

**House of Representatives Standing
Committee on Employment and
Workplace Relations**

**Inquiry into Aspects of Australian
Workers' Compensation Schemes
Comcare Submission**

Revised

September 2002

CONTENTS

OUTLINE OF THE SUBMISSION	3
PART 1: LEGISLATIVE AND CORPORATE OVERVIEW	3
PART 2: FRAUD—PREVENTION & MANAGEMENT, INVESTIGATION, COST AND INCIDENCE	11
PART 3: SAFETY AND REHABILITATION	24

OUTLINE OF THE SUBMISSION

This submission begins by providing an overview of the relevant safety, rehabilitation and compensation legislation in the Commonwealth jurisdiction, and Comcare's role within that framework (Part 1). Against this background, it addresses the terms of reference set down by the Standing Committee on Employment and Workplace Relations. It deals first with the terms of reference relating to fraud (Part 2), before considering the final term of reference relating to safety and rehabilitation (Part 3). The submission focuses on matters that are relevant to the Commonwealth workers' compensation scheme and explains the scheme's operation in relation to these issues.

PART 1: LEGISLATIVE AND CORPORATE OVERVIEW

This Part provides an overview of the relevant safety, rehabilitation and compensation legislation in the Commonwealth jurisdiction, and recent changes to that legislation. It also outlines the respective roles and responsibilities of Comcare and the Safety, Rehabilitation and Compensation Commission (SRCC) within that framework. This background is necessary to understanding the systems and processes that have been designed to encourage a safer and healthier working environment, effective rehabilitation, and the prevention and detection of fraud.

THE LEGISLATIVE FRAMEWORK

The *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) provides the legislative basis for the Commonwealth Government's workers' compensation scheme. The scheme emphasises prevention, active claims management, rehabilitation and safe return to work.

The *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS(CE) Act) provides the legislative basis for the Commonwealth Government's occupational health and safety (OHS) program. The OHS(CE) Act complements the SRC Act by providing a regulatory framework aimed at reducing occupational injury and disease and their associated human and financial costs.

Together, these two pieces of legislation provide an integrated and cost effective approach to injury prevention, workers' compensation and occupational rehabilitation across Commonwealth employment.

The SRC Act scheme

The SRC Act establishes a fully-funded premium-based system and a licensed self-insurance system of compensation and rehabilitation for employees who are injured in the course of their employment. It covers all Commonwealth employees, including members of the Australian Defence Force (ADF), and employees of certain private sector corporations. ACT Government employees are also covered by virtue of the ACT Government having been declared a Commonwealth authority for the purposes of the SRC Act on 30 June 1994.

The SRC Act emphasises prevention, active claims management, rehabilitation and safe return to work. It has a comprehensive benefits structure with limited common law rights.

The original title of the Act, when enacted in 1988, was the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*. The title was amended in 1992 to reflect the extension of the potential coverage of the SRC Act beyond the public sector into the private sector, in line with provisions made at the time.

In brief, the SRC Act scheme is characterised by:

- a fully funded approach where employers have financial accountability for the cost of work-related injury and disease through the payment of an annual premium;
- a 'no fault' scheme, with limited access to common law;
- an integrated and cost effective approach to prevention, compensation and occupational rehabilitation;
- a comprehensive benefits structure with entitlement to compensation payments for 45 weeks at 100 per cent of normal weekly earnings, and 75 per cent thereafter;
- employer responsibility for the occupational rehabilitation of injured workers;
- coverage of all allowable medical, rehabilitation and related costs associated with the treatment of work-related injury and disease;
- lump sum payments for permanent impairment due to work related injury or disease;
- entitlement to coverage until age 65; and
- coverage for journeys and ordinary recesses (such as meal breaks).

Since the introduction of the SRC Act in 1988, the Commonwealth workers' compensation scheme has largely been funded by the collection of premiums from employers. It is also funded through licence fees, regulatory contributions, and some payments from the Consolidated Revenue Fund (for workers' compensation claim payments for injuries incurred prior to July 1989).

The role of Comcare and the SRCC

Comcare is a Commonwealth statutory authority responsible for workplace safety, rehabilitation and compensation in the Commonwealth jurisdiction. It reports to the Minister for Employment and Workplace Relations, and administers two Acts of Parliament—the SRC Act and the OHS(CE) Act.

Comcare is administered under the *Commonwealth Authorities and Companies Act 1997* (CAC Act) and the majority of its staff are employed under the *Public Service Act 1999*.

Comcare and the SRCC are established under the SRC Act, which outlines the role and functions of both bodies including administrative, regulatory and service responsibilities.

Comcare's main functions under the SRC Act are to:

- make determinations accurately and quickly in relation to claims and requests made to Comcare under the SRC Act;
- minimise the duration and severity of injuries to employees by arranging quickly for the rehabilitation of those employees;
- co-operate with other bodies or persons with the aim of reducing the incidence of injury to employees;
- conduct and promote research into the rehabilitation of employees and the incidence and prevention of injury to employees;
- promote the adoption in Australia and elsewhere of effective strategies and procedures for the rehabilitation of injured workers;¹
- publish material relating to any of its functions;
- determine the premiums and, where appropriate, the special premiums and regulatory contributions payable by entities and Commonwealth authorities; and
- advise the Minister about anything relating to Comcare's functions and powers.

Comcare also supports the SRCC in performing its functions under the relevant legislation. The SRCC is a statutory commission established under the SRC Act.

The SRCC's main functions are to:

- provide advice to the Minister in relation to the SRC Act and the OHS(CE) Act;
- develop and implement policy to allow Commonwealth authorities and certain corporations to self-insure or manage their own claims under licence;
- develop general policy direction for scheme administrators on the operation of the SRC Act;
- ensure consistency in the administrative practices and procedures used by scheme administrators; and
- act as a review body for premiums and regulatory contributions.

Licensing

The licensing arrangements detailed within the SRC Act were enacted in 1992 and 'streamlined' in 2002. They provide for Commonwealth authorities and certain corporations declared by the Minister to be eligible to apply to the SRCC for the grant of a licence to self-insure and/or take on the responsibility for managing their workers' compensation claims.

¹ This function of Comcare extends beyond employees in the Commonwealth jurisdiction to workers more generally.

Essentially, the SRCC has responsibility for the grant of licences and determining the scope and conditions of licence, monitoring compliance with the SRC Act and conditions of licence and overseeing operation of the licensing arrangements. The SRC Act and Ministerial Directions specify the criteria and procedures for the SRCC to follow when granting licences.

The scope of a Commonwealth authority license enables self-insurance of liabilities, and claims management, either in-house or by the Commonwealth or by another Commonwealth authority.

The scope of a licence for a corporation (private sector licence) enables self insurance and claims management, either in-house or by a third party claims manager from the private sector.

Licence conditions

All licensees are required to comply with licence conditions, the nature of which varies according to the scope and the conditions of the licence held by the licensee. While the SRC Act specifies certain licence requirements, Ministerial Directions and the SRCC can further define or specify additional conditions of licence (for example the detail of prudential conditions which may apply to all licensees, or claims management conditions which may apply to only one licensee).

Compliance monitoring

The SRCC's approach to evaluating licence compliance, its Management Systems Review and Improvement Program (MSRIP), provides an holistic and integrated assessment of the licensees' management systems in achieving stated objectives. The annual MSRIP report for each licensee provides an examination of the capacity of the prevention, rehabilitation and claims management systems established by the licensee to deliver positive and measurable outcomes against the objectives of the legislation.

The MSRIP report draws upon subordinate prevention, claims management and rehabilitation audits.

Compliance with prudential conditions of licence is also monitored. In addition, licensees and other determining authorities (Comcare and the Military Compensation and Rehabilitation Service) are required to provide twice-yearly performance reports against the Commission Indicators which include a number of key performance outcome measures against prevention, rehabilitation, claims management and scheme administration indicators.

The OHS(CE) Act Scheme

The OHS(CE) Act is designed to minimise the incidence and severity of work-related injury and disease in Commonwealth employment. It does this through a regulatory framework which includes advisory and enforcement functions, and a system of penalties and sanctions. It is similar to legislation in force in all States/Territories.

The OHS(CE) Act:

- confers a duty of care on employers, manufacturers, suppliers and certain contractors;
- specifies employees' duties;
- requires employers to notify and report accidents or dangerous occurrences;
- provides for the
 - establishment of designated work groups
 - the election of health and safety representatives (HSR)
 - establishment of health and safety committees, and
 - the appointment of SRCC investigators with a range of powers to allow them to conduct OHS investigations;
- allows for the placing of Provisional Improvement Notices (PIN) by HSRs and Improvement Notices (IN) and Prohibition Notices (PN) by investigators;
- allows appeal of PINs, INs and PNs to the Australian Industrial Relations Commission;
- places a variety of monetary penalties against parties for breaches of the provisions of the Act—Government Business Enterprises are subject to prosecution, Departments and Statutory Authorities are subject to report to Parliament by the Minister;
- confers on the Governor-General the power to make regulations to the Act;
- confers on the Minister power to direct the SRCC and Comcare on any matter relating to the performance of their functions and exercise of their powers under the Act, and approve regulations and codes of practice; and
- requires the Minister to provide SRCC reports where, in the SRCC's view, an employer has not met undertakings arising from an investigation, a certain direction by an Investigator, an improvement or prohibition notice to Parliament within 15 sitting days of receipt.

The role of Comcare and the SRCC under the OHS (CE) Act

The OHS(CE) Act confers on the SRCC the responsibility to:

- ensure compliance within the jurisdiction;
- provide advice on OHS matters;
- collect, interpret and report information for the jurisdiction;
- formulate policies and strategies for OHS;
- advise the Minister on all OHS matters within the jurisdiction, on the approval of codes of practice and the making of regulations;
- accredit HSR training programs;

- conduct public inquiries; and
- liaise with other bodies as required.

The OHS(CE) Act confers on Comcare the responsibility to:

- administer the Act under the direction of the SRCC;
- assist the SRCC to give effect to its functions described above, including compliance activities and contributing to the development of regulations and codes of practice;
- institute investigations and prosecutions; and
- appoint investigators (who may also institute prosecutions).

Recent Legislative Reform

The SRC Act

The *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001* (the SRCOLA Act) received royal assent on 1 October 2001. The SRCOLA Act amended the SRC Act by:

- enabling compensation payments to ex employees to be updated by reference to a prescribed index;
- clarifying that there is no entitlement under the SRC Act to a lump sum payment for non-economic loss for a permanent impairment occurring prior to 1 December 1988 except where a claim has been lodged before the introduction of this amendment (7 December 2000);
- clarifying provisions relating to the calculation of compensation;
- enabling all employees to receive weekly compensation payments beyond the age of 65 for a maximum period of 104 weeks if they are injured after the age of 63;
- ensuring that persons providing rehabilitation services meet acceptable standards through a range of measures;
- ensuring that dependants of deceased employees are not barred from taking action at common law;
- improving access to compensation for permanent impairment for hearing loss;
- streamlining the existing complex licensing arrangements;
- amending provisions relating to premiums and regulatory contributions;
- amending various technical and miscellaneous provisions;
- including as a member of the SRCC a member nominated by the Chief Minister of the ACT to represent the interest of ACT public sector employers.

SRC Act and OHS(CE) Act and regulations—penalty provisions

Since the Criminal Code was enacted in 1995 all Commonwealth legislation with criminal provisions has been gradually amended to modernise and standardise the criminal law across the Commonwealth. In line with this change, amendments were made to the penalty provisions in both the SRC Act and the OHS(CE) Act. In addition penalty provisions in both the Occupational Health & Safety (Commonwealth Employment) Regulations and the Occupational Health & Safety (Commonwealth Employment)(National Standards) Regulations 1991 were amended with effect from 15 December 2001.

Regulations—supporting SRCOLA changes

On 27 March 2002 the Executive Council approved regulations to implement amendments made to the Act in Schedule 2 to the SRCOLA Act. The regulations prescribe a number of matters essentially to streamline the Act's licensing arrangements, to introduce new approval processes for rehabilitation treatment providers and to clarify provisions relating to compensation.

These Regulations repeal the Safety, Rehabilitation and Compensation Regulations 1990 (the 1990 Regulations), but replicate all provisions of those Regulations (except for one redundant provision). This approach was taken as a matter of drafting style, to make the Regulations more readable by avoiding complex renumbering.

The Regulations implement this Act by prescribing:

- additional categories of health professionals who can provide 'medical treatment' as defined in the *Safety, Rehabilitation and Compensation Act 1988* to enable the costs of such treatment to be reimbursed to the claimant without the need for referral by a medical practitioner;
- an index for determining the appropriate amount of compensation for ex-employees in relation to increases in normal weekly earnings. There are also provisions for the method for calculating the increase in normal weekly earnings;
- the renewal periods for approval as a rehabilitation program provider, as well as the fees for applications for initial approval and renewal of that approval;
- a 'prescribed day' for the annual date by which information must be provided to Comcare for estimating salary and wages to be paid to employees during the next financial year;
- the form for an application for a licence, as well as the required particulars of the applicant, and other information and documents which must be contained in or accompany licence applications; and
- the consequences of revocation of a licence and suspension of a licence.

A technical amendment was made concerning a provision in the repealed 1990 Regulations to delete a duplicated reference to the Commissioner of the Australian Federal Police.

The commencement date of the Regulations was 1 April 2002, except for Regulation 19 which had 1 July 2002 as its commencement date. These commencement dates mirror the relevant commencement dates under the SRCOLA Act

Ministerial directions

Section 101 of the SRC Act, which was inserted by the SRCOLA Act, extends the Minister's power to give directions to the SRCC under section 89D. It extends to directions concerning any matter relating to the grant of licences issued under Part VIII of the Act.

The purpose of the Ministerial directions is to give directions to the SRCC on the following matters relating to the granting of licences under Part VIII of the SRC Act:

- the criteria and procedures for the SRCC to follow when granting licences under the Act;
- the scope and conditions of licences granted by the SRCC under the Act;
- the criteria and procedures that the SRCC must follow when suspending or revoking licences;
- notices to be given by the SRCC on granting, varying, suspending and revoking licenses; and
- record keeping and reporting requirements for the SRCC.

The Ministerial directions operate in conjunction with the new legislative provisions dealing with licences in the SRC Act. The directions retain most limitations and restrictions on licences under the previous licensing provisions in the SRC Act which have not been included in the new streamlined provisions.

The commencement date of the Ministerial directions was 1 April 2002.

Declarations under both acts—volunteers

Subsection 5(6) of the SRC Act provides for the Minister to declare classes of persons who engage in activities at the request or direction, or for the benefit of the Commonwealth or a Commonwealth authority to be employed by the Commonwealth for the purposes of the Act. Subsection 9(5) of the OHS(CE) Act contains an identical requirement.

Other declarations—Commonwealth authority

The Minister may also declare a body corporate in which the Commonwealth holds a controlling or substantial interest to be a 'Commonwealth authority' for the purposes of the definition at subsection 4(1) of the SRC Act. The effect of such a declaration is that the employees of the body corporate receive workers' compensation coverage under the provisions of the SRC Act.

PART 2: FRAUD—PREVENTION & MANAGEMENT, INVESTIGATION, COST AND INCIDENCE

INTRODUCTION

Part 2 addresses the terms of reference relating to fraud. It details Comcare's claim management systems and processes, and explains the mechanisms that are in place to prevent and detect fraud in the workers compensation environment. It then examines the incidence and cost of fraudulent claims, before discussing initiatives that are being considered to improve fraud management in the future.

FRAUD PREVENTION AND MANAGEMENT

In managing the Commonwealth's workers' compensation scheme, Comcare's goal is to ensure that all benefits are paid in accordance with the SRC Act.

Some of the principles espoused in the Act, and supported by Comcare's management systems are that:

- for a claim to be accepted, there must be a diagnosed medical condition;
- injuries under the scheme must have arisen out of, or been in the course of, employment;
- in the case of a disease, work must have contributed to the medical condition to 'a material degree';
- claims are not accepted where the disease, injury or aggravation is suffered by an employee
 - as a result of reasonable disciplinary action taken against the employee, or
 - failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment, or
 - where the disease, injury or aggravation is caused by the serious and wilful misconduct of that employee.²

The management systems used by Comcare are designed to ensure compliance with these principles.

The main aim of the workers' compensation claims management systems are to ensure that all claims made and paid are legitimate.

Comcare uses a purpose-built computer program known as PRACSYS that assists claims managers to:

- interpret and apply the legislation correctly;
- ensure that all entitlements are paid correctly;
- maintain records, including audit trails, for claims and payments.

² SRC Act, Sections 4 – definition of injury, Section 14 – compensation for injuries

At each stage of the process there are checks designed to ensure compliance and to provide guidance to decision makers in managing claims for workers' compensation benefits.

To support its work systems, Comcare has:

- a strong policy and procedural framework;
- a quality assurance and risk management program;
- a rigorous internal and external audit program;
- a comprehensive training and development program;
- a fraud control and investigations area; and
- access to expert advice across its range of functions.

CLAIMS MANAGEMENT PROCESSES AND PROTECTIONS

Comcare's workers' compensation claim management process has, at each stage, a range of checks specifically designed to ascertain entitlement and to prevent fraudulent claims.

The process checks are as follows.

Claim form

Comcare's claim form is designed to ensure that mandatory information and evidence is supplied to justify the claim. It must be accompanied by an original medical certificate completed by a legally qualified medical practitioner that includes a medical diagnosis and a statement outlining the relationship of the injury to work. The employer must sign the form and provide information either supporting or refuting the claim. Where there were witnesses and statements that would assist in the determination of a claim, supporting statements are sought.

Initial liability determination

New claims to Comcare are determined utilising a computerised guided decision making program (part of PRACSYS mentioned earlier). It assists claims managers to:

- make consistent, legally valid initial liability decisions;
- ensure that the SRC Act is interpreted and applied correctly; and
- ensure that relevant investigation is undertaken and evidence is collected prior to claim determination.

Utilising this system ensures a high standard of quality assurance in decision making is applied at the initial claim determination phase.

In 2000/2001 Comcare determined 6440 claims for workers' compensation benefits and of these 12.7 per cent were rejected. In 2001/2002 Comcare determined 6654 claims of which 14 per cent were rejected.

This program also assists claims managers to identify whether or not potential fraud indicators exist at the time of determination. As the claims manager inputs data from the claim form the system will note any irregular or potentially fraudulent indicators. If this occurs the claim manager is advised to contact the fraud investigation unit.

New claims are also subject to separate quality assurance processes, which check accuracy of data entry and the accuracy of decisions.

Treatment plans

On the acceptance of liability, Comcare's computer system provides a medical treatment plan for a claim. This plan, based on information built into the system, matches the injury type to a series of treatment protocols supported by current medical research.

This ensures that each individual claim has a time-specific medical strategy that outlines appropriate treatment including the number of treatment visits, cost ranges and time frames for attendance.

Treatment plans give claims managers a framework around which to define appropriate medical or allied health treatments and their costs, and periods of time off work. It provides a decision-making guideline that assists in the monitoring of claims and helps prevent over-servicing, overcharging and access to inappropriate treatment.

Claims managers monitor medical treatment plans and any extension beyond the initial time period allocated is only approved on the receipt of further medical justification provided by the claimant.

Periodic review forms

During the claims management process, claimants may be required to complete a Periodic Review Form. This form is designed to ensure that the information on a claim is accurate and up to date and that the claimant is receiving their correct level of entitlement.

Periodic reviews enable claim managers to collect up to date information on the injury, a range of personal details, superannuation data and any earnings that may need to be taken into account in determining the amount of compensation payable to the claimant.

They are sent to claimants on a managed basis ranging from events-triggered reviews for new claims (eg at the end of a treatment plan, following the end of a period of time off work etc) to annually for longer term cases.

Other benefits—household services, attendant care and aids & appliances

While not specifically medical treatments, Comcare's systems facilitate integration of some other injury-related services (eg home help, attendant care) into the framework of the medical treatment plan. This maintains a consistent approach to the management of all aspects of the claim and ensures that all

services are monitored and assessed as appropriate to the injury and personal circumstances of the injured worker.

Claims managers can set limits on the duration of these services. Comcare has implemented a schedule of fees based on reasonable costs for many of these services. The SRC Act also specifies a weekly maximum payment for both home help and attendant care services which is currently set at \$317.65 (indexed).

Occupational rehabilitation and case management

Within the claims management process, there is often a rehabilitation case management plan outlining actions required to assist the injured worker to return to work.

This plan is developed by a specialist provider and agreed by the employing agency. The plan is entered onto Comcare's system as part of the overall claims management process.

This approach ensures that all parties monitor the claim and provides additional checks in relation to claim validity, appropriateness of treatment, time off work and overall claim costs.

Decision review and the Administrative Appeals Tribunal

Another protection built into the workers' compensation system is the facility for appeal and independent review of decisions. Both the employer and the employee have access to the appeal mechanisms.

The initial request for reconsideration is made to an independent review officer within Comcare and then, if the appellant is still not satisfied, to the Administrative Appeals Tribunal. Both these reviews provide quality checks on the workers' compensation claims management system itself and decisions made within that system.

For the Financial Year of 2000/2001 a total of 1,565 reconsideration matters were managed by Comcare. 68 per cent of the reviewable decisions were affirmed. 698 matters were appealed to the Administrative Appeals Tribunal.

Reconsideration and Appeals Data			
Financial Year	1999/00	2000/01	2001/02
No of reconsiderations decided	1729	1382	1647
Affirmation rate	58%	68%	62%
No of AAT Appeals Received:	710	698	821

Reporting

Comcare reports to a range of stakeholders in relation to workers' compensation claims management. It reports to employers on a claim by claim basis, providing information on costs and services. Such reporting enables agencies to verify details contained within the reports and highlight any inconsistencies.

Comcare also provides an on-line Customer Information Service which allows agencies to review up to date individual claim and aggregated information. This information is particularly useful in identifying the key Occupational Health and Safety issues confronting agencies, thereby allowing them to develop appropriate prevention strategies.

Comcare reports to the SRCC on performance on a regular basis and the Department of Employment and Workplace Relations for the national Comparative Performance Monitoring project. This data is at a summary level but provides information on systems, payment types, claim and injury types and employer injury profiles, as well as administrative performance.

Training and education for staff

Comcare provides a comprehensive training and development program for all staff involved in claims management. This covers decision making, legislative compliance, simple fraud detection and other legal processes. Comcare also provides training services for customers and some providers in claims management processes.

System support tools and reference material and a number of quality review mechanisms such as audit and systems reviews are also available to support claims managers.

Claimant fraud

The claims management process administered by Comcare, and general employment framework within the APS, are designed to ensure that workers' compensation payments are only made where an entitlement exists. At all stages of the workers' compensation claim process, systems are in place in Comcare to ensure sound governance and fraud control.

These systems tend to ensure that where a fraudulent claim is made, it is detected and appropriate action can be taken. Identification of fraud within the Comcare jurisdiction occurs through a range of sources: audit and quality systems, informants, employers, providers and other agencies such as the police.

Provider fraud

Comcare processes a large number of invoices from claimants and providers and this requires an effective system of controls to maintain the integrity of the

payment operation. Approximately 15,000 invoices to the value of \$6million are paid each month.

Comcare has in place a number of controls for the payment of non-incapacity benefits that include:

- restricted access to the system to a limited number of processing staff;
- set rates of payment for each service item payable based on either the Australian Medical Association rates, Medical Benefits Scheme rates or leading Association rates for a particular service;
- maximum provider payment limits, after which verification must be made by a different staff member;
- automated checks for duplicate payments that place a suspected duplicate payment on hold and will not allow payment until verified by a different staff member;
- quality assurance staff performing random audits on accounts that have been paid; and
- claim Treatment Plans which will only allow payments to be made to service providers who have prior approval to provide such services.

The system limits opportunity for both over servicing and overcharging which are the major risk areas identified in relation to possible fraud by service providers. This identification is made by the system, matching treatment plans with injury types and ascertaining any services, costs etc that fall outside the system's inbuilt parameters.

Where issues are identified through any of the claims filters, audit or other process checks, claims managers can refer the issue for further investigation to Comcare's fraud investigation unit.

Employer fraud

Employer fraud in relation to workers' compensation usually falls into three main areas:

- failure to enter into appropriate insurance arrangements;
- falsifying claim or payment records to adjust insurance premiums; and
- falsifying records to extort money from insurers.

Within the Commonwealth jurisdiction, employers are bound by a legislative framework that makes it very difficult to undertake fraudulent activity in relation to workers' compensation.

All Commonwealth agencies are monitored for workers' compensation purposes and either obliged to pay premiums under the Comcare scheme or to enter into self-insurance arrangements. Government organisations have significant parliamentary reporting obligations and are subject to ongoing audit by the Australian National Audit Office—both of which mitigate against fraudulent activity. Organisations also have to provide wage and salary

estimates and cost data that can be verified through other Government accounting systems.

Additional safeguards are built into the workers' compensation system. The two most effective of these are the fact that the final decision maker, Comcare, is separate from the employer and that the regulator under both the SRC and OHS(CE) Acts collects data that can be matched against claims management data to ensure consistency.

Comcare has not, to date, uncovered any instances of employer fraud.

FRAUD INVESTIGATION

The Commonwealth Fraud Control Guidelines 2002

Comcare has fully accepted its obligations for fraud prevention and detection and complies to the fullest extent possible with the Commonwealth's Fraud Control Guidelines 2002, developed by the Australian Federal Police (AFP) in consultation with the Law Enforcement Co-ordination Division of the Attorney General's Department. The Guidelines place a number of responsibilities on Comcare in relation to fraud including:

- the responsibility for preventing and detecting fraud against the Commonwealth including fraud within those outsourced functions performed by external service providers;
- the responsibility for investigating routine or minor instances of fraud and for referring all instances of serious or complex fraud involving Commonwealth interests to the AFP;
- the preparation of fraud risk assessments and fraud control plans that comply with the guidelines; and
- ensuring that all agency employees and contractors to Commonwealth agencies primarily engaged in fraud control activities meet the appropriate training standards.

Comcare's Fraud Control Plan

Comcare first implemented a number of fraud control initiatives under a pilot Fraud Prevention Management program in 1993. In July 1997, Comcare implemented a formal fraud control plan which was based on a risk assessment conducted in 1996/1997. This plan focused on addressing fraud investigation, training and the documentation of investigations, in a period when Comcare was developing its fraud investigation capacity.

Comcare's current Fraud Control Plan for the period 2000 to 2002, and the risk assessment upon which it was based, comply with the Commonwealth's Fraud Control Guidelines. The risk assessment process was approved by the Law Enforcement Coordination Division (LECD) of the Attorney-General's Department prior to commencement.

Comcare's Investigation Management Unit

Comcare's Investigation Management Unit (IMU) is located in the Australian Capital Territory. The role of the IMU is to:

- investigate instances of suspected fraud or other criminal activity directed at the Commonwealth Government workers' compensation scheme administered by Comcare;
- investigate cases of suspected malingering, misrepresentation, the claiming of excessive benefits or the making of false or misleading statements in relation to a claim for compensation or other benefit from Comcare;
- where appropriate, prosecute in the criminal courts persons who have committed such offences;
- provide specialist advice to senior Comcare management on all aspects of investigative and law enforcement issues relevant to Comcare; and
- monitor changes to the Fraud Control Policy of the Commonwealth and other similar policies and legislation and implementing changes within Comcare.

Role of the Director of Public Prosecutions (DPP)

The DPP conducts all public prosecutions for criminal offences against Commonwealth law other than in a few areas where, for reasons of convenience, some summary prosecutions are conducted by other agencies under arrangement with the DPP.

Once Comcare has investigated an alleged offence and prepared a brief of evidence to support a prosecution and where possible asset recovery, the DPP conducts all prosecution matters on behalf of Comcare. The DPP provides legal advice and other assistance at the investigation stage including advice on the sufficiency of evidence and any issues arising under the *Prosecution Policy of the Commonwealth*.

INCIDENCE AND COST OF FRAUDULENT CLAIMS

Investigation statistics for the financial year 2000/2001

During the financial year 2000/2001, 151 new matters were referred to the IMU for investigation.

The 151 matters were referred from the following sources:

Referral Source	Number of Referrals
Comcare staff	87
Customer Agencies	26
Anonymous Informants	28
Known informants	10

129 matters investigated were finalised during this financial year.

Of the 129 matters finalised:

- 11 investigations resulted in the cessation of liability for workers' compensation benefits;
- 4 investigations resulted in the reduction of the amount of liability Comcare had estimated for the claim;
- 1 investigation resulted in the denial of a benefit;
- 1 investigation resulted in the recovery of an overpayment;
- 1 investigation resulted in successful prosecutions in the Magistrates Court in Canberra;
- 2 investigations are awaiting the outcome of action in the Administrative Appeals Tribunal;
- 19 investigations resulted in no change in the individuals claim for workers' compensation benefits; and
- 89 cases required some initial analysis but no formal investigation was found to be warranted.

Cost of fraud investigation for the 2000/2001 financial year

The costs of investigation spent during this financial year were as follows:

Cost Type	Amount
Outsourced Surveillance Investigation	\$225,520
Outsourced Factual Investigation	\$149,971
Comcare staff	\$376,582
Total	\$752,073

Savings

In relation to the 129 closed investigations in this financial year, the savings to Comcare and ultimately the Commonwealth are estimated to be approximately \$8 million.

These savings are calculated using Comcare's case estimate system. This system, based on actuarial assessments, allocates an amount to each claim which represents the expected cost to Comcare of that claim over its life.

Savings estimates are the cumulative totals of estimates that are no longer payable due to action taken as part of an investigation. Savings represent a reduction in Commonwealth liabilities as estimated by Comcare's actuary.

Investigation statistics for financial year 2001/2002

During the financial year of 2001/2002, 151 new matters were referred to the IMU for investigation.

The 151 matters were referred from the following sources:

Referral Source	Number of Referrals
Comcare staff	87
Customer Agencies	24
Anonymous Informants	27
Known informants	12
Service Provider	1

Investigation results

146 investigations were finalised during this financial year.

Of the 146 matters finalised:

- 6 investigations resulted in the cessation of liability for workers' compensation benefits;
- 2 investigations resulted in successful prosecutions in the Magistrates Court in Canberra;
- 1 investigation resulted in the denial of a benefit;
- 7 investigations are awaiting the outcome of action in the Administrative Appeals Tribunal;
- 6 investigations are awaiting the outcome of Claim Management action;
- 3 investigation matters of multi-jurisdictional crime were referred to the AFP resulting in the deportation of illegal immigrants;
- 32 investigations resulted in no change in the individuals claim for workers' compensation benefits; and
- 89 investigations required some initial analysis but no formal investigation was found to be warranted.

Cost of fraud investigation for the 2001/2002 financial year

The costs of investigation spent during this financial year are as follows:

Cost Type	Amount
Outsourced Surveillance Investigation	\$226,862
Outsourced Factual Investigation	\$19,805
Comcare Staff	\$376,582
Total	\$623,249

Savings

Of the 146 closed investigations in this financial year the savings to Comcare and ultimately the Commonwealth are estimated to be \$2,457,348.00.

There are another 13 investigation matters pending either an Administrative Appeals action or claim management outcome and the potential savings of these matters are estimated in excess of \$3.8million.

Summary

For the financial years of 1998/1999 to 2001/2002 Comcare through its fraud detection and investigation activities has achieved savings to the Commonwealth of approximately \$18.5million dollars.

	2000-01	2001-02
Investigations completed	129	146
Cost of investigations	\$752,073	\$623,249
Savings through investigations	\$8,000,000	\$2,457,348
Probably savings after resolution of remaining investigations (13 cases outstanding at time of writing)	—	\$3,800,000

OTHER FRAUD INITIATIVES

Fraud filters

To date Comcare's fraud investigation has in the main been reactive. To assist in the more proactive identification of claims which are potentially fraudulent, Comcare has recently undertaken a project of developing a fraud filter system to identify claims which are most likely to warrant further investigation.

In a recent pilot program, a number of 'red flag' parameters developed by Curtin University and accepted and used by Charles Sturt University were applied against a set of Comcare's data encompassing claims for the period of 1996 to October 2001.

These parameters are developed to assist in early identification of potential fraud using a range of characteristics that researchers found are common to many fraudulent claims. The parameters work on the inter-relationships between data elements and pick up combinations that can indicate invalid or fraudulent claims. The types of data the parameters look for include:

- inconsistencies in timing, injury and accident type, personal particulars etc;
- issues such as previous injuries and claims;
- relationships between those claiming and other involved in the alleged incident;
- connected events, claims, and/or other legal processes (such as harassment, discrimination etc); and/or
- mismatches in severity of injury, treatment and claims for benefits.

The outcome of this project was very useful in highlighting claims that required further investigation. Comcare is now examining opportunities to integrate the parameters into the PRACSYS computer system. The benefits will include:

- an automated tool which easily and simply identifies irregular claims;
- reduced need of extensive training for claims staff to enable them to identify irregular claims;
- reduced time required by staff to identify irregular claims; and
- standardised procedures for managing irregular claims.

Data matching

Data matching (which is simply the comparison of information from a range of sources to prevent duplication of payments) fraudulent claims and other forms of 'double dipping' could be used to advantage between State and Commonwealth organisations.

Data matching would allow Comcare to:

- check the validity of information supplied by individuals;
- assist in verifying that individuals are receiving their correct level of entitlement;
- assist in the identification of undeclared income; and
- provide vital intelligence for criminal investigations which might not otherwise be available.

Data matching is reliant on agencies gaining access to a large amount of personal information on individuals and would need to be subject to appropriate controls. Obviously a crucial issue to the implementation of such arrangements would be the privacy rights of individuals. A great deal more work needs to be undertaken on this issue before implementation could be considered.

It is worth noting that at this stage Comcare has the legal authority to obtain information from the employer or the Australian Taxation Office where it suspects fraudulent activity.

PART 3: SAFETY AND REHABILITATION

INTRODUCTION

This part of the submission is divided into four sections. The first outlines the structure and approach. The second section considers safety records and claims profiles for Commonwealth employment based on the most recently available data. It outlines explanatory factors identified in the literature, and considers key aspects of Commonwealth legislative and institutional arrangements and their role in safety and claims performance.

The third section outlines the Commonwealth's approach to rehabilitation, notes the findings of reviews of the Commonwealth model, and considers comparative information on return to work outcomes and processes.

The final section of this part outlines Comcare's response to emerging issues in relation both to prevention and rehabilitation.

The submission relies on official statistics based on workers' compensation claims that derive primarily from the Comparative Performance Monitoring (CPM) project initiated by the Workplace Relations Ministers' Council, and reports against the SRCC's performance indicators.³

SAFETY RECORDS AND CLAIMS PROFILES

Comparative performance monitoring

CPM is an initiative of the Workplace Relations Ministers' Council. It allows comparison of the performance of the Commonwealth workers' compensation scheme with other schemes in Australia on a standardised basis.

The CPM reports (CPMRs) provide information about compensated workplace injuries and fatalities, but do not cover work-related disease or journey claims. Members of the Defence forces are excluded from 'Commonwealth' safety data for the purpose of the reports, but corporations and authorities licensed to self-insure are included, as well as employers who pay a premium to Comcare. Information on the ACT Government Service (ACTGS) is separately reported.⁴ The fourth report is the latest in the series and reports on performance up to 2000/01. Table 3.1 summarises the injury information from that report for the Commonwealth, the ACTGS and the Australian average.

Based on CPM performance data standardised to reflect the industry mix across Australian workers' compensation jurisdictions, the Commonwealth has one of

³ In October 2001, the Australian Bureau of Statistics (ABS) released a survey on work-related injuries—the first representative information of its type available for a number of years. The submission does not rely on that survey as the ABS survey provides jurisdictional information based on State or Territory of residence, and does not separately identify work-related injury for the Commonwealth or Comcare.

⁴ As noted in Part 1, the ACT Government was declared a Commonwealth authority for the purposes of the SRC Act in 1994. The ACT Government has its own legislative arrangements governing occupational health and safety.

the lowest records of compensated workplace injury of any of the jurisdictions covered.

- The incidence rate (number of injuries per 1000 employees) for compensated workplace injuries resulting in 1 week or more off work in the Commonwealth has continued to decrease over a three year period and at 12.0 is one of the lowest in Australia—well below the Australian average of 15.2 (refer CPMR4, Part A, Figure 1).⁵
- The frequency of injuries resulting in 1 week or more off work per million hours worked in the Commonwealth is 5.8, which is the lowest in Australia, and well below the Australian average of 9.0 (refer CPMR4, Part A, Figure 2).

Based on unstandardised data in the CPM, the Commonwealth scheme performs well above average on the critical 6 and 12 week or more off work measures, and has shown an improving trend to 2000-2001 (refer CPMR4, Part A, Figures 5-8). These indicators are important because the length of time for which compensation is paid to a worker is an indicator of the severity of the injury, whether a scheme's rehabilitation and return to work programs are effective, and the costs of an injury to the worker, the scheme and employers.

For the Commonwealth, the incidence rate and the frequency rate of compensated traumatic fatalities are well below the Australian average (refer CPMR4, Part A, Figures 35 and 36).

⁵ CPMR4 refers to the *Comparative Performance Monitoring Fourth Report, Workplace Relations Ministers' Council, August 2002*.

Table 3.1: Summary of Comparative Performance Monitoring Information for the Commonwealth, ACTGS and Australia, 2000/2001

Rates for compensated injuries and fatalities (excludes disease and journey claims)	Commonwealth	Australian average	ACTGS
Incidence rate of injuries resulting in 1 week or more off work, standardised	12.0	15.2	24.6
Frequency rate of injuries resulting in 1 week or more off work, standardised	5.8	9.0	13.3
Incidence rate of injuries resulting in 1 week or more off work, unstandardised	8.0	15.2	11.3
Frequency rate of injuries resulting in 1 week or more off work, unstandardised	3.5	9.0	10.2
Incidence rate of compensated injuries resulting in 6 or more weeks off work, unstandardised	2.7	5.4	8.8
Frequency rate of injuries resulting in 6 or more weeks off work, unstandardised	1.2	3.2	5.0
Incidence rate of injuries resulting in 12 or more weeks off work, unstandardised	1.7	3.3	6.3
Frequency rate of injuries resulting in 12 or more weeks off work, unstandardised	0.7	2.0	3.5
Incidence rate of fatalities	0.8	2.6	*
Frequency rate of fatalities	0.4	1.5	*

Source: Workplace Relations Ministers' Council, *Comparative Performance Monitoring Fourth Report*, August 2002.

* The ACTGS is statistically too small to record a rate per 100,000 workers, or a rate per 100 million hours worked.

Inter-industry differences

The CPMR illustrates that there is considerable variation in the incidence of injuries across different industries in Australia, with the maritime, mining, construction and transport and storage industries reporting the highest incidence of workplace injuries, followed by Agriculture, Forestry and Fishing, Manufacturing and Health and Community Services (refer CPMR4, Part A, Figure 9).

Commonwealth employment occurs across a number of industries and occupations, and CPMR4 includes data that allows a comparison of Commonwealth performance with that of other jurisdictions for selected

industries (Transport and Storage, Manufacturing, Health and Community Services and Education), standardised to reflect the sub-industry mix.

The data shows that for Commonwealth employment for the period 2000/01:

- *for Transport and Storage*, the incidence rate for compensated workplace injuries resulting in 1 week or more off work, and for 12 or more weeks off work was better than the Australian average for the industry (refer CPMR4, Part A, Figures 17, 18);
- *for Manufacturing*, the incidence rate for compensated workplace injuries resulting in 1 week or more off work was marginally worse than the Australian average for the industry, but for 12 or more weeks off work was considerably better than the Australian average for the industry (refer Part A, CPMR4, Figures 19, 20);
- *for Health and Community Services*, the incidence rate for compensated workplace injuries resulting in 1 week or more off work was better than the Australian average for the industry, but for 12 or more weeks off work was worse than the Australian average for the industry and trending upwards (refer CPMR4, Part A, Figures 21, 22); and
- *for Education*, the incidence rate for compensated workplace injuries resulting in 1 week or more off work was better than the Australian average for the industry, but for 12 or more weeks off work was worse than the Australian average for the industry (CPMR4, Part A, Figures 23, 24).

Mechanism of injury

As claims that incur more than 12 weeks of compensation payments make up a significant proportion of premium costs, the CPMRs include information about the 'mechanisms of injury' for these claims. The mechanism of injury classification is intended to identify the action, process or event that was the direct cause of the most serious injury or disease. The four highest percentage mechanisms of injury that incur 12 or more weeks of compensation payments are:

- 'body stressing' (including strains from lifting, carrying or putting down, strains from pushing, pulling or kicking objects, strains where no objects are handled, and repetitive movement/low muscle load injuries);
- 'falls, trips and slips of a person' (including falls from a height, falls on the same level, and step/kneel/sitting on objects);
- 'being hit by moving objects' (including being hit by falling or moving objects, being bitten or hit by an animal, being hit by a person, being trapped by moving machinery or between objects, and exposure to mechanical vibration); and
- 'other and unspecified mechanisms' (including a slide or cave in, vehicle accidents, other multiple mechanisms of injury, and unspecified mechanisms of injury).

The most recent report shows that for most schemes, including the Commonwealth, approximately 50 per cent of compensated injuries resulting in 12 or more weeks of compensation payments were caused by 'body stressing'. For the Commonwealth, the next most important mechanisms were 'falls, trips and slips of a person', followed by 'other mechanisms'. For the Commonwealth, 'being hit by moving objects' accounted for the smallest proportion of claims, although for most other schemes this mechanism was the third most important (refer CPMR4, Part A, Figure 32).

Consideration of the subcategories of the mechanism 'body stressing' for each jurisdiction reveals a more even spread across the subcategories for the Commonwealth compared to the other jurisdictions. Strains from lifting, carrying or putting down account for the largest proportion of Commonwealth claims that incur 12 or more weeks of compensation payments, followed fairly closely by strains from pushing, pulling or kicking objects, body stressing from repetitive movements or low muscle loads, and strains where no objects were handled (refer CPMR4, Part A, Figure 34).

Intra-scheme performance

One of the SRCC's key strategies in driving the Commonwealth scheme towards achieving improved performance is its system of outcome focused performance indicators. The SRCC and Comcare's annual reports provide performance data for the Commonwealth against the Commission Indicators. They provide information on 'injury' claims involving work-related injury and disease, and include journey claims. They are therefore not comparable with the CPM figures mentioned above (which exclude disease and journey claims). The SRCC reports also separately identify performance for the Australian Defence Forces (ADF), self-insuring licensees, and the largest premium paying agencies. As noted above, the CPMRs exclude members of the Defence forces from 'Commonwealth' safety data.

Table 3.2 provides information for Comcare, the ADF and licensees against selected Commission Indicators for the period 2001/02. Table 3.3 details the performance of the 15 largest premium-paying agencies (in order of employee numbers) against Commission Indicators where performance is attributable to the agency (rather than Comcare, who manages its claims) for the period 2001/02. As with the performance of the licensees reported in Table 3.2, Table 3.3 shows that there is considerable variation in performance between agencies.

Table 3.2: 2001/2002 Selected SRCC indicators—achievement by determining authorities

2001/2002 Performance	P1 Incidence of injuries with:			P4 Lost time injury (claims) frequency rate (LTIFR)	C1 Average time taken in calendar days to determine new claims (from date of receipt)	R1 % of claims with 10 or more days incapacity with a RTW plan	R2 Quality of RTW - % achieving RTW on case closure	SA2 Administration Costs per claim
	5 or more days lost time per 1,000 employees	30 or more days lost time per 1,000 employees	60 or more days lost time per 1,000 employees					
Comcare	14.10	5.91	3.99	11.62	19	58%	81%	\$1,553
Telstra	10.45	4.25	2.88	10.14	18	59%	91%	\$1,248
Aust Post	17.49	5.61	6.67	17.83	12	NA	94%	\$1,427
NDC	9.86	6.57	3.09	7.26	14	42%	83%	\$1,541
ADI	8.95	3.50	1.95	9.08	14	93%	100%	\$1,368
AaE	28.77	3.79	2.27	33.67	9	83%	100%	\$1,261
Reserve Bank	6.39	0 cases	0 cases	7.79	13	0 cases	0 cases	\$4,331
Visionstream	0 cases	0 cases	0 cases	6.95	2	0 cases	100%	\$1,680
Pacific National	30.83	9.17	7.50	20.24	11	57%	50%	\$1,540
ADF#	Not applicable			18.5	147	Not applicable	66%	\$765
Aggregate Scheme Performance 2001/ 2002	14.02	5.60	4.14	12.36	17	59%	88%	\$1,474
Aggregate Scheme Performance 2000 / 2001*	14.98**	Not measured	Not measured	11.69**	19	55%	84%	\$1,348

NA Data not available

ADF is not included in Aggregate Scheme Performance figures

* Pacific National was not part of 2000/2001 performance as it was not a licensed determining authority in 2000/2001

** Scheme Performance for 2000/2001 differs from last year's Annual Report due to new reporting methodology.

Table 3.3: 2001/2002 Selected SRCC indicators—achievement by large premium agencies

Agency	P1 Incidence of injuries with:			P4 Lost time injury (claims) frequency rate (LTIFR)	C6 Average time taken (in calendar days) from date of injury to claim lodgement with Comcare)	R1 % of claims with 10 or more days incapacity with a RTW plan	R2 Quality of RTW. % achieving RTW on case closure
	5 or more days lost time per 1,000 employees	30 or more days lost time per 1,000 employees	60 or more days lost time per 1,000 employees				
Centrelink	16.07	6.93	4.76	11.31	82	63%	85%
Australian Taxation Office	10.94	5.08	3.37	9.31	56	58%	86%
Department of Defence (civilian)	10.31	4.27	2.78	9.71	82	49%	71%
Commonwealth Scientific & Industrial Research Organisation	10.44	2.73	1.45	9.95	52	40%	83%
Dept of Family & Community Services	8.09	2.29	1.58	7.23	72	57%	71%
Australian Customs Service	17.02	4.02	1.89	16.58	53	44%	94%
Australian Broadcasting Corporation	8.81	3.57	1.43	7.70	61	35%	71%
Health Insurance Commission	17.32	6.88	4.59	11.87	56	64%	83%
Dept Immigration & Multicultural & Indigenous Affairs	8.73	4.11	2.31	8.87	74	63%	91%
Dept of Foreign Affairs & Trade	5.70	3.00	2.10	4.11	103	18%	50%
Australian Bureau of Statistics	34.03	7.60	4.56	27.64	54	41%	94%
Australian National University	9.07	4.07	3.44	6.68	55	67%	79%
Department of Health & Ageing	13.86	7.87	6.61	11.22	57	109%*	80%
Airservices Australia	13.24	4.41	1.70	10.61	34	20%	100%
Dept of Agriculture, Fisheries & Forestry	27.74	7.37	3.51	23.47	63	38%	82%
Aggregate of all other Comcare premium paying agencies**	15.05	7.02	5.03	12.39	64	74%	79%
Aggregate of all Comcare	14.10	5.91	3.99	11.62	65	58%	81%

* Results over 100% are possible due to processing catch up
 ** includes the ACT Government

EXPLANATORY FACTORS

A variety of factors have been recognised as contributing to different safety records across industries, as reflected in workers' compensation claims.⁶ Broadly, these factors may be categorised as institutional, structural, physical, organisational, individual and social:

- *Institutional factors*—these include the legislative frameworks that enable the delivery of occupational health and safety (OHS) services and provide systems of compensation and rehabilitation. Differences in the design, coverage, structure and operation of such frameworks and the institutions that operate under them can be important in explaining differences in safety and claims performance, particularly across jurisdictions.
- *Structural factors*—different operational, competitive and labour market factors operating at the industry level are sometimes termed structural factors. A recent study of the aged care sector (reported in CPM4, Part A, Appendix A) notes that relevant structural factors may vary from industry to industry. The study identified age, occupation, size of facility, location, ownership and residential care levels as relevant structural factors impacting on occupational health and safety performance in the aged care sector. But the study notes that 'building and construction would have to capture contractual arrangements, type of construction and working hours as part of the structural variables.'
- *The physical working environment and the nature of the work itself* are a recognised source of occupational hazards, and can vary both between and within industries. For example, work that involves spending a significant portion of the day underground, or riding a motorcycle or handling dangerous chemicals involves a higher level of inherent risk and results in different types of injuries than office based work. Note, however, that care needs to be exercised in categorising factors as physical or technical, as many physical and technical aspects of the workplace are not immutable, but are a result of conscious human decision making, job design and work organisation.
- *Organisational factors*—at the workplace level a large number of factors relating to the way the workplace is organised can affect safety and claims performance, including
 - organisational stability and employment security
 - induction, training and promotion systems
 - leave provisions, childcare facilities and sexual harassment programs

⁶ For example see Richard Johnstone and Michael Quinlan, "The Origins, Management and Regulation of Occupational Illness: an Overview" in *Work and Health: the Origins, Management and Regulation of Occupational Illness*, Michael Quinlan (ed.), Macmillan Education Australia, Melbourne, 1993, pp.1-32; and Philip Bohle and Michael Quinlan, *Managing Occupational Health and Safety: a Multidisciplinary Approach*, 2nd ed., Macmillan, Melbourne, 2000, pp. 66-143.

- management policies and commitment to OHS
 - management structures, supervisory and discipline systems
 - the arrangement of work processes and task structures
 - payment, reward and incentive systems
 - hours of work and shift arrangements
 - staffing levels, workload and production pressures
 - workforce age, experience, language skills, and literacy
 - union involvement
 - different workplace cultures, and
 - use of outsourcing or subcontracting.⁷
- *Individual and social factors*—individual behaviour (for example apathy or carelessness that results in breach of formal safety rules, or the exaggeration of claims) has a role to play in understanding safety records and claims profiles. But such behaviour may need to be seen in its broader social and organisational context. For example, organisational and social factors that contribute to fatigue, frustration and stress may, in turn, promote careless or unsafe behaviour.

Factors that are ‘relevant and incidental to Australia’s workers compensation schemes’

The terms of reference focus attention on explanatory factors that are ‘relevant and incidental to Australia’s workers’ compensation schemes’, rather than on the full range of factors that may contribute to different safety records as outlined above. Consistent with the terms of reference, this section focuses on key aspects of Commonwealth institutional and operational arrangements.

An outline of the relevant Commonwealth legislative arrangements is provided in Part 1 of this submission.

The 1988 legislation (the SRC Act) was developed in the context of significant increases in the numbers of workers’ compensation claims and the spiralling cost of work-related injury in Commonwealth employment. Its objective was to:

- reduce the incidence of work-related injury and disease for Commonwealth employees by encouraging a safer and healthier working environment;
- reduce the severity of injury through the prompt return to work of Commonwealth employees through effective rehabilitation;
- assist employees who sustain a work-related injury or disease through the provision of adequate and timely support and financial assistance; and

⁷ Bohle and Quinlan, op cit, p.28.

- control the Commonwealth's long term liability resulting from work-related injury and disease.⁸

The Commonwealth scheme that was developed in response to these imperatives is based on the premise that a high benefit structure can be sustained in the long term at low cost in a system in which premiums provide direct incentives for prevention and rehabilitation, and prevention, claims management and rehabilitation are fully integrated.

Key features of the Commonwealth scheme

There are a number of key features of the Commonwealth arrangements that help to explain the relative success of the Commonwealth scheme. Key elements of the Commonwealth scheme and those of other jurisdictions are outlined in the Heads of Workers' Compensation Authorities report, *Workers' Compensation Arrangements in Australia and New Zealand*.⁹

An integrated approach to prevention, compensation and rehabilitation

In 1988, the legislation provided for Comcare to take responsibility for the promotion of healthy and safe workplaces in areas of Commonwealth employment. Following the passage of the OHS(CE) Act in 1991, Comcare was able not only to administer the relevant OHS legislation, but also to fully integrate OHS with the other strands of the legislation. This legislation also enabled Comcare to play an active role in regulating the occupational health and safety of Commonwealth employees.

Integration enables Comcare to minimise claims by encouraging preventative action by agencies. Comcare is able to use data from its claims management system to identify illness and injury trends in workplaces, and to encourage agencies to monitor their claims costs and develop preventative programs.

Where claims do occur, integration of claims management and rehabilitation, with cooperative arrangements between agencies and Comcare, enables a smooth transition between claims processing and rehabilitation. The early identification of claims that are likely to involve extended periods of incapacity, and early intervention are important factors in ensuring early return to work.

A 'no fault' scheme, with limited access to common law

The SRC Act provides a 'no fault' scheme. Essentially this means that an injured employee does not have to show that the employer did anything wrong in order to be eligible for compensation. Generally, the employee is covered provided that their injury or disease did not arise from their own 'serious and wilful misconduct'.

⁸ Office of the Commissioner for Employees' Compensation, *Annual Report of the Commissioner for Employees' Compensation 1987-88*, AGPS, Canberra, 1989.

⁹ *Workers' Compensation Arrangements in Australia and New Zealand*, Heads of Workplace Safety and Compensation Authorities, Victorian Workcover Authority (ed.), November 2001.

For example, a person tripping over their own untied shoelace and injuring themselves as they fall in the workplace would be covered for workers' compensation under the scheme. This is so even though it could be argued that the individual's carelessness or lack of attention caused the injury, and even though the employer did nothing wrong. Another example would be where a person is working in a position known to be stressful, such as counter staff or call centre staff dealing with customer complaints. The agency may have extensive support programs in place to mitigate the circumstances of the position as much as they feel they can. However, if, despite the employer's efforts, the employee develops an anxiety condition which has been brought on by the work, then they would be covered for workers' compensation.

The 'no fault' characteristic of the Commonwealth scheme helps to encourage a quick response to rehabilitation, and reduces arguments about liability that occur in some other jurisdictions.

Cost accountability

Employers are accountable for creating safe workplaces and for the cost of injuries that occur. This is achieved through a legislated duty of care combined with an incentive-based premium system.

The fully funded¹⁰, performance-based premium system¹¹ commenced on 1 July 1989. The system was designed to make agencies financially accountable for the costs of workers' compensation, and to provide incentives for agencies to develop effective injury prevention and rehabilitation strategies. Cost accountability reduced any prior incentive for employers to retire injured employees, rather than return them to productive work.

The Comcare premium model is designed so that the premium paid to Comcare by each agency responds to the number and cost of claims from that agency. To reduce its future premiums, an agency must reduce its claims frequency, and/or reduce its average claim cost.

But the premium model does not aim to set a rate that matches claim performance in a single year. It is designed to respond to trends in claim performance, without over-reacting to random fluctuations.

Comcare obtains actuarial advice on the size of the 'premium pools'¹² (one for the Commonwealth and one for the ACT Government) needed each year, and calculates a premium for each agency, taking into account the development of each agency's claims over a number of years.

¹⁰ In insurance terms, a scheme is fully funded where sufficient funds are collected now to pay for all expected future costs associated with claims occurring in a particular injury year.

¹¹ A premium is money charged by Comcare for the cost of managing the compensation claims of a customer—the cost of a policy. Premiums represent the expected liability of a customer, based on the claims received in previous financial years. Each premium comprises a prescribed amount and a bonus or penalty amount.

¹² A 'premium pool' is the sum of all premium funds collected from agencies as assessed by the Actuary as necessary to fully fund liabilities.

Comprehensive benefits

The Commonwealth scheme is based on a comprehensive benefits structure with entitlement to compensation payments for 45 weeks at 100 per cent of normal weekly earnings, and 75 per cent thereafter. There is an entitlement to incapacity payments until age 65, with provisions for workers injured on or after their 63rd birthday to have a continuing entitlement to incapacity benefits for up to 104 weeks. 'Journey claims' to and from work, which are excluded in some other jurisdictions, are covered. The relatively high benefit structure that prevails in the Commonwealth jurisdiction provides an incentive for employers to minimise compensation claims, including through safe and effective return to work, and for employees to report claims at an early stage. Relatively lower benefit structures may provide less incentive for employers, and contribute to under-reporting or delayed reporting of claims by employees. The latter can contribute to a higher incidence of more chronic injuries.

Efficient service

Comcare is financially self-sufficient, and customers expect efficient service, price and cost. This has resulted in a major emphasis being placed on continuous improvement across all areas of performance (prevention, claims management and rehabilitation).

Other factors that influence relative performance

No employer excess

Differences in work-related injury records that are based on workers' compensation claims may be at least partially the result of differences in the design, coverage or structure of different schemes. For example, under the Commonwealth system, employees are covered from the first full day of incapacity. Several State workers' compensation arrangements provide for an employer excess, ranging from coverage for the day of injury to the first 10 days of incapacity.

Structural change

Like most Australian workers' compensation schemes, the Commonwealth scheme covers workers engaged under contracts of service. It does not cover those engaged under contracts for services. Structural changes to Commonwealth employment, including those arising from privatisation and contracting out, reduced the number of employees under the scheme. This may have changed the overall risk profile of Commonwealth employment.

Management at the agency level

Under the SRC Act, agencies are required to co-operate with Comcare to ensure that the provisions of the SRC Act are complied with. The SRC Act also confers on agencies specific powers in relation to the rehabilitation and

management of the return to suitable duties of their injured workers. Guidelines that inform how agencies exercise these powers are issued by Comcare under the legislation.

Under the OHS (CE) Act, agencies are required to take all reasonably practicable steps to protect the health and safety of their employees at work and to comply with the requirements of the legislation.

For its part, Comcare assists agencies to develop, promote and implement prevention programs, as well as assisting with specific OHS projects. It provides practical guidance, including through publications, training, and customer forums, and undertakes research into the incidence and prevention of injury. Comcare also conducts investigations, in response to a notification of an accident at a workplace, or a request, or as part of its Planned Investigation Program. These investigations specifically focus and report on agencies' OHS policies and practices.

The SRCC evaluates each licensee's compliance against their conditions of licence and their performance against SRCC indicators and targets. Licence compliance results and performance reports form the basis for SRCC decisions on relevant licence renewals and the calculation of the performance component of licence fees.

Despite these initiatives, there is considerable variation in safety records and claims profiles across agencies and licensees, and for the ACTGS. These differences may be attributable to:

- the different industry risk profile of the agency, licensee or ACTGS (arising from the operation of different physical, technical, structural and organisational factors); and/or
- differences in risk management performance.

Some of the variation evident in tables 3.2 and 3.3 above, particularly in relation to safety indicators (such as P1 and P4), can be explained by the industry risk profile of the agency. For example, police and rail freight operations are acknowledged as higher risk industries than broadcasting and administrative industries. However, some of the variation cannot be explained by industry risk, suggesting a need for greater attention to OHS issues in some agencies.

The most efficient and effective way to create and maintain a healthy and safe work environment is for senior managers to integrate OHS risk management into their daily business operations. The SRCC has developed the OHS Risk Management Model to assist Commonwealth managers to achieve best practice in risk management performance.

The Risk Management Model contains the following six broad principles:

- senior management leadership and commitment;
- active involvement of each individual in the workplace;
- effective communication through consultation with all relevant parties;
- provision of appropriate information, education and training;

- hazard identification, risk assessment and risk control at the workplace level; and
- development and implementation of appropriate OHS management information systems.

However, the primary element of the model is senior management leadership and commitment. Without leadership and commitment driving the model, there is little chance of success.

The final section of this part of the submission will provide an overview recent Comcare initiatives to improve both OHS and rehabilitation performance within Commonwealth employment, including its Leadership and Accountability Strategy.

THE ADEQUACY, APPROPRIATENESS AND PRACTICABILITY OF REHABILITATION PROGRAMS AND THEIR BENEFITS

The Comcare rehabilitation model

Research and experience has shown a clear link between early intervention, the containment of claim costs and successful rehabilitation.¹³ Early rehabilitation assistance helps individuals to get back to work faster and with fewer complications and avoids the significant costs that can occur when return to work activity is delayed, including through an impact on workplace productivity.

The SRC Act emphasises the importance of the employer/employee relationship and the mutual responsibilities of employers and employees in achieving expeditious, safe and durable return to work. The aim is for employees to resume their pre-injury employment status as soon as possible following injury. Employers covered by the SRC Act are responsible for determining access to rehabilitation assessments and programs. Employees are required to actively participate in the development and implementation of their return to work program, or they can lose their entitlement to compensation payments.

Comcare's return to work model is built on the following principles:

- early diagnosis of injured employees and timely rehabilitation assistance will lead to better outcomes for the employee and the employer;
- employers have a responsibility to identify safe, suitable duties for the injured employee as early as possible;
- injured employees requiring rehabilitation should have a managed return to work plan based on their individual injury circumstances;
- rehabilitation programs are best managed at the workplace;

¹³ For example, see Comcare, *Comcare Australia, Annual Report 1995-96*, AGPS, Canberra, 1996, pp. 20-21; Comcare, *Comcare Annual Report 1998-99*, Comcare, Canberra, 1999, p.56.

- each employee has a responsibility to participate in the development of the plan and the return to work effort; and
- approved experts—rehabilitation providers—are available for the delivery of quality return to work services.

Comcare’s approach fully integrates claims management and rehabilitation and aims to ensure that cases requiring return to work programs are identified at an early stage. Accredited rehabilitation providers assess injured employees who are likely to be away from work for more than 10 days or who have complex injuries—that is, those people who would benefit from rehabilitation in facilitating their return to work. This may include people with soft tissue, occupational overuse and back injuries, as well as those suffering from occupational stress related illnesses.

An assessment of the predicted complexity and duration of an injury is arranged by the employing agency’s case manager. Case managers may contract with approved service providers for services associated with the program. Where necessary, an individual return to work plan is developed. These plans are managed by the employing agency at the workplace. They focus on the capabilities of the injured worker and document the steps necessary to assist the persons to re-enter the workplace. They are developed through a consultative process involving the injured employee, the treating doctor, the rehabilitation provider, the employee’s supervisor and, where necessary, the union delegate. This consultation ensures that the plan is not imposed on either the injured employee or the employer. If the employee is not satisfied with the program, they may request a reconsideration by Comcare, and if still not satisfied following the reconsideration, may appeal to the Administrative Appeals Tribunal.

Comcare’s rehabilitation model aims to ensure a sustainable return to work. Graduated return to work is sometimes used to ensure the employee is not re-injured by returning to full-time work too soon. Redeployment strategies are also considered to be an essential element of successful rehabilitation for that limited number of cases in which return to the same employer is not practicable.

Where a sustainable return to work is not probable, case managers assess whether a revised return to work plan or invalidity retirement is appropriate. The latter is only considered when there is medical evidence that the employee will never be able to work again and all return to work options (whether in Commonwealth or any other employment) have been exhausted. While Comcare provides advice to employers on these matters on a case by case basis, it is ultimately a decision for Comsuper, and is an avenue pursued in only very few cases.

Comcare offers training and support for case managers. As part of this support, Comcare makes available to agencies, experienced staff who can analyse return to work data and from this provide advice on more effective ways of managing the return to work effort. This service is provided at the request of an agency or initiated by Comcare staff who identify data

indicating that an agency could benefit from targeted information or advice. Agencies can also access their claims and injury management information and produce reports through Comcare's on-line Customer Information System.

Comcare is also responsible for setting and regulating the quality standards of rehabilitation providers, for providing performance information to key stakeholders, and for researching best practice strategies.

Comcare approves rehabilitation service providers according to standards of service delivery gazetted under the SRC Act. Agencies can provide their own in-house rehabilitation services, where the personnel providing these services are approved by Comcare. However, agencies cannot make referral to these providers compulsory, and must meet Comcare's standards. In all agencies, the employer is responsible for selecting a rehabilitation provider, and in so doing, takes into account the needs and wishes of the injured worker.

Experience suggests that where rehabilitation services are contracted out, the relationship with the service provider needs to be carefully managed to ensure that responsibilities are clear and communication issues are handled effectively.

The best outcomes in rehabilitation are achieved when the employee, employer, approved rehabilitation provider and treating doctor are all focussed on a common goal—that is, making it possible for an individual to remain in their job or return to productive employment following a work-related injury. This means identifying suitable and safe employment options as soon as possible and making them available to the employee. It means being creative in seeking solutions, and working together with a common purpose. Medical experts, the employer and the employee need to maintain their focus on the employee's capacities and strengths, and must match these with suitable work opportunities.

The following case example helps to explain how these principles, and the roles of individuals can work in practice.

Rehabilitation case example

Employee reports pain

The employee had only been working for eight weeks when she started to say that by the end of each day she was suffering from neck pain. There was no history of an underlying condition, but she was very concerned about what was happening and what the cause might be.

The employee was unable to get a proper diagnosis from her doctor who wrote a certificate for neck pain. At this stage the employee did not want to claim a work injury and the diagnosis and cause were uncertain. The employee's doctor was very much of the opinion that she just needed to rest her arms and back and the condition would resolve.

This type of medical intervention is not helpful as it does not take account of the possibilities of accommodating the employee at the workplace.

The case manager suggested to the employee that she see an occupational physician and an approved provider to look at restrictions in duties rather than to continue away from work.

The employer's action was helpful in attempting to refocus the employee and the doctor on the workplace and occupational possibilities.

The employee was interested in her workplace needs, and in addressing the problems, and had strong ideas of what was needed. A provider who was expert in ergonomics and occupational therapy was engaged and the employee's physical needs were attended to—an ergonomic key board was provided, a new work station chair and a chair for back rest were provided.

The case manager and the provider worked together to keep the employee at work.

Although at this stage there was no claim, the rehabilitation provider and the case manager worked to keep the employee at work. The provider also recommended a mentor to assist with work organisation and planning.

Good co-operation between all parties helped to ensure the focus was on the workplace and not solely on treatment.

Two weeks later the employee lodged a claim for compensation with a valid diagnosis. The GP also referred the individual to a range of medical specialists. The rehabilitation provider contacted the medical experts and with good communication developed a graduated and safe return to work plan. Duties remained similar to the original job.

The employer and the rehabilitation provider closely monitored progress in consultation with the medical experts.

The case manager continued on the case and the employee was returned to full time duties. There remained some concerns—identified through closely working with the employee—that part of the problem may have been the employee's anxiety about achievement. As the goal is to ensure that return to work is safe and durable, the rehabilitation provider and case manager suggested to the GP that there could be benefit in counselling and pain management intervention. A referral was made to a psychologist who was able to tackle the perception of stressors at the workplace, and assist the employee to develop better coping strategies.

Employee's Response

Quick and supportive action by the employer gave the employee confidence in the process. The fact that the case manager and the rehabilitation provider actively worked to gain the cooperation of the medical treatment experts, and to focus on workplace possibilities was critical in the success of this case. The employee was an active participant in the process.

Summary

From an occupational rehabilitation perspective this is an example of a successful outcome. Addressing the following factors contributed to a good result:

- early intervention and assistance was offered by the employer;
- a purposeful relationship was cultivated between the workplace and the medical treatment experts that focussed on clarification of the employee's occupational capabilities;
- the rehabilitation provider gained the cooperation of the treatment experts in assessing the employee's needs and devising an appropriate return to work program;
- the employer actively sought suitable duties for the employee;
- monitoring and responsive action from the employer gave the employee confidence in the process and the employee fully participated; and
- the employee's needs were assessed and responded to through close case management.

Reviews of the model

Ongoing monitoring against performance measures, combined with research and periodic reviews have underlined the best practice elements of Comcare's rehabilitation model and ensured continuous improvement.

The first independent review of Comcare was conducted following its initial two years of operation. The review established Comcare as one of the best performing workers' compensation schemes in Australia, based on a comparison of benefits, costs and service levels with major State schemes. It found that the Comcare rehabilitation model, with its emphasis on early intervention and workplace based rehabilitation, had a major impact on reducing the duration of claims—recognised as being one of the most significant factors influencing workers' compensation costs.¹⁴

A comprehensive effectiveness review of Comcare's return to work model was undertaken during 1993-94 by officers of the Departments of Finance and Industrial Relations and Comcare. The review involved surveys of customers and rehabilitation providers. It found that the model was generally regarded as offering an effective program, and facilitated co-operation between the parties.¹⁵

In 1994, the Industry Commission released its final report into Workers' Compensation in Australia. The Commission's report noted the best practice

¹⁴ The findings of the review are reported in Comcare, *Comcare Annual Review 1990-91*, Comcare, Canberra, 1991, p.9.

¹⁵ Comcare, *Comcare Australia Annual Report 1993-94*, Comcare, Canberra, 1994, p. 9.

elements of the Commonwealth scheme, and made generally favourable comments in relation to Comcare's return to work model.¹⁶

In 1995, a Return to Work Advisory Group (RTWAG) was convened to advise the SRCC on issues relating to the return to work of injured employees within the Commonwealth scheme. The RTWAG was chaired by Comcare and included representatives of the licensed and delegated authorities—Australia Post, Telstra and the ADF. During 1995/96, the RTWAG reviewed international and jurisdictional best practice in managing the return to work of injured employees. The review concluded that Comcare's return to work model was consistent with best practice, but recommended that further effort be focused on supporting employers to implement the model, whilst ensuring that employer/employee responsibility for workplace injury management was not diluted.¹⁷

During 1995/96, the Australian National Audit Office (ANAO) completed an audit of Workers' Compensation Case Management that made a number of recommendations, including in relation to providing greater support to managers in agencies.

Following the audit, Comcare collaborated with the ANAO to prepare *Return to Work: A Guide to Workers' Compensation Case Management* (the Better Practice Guide), which was issued in 1996 for organisations covered by the SRC Act. The Better Practice Guide provided insight into how organisations were addressing the costs of workers' compensation through their return to work arrangements and aimed to assist agencies in developing and implementing better practice in this area. The Better practice Guide was updated and reissued in 2001.

In 1999, Comcare released the *Return to Work Self Assessment Guide* as a tool for organisations seeking to improve their return to work outcomes. The *Self Assessment Guide* provided a checklist to enable employers to assess the effectiveness of their rehabilitation policies, their case management practices and specific return to work strategies. These tools were important parts of Comcare's strategy to provide further support to agencies, and complemented a range of other products and services, including advisory services, training programs, network meetings and information sessions.

During 1995 and 1996, Transformation Management Services was contracted to review Australian and international best practice dispute resolution procedures, and to identify factors in claims officer file handling and review operations that could achieve lower dispute rates. The 1996 report made detailed recommendations in relation to matters such as information exchange, case flow management, facilitation through mediation and conciliation and medical panels to assist Comcare in achieving best practice in relation to disputed claims.¹⁸ The research was translated into a set of best

¹⁶ Industry Commission, *Workers' Compensation in Australia*, Report no. 36, AGPS, Canberra, 1994, pp. 130, 142-143, 144, 148, 155, 228

¹⁷ Comcare, *Comcare Australia Annual Report 1995-96*, AGPS, Canberra, 1996, pp. 21-22.

¹⁸ Transformation Management Services, 'Deterring Reconsiderations: and analysis of disputed claims in Comcare', Comcare, October 1996.

practice principles for Comcare dispute management. These principles were in turn translated into processes and documented in Claims Service Delivery Procedures.

In 1997, the Labour Ministers' Council adopted a strategy for continuing workers' compensation reform nationally, noting five key principles of Australian workers' compensation scheme design. The principles were identified by the Heads of Workers' Compensation Authorities in the report, *Promoting Excellence*,¹⁹ and are:

- workers' compensation systems must reinforce the primacy of the employer/employee relationship in preventing and managing workplace injuries and ensuring that injured workers are returned to meaningful work;
- schemes throughout Australia should be consistent and predictable in terms of employers' liabilities and workers' entitlements;
- allocation of the costs of workplace injuries must be equitable in relation to employers, workers and the community;
- prevention and return to work objectives must be supported by the delivery of high quality claims management, medical, rehabilitation and other services, according to clearly defined criteria designed to promote scheme outcomes; and
- inter-jurisdictional competition predicated on service delivery should be maintained, on the basis that this provides the best opportunity for continuous improvement based on best practice benchmarking and, combined with national consistency in important aspects of scheme design, enables regulators to focus on the standards of service necessary to achieve scheme outcomes.

The *Promoting Excellence* report identified seven elements of best practice scheme design in relation to rehabilitation and return to work arrangements. These are:

- in a workers' compensation system, early return to work is the expected outcome of occupational rehabilitation intervention. Occupational rehabilitation should be workplace based with services aimed at the maintenance or restoration of a worker to appropriate employment;
- the employer should be responsible for assisting in the occupational rehabilitation of their injured workers, as well as keeping the job available for a reasonable period;
- occupational rehabilitation services are not required for all injured workers, but where necessary to achieve a return to work, services are most effective when delivered as soon as possible after injury, and subject to regular assessment for relevance, effectiveness and results;

¹⁹ Heads of Workers' Compensation Authorities, *Promoting Excellence: National Consistency in Australian Workers' Compensation*, Final and Interim Reports to the Labour Ministers' Council, Melbourne, May 1997.

- workers' compensation systems should provide an environment where an early return to work is seen by the injured worker as the most appropriate outcome. This involves an obligation on behalf of the injured workers to participate positively in the occupational rehabilitation program and return to work plan;
- insurers and managed fund agents should ensure that there is a clear focus on occupational rehabilitation and return to work as part of the workers' compensation claims management process;
- occupational rehabilitation is most effective when the employee, workers, medical and rehabilitation providers (where involved) jointly develop, implement and show a commitment to return to work programs; and
- the workers' compensation system regulator should have a responsibility to develop and foster a culture that supports and reinforces the expectation of return to work as the normal outcome for any work related injury or disease. The regulator's role should be to develop, communicate, promote and enforce the legislative framework required to achieve return to work and the provision of occupational rehabilitation.

These elements are reflected in Comcare's return to work model and the guidelines issued to employers under the SRC Act. The *Promoting Excellence* report also recommended a nationally consistent framework for reporting on return to work outcomes. Consistent with this recommendation, Comcare commenced participation in the National Return to Work Monitor (the Monitor) in 1998. Results from recent reports of the Monitor are discussed below.

During 1999-2000, Comcare sought to identify strategies for improving the management of long-term claims. Transformation Management Services was engaged to research Australian and international best practice in the management of such claims. The review identified five best practice elements that are believed to contribute to successful outcomes for long-term injured employees and workers' compensation schemes:

- a refocus from short term to long term claims cost thinking;
- handing more control to injured employees;
- intensive management of chronic pain;
- an emphasis on communication; and
- unseating the compensation mentality.

The research suggested that these elements could be translated into claims management strategies that include:

- better managing injured employee expectations;
- improving personal contact with injured employees;

- providing injured employees with as much scope as possible to control the outcome of interventions; and
- providing ongoing access to treatment services.

Where these strategies were not already reflected in Comcare's work practices, work was undertaken to consider their applicability and to change practices.²⁰

In addition, during 1999/2000 research was conducted into the impact of workplace culture on return to work as an extension of the National Return to Work Monitor.²¹ The research found that the working environment prior to the injury is a primary factor influencing return to work outcomes. In particular, cooperation and support from management, especially the claimant's supervisor, was the most influential factor in return to work outcomes. The report highlighted important issues associated with employees needing to feel supported in the workplace, which include a workplace culture supportive of the injured workers' needs, the provision of suitable duties and an organised return to work plan.

Return to work outcomes

Comcare commenced participation in the National Return to Work Monitor in November 1998. The Monitor is based on surveys of a sample of employees from each participating jurisdiction, conducted by an independent research company, Campbell Research and Consulting. The Monitor enables national comparative measurement of return to work outcomes. Key results for 2000/2001 are included in the reports of the Workplace Relations Ministers' Council's Comparative Performance Monitoring project (refer CPMR4, Part C). Note that the Monitor includes results for the ACTGS in the Commonwealth/Comcare figures. Results reported for the 'ACT' are for the ACT private sector scheme only.

For 2000/2001 and 2001/2002²² the return to work and durable return to work rates among Comcare injured workers remained well above the national average, as they have been consistently across the waves of the Monitor:

- for 2000/2001, 93 per cent of Comcare injured workers interviewed had returned to work for some period by the time they were interviewed, compared to 84 per cent nationally. For 2001/2002, the corresponding figures fell to 89 per cent for Comcare and 83 per cent nationally; and
- for 2000/2001, the durable return to work rate²³ for Comcare was 85 per cent, compared to 74 per cent nationally. For 2001/2002, the durable

²⁰ Comcare, *Comcare Annual Report 1999-2000*, Comcare, Canberra, 2000, p.40.

²¹ Campbell Research & Consulting, *Impact of Workplace Culture on RTW, a report on injured workers' perceptions of workplace culture and status of return to work, prepared for Comcare, Preliminary Report*, December 2000.

²² Campbell Research & Consulting, *Return to Work Monitor 2000/2001: National Report*, September 2001, and *Return to Work Monitor 2001/2002: National Report*, August 2002, prepared for the Heads of Workers' Compensation Authorities.

return to work rate for Comcare fell to 82 per cent, compared to 73 per cent nationally.

Comcare rated well on process measures as well as on outcome measures. For Comcare there was:

- a higher involvement in return to work plans. For both 2000/2001 and 2001/2002, 58 per cent of Comcare injured workers reported they had a return to work plan developed for them. Nationally, this figure increased from 43 per cent for 2000/2001 to 47 per cent for 2001/2002—still well below the Comcare rate;
- a higher rate of workers reporting that their main reason for returning to work was due to injury recovery, and a lower proportion of injured workers reporting that their reason for return to work was due to economic need over the waves of the Monitor; and
- a higher rate of claimants returning to their same employer as prior to their injury (97 per cent for Comcare for 2000/2001, falling to 96 per cent for 2001/2002. This compares with 85 per cent nationally for 2000/2001 and 2001/2002).

While a majority of Comcare injured workers report that it is easy to find the information needed to lodge a claim, the process of lodging the claim is perceived as complicated. Research into this issue conducted by Comcare in November 2001²⁴ found that claimants perceived the process of claiming to be lengthy or difficult to navigate, and reported that the claim form included questions or instructions that were unclear. Comcare is currently reviewing the claim form to address these concerns.

Doctors, work colleagues and physiotherapists are generally found to be more likely to be reported as persons who 'helped the most with return to work'. But 16 per cent of injured workers identified Comcare as being the most help for 2001/2002—up slightly from 15 per cent for 2000/2001. Comcare rated at around the national average in relation to customer service measures, but rated higher than average for 2001/2002 in providing advice about injured workers' rights.

Comcare performs comparatively well in returning injured employees to work, but claim cost and rehabilitation cost are higher than most other jurisdictions:

- in 2000/2001, the *median* number of days compensation paid was 57 for Comcare, compared with a substantially lower national median of 38 days. For 2001/2002, the national *mean* was 60 days, while the comparable figure for Comcare was 55 days²⁵; and

²³ That is, the proportion of injured workers who had returned to work and were still working at the time of interview.

²⁴ Campbell Research & Consulting, 'What was complicated about putting in the claim?', November 2001.

²⁵ Note that the basis of reporting for number of days compensation paid changed from median to mean between 2000/2001 and 2001/2002—this means that the figures are not strictly comparable.

- around half of Comcare injured workers incurred rehabilitation costs (47 per cent for 2000/2001, increasing to 56 per cent for 2001/2002). This compares with a national average of around a third (33 per cent for 2000/2001, rising to 35 per cent for 2001/2002).

These results partially reflect the relatively high benefit structure of the Commonwealth scheme, the longer periods of compensation payment available when compared to some other schemes, and the absence of employer excess thresholds.²⁶ However, the duration of time off work, for example associated with occupational overuse and stress related claims, remains a significant cost driver.

Tables 3.2 and 3.3 above provide more detailed information in relation to selected SRCC return to work indicators for Comcare, the ADF, licensees, and the 15 largest premium paying agencies. Variation in indicator R1 (per cent of claims with 10 days incapacity which attract a rehabilitation plan) will not be subject to industry differences. Variation in achievement across agencies against R1, is more likely to suggest differences in management strategies to return to work for injured employees.

RESPONDING TO EMERGING ISSUES

The Commonwealth has one of the lowest incidence and frequency rates of compensated workplace injury, across all measures, particularly the critical 6 and 12 week or more measures, with trends improving. The Commonwealth Government's average premium rate is the lowest overall in Australia, and when standardised to reflect industry mix, is the second lowest. Yet for 2002/2003, the average workers' compensation premium rate paid by Commonwealth premium payers increased from 1.0 to 1.13 per cent.

While the Commonwealth pool increases can be attributed to a number of factors, including increased medical, lump sum and legal costs, a significant driver of these increased costs is the duration of claims—injured employees are staying off work longer, and workers' compensation costs are increasing for employees who remain off work for these longer periods of time. The actuary has estimated that, over the life of the claims, payments for time off work for injuries suffered in 2001/2002 will be 24 per cent higher than for injuries suffered in 2000/2001, and double the payments for time off work for injuries suffered in 1996/1997.

To address this trend, Comcare is:

- restructuring to increase its claims management focus on minimising claim duration and preventing disputes;
- introducing measures to increase senior management leadership and accountability for prevention and injury management in agencies; and
- continuing to improve return to work arrangements in the Commonwealth.

²⁶

Refer *Workers Compensation Arrangements in Australia and New Zealand, 2001*.

Claims management arrangements

Comcare has restructured its claims management arrangements to place increased emphasis on assisting employees with claims for injuries that, based on experience of similar claims in the past, have the greatest potential to result in extended periods of time off work. Comcare's stress-related claims investigation model is being redeveloped as an early intervention model to assist in identifying potentially complex or contested claims at an early stage. The revised model will be piloted in the later part of this year.

The new structure includes a team dedicated to actively promoting early intervention by agencies in these cases and to making timely and sound determinations of liability. It also includes multidisciplinary teams that will manage ongoing claim liability.

The management of 'pre-premium claims'²⁷ is also getting special attention, with the creation of a small team established to trial an improved approach to identifying, streaming and managing these long-term claims.

A network of customer liaison officers has been established to act as a single point of contact in Comcare for both prevention and injury management matters. Previously, Comcare's National Customer Managers liaised with agency staff specifically on claims and injury management related matters. The new arrangements will mean that agency staff will be able to draw on the full range of Comcare's resources and expertise—whether relating to occupational health and safety, occupational rehabilitation and return to work, workers' compensation, performance monitoring or any combination of these.

The workers' compensation claim form and other claimant communication is being redesigned to better inform client expectations of compensation and rehabilitation processes, and to assist them to access the compensation process more readily. The redesign is intended to ensure that the claiming process is clear and simple, yet provides Comcare with the information and evidence required to make sound decisions, as quickly as possible.

Comcare's management of AAT applications is also being reviewed to ensure that claims of a type which have in the past given rise to disputes are actively managed.

The overall intention of these initiatives is to reduce disputation and focus clients as soon as possible on rehabilitation and return to work.

Leadership and accountability

Comcare has developed a leadership and accountability strategy to improve OHS performance. The strategy was initially focused on OHS leadership. Following the deterioration in duration performance, the strategy was extended from injury prevention to also include injury management. This recognises the scheme's intended integration of safety, rehabilitation and

²⁷ That is, claims relating to injuries that predate the introduction of the premium system in 1989.

compensation arrangements. The strategy was launched on 10 July 2002 by the Hon Tony Abbott MP, the Minister for Employment and Workplace Relations and the Minister Assisting the Prime Minister for the Public Service.

The leadership strategy draws senior executives' attention to their responsibilities under the OHS(CE) Act, the SRC Act and the APS leadership framework. The strategy package includes technical support, training and information to enable senior managers to take an informed and active role in improving agency performance.

The 'whole of agency' strategy is an important element of the leadership approach. Senior Comcare officers are available to work with agencies to develop whole of agency prevention and injury management strategies that address specific agency injury risk profiles and premium cost drivers, and barriers to effective return to work. The whole of agency approach draws on resources and expertise from across the whole of Comcare's operations to assist agencies in injury prevention, claims management and rehabilitation.

The whole of agency approach was initially focused on four agencies (Centrelink, Australian Protective Services, the Department of Health and Aged Care, and the Aboriginal and Torres Strait Islander Commission). In the light of the 2002-2003 premium results, Comcare is inviting agencies with significant premium increases to be involved in this strategy.

Recognising that there is a relationship between workplace safety and injury management systems, Comcare has been developing an audit tool which will deliver an integrated approach to the mapping and diagnosis of agency systems, and assist senior managers in developing comprehensive responses to any issues arising in workplaces. Current arrangements provide separate measures of agency OHS systems and return to work systems.

Senior managers will also be able to draw on services such as premium devolution²⁸, analysis of agency-specific performance information, draft AWA clauses and tailored training targeted to agency requirements. Customer Forums will also continue to provide an opportunity to exchange views on best practice management approaches to prevention, claims management and rehabilitation.

Key to the implementation of the leadership strategy is the publication of prevention and injury management performance information. The SRCC and Comcare will be reporting performance data in their respective annual reports:

- Comcare's performance will be separately identified in its report;
- the premium rate for each Commonwealth agency with more than 100 employees will be published in Comcare's report; and

²⁸ For example, Comcare can provide data showing the claim costs for each component of an agency and (depending on agency preference) can split the premium in proportion to those claim costs in a given premium year. Agencies may choose to split the premium in that way or may choose to ask Comcare to do alternative calculations.

- the 15 largest premium paying agencies will have their performance against a selection of the Commission's indicators reported in the SRCC's report.

The Australian Public Service Commission will also incorporate key performance information in its 2001-2002 *State of the Service* report. This performance information will relate to agency efforts to reduce the incidence of injuries that result in 5, 30 and 60 days taken off work, and will include agencies with 200 or more employees.

Agencies are also being asked to consider publishing prevention and injury management performance information in their annual reports.

Return to work arrangements

Comcare has been developing a range of information resources to better inform stakeholders of return to work processes and their respective roles and responsibilities.

Comcare and the ANAO saw the need to revise the original Better Practice Guide, *Return to Work: A Guide to Workers' Compensation Case Management*, that was issued in 1996. Revision was necessary to address the changing demands and expectations of the Commonwealth employment environment. In June 2001 a revised Better Practise Guide was released. The new guide, *Rehabilitation: Managing Return to Work—A Better Practice Guide for Senior Managers and Supervisors*, includes a self-assessment tool as part of the information kit.

In addition, the *Return to work easy reference guide* has been developed to emphasise key stakeholder responsibilities, to promote the role of managers and supervisors in the return to work process and to provide advice to agencies on early intervention and return to work strategies for potentially long duration injury types (such as stress and sprains and strains).

Comcare will be piloting with a selection of Commonwealth agencies a scheme to promote trans-agency mobility of injured employees. This scheme is designed to support the provision of suitable employment for employees with a capacity to work where, for a range a reasons, the employee is unable to return to work with their current employer. For example, in workplaces with a limited range of work (such as call centres where most work involves keyboard or client contact), supervisors otherwise have limited options in providing suitable alternative duties. Providing alternatives beyond the original workplace, may allow supervisors to avoid leaving claimants on compensation.

Legislative amendments in 2001 redefined the procedural requirements relating to the accreditation and performance monitoring of approved rehabilitation providers under the SRC Act. Work is well progressed on approving rehabilitation providers according to the new requirements.

Work has also commenced on redeveloping the performance criteria for monitoring and assessing performance against operational standards and the development of appropriate guidance material for providers.

SRCC Safety Awards

In 2000/2001 the SRCC introduced annual awards to provide public recognition for significant achievement in OHS and injury management by agencies and licensees in the Commonwealth jurisdiction, known as the SRCC Safety Awards. Awards have been made for two categories:

- workplace safety and leadership; and
- workplace safety and innovative solutions.

Initiatives at the national level

Comcare's initiatives must also be seen in the context of a range of national strategies to improve OHS and workers' compensation arrangements.

On 24 May 2002, the Workplace Relations Ministers Council endorsed the National OHS Strategy. Under this strategy, for the first time, all jurisdictions and peak employers and unions have committed to minimum national targets and five national priorities for improving OHS. The national targets are:

- a significant reduction in the incidence of work-related fatalities, with a reduction of 10 per cent by mid 2007 and at least 20 per cent by July 2012; and
- a reduction in the incidence of workplace injury of 20 per cent by mid 2007 and at least 40 per cent by July 2012.

There are five initial national priority areas for action to achieve short-term and longer-term improvements. They recognise that cooperation among OHS stakeholders will lead to more efficient and effective prevention efforts. The priorities are:

- reduce high incidence/severity risks;
- improve the capacity of business operators and workers to manage OHS effectively;
- prevent occupational disease more effectively;
- eliminate hazards at the design stage; and
- strengthen the capacity of government to influence OHS outcomes.

NOHSC is now developing the detailed action plans for each of the 5 priorities.

At its June 2002 meeting, the SRCC endorsed the NOHSC National OHS Strategy targets for the Commonwealth scheme. The SRCC will monitor the performance of the scheme and individual authorities against the OHS targets throughout the life of the strategy.

The Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002 was introduced into Parliament on 26 June 2002. This bill focuses on improving employee involvement in OHS and providing for a more direct relationship between employers and employees about OHS, so that workplaces can develop

arrangements that take account of the specific needs of their enterprise. The Bill also proposes new compliance measures such as enforceable undertakings and extending the potential application of civil penalties to all Commonwealth employers.