

W.E. UPJOHN INSTITUTE for Employment Research

THE THIRD WAY: PREVENTION AND
COMPENSATION OF WORK INJURY
IN VICTORIA, AUSTRALIA

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Executive Summary

This study originated because the leadership of the VWA and the responsible Minister wanted an assessment of the performance of the Victorian scheme within a larger perspective. They commissioned the W. E. Upjohn Institute for Employment Research, an endowed, not-for-profit research foundation in the United States, to assemble an appropriate team of workers' compensation experts to conduct such a study. The assignment was to carry out a thorough, independent review of the Victorian system of prevention and compensation for work injuries and to provide a set of informed judgments about the system and its performance.

A group of six workers' compensation scholars (three Americans, two Canadians, and one Australian) conducted over 300 interviews during 13 separate visits to Victoria in 1996 and submitted a report of findings in August 1997. The VWA subsequently asked us to come back and take another look after the amendments of 1996 and 1997, specifically including the merger of the former Health and Safety Organisation into the VWA in July 1996. Four of the original six authors were involved in another 100 interviews and a second report was tabled in July 1998. The present volume contains a combination of the findings of both reviews, with observation dates of either 1996 or 1998.

The methodology of the study is based on a research model developed at the Workers Compensation Research Institute in the United States and adapted by the Upjohn Institute in a series of studies in British Columbia, Canada. It involves a review of published and unpublished documents, extensive interviews with stakeholders and system administrators, vetting the descriptive material to a sub-set of interviewees for factual accuracy, and finally, adding the judgments of the reviewers in the form of "attention points" about the system. The emphasis is on description, not prescription, so the judgments are presented as observations about unique or noteworthy characteristics of the system, or apparent system problems. Policy recommendations are left to local decision makers.

The history of workers' compensation and safety regulation in Victoria is explored in order to place the current system into context. In particular, the transition from the historically private insurance system to public underwriting with the introduction of the WorkCare system in 1985 is described in Chapter 2. WorkCare introduced a uniquely Australian contribution to workers' compensation system design with public underwriting and private service delivery. The

substantial refinement of this framework with the move to the WorkCover system in 1992, and the evolution of WorkCover through 1997 is also documented with a legislative history. Additional legislative review and background are also presented in specific content chapters as needed.

The administrative structure and performance of the VWA as at 1 June 1998 are presented in Chapter 3. As mentioned above, the Victorian system is unusual in the division of responsibility between public and private actors. Like Canadian workers' compensation systems, a public fund bears the underwriting risk and sets the insurance premium levels in Victoria. Like most American workers' compensation systems, private insurers collect the premiums and process the claims of injured workers. The VWA serves as mandatory reinsurer for all claims and regulates all aspects of the scheme, including workplace safety and health (from 1996).

Regulatory aspects of the Victorian system are described in Chapter 4. Using a principal-agent theoretical framework, the ways in which the public authority (VWA) attempts to influence the behavior of authorised insurers and other private actors in the workers' compensation scheme, are described in detail. The VWA simultaneously plays the roles of administrator, insurer, and regulator under WorkCover. This complex assignment is accomplished with a carefully balanced set of incentives and regulations. The licensing of authorised insurers, remuneration and service standards for insurers, and the best practice incentive scheme are reviewed, together with an explanation of the reserving and pricing policies of the VWA. Market structure and performance are considered, followed by an overall assessment of the regulatory program.

The benefits paid to injured workers and their dependents are laid out in Chapter 5. The WorkCover system has altered the benefit structure with the objectives of reducing costs while adequately and fairly compensating injured workers. Another theme of the WorkCover changes, however, has been the attempt to make return to work, rather than compensation, the cornerstone of the system. One unusual feature of workers' compensation benefits in Victoria is the "employer excess." Employers bear the responsibility for the first 10 days of worker lost time, and the first \$426 of medical and like services. This is in sharp contrast to North American jurisdictions where waiting periods, in essence, mean the worker bears initial responsibility.

Since WorkCover began, the number of standard claims has been reduced by over 46 percent. Aggregate weekly benefit payments have been reduced by 26 percent. An attack on

lump sum settlements was launched in reaction to their rapid escalation in the WorkCare years, from \$11.5 million in 1986/87 to over \$220 million in 1991/92. However, after a few years of restraint, lump-sum benefits took off again in 1996/97, reaching \$367 million in 1997/98. By that point, with the accompanying reduction in weekly benefit claims, the total of lump-sum benefit payments actually surpassed weekly benefit payments.

The dispute resolution system of WorkCover is described in Chapter 6. This system aims to reduce litigation costs by promoting informal settlement through a VWA funded Conciliation Service and independent Medical Panels. Disputed claims are required to go through conciliation before they can proceed to court. Medical Panels are empowered to resolve medical disputes authoritatively and decisively. The Conciliation Service is successfully resolving approximately 75 percent of disputes and appears to be an effective gate keeper for court access. Medical Panels in Victoria have had a more checkered history. Early utilisation was dominated by maims cases on their way to court. After revisions to the statute in 1996, which more effectively integrated the Medical Panel system with the Conciliation Service, the timeliness and performance improved significantly.

Unlike in North America, workers' compensation claims do not constitute an "exclusive remedy" against the employer at injury in much of Australia. However, most Australian jurisdictions in which the common law remedy exists have legislatively modified its operation through threshold conditions of access (e.g., minimum level of disability) and capping certain damages. Thus, the 1992 statute introducing the WorkCover system, adopted a 30 percent disability rating or "serious injury" threshold for access to common law remedies in the courts. However, the impact of this threshold was mitigated by the practice of combining physical impairment ratings with a rating for psychiatric impairment. This development and some adverse court decisions were overturned directly in the 1997 amendments, which eliminated access to common law for all injuries or illnesses arising after 12 November 1997.

Occupational rehabilitation in Victoria is discussed in Chapter 7. The primacy of the return-to-work goal is very clear in Victorian arrangements. This reflects the reaction to the apparent excesses of rehabilitation under WorkCare, when as many as 16 percent of all paid claims were entering rehabilitation. Currently, responsibility for rehabilitation is placed with the employer and the insurer. The VWA has only a regulatory role, through approval of occupational rehabilitation providers and enforcement of employer and insurer obligations. Employers with

more than \$1 million payroll are required to develop an occupational rehabilitation program, including a return-to-work coordinator and a requirement to develop a written return-to-work plan within 30 days of an injury. The latter specifically includes consultation with the injured worker. Workers are entitled to reinstatement for a period of 12 months following injury.

The Field Services Division of the VWA has responsibility for health and safety in Victorian workplaces, plus dangerous goods (e.g., hazardous materials) and certain equipment (e.g., boilers) regardless of location. Legislative authority for these functions derives from the Occupational Health and Safety Act of 1985 and related statutes. The Field Services Division was created when the VWA absorbed the formerly independent Health and Safety Organisation at 2 July 1996. The orientation of Victorian health and safety regulation has been evolving from a prescriptive approach to a performance-based approach since 1985.

FSD provides a full range of health and safety services, including inspection, investigation, providing information, advising, registration, licensing, and training. There are some 20 codes of practice promulgated under the act, and a number of operational manuals, which are available on-line as well as in paper format. FSD conducts about 50,000 inspections annually, resulting in 3,600 Improvement Notices, 1,300 Prohibition Notices, 7,000 Written Directions, and about 80 prosecutions. The FSD has been striving to increase the proportion of staff time spent in the field, and to provide the equipment to facilitate that deployment.

The report concludes with a set of attention points, or summary observations about the Victorian system. They are addressed to two sets of issues. First, are those that the authors think are of interest to policymakers and stakeholders outside Victoria, because they may contain lessons for other systems. Second, there are issues that we think should be of concern to Victorians, as unresolved system problems. Some 51 attention points are presented that deal with a range of insurer regulation, compensation, rehabilitation, and prevention issues.