therefore self-insurers should also be exempt.

The requirement for self-insurers to undertake regular occupational health and safety audits was introduced to ensure that self-insurers could continue to meet their claims costs by keeping the incidence of workplace accidents and injury low. The Government expects self-insurers to maintain high occupational health and safety standards as this provides additional

protection for the insurer of last resort from expensive and/or catastrophic workers' compensation claims that the self-insurer may be unable to fund.

In addition, the table below demonstrates that self-insurers have claim rates far exceeding the scheme average, suggesting that greater diligence is required by self-insurers in creating a safe workplace for employees.

Claim Frequency Rate (per 100,000 employees covered)

	1999-2000	**2000-2001**	**2001-2002**	**2002-2003**	**2003-2004**
Self-Insurers	13,494.1	12,065.9	11,922.9	9,756.0	10,082.2
Whole Scheme	5,991.5	5,362.2	5,167.4	4,935.8	4,862.6

Therefore, the Steering Committee strongly believes that the requirement for self-insurers to demonstrate that they have satisfactory occupational health and safety performance should be retained. Furthermore, through regular occupational health and safety audits, the Steering Committee believes that self-insurers can identify areas where they can improve their occupational health and safety practices, thereby reducing claims costs even further.

Audit system

In response to requests from multi-state employers to consider a move to using Australian Standard / New Zealand Standard 4801 'Occupational Health and Management Systems – Specification with guidance for use' (AS/NZS 4801) as the auditing standard in Queensland, the discussion paper sought the views of stakeholders on their preferred occupational health and safety auditing system.

Views from stakeholders who indicated a preference for a particular auditing system were mixed. Those arguing for the retention of the current Performance Criteria and Guidelines raised issues such as:

- the cost to self-insurers of implementing a new system;
- an increase in administrative load associated with the adoption of AS/NZS 4801;
- that AS/NZS 4801 has no 'pass mark' or level to aspire to; and
- that the current system has been a success.

Those stakeholders who were in favour of the adoption of AS/NZS 4801 raised such issues as:

- the standard achieves a greater degree of national consistency;
- the standard is internationally recognised;
- the standard is widely recognised as best practice;
- the standard provides guidance; and
- the standard incorporates consultation with workers.

It is obvious from stakeholder views that both systems have their merits and disadvantages. The Steering Committee has considered an option whereby a self-insurer could choose which audit system they wished to use, but were concerned that as AS/NZS 4801 does not have a 'pass mark' that this situation would create inequities between self-insurers depending on which system they selected.

An alternative is to update the current Performance Criteria and Guidelines to better reflect AS/NZS 4801. This would minimise the costs for self-insurers of implementing a new

auditing system, while still giving multi-state employers a common framework to plan, monitor and audit their occupational health and safety performance. The general framework and guidance of AS/NZS 4801 could be adopted as overarching principles supported by the more specific compliance requirements and scoring system of the current Performance Criteria and Guidelines.

Recommendation: That Workplace Health and Safety Queensland update the Performance Criteria and Guidelines for Workers' Compensation Self-Insurers to reflect AS/NZS 4801.

Frequency

Currently self-insurers are required to engage independent third party auditors to audit their occupational health and safety systems upon application and prior to licence renewal (i.e. every two years). Stakeholders who indicated a preference supported retaining the external third party occupational health and safety audit at licence renewal time. Given that the Steering Committee has recommended that licence periods be extended to up to four years, this could equate to one external audit every four years.

To ensure occupational health and safety matters are being given serious consideration by self-insurers in the period between licence renewals and to encourage a culture of continuous improvement, the discussion paper proposed that self-audits be undertaken on an annual basis. There was little opposition among stakeholders to the concept of self-auditing. However, opinions were divided on whether self-audits should be conducted annually or every two years in the period between external audits.

The Steering Committee considers that a self-audit (using the same audit system used for external audits) every two years for those self-insurers with a four year licence would ensure self-insurers remain focused on occupational health and safety performance while not imposing more frequent audits than currently exist. Self-audits would still need to be provided to Workplace Health and Safety Queensland for review and taken into consideration by the Q-COMP Board as part of the self-insurer's ongoing ability to meet the self-insurance criteria. The combination of self-auditing and external auditing (potentially as little as every four years) should see a significant reduction for self-insurers in the resources they currently direct towards demonstrating their satisfactory occupational health and safety performance.

Recommendation: That independent third party occupational health and safety audits be undertaken at the time of licence renewal.

Recommendation: That self-insurers with a four year licence undertake self-audits (using the same audit system used for external audits) two years after licence renewal and report the results to Workplace Health and Safety Queensland and Q-COMP.

Outsourcing claims management

Currently, self-insurers are required to manage claims in-house with the exception of classification group self-insurers who are permitted to outsource their claims management function (section 92).

The discussion paper canvassed the option of allowing all claims managers to outsource their claims management function to a Queensland-based provider. The option of outsourcing claims management received overwhelming support from stakeholders. Some of the benefits identified include:

- third party independence would be achieved;
- self-insurers would have access to expertise in claims and injury management – this is particularly important for self-insurers that do not manage many claims;
- allowing self-insurers to focus on their core business; and
- allowing self-insurers to organise claims management in a way that meets their business needs.

Some stakeholders indicated that even greater benefits could be achieved for self-insurers if they were able to centralise their claims management (i.e. that the claims management services could be based interstate). The Steering Committee has significant reservations about this option and is supported by a number of stakeholder submissions which emphasise the importance of claims managers being in close proximity to injured workers. Furthermore, one stakeholder (a claims manager) identified the benefits to Queensland as a whole of retaining employment and business opportunities within the State – these are key priorities of the Government.

Several stakeholders supported self-insurers outsourcing their claims management function provided that the claims managers were accredited. The Steering Committee agrees that systems should be put in place to ensure that the services provided by claims managers are of an adequate standard. The development of a Code of Practice for claims management applying to all insurers would establish 'benchmarks' which self-insurers would be required to ensure their claims managers met, regardless of whether this function was outsourced or delivered in-house.

Some stakeholders also raised the issue of reintroducing self-rating as a way of giving employers who do not qualify for self-insurance greater control of their claims management practices and outcomes. A discussion of self-rating and why the Steering Committee do not favour its reintroduction is at page 18 of this report in the Claims Management section.

Recommendation: That self-insurers be given the option of outsourcing their claims management function to a provider with Queensland-based claims managers.

Recommendation: That a Code of Practice be developed to regulate the standard of claims management services.

Services Provided by Allied Health Professionals

Sections 210(2) and 222(3) of the Act enable the Workers' Compensation Regulatory Authority, Q-COMP to impose conditions on the provision of medical treatment and rehabilitation services under the table of costs.

The Table of Costs is developed by Q-COMP to establish fees and outline conditions for the provision of services by medical practitioners and allied health professionals to injured workers in Queensland.

The NCP Review conducted in 2000 acknowledged that while the Table of Costs imposes a restriction on the market, the benefits to the community outweighed the costs and, therefore, its continuation was supported. However it was recommended that a review of the conditions applied to the use of allied health professionals be the subject of a further review.

Issues

The main conditions imposed on treatment and rehabilitation services under the Table of Costs are:

- the requirement for a referral by a medical practitioner; and
- prior approval by the insurer before services are provided with exceptions in certain circumstances where a limited number of treatments or services are allowed without prior approval by the insurer (eg. Chiropractic, Occupational Therapy, Osteopathy and Physiotherapy).

The requirement for a referral by a medical practitioner for treatment

The Table of Costs requires all allied health professionals to have a referral from a medical practitioner as a prerequisite to treating or providing services to an injured worker. The only exceptions are the Tables of Costs for Occupational Therapy, Physiotherapy, Psychology and Speech Pathology where an accredited workplace may refer for an initial assessment and report only, for example, in order to implement early workplace based programs.

This requirement in the Table of Costs is based on a medically driven model consistent with Queensland Health practices, which gives the medical practitioner primary care status. Under this model, it is the medical practitioner's role to issue medical certificates and to provide case management advice and direction on rehabilitation.

The referral requirement was introduced so that all treatment and rehabilitation for a worker's injury would be consistent with the medical diagnosis and could be monitored medically. It also minimises the risk of conflicting treatments being provided by different practitioners.

In some jurisdictions injured workers are able to self-refer for physiotherapy, chiropractic and osteopathic services. However, verification of the nature of the injury, causation and appropriate treatment is still required to determine liability for the claim. It is general practice to require this verification from a medical practitioner.

The majority of stakeholders, including allied health professionals, employers, unions and insurers, support the retention of this requirement on the basis that it is essential to achieving early, accurate diagnoses and appropriately coordinated treatment.

A small number of stakeholders suggested that improvements to the operation of these requirements could be made including encouraging medical practitioners to ensure early intervention occurs to treat workplace injuries and the development of guidelines for general practitioners to assist in providing appropriate treatment. These issues fall outside the scope of this review and therefore are not considered in this report. However, these issues were raised by stakeholders in a recent review of the Schedules of Fees for Medical Services conducted by Q-COMP in 2004/2005. Q-COMP has established the Workers' Compensation Medical Services Steering Committee to work in partnership with the medical profession, insurers, employers and unions to address these issues.

Only one stakeholder opposes the referral requirement although another stakeholder supported some relaxation of the requirement provided any treatment was closely monitored by qualified injury management specialists. In particular, the Chiropractors Association of Australia raised concerns that chiropractors are disadvantaged by the referral requirement due to a perceived bias against the chiropractic profession by the medical profession. The Chiropractors Association of Australia's submission argued that chiropractors' training enables them to determine when an injury falls outside of their area of expertise, therefore allaying any concerns that inappropriate treatment would be provided to injured workers.

The Steering Committee does not refute the effectiveness of chiropractic treatment to address workplace injuries that fall within a chiropractor's training nor the ability for chiropractors to determine when an injury falls outside of the scope of a chiropractor's expertise. However, the current system is built around a model where the medical practitioner is responsible for coordinating the provision of all services to the injured worker. Not only does this model ensure consistency in treatment modalities but the medical practitioner is well placed to respond to a broad range of issues arising from an injury. In addition, there is significant concern that delays in receiving appropriate treatment will occur if the referral requirement is lifted, such as where a worker seeks treatment from a type of allied health professional that is inappropriate for the injury and therefore needs to seek treatment from another type of allied health professional. Not only could this impact on return-to-work outcomes for the worker, but it would be difficult to ensure that the insurer's liability for payment of treatment is limited to compensable injury, as provided for in the Act.

The real issue would seem to be that, historically, the chiropractic profession has struggled to obtain acceptance by, and harness the support of, the medical profession. The workers' compensation system is not the appropriate avenue for resolution of any perceived non-acceptance of chiropractic treatment. This issue is one for consideration between the Chiropractors' Association of Australia and the Australian Medical Association rather than one for the workers' compensation scheme arena.

It is acknowledged that removing the referral requirement may provide workers with a greater choice of services as they would be able to refer themselves for treatment of their choosing. However, without the medical practitioner's referral, reliance would necessarily be placed on the worker's ability to self-diagnose and determine an appropriate course of treatment. In addition, the requirement for a referral does not prevent workers from requesting a referral for a specific type of treatment from medical practitioners.

The majority of stakeholders reiterated the potential implications of removing the referral requirement on scheme costs and return to work outcomes as raised in the discussion paper. These included:

- difficulties in coordinating the medical management of a claim so that the worker's medical practitioner is aware and supportive of the treatment and rehabilitation strategies;
- treatment for non-compensable injury or non-compensable elements of an injury for which the insurer is not liable;
- litigation may ensue where treatment is undertaken that is unsupported by the worker's treating medical practitioner;
- workers may elect to undergo inappropriate, inconsistent and possibly conflicting treatment modalities.

The Steering Committee considers that the strategies currently in place for all allied health professional service providers through the requirements in the Table of Costs have been instrumental in containing medical and rehabilitation costs while maintaining quality of services and a return to work rate comparable with other jurisdictions.

Recommendation: That the requirement for a referral by a medical practitioner for treatment by an allied health professional be retained.

Prior approval by the insurer before treatment commences

The Table of Costs allows for payment of up to ten sessions for professional treatment by some allied health professionals, including physiotherapy, osteopathy or chiropractic and payment of up to two sessions of critical incident counselling. The Table of Costs stipulates that an insurer is not liable for paying for consultations exceeding ten sessions unless the allied health professional has gained prior approval from the insurer.

This requirement allows the insurer to monitor the cost and to co-ordinate with the treating medical practitioner in relation to the need for on-going treatment and continuing liability for treatment. This also allows the insurer to verify that the treatment is relevant to the component of the injury for which liability has been accepted.

The Table of Costs does not impose limits on the type of treatment recommended to an injured worker by a medical practitioner. However, the treatment recommended should demonstrate a positive impact on, and contribute towards, the worker's recovery and ability to resume an appropriate level of work duties.

The majority of stakeholders viewed this requirement as essential in ensuring appropriate and effective treatment is provided to injured workers under the Act and to avoid the potential for overcharging and over-servicing where treatment undertaken is inappropriate, unwarranted or unrelated to the compensable workplace injury.

One stakeholder suggested that "*reviews of injured workers' progress should be made at intervals determined by the professionals involved (rather than at some specified standard interval), and collectively (i.e. as a multi-disciplinary team), taking into account the injured worker's progress*". The Steering Committee considers it necessary to ensure that a consistent approach is taken to monitoring treatments for compensable injuries as this provides certainty for all parties involved.

Another stakeholder commented that the requirement to seek approval for the provision of supportive devices to assist their recovery and/or rehabilitation can impede injured workers' access to such devices and therefore this requirement, in relation to supportive devices, should be removed. It is the Steering Committee's opinion that as prior approval is not required until the provision of such devices exceeds $90 per claim, then this requirement should not pose a barrier to workers' access to supportive devices.

The Steering Committee considers it reasonable for the insurer to be involved in making decisions about treatments for which the insurer is liable for payment. As all allied health professionals are subject to the same conditions, this requirement does not impede competition amongst service providers. Following consideration of submissions from stakeholders, the Steering Committee concluded that this requirement provides significant benefits to the community by ensuring that workers receive appropriate treatment for work-related injuries and employers' premiums are not adversely affected by over-servicing. Submissions from stakeholders did not demonstrate any benefits to the community from removing this requirement.

Recommendation: That the requirement for approval to be obtained from the insurer prior to commencing further treatment exceeding ten consultations be retained.

Exclusive Claims Management by WorkCover Queensland

At present, WorkCover Queensland has exclusive responsibility under Chapter 1, Part 2 and Chapter 8, Part 2 of the Act for managing workers' compensation claims made under the statutory scheme in Queensland (section 2 of this report discusses claims management by self-insurers).

In 2000, the NCP Legislation Review of Queensland's workers' compensation legislation identified this provision as being anti-competitive. Following a Public Benefit Test and consultation with key stakeholders regarding the option of privatising WorkCover Queensland's claims management function, the Interdepartmental Steering Committee concluded that WorkCover Queensland should 'retain its exclusive claims management role but the issue of claims management be reviewed in three years time'.

The Department of Industrial Relations has now reviewed the issue of exclusive claims management by WorkCover Queensland again, taking into account the performance of the Queensland scheme, the experience of other Australian jurisdictions that have privatised their workers' compensation claims management function, and the views of stakeholders in response to the discussion paper.

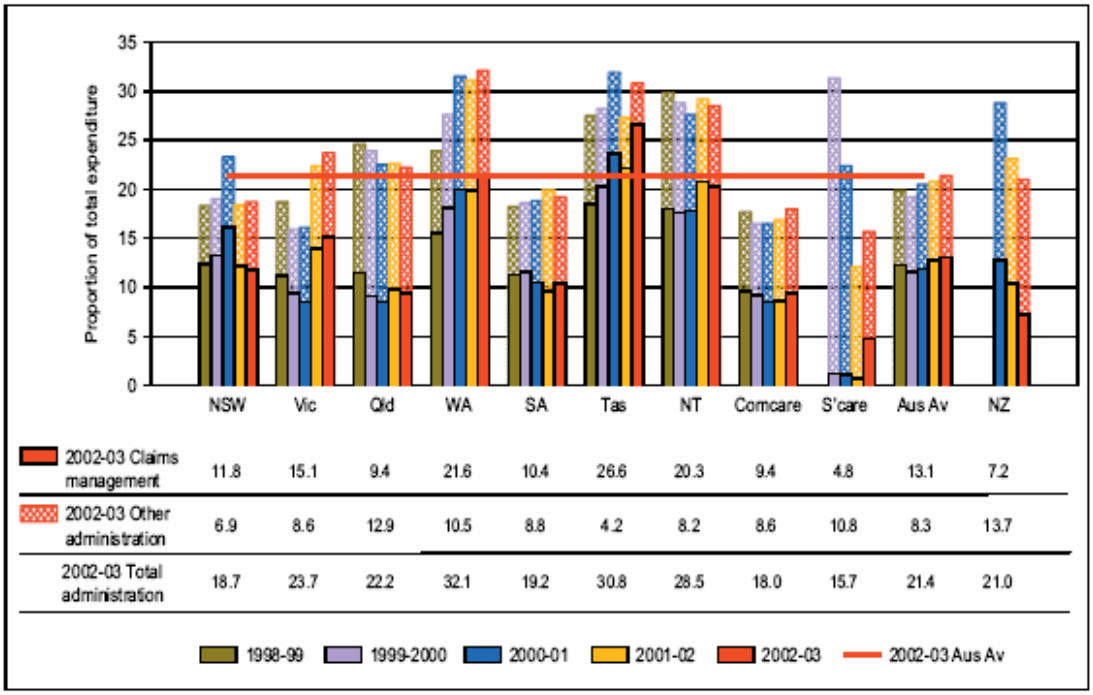
Scheme performance

Queensland currently has one of the most efficient workers' compensation schemes in Australia. According to the latest Workplace Relations' Ministers' Council Comparative Performance Monitoring Report, Queensland not only has the lowest premium rate, but also the lowest claims management costs, the lowest disputation rate and the highest amount of direct compensation paid as a proportion of total scheme expenditure of all Australian State and Territory workers' compensation schemes.[4]

The discussion paper highlighted the experience of other Australian jurisdictions that have outsourced claims management and the impact this has had on their schemes. Particular attention was paid to Victoria, New South Wales, and South Australia which have reviewed their claims management arrangements in light of unsatisfactory results to identify improvements. The Comparative Performance Monitoring Report indicates that Queensland is delivering much stronger results than schemes with private claims management, most importantly in terms of the cost of claims management services as a proportion of total scheme expenditure.

[4] Workplace Relations' Ministers' Council, 2004, *Comparative Performance Monitoring 2002-03*, pages 59, 73, 74, 75, and 82.

Administration costs as a proportion of total scheme expenditure[5]



Many stakeholders were not convinced that private claims managers could improve on the efficiencies and economies of scale currently achieved by WorkCover Queensland, and some raised concerns that any changes to the current arrangements would be likely to cause an imbalance which would inflate scheme costs. Furthermore, one stakeholder attributed WorkCover Queensland's strong performance in recent years to changes in claims management processes introduced in the late 1990s and questioned the logic of moving away from a system which was a proven success.

A number of insurance companies and claims managers who made submissions to the review were of the opinion that private claims management could deliver greater efficiencies for the Queensland workers' compensation scheme through the introduction of competitive forces. However, little evidence to support this contention was provided compared to the large amount of evidence demonstrating the success of claims management undertaken by WorkCover Queensland.

Service delivery

The submissions of insurance and private claims management companies identified a number of benefits of private claims management in terms of the service delivered to employers and injured workers. These primarily related to competitive tension in the market leading to improved worker satisfaction, employers having a choice of service provider, and the opportunity to introduce innovations from other jurisdictions into the Queensland scheme.

On the other hand, unions and a significant proportion of employers who made a submission, queried how private claims managers could improve on the service levels experienced in Queensland under the existing claims management model. Issues raised included:

- the fundamental conflict of interest that for-profit insurers face when trying to balance fair and just treatment of claims against profitability goals;

[5] Workplace Relations' Ministers' Council, 2004, *Comparative Performance Monitoring 2002-03*, p75.

- that in-house claims management is fundamental to the welfare of injured workers under the WorkCover scheme;
- the lack of bargaining power for small businesses in a private insurance workers' compensation scheme, particularly considering the high proportion of small employers in Queensland; and
- the potential for employers, injured workers, and medical professionals to be confused about who they need to deal with if multiple providers of claims management services were in the market.

It is important to note that the majority of submissions, including union, employer and medical professional groups, stated that the level of service currently delivered by WorkCover Queensland was acceptable. The most recent Return to Work Monitor, a publication produced for the Heads of Workers' Compensation Authorities, shows that Queensland is above the national average in all areas of customer service measured by the survey and has the highest overall result of all Australian jurisdictions in terms of customer service provided by insurers.[6]

One particular aspect of the scheme where stakeholders acknowledged that WorkCover Queensland provide particularly high levels of claims management services that private claims managers may not be able to match is in regional Queensland. Insurance and claims management companies raised a number of issues in relation to the provision of services in regional areas including:

- that regional offices are not essential to deliver a high level of service to injured workers state-wide and that the majority of claims are within a 2 hour drive of the metropolitan area;
- that the government could mandate that private claims managers establish a regional network of offices; and
- that employers would prefer to deal with a central office rather than multiple WorkCover Queensland offices.

Other stakeholders argued that for private claims managers to deliver the same level of service to regional areas, they would almost certainly incur greater costs therefore leading to an increase in scheme administration costs. Submissions from providers of rehabilitation services noted the importance of having claims managers in close proximity to injured workers in terms of achieving better rehabilitation and return to work outcomes.

The discussion paper also raised the potential for inconsistent decision-making and rehabilitation services should claims management be outsourced to multiple private providers. A significant proportion of stakeholders highlighted that the potential for inconsistency already exists under the current model between WorkCover Queensland and self-insurers or between WorkCover Queensland offices and that this is adequately managed. Many stakeholders therefore argued that consistency should not be a consideration when determining whether claims management should be privatised.

Partial outsourcing

Some stakeholders supported partial outsourcing of claims management services in complex cases or cases in a particular industry where specialist case managers could be used. As WorkCover Queensland already has the power to use private case managers (section 220 of

[6] Campbell Research and Consulting, 2003, *Return to Work Monitor*, p44.

the Act) and has used these in the past for complex or interstate cases, the Steering Committee is satisfied that no legislative amendment is required to give effect to this proposal.

Self-rating

A number of stakeholders raised the option of 'self-rating' as a potential alternative to completely privatising claims management. Self-rating was an option under the Queensland workers' compensation scheme between 1996 and 1999 which involved employers:

- funding their own liability for workers compensation claims within their own separate pool on the central workers' compensation authority system;
- paying an annual premium to cover their full injury year costs (including claims liabilities) and workers' compensation authority fees, depending upon the level of employer input;
- undertaking to implement claims management/rehabilitation procedures at a certain standard;
- having the option of:
    - WorkCover Queensland providing all claims management / rehabilitation / return to work input; or
    - WorkCover Queensland providing claims management with rehabilitation/return to work input provided by the employer; or
    - the employer providing all claims management /rehabilitation/return to work input with audit oversight by WorkCover Queensland.

Self-rating was recommended for removal from the scheme in the Government's Restoring the Balance Policy Platform in 1999 because companies could effectively opt in or out of the system to minimise premiums payable and could minimise the effect of poor claims history by moving back to an experienced-based rating (EBR) system. Furthermore, as of March 1999, only one employer was self-rating and one other had applied.

The Steering Committee believes that the potential costs of reintroducing self-rating in terms of the inequity between employers of how their claims history impacts premiums depending on whether they elect to self-rate or use EBR, outweigh any potential benefits of allowing employers to manage their own claims.

Conclusion

The Steering Committee believes that the strong position of the Queensland scheme at present makes it difficult to justify a change to the current claims management model. The current system contributes to keeping premiums at low levels for employers and provides above average levels of service to injured workers. As fundamental tenets of workers' compensation, the Steering Committee believes that these aspects of the scheme should not be compromised by possible negative impacts of private claims management.

Furthermore, the majority of stakeholders from a cross-section of backgrounds supported the retention of claims management by WorkCover Queensland.

Recommendation: That WorkCover Queensland retain its exclusive claims management role.

Workplace Rehabilitation Requirements

The report of the 2000 NCP Review of Queensland's workers' compensation legislation recommended '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'.

This section of the report considers alternatives to competitive restrictions in the workplace rehabilitation field and possible strategies to improve return to work outcomes for workers and employers. The rehabilitation section of the discussion paper canvassed a number of options to address these two aspects of the review and following is an analysis of stakeholder comments and other relevant factors taken into consideration by the Steering Committee in forming its recommendations.

Definition of 'rehabilitation'

Section 40(1) of the Act currently defines 'rehabilitation' of a worker as:

(a) necessary and reasonable—
  (i) suitable duties programs; or
  (ii) services provided by a registered person; or
  (iii) services approved by an insurer; or
(b) the provision of necessary and reasonable aids or equipment to the worker.

Section 40(2) identifies the purpose of rehabilitation as being 'to ensure the worker's earliest possible return to work or to maximise the worker's independent functioning'. The discussion paper proposed amending the current definition and purpose of rehabilitation to include a stronger focus on the achievement of return to work outcomes with the pre-injury employer.

Some stakeholders did not see a need to change the current definition on the basis that the current definition provides flexibility, already includes reference to return to work, and a change in definition would not address 'the basic weaknesses of rehabilitation coordination'. However, the majority of stakeholders supported amending the definition of rehabilitation to include a greater focus on return to work.

The Steering Committee proposes the following definition of rehabilitation, subject to Parliamentary Counsel's drafting protocols, to incorporate a greater emphasis on return to work outcomes:

(1) "Rehabilitation" is a process designed to ensure the worker's earliest possible return to work, or to maximise the worker's independent functioning.

(2) Rehabilitation, of a worker, includes—
  (a) necessary and reasonable—
    (i) suitable duties programs; or
    (ii) services provided by a registered person; or
    (iii) services approved by an insurer; or
  (b) the provision of necessary and reasonable aids or equipment to the worker.

(3) The process will, where reasonable and practicable—
  (a) return the worker to their pre-injury duties; or
  (b) where the worker's return to pre-injury duties is not feasible, either temporarily or permanently, to other suitable duties with the worker's pre-injury employer".

The inclusion of (3) in addition to the current definition and purpose would highlight two of the primary objectives of the rehabilitation process and in so doing focus on the important role employers have in the achievement of return to work outcomes for injured workers. The proposed changes to the definition will not reduce flexibility as it allows discretion through the provisos of 'necessary and reasonable' and 'where reasonable and practicable'.

A number of stakeholder submissions also identified the need to clarify other rehabilitation terminology in the Act, Regulation, and administrative guidelines. These include drawing a clear distinction between rehabilitation treatment services and occupational rehabilitation services, and defining suitable duties, suitable duties plans, rehabilitation and return to work plans, return to work coordinator, case manager, and claims manager. The Steering Committee supports clarification of this terminology and recommends defining these terms in the legislation and/or administrative guidelines where relevant.

Recommendation: That the definition of rehabilitation be amended to have a greater emphasis on return to work.

Recommendation: That rehabilitation terminology be clearly defined in the Act, Regulation, and administrative guidelines.

Early intervention and injury reporting requirements

Early intervention following workplace injury is widely recognised as a key factor in increasing both return to work rates and their durability. Early reporting of claims and good communication between all parties are also factors in reducing the duration and cost of claims.

The discussion paper canvassed a range of strategies which could encourage early reporting of claims and therefore facilitate early intervention. These strategies include:

- the introduction of facilities to allow electronic lodgement of injury reports;
- injury report forms to include information about the potential benefits of early intervention, including guidance on easy and effective early intervention strategies;
- active monitoring of compliance with section 133 (Employer's duty to report injury) of the Act which applies to employers insured with WorkCover;
- Q-COMP developing and implementing strategies to educate employers and encourage early lodgement of injury report forms, including actively monitoring section 133 of the Act; and
- requiring employers to give insurers evidence 'in writing' that suitable duties are not practicable under section 228(3) of the Act, which sets out an employers' obligation to assist or provide rehabilitation.

The majority of stakeholders supported the introduction of any strategies which could encourage early reporting and intervention of injuries and believed they have the potential to reduce lost time and improve the durability of return to work outcomes. Many stakeholders believed that educating employers about their responsibilities in this area and the benefits for them of early reporting would deliver the most effective results and is preferable to taking punitive action.

There was general support for introducing systems which allow for electronic lodgement of employers' injury reports and other strategies which streamline the lodgement process. The Steering Committee recommends that WorkCover continue to investigate options which

would make it easier for employers to lodge injury reports. The Committee also recommends a review of the approved form referred to in section 133 and 133A of the Act to ensure it collects all essential information required by WorkCover.

The proposal to require evidence 'in writing' under section 228(3) of the Act, which requires employers to give WorkCover Queensland evidence where suitable duties are not practicable for an injured worker, received divided responses from stakeholders. Some claimed that this requirement would provide an added incentive for employers to investigate all suitable duties options for an injured worker, while others claimed that this could have significant compliance costs for employers. However, because employers are already required to provide this evidence and the change merely specifies that the evidence be in written form, the Steering Committee views this as a minimal change which formalises the record-keeping process but one that could contribute to improved return to work outcomes.

While the strategies canvassed in the discussion paper focus primarily on the employer, some stakeholders felt it important to emphasise that both injured workers and employers have a role in ensuring early intervention. One stakeholder suggested that workers should have to report injuries sooner than they are currently required to under the Act (section 131 requires claims to be made within six months, with some exceptions). However, the Steering Committee believes that this is an important provision allowing workers to make claims for injuries that may not be immediately apparent, and should not be amended. Furthermore, this section also includes a 'disincentive' for injured workers to make a claim later than 20 business days following an injury as the insurer's liability commences from the day the claim is lodged if this happens after 20 business days. The Committee does, however, support increased education and awareness strategies alerting injured workers to the benefits of early reporting.

Recommendation: In relation to early intervention and injury reporting requirements, it is recommended that:

- WorkCover continue to investigate options which would make the lodgement of injury reports more convenient for employers;
- a review be undertaken of the written notification required under section 133 and 133A to ensure it includes all essential information required by WorkCover;
- compliance with section 133 be actively monitored;
- injured workers and employers be made aware of the potential benefits of early intervention, including guidance on easy and effective early intervention strategies; and
- employers be required to give insurers evidence 'in writing' under section 228(3) of the Act that suitable duties are not practicable.

Rehabilitation Case Management Plan requirements

Section 106 of the *Workers' Compensation and Rehabilitation Regulation 2003* requires a rehabilitation plan to 'be developed for each worker undertaking rehabilitation'. The plan must be consistent with the worker's needs, developed in consultation with the worker, and at a minimum contain the following matters:

(a) clear and appropriate objectives with ways of achieving the objectives;
(b) details of rehabilitation required to meet the objectives;
(c) projected costs and time frames of rehabilitation;
(d) review mechanisms and dates for review;
(e) progress to date.

There has been some uncertainty under the Regulation in relation to who has responsibility for developing and maintaining a rehabilitation plan for an injured worker, when they should be prepared, etc. The discussion paper canvassed a number of options to clarify this issue including:

- the renaming of 'rehabilitation plans' to 'rehabilitation and return to work plans';
- insurers having 'ownership' of the overall rehabilitation and return to work plan;
- employers having responsibility for developing the suitable duties component of the plan in consultation with stakeholders;
- Q-COMP's Performance Standards and Benchmarks for Insurers requiring a plan to be developed for each time lost claim exceeding two weeks; and
- Q-COMP developing administrative guidelines to assist insurers with the development of plans.

Responses to these proposals from stakeholders were generally positive. While some stakeholders claimed that renaming 'rehabilitation plans' to 'rehabilitation and return to work plans' would be purely semantic, others identified a range of benefits including:

- allowing the focus to be on improving capacity for specific work demands rather than merely treatment of the injury;
- greater certainty for an injured worker about the role they will be returning to with their employer;
- a reduction in time spent processing documentation for employers; and
- alleviating confusion and bringing clarity to the development and maintenance of plans.

A number of concerns were raised with the proposal to give insurers overall 'ownership' of the rehabilitation and return to work plans. Some stakeholders argued that giving insurers overall responsibility for the plan significantly reduces the employer's participation in the return to work process, which would be contrary to the general policy direction on return to work. Other stakeholders supported the insurer having ownership because of concerns about the capacity and expertise across the breadth of employers to be able to prepare and implement rehabilitation and return to work plans. The Steering Committee is of the view that employers should play an active role in developing the plans, but that insurers, with access to the relevant expertise and medical advice are best placed to retain ultimate control and coordination of the rehabilitation and return to work plan. Employers should be encouraged to take responsibility for the suitable duties component of the rehabilitation and return to work plan as proposed in the discussion paper, as this is the area of most relevance to them and where an employer's input is most required. The rehabilitation and return to work plan, and the suitable duties component within it, should be developed with the input of the insurer, the employer, the injured worker, treating medical practitioners, and other relevant stakeholders.

There was general support for the development of administrative guidelines to assist insurers and employers with the preparation of rehabilitation and return to work plans. However, the proposal to include a benchmark in the Performance Standards and Benchmarks for Insurers that a rehabilitation and return to work plan be prepared for all time lost claims within 10 business days of claim acceptance received a mixed reaction from stakeholders. Employer groups argued that this benchmark would be inflexible and impractical in cases of severe injury where rehabilitation options may not be known within the first 10 days. Q-COMP would take these factors into consideration when monitoring the performance of insurers. Providers of rehabilitation services strongly supported the introduction of a benchmark and recommended its extension to all claims rather than just those where more than two weeks

had been lost. The Steering Committee recommends that a standard be included in the Performance Standards and Benchmarks for Insurers as follows:

> *"The insurer must develop a rehabilitation and return to work plan on all time lost claims within 10 business days of claim acceptance where there is more than two weeks time lost and a continuing incapacity for work. The plan should be developed in consultation with the injured worker, employer, treating doctor, and all other relevant parties.*
>
> *The rehabilitation and return to work plan must demonstrate that the insurer has reviewed the medical and rehabilitation circumstances of the injured worker and documented steps for the rehabilitation and return to work of the injured worker. In certain circumstances, little or no insurer rehabilitation intervention will be required. In such cases the rehabilitation and return to work plan should reflect this and provide for the future review of the claim."*

One stakeholder raised concerns about rehabilitation and return to work plans only being effective until an injured worker is medically stable and stationary and has received a statutory lump sum or common law payment. The Steering Committee anticipates that the introduction of the above standard, the employer taking a more active role in the preparation of the rehabilitation and return to work plan, and a stronger focus on return to work during the rehabilitation process generally, should contribute to an ongoing commitment from both the injured worker and the employer to return to work outcomes regardless of whether the worker is medically stable and stationary.

Recommendation: In relation to rehabilitation case management plans, it is recommended that:

- 'rehabilitation plans' be renamed 'rehabilitation and return to work plans';
- insurers have the ultimate responsibility for co-ordinating the development and maintenance of a rehabilitation and return to work plan in consultation with the injured worker, the employer, treating practitioners, and any other relevant stakeholders;
- employers have the ultimate responsibility for the development of the suitable duties component of the rehabilitation and return to work plan in consultation with the worker, insurer, medical practitioner, and other relevant stakeholders; and
- the Performance Standards and Benchmarks for Insurers include a requirement for insurers to develop a rehabilitation and return to work plan for each accepted time lost claim greater than two weeks within 10 business days of the claim acceptance and that performance against the Standard / Benchmark be monitored by Q-COMP.

Rehabilitation coordinator and policy and procedure requirements

The discussion paper canvassed a range of options to minimise competitive restrictions relating to rehabilitation coordinators and to refine their role including:

- amending the current title of 'Rehabilitation Coordinator' to 'Rehabilitation and Return to Work Coordinator' in sections 41 and 226 of the Act;
- amending sections 226 and 227 of the Act to:
  - raise the return-to-work co-ordinator threshold requirements to employers with an annual payroll of more than $4.9M indexed annually to any changes in the Australian Bureau of Statistics' Queensland's average weekly earnings; and

- introduce a risk-based model, requiring employers in high-risk industries (e.g. the building and construction industry or transport and storage industry) or those with poor occupational health and safety records to engage return to work co-ordinators;

- including a requirement in the Act for employers who are required to have a rehabilitation and return to work coordinator to develop a suitable duties plan as soon as practical for an injured worker with altered work capacity in consultation with relevant parties;
- removing the current restriction requiring rehabilitation coordinators be engaged on a contract of service ((s.226)(2) of the Act);
- including a list of core functions in the *Workers' Compensation and Rehabilitation Regulation 2003* which the return to work coordinator would be required to perform; and
- developing a template for suitable duties plans, for use by employers to aid compliance with new requirements, which could also provide for medical practitioners to approve identified suitable duties.

Stakeholders were generally positive about the proposed changes to clarify the role of the rehabilitation coordinator, to make it more effective, and to minimise competitive restrictions.

Some stakeholders had reservations about renaming rehabilitation coordinators 'rehabilitation and return to work coordinators' primarily because the current title is well known and understood, and the misunderstanding of some employer groups that the proposal to outsource would not apply to rehabilitation and return to work coordinators. The Steering Committee believes the title of rehabilitation and return to work coordinator more accurately describes the functions of the role and any negative consequences of a change (e.g. lack of familiarity with the title) can be easily overcome through education.

There was strong support from stakeholders for the role of the rehabilitation and return to work coordinator to be better defined in the legislation, although some concerns were expressed with the list of functions proposed in the discussion paper particularly in relation to functions which may overlap with the insurer's responsibilities. A revised list of functions to be inserted into the *Workplace Compensation and Rehabilitation Regulation 2003* (subject to Parliamentary Counsel's drafting protocols) which address concerns raised by stakeholders follows:

- initiating early communication with the injured worker to clarify the nature and severity of the worker's injury and to compile initial notification information;
- providing overall coordination in the workplace;
- developing the suitable duties component of the rehabilitation and return to work plan if one is required in consultation with relevant stakeholders; and
- providing the case manager with feedback regarding the worker's progress and indicating as early as possible, when there is a need for assistance or intervention by the insurer.

These are intended to specify only the core functions to provide guidance for the employer, insurer, and rehabilitation and return to work coordinator and are not intended to restrict an employer's flexibility to structure the role to their own business needs.

A number of stakeholders noted the arbitrary nature of the current requirement for every workplace with more than 30 workers to have a rehabilitation coordinator and rehabilitation policy and procedures. The majority supported the introduction of new criteria for

determining which employers should engage rehabilitation and return to work coordinators and develop workplace rehabilitation policy and procedures as follows:

- employers with an annual payroll of more than $4.9 million indexed annually to any changes in the Queensland Ordinary Time Earnings (QOTE); and
- employers in high-risk industries (e.g. the building and construction industry or transport and storage industry) or those with poor occupational health and safety records / comparatively long claim durations, regardless of whether their payroll exceeds $4.9 million.

These criteria are anticipated to capture large employers and those with the most need for a rehabilitation and return to work coordinator. These criteria should also capture those seasonal industries with the greatest need for rehabilitation and return to work services. A methodology based on claims data would be specified in the Regulation to determine high-risk industries and employers with poor occupational health and safety records / comparatively long claim durations.

There was also strong support among stakeholders for allowing the role of rehabilitation and return to work coordinator to be outsourced by employers. Benefits identified include:

- access to greater rehabilitation expertise (particularly for employers with infrequent claims);
- reduction in rehabilitation coordinator training costs for employers; and
- reduction in 'downtime' for those staff who currently act as rehabilitation coordinators in addition to other duties.

Those who opposed outsourcing had concerns about accreditation and monitoring, and the possibility of outsourced rehabilitation and return to work coordinators making commercially-driven decisions. The Steering Committee believes that these disadvantages can be overcome by Q-COMP continuing to accredit and monitor the performance of individuals and organisations providing rehabilitation and return to work services to Queensland employers. Employers would be required to advise Q-COMP of their rehabilitation and return to work coordinator and be able to provide evidence of a contract with an external provider of these services on Q-COMP's request. The employer would be free to negotiate their own contractual arrangements with the coordinator or would have the option of retaining an in-house rehabilitation and return to work coordinator if this suited their business needs.

Furthermore, the Steering Committee recommends that responsibility for accrediting workplace rehabilitation training providers and courses be transitioned to the Vocational Education and Training (VET) sector. This would not only allow Q-COMP to focus on the accreditation of rehabilitation and return to work coordinators but also reflect moves to transition training for workplace health and safety officers to the VET sector. The transition should include consultation with Q-COMP and other key industry stakeholders to ensure that services to injured workers are maintained.

With regard to the proposal that any employer with a rehabilitation and return to work coordinator should be required to develop suitable duties plans for all injured workers with altered work capacity, the Steering Committee believes that the recommendations in the previous section on rehabilitation and return to work plans adequately address this issue. The requirements relating to an employer's obligation to develop a suitable duties plan should be the same regardless of whether an employer has a rehabilitation and return to work coordinator or not. Employers who are not required to engage a rehabilitation and return to

work coordinator under the proposed model would have access to rehabilitation services provided by WorkCover Queensland case managers.

Recommendation: In relation to the role of rehabilitation coordinator, it is recommended that:

- the title of rehabilitation coordinator be changed to rehabilitation and return to work coordinator;
- core functions of rehabilitation and return to work coordinators be included in the regulation;
- the current requirement for a workplace with more than 30 workers to have a rehabilitation coordinator and workplace rehabilitation policies and procedures be removed, and be replaced by the following criteria –
  - (a) employers with an annual payroll of more than $4.9 million indexed annually to any changes in the Queensland Ordinary Time Earnings (QOTE), and
  - (b) employers in high-risk industries (e.g. the building and construction industry or transport and storage industry) or those with poor occupational health and safety records / comparatively long claim durations, regardless of whether their payroll exceeds $4.9 million;
- the Department of Industrial Relations develop a methodology to be included in the Regulation for determining which employers are required to engage a rehabilitation and return to work coordinator based on the above criteria, in consultation with WorkCover Queensland and Q-COMP;
- employers be permitted to outsource the position of rehabilitation and return to work coordinator under section 226 of the Act; and
- accreditation of workplace rehabilitation training providers and courses be transitioned to the VET sector.

Amendment of the *Industrial Relations Act 1999*

Queensland provides guarantee of employment following injury for a period of six months under section 93 of the *Industrial Relations Act 1999.* The discussion paper canvassed the option of extending security of employment to 12 months following injury in the interests of improving return to work rates.

Stakeholders were divided on this issue with significant advantages and disadvantages identified with extending security of employment provisions. Benefits of the proposal identified in stakeholder submissions include:

- making rehabilitation more of a priority for employers and providing added incentive for them to develop more comprehensive and effective return to work strategies;
- a positive effect on the injured worker's response and commitment to rehabilitation programs;
- a reduction in anxiety and therefore better return to work outcomes for workers with more severe injuries or those that require a longer period of intervention to return to their pre-injury position;
- allowing workers to make a more complete recovery before returning to work, thereby resulting in more durable return to work outcomes;
- providing greater incentive for the employer to find alternative duties for a worker; and
- it would achieve a greater degree of national consistency.

Stakeholders arguing for the retention of the current security of employment provision of six months identified the following issues:

- increased costs, uncertainty, and delays for the employer if security of employment provisions are extended;
- the current provision achieves reasonable rehabilitation outcomes;
- in some cases, employment separation is the most appropriate outcome for all parties and it is pointless to delay this process until 12 months from the injury;
- extending security of employment provisions to 12 months may be counter-productive to rehabilitation that is designed to assist an injured worker to be employed elsewhere;
- public sector agencies' inability to commence medical retirement provisions (under section 85 of the Public Service Act 1996) if security of employment is extended to 12 months; and
- other avenues exist under the *Industrial Relations Act 1999* for workers who have been dismissed to regain employment within 12 months if declared fit to work.

One issue that the majority of stakeholders agreed on regardless of their position on this issue was that the majority of injured workers are able to return to work within the first six months of an injury. The table below illustrates that only a small proportion of injured workers continue to receive weekly benefits in the period between six and 12 months (5.6% of all time lost claims) indicating that the majority of workers have either returned to work, have received a lump-sum offer, or have received the maximum amount of compensation payable by this time.

Number of time lost claims by workdays lost bands 2003-2004

Workdays lost bands	Number claims	Proportion of time lost claims (%)
1 – 5 days	15,153	34.8
6 – 10 days	6,911	15.9
11 – 20 days	5,790	13.3
21 – 40 days	5,201	12.0
41 – 65 days	3,078	7.1
66 – 130 days	3,677	8.5
131 – 260 days	2,467	5.6
> 260 days	1,221	2.8
Total time lost claims	43,498	100

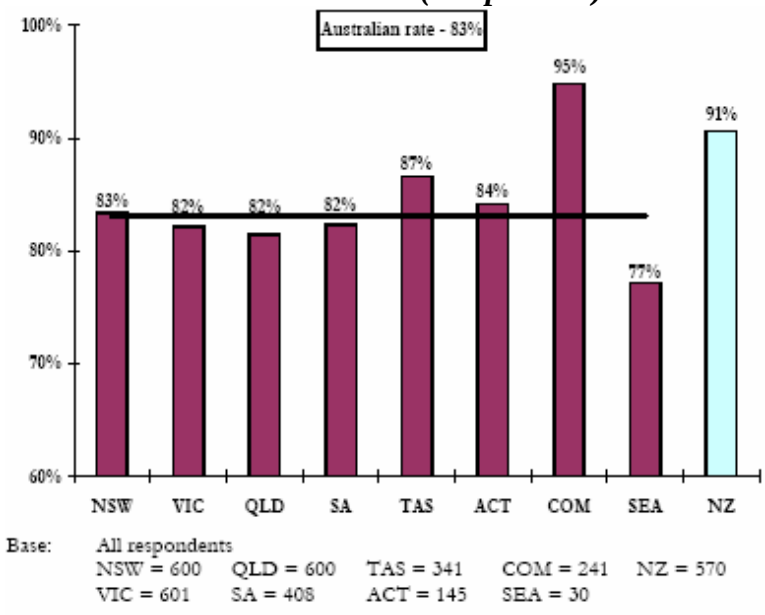
*Note: The above timebands are in workdays lost, e.g. 5 workdays lost = 1 working week.

[7]

In addition, Queensland's current return to work rate is slightly below the national average as the table below illustrates. Some stakeholders suggested that the six month security of employment provision contributes to below average return to work rates.

[7] Q-COMP, 2004, *Queensland Workers' Compensation Scheme Statistics Reporting 2003-2004*, p15.

Return to work rate (comparative)[8]



Furthermore, the average time from date of injury to the assessment of a permanent work-related impairment, which takes place when the injury is medically stable and stationary, was 1.91 years in 2003-04 and 2 years based on 2004-05 year to date figures. This suggests that workers' conditions can take a considerable amount of time to stabilise and assess as permanent, and that a longer period than 6 months is needed to give these workers the opportunity to recover and return to their former position.

Under section 95 of the *Industrial Relations Act 1999*, employees who have been dismissed from a position because they have incurred an injury which makes them unfit for employment are entitled to reinstatement to that position within 12 months of the injury if they recover. Extending security of employment provisions under section 93 would give greater certainty to workers and employers about employment security, and alleviate costly and time consuming dismissal and reinstatement proceedings if a worker is able to return to their position within 12 months following an injury.

Queensland's current six month security of employment provision is also inconsistent with the majority of other Australian jurisdictions. Only New South Wales and the Territories do not guarantee employment in the pre-injury position for up to 12 months (Tasmania, Victoria, and Western Australia guarantee employment for 12 months; South Australia guarantees employment indefinitely or for 12 months if the employer has less than 10 workers). A move to 12 months security of employment would bring Queensland into line with the majority of States.

On balance, the Steering Committee is of the view that the potential benefits to injured workers of extending the security of employment provisions to 12 months would outweigh potential costs to employers (which would be minimal according to current statistics on the number of workers whose injuries extend beyond six months). Allowing injured workers 12 months to return to their pre-injury position would send a strong message to workers and employers of the importance of return-to-work. It would also allow more seriously injured workers additional time to rehabilitate and recover completely from an injury before returning to work, possibly contributing to more durable return to work outcomes.

[8] Campbell Research and Consulting, 2003, *Return to Work Monitor*, p1.

It is important to note that 12 months security of employment following an injury does not prevent an injured worker from instigating separation from an employer. This should address concerns raised by some stakeholders that extending security of employment would be counter-productive where the desired rehabilitation outcome is for the injured worker to be employed elsewhere, and where separation is the most appropriate outcome (presuming the injured worker agrees this is the most appropriate outcome).

Recommendation: That security of employment provisions in the *Industrial Relations Act 1999* be extended from 6 to 12 months.

Education/awareness and advisory services

The discussion paper highlighted the need for Q-COMP to provide education and advisory services to insurers and employers if the proposed options were implemented.

In addition, stakeholders identified a need for Q-COMP and WorkCover Queensland to provide advice on rehabilitation and return to work matters more generally. The Steering Committee supports the continuation of Q-COMP's rehabilitation advisory service and the provision of rehabilitation information by WorkCover Queensland on a case by case basis.

Recommendation: That employers and insurers have access to education and advisory services regarding rehabilitation and return to work matters, particularly any changes that are implemented as a result of this review.

Attachment A

Written submissions received as part of the review of certain aspects of the *Workers' Compensation and Rehabilitation Act 2003*

Aged Care Employers Self-Insurance
Aged Care Queensland Inc
Allianz Australia Insurance Ltd
Aon
Australian Industry Group
Australian Lawyers Alliance
Australian Meat Holdings Pty Ltd
Australian Physiotherapy Association (Qld Branch)
Australian Psychological Society Ltd
Bluescope Steel Ltd
Brisbane City Council
Chiropractors' Association of Australia (Qld) Ltd
Commerce Queensland
Department of Education and the Arts
Department of Emergency Services
Endeavour Foundation
Greenslopes Private Hospital
Housing Industry Association
Insurance Council of Australia Ltd
Jardine Lloyd Thompson
Local Government Association of Queensland Inc
OT Australia
Q-COMP
Queensland Council of Unions
Queensland Law Society
Queensland Police Service
Queensland Rehabilitation Providers Association
Queensland Workers' Compensation Self Insurers' Association
Recruitment and Consulting Services Association Ltd
Suncorp Metway
University of Queensland
WorkCover Queensland
Wyatt Gallagher Bassett
Xstrata Queensland Ltd