

VICTORIA

Auditor General
Victoria

Management of claims by the Victorian WorkCover Authority

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AUDITOR GENERAL
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Sir

Under the provisions of section 16 of the *Audit Act* 1994, I transmit my performance audit report on *Management of claims by the Victorian WorkCover Authority*.

Yours faithfully

J.W. CAMERON
Auditor-General
28 November 2001

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Foreword

Victoria's worker's compensation system is complex. The scheme has many stakeholders, and many political, economic, social and cultural pressures that affect its capacity to meet its objectives.

This report is being tabled at an important time for the Authority. The recent broadening of its responsibilities to include meeting common law claims and new appointments to its senior leadership team have led to the Authority embarking on a course of substantial change at the time this audit was being undertaken. The Authority has recently completed a full strategic review of its past performance, recognised inadequacies in its management processes and embarked on a reform agenda. This includes a major overhaul of the Authority's claims management system.

Through this report, Parliament and the public are provided with my independent assessment of the Authority's preparedness to respond to the challenges presented by its reform agenda.



J.W. CAMERON
Auditor-General

Part 1

Executive summary

BACKGROUND AND AUDIT APPROACH

1.1 The Victorian WorkCover Authority is responsible for administering the State's WorkCover scheme which provides rehabilitation and compensation for workers injured during the course of their employment, including access to common law entitlements.

1.2 Workers' compensation is compulsory requiring all employers (some 194 800) to purchase annual insurance policy cover from agents of their choice. At November 2001, 10 private sector companies acted as agents to collect premiums and manage WorkCover claims on behalf of the Authority (around 31 100 active claims at June 2001).

1.3 In early 2001, the Authority reviewed its performance in key areas of the WorkCover scheme and established a case for change. The Authority has identified claims management, injury prevention and its own performance as a system manager as the key areas for attention, and we have chosen to focus on claims management.

1.4 The objectives of our audit were to assess whether actions taken by the Authority would redress the deficiencies it identified with the claims management system and improve the overall performance of the scheme. The audit also assessed whether the Authority had adequately managed the co-ordinated care program, which focuses on claims that are complex, problematic, long-term and high cost. An examination of the strategies implemented by the Authority to mitigate the risks associated with the re-introduction of common law rights for seriously injured workers was also undertaken.

AUDIT CONCLUSION

1.5 We acknowledge the Authority's recognition of past inadequacies and the need to embark on a program of reform.

1.6 The proposed new claims management model retains the existing structure of outsourced claims management by private sector agents. It has incorporated better to best practice design features which should address past deficiencies, while improving the overall performance of the scheme. The Authority did not, however, specifically address the potential for directly linking claims management to injury prevention, as occurs in some international best practice systems.

1.7 The extent to which the Authority improves the overall performance of the scheme will be dependent on the performance and quality of its agents, effectiveness of the operational arrangements, improved injury management and more pro-active oversight of the system. Success cannot be assessed until the new model is fully operational, scheduled for December 2002. In the meantime, maintaining the day-to-day operation of the scheme, while introducing substantial reform, will be a challenge.

1.8 The Authority has failed to adequately oversee the management by agents of injured workers placed on the co-ordinated care program. Information relating to the operation of, and outcomes achieved by, the co-ordinated care program is not compiled, nor is the Authority able to ensure that those workers who would benefit from a co-ordinated care program are actually receiving such care. Concerted attention to this high cost area of claims management is likely to yield improved rehabilitation for workers.

1.9 The Authority has acknowledged that successful management of common law liabilities is critical to the continuing financial viability of the WorkCover scheme. The real impact of the new legislation will not be known for some time until it is tested in the courts. Since November 2000, new strategies have been adopted and both positive and negative results have emerged. For example, although old common law liabilities have reduced, the agents' management of new common law claims must be improved. In particular, as the identification process is not yet sufficiently rigorous, some doubt exists about the accuracy of the estimated quantum of potential new common law claims.

1.10 The financial position of the Authority remains poor. However, the Authority's external actuary (Tillinghaust-Towers Perrin) has recently estimated that the scheme will reach full funding by June 2004 (compared with June 2006 in estimates made in December 2000). Although actions taken to date are appropriate, it is not possible to conclude on the likely success or otherwise of the Authority's management strategies.

AUDIT FINDINGS

Key challenges facing the Authority in managing claims

1.11 In mid-2000, the Authority assessed that, if it was to achieve its legislative objectives, a marked improvement in operations was required in all core business areas. *Strategy 2000* provides key directions for the next 3 years aimed at:

- developing more effective claims management;
- increasing the emphasis on prevention; and
- revitalising WorkCover. (*paras 3.13 to 3.16*)

1.12 Table 1A outlines the key claims management challenges identified by the Authority and the corresponding performance concern of the Authority in each area. (*paras 3.17 to 3.37*)

TABLE 1A
CLAIMS MANAGEMENT CHALLENGES FOR THE WORKCOVER SCHEME

<i>Key challenge</i>	<i>Performance</i>
Encouraging timely claim notification.	Delay in claim notification adversely affecting outcomes.
Enhancing the effectiveness of medical and like services.	Sustained growth in medical and like expenditure but no apparent improvement in return to work.
Improving return to work.	Static return to work rate in recent years.
Developing the services agents provide.	Average satisfaction with the services agents provide.
Addressing long-term claims.	Long-term claims are increasing.
Restoring a sustainable common law system.	In the past, the delivery of common law benefits became financially unviable.

Source: *The Case for Change*, Victorian WorkCover Authority, 2001.

New approach to claims management

1.13 In March 2001, an international management consulting firm began a review aimed at developing a best practice management solution that would deliver significant improvements in the efficiency of the Authority’s claims management system and improved outcomes for injured workers. The new claims management model was subsequently endorsed by the Authority in July 2001 and is scheduled to be introduced on 1 July 2002 and implemented in stages by December 2002. The consulting fee for this review was \$2.4 million. (*paras 4.1 to 4.4*)

1.14 The Authority has determined that the current structure of the system should remain essentially intact. However, the number of agents it will engage will be resolved through an open tender process, scheduled to be completed by April 2002. Changes will be made to claims management practices within agents and the Authority will adopt a more pro-active oversight role. (*paras 4.9 to 4.10*)

1.15 We recognise there is no one “best” model for the operation of a workers’ compensation system which is superior in every jurisdiction at every time. There are examples of efficient and inefficient outsourced models as well as efficient and inefficient in-sourced models. Nevertheless, despite past poor performance and the success of different approaches elsewhere, the structure is unchanged. (*para. 4.11*)

1.16 The success of the new model will be heavily dependent on substantially improving the performance of the agents. This requires attention to the following 4 key areas:

- high quality agents, to be determined through a tender process;
- effective operational arrangements;
- improved injury management; and
- more pro-active oversight by the Authority. (*para. 4.12*)

1.17 The design of the new claims management model did not specifically address the potential for a more prescriptive role for agents in the claims management process to directly contribute to reductions in the risk of future injury and disease. As well as the existing regulatory regimes, workplace inspections, prosecutions, and the activities of agents, a key injury prevention policy lever is the link between employer premiums and workers compensation claims. The Authority considers these mechanisms are of a higher priority for achieving its injury prevention objectives than mandating an increased role for its agents. *(paras 4.13 to 4.17)*

1.18 Another approach which might have been considered is an explicit link to injury prevention through inclusion of some injury prevention capacity in the agents' claims management teams. Embedding a stronger feedback loop from claims management to injury prevention contributes to preventing or mitigating the pain and losses from injury and disease, while also having an impact upon reducing liabilities. This form of risk management feedback is a defining element of 2 of the highest regarded international workers' compensation systems: the Caisse Regionale d'Assurance Maladie (CRAM) in France and the German Berufsgenossenschaften. *(paras 4.18 to 4.23)*

1.19 The new model incorporates the following better to best practice design features of claims management:

- All agents will be required to establish multi-disciplinary claims management teams comprising a range of specialists. Caseloads will be specified for each case management team member and agent remuneration will reflect these caseloads. However, the overall effectiveness of these teams could be affected by:
 - appropriateness of, and compliance with, the prescribed caseload requirements;
 - limited availability of qualified staff; and
 - an absence of specific linkage to injury prevention; *(paras 4.25 to 4.32)*
- Considerable emphasis will be placed on early notification of injuries by employers to provide a springboard for more effective management through early and appropriate intervention; *(paras 4.33 to 4.37)*
- Agents will be required to segment existing claims, and to triage new claims into a number of categories according to claims characteristics which reflect likely outcomes; *(paras 4.38 to 4.41)*
- A pilot project in improved injury management practices for sprains and strains will provide a demonstration of the benefits of multi-disciplinary assessment and treatment that can, if successful, be implemented across the WorkCover system; *(paras 4.42 to 4.46)*

- Monitoring of agents will be substantially modified and involve file reviews by highly experienced claims handlers together with electronic targeting, by data analysts, of problematic files. The effectiveness of these reviews could be enhanced if they encompassed an assessment of agents' performance against best practice case management standards and outcomes achieved for claimants in terms of the Authority's objectives (*paras 4.47 to 4.51*); and
- Greater interaction is intended to occur between claims agents, workers and service providers. (*paras 4.52 to 4.58*)

1.20 Indicative costs of implementing the new model are estimated to be in the order of \$10 million to \$13 million in 2001-02 and \$5 million to \$7 million in 2002-03. Sixty-five per cent of the costs in 2001-02 is for information technology systems development, and 60 per cent of the costs in 2002-03 is for one-off agent transition costs. (*paras 4.60 to 4.61*)

1.21 Although the action taken to date is appropriate, implementation of the new model constitutes a risk to the Authority because of the substantial changes to be made within a relatively tight timeframe. This includes managing the uncertainty for agents during the transition. (*paras 4.62 to 4.64*)

The co-ordinated care program

1.22 The co-ordinated care program (CCP) promotes cost-effective health care practices that emphasise restoring an injured worker's health, providing the best possible quality of life, and enhancing work potential. The CCP focuses on the most complex, problematic, long-term and high cost claims. However, the Authority's agents reported that only around 70 injured workers were managed on a CCP as at October 2001. (*paras 5.1 to 5.3*)

1.23 Scope exists to improve the operation of the program in the following areas:

- Agents lack appropriate resources and/or expertise, partly due to the relatively high level of staff turnover. The Authority has, by necessity, provided a high level of support and advice to agents; (*paras 5.20 to 5.24*)
- The July 2000 evaluation identified every stakeholder group encountered problems with the program. For example, medical practitioners, as major participants in the program, had a poor level of knowledge and understanding of the CCP process, as did claimants. Agents were slow to approve services and expenditure outside care plans, often causing problems for claimants; (*paras 5.25 to 5.27*)
- The Authority's monitoring of agents was poor. For example, agents are not formally required to notify the Authority when initiating a CCP, the Authority does not ensure agents comply with the CCP guidelines and practices, and information on the effectiveness of the program is not currently collected by agents (*paras 5.28 to 5.31*); and
- Documentation provided by the Authority to assist agents in managing injured workers on a CCP was deficient. (*paras 5.32 to 5.34*)

Re-introduction of common-law

1.24 Since November 2000, the Authority has taken steps to improve its performance in managing common law claims. It is too early to determine whether or not the strategies adopted will be effective in the long-term in achieving the desired outcomes. The Authority's 2 external actuaries have confirmed improved management of old common law claims. The Authority believes the market has recognised it is now managing its liabilities in a pro-active and consistent manner. (*paras 6.5 to 6.12*)

1.25 Improvements to date in the financial management of claims include:

- a reduction in the initial serious injury acceptance rate;
- a write-down of \$127 million in estimated common law liabilities at December 2000 to \$1 275 million at June 2001;
- an increase in the level of applicants not contesting serious injury claims denied by the Authority;
- a reduction in the serious injury reversal rate at the originating motion stage; and
- a reduction in the average payment. (*para. 6.10*)

1.26 Notwithstanding these positive financial results, challenges to be overcome include:

- ensuring early identification of common law claims, including the accuracy of the estimated level of potential new common law claims;
- implementing case management plans;
- improving agents' common law expertise;
- improving the management of the serious injury threshold; and
- ensuring proper management of the narrative test for serious injury. (*paras 6.13 to 6.33*)

RECOMMENDATIONS

Report reference	Paragraph number	Recommendation
New approach to claims management	4.24	The Authority should: <ul style="list-style-type: none"> • monitor the impact of the underlying structural arrangements on the achievement of the scheme's objectives, with a view to reassessing over the next 4 years whether the improvements sought have been realised; and • maximise the potential for injury prevention in the system through the use of all available mechanisms, including the activities of WorkSafe Victoria, employer premiums, incentives for agents and integration of injury prevention within the claims management model.
	4.59	The Authority should closely monitor claims management performance, incorporating a rigorous cost-benefit analysis and ascertaining the views of key stakeholders. Specific attention needs to be given to:

RECOMMENDATIONS - continued

<i>Report reference</i>	<i>Paragraph number</i>	<i>Recommendation</i>
New approach to claims management - continued	4.59	<ul style="list-style-type: none"> • ensuring multi-disciplinary teams are staffed with appropriately experienced and knowledgeable specialists; • ensuring mandated caseloads are appropriate; • vigorously pursuing employers who fail to comply with the statutory reporting requirements for lost time injury claims; • ensuring that demonstration projects which identify better practice approaches are integrated into the claims management model; and • incorporating within the proposed case file reviews, assessments of agents' performance against best practice case management standards and outcomes achieved for claimants.
	4.65	The Authority should closely monitor implementation of the new model and immediately address any significant shortcomings.
The co-ordinated care program	5.35	<p>The Authority should:</p> <ul style="list-style-type: none"> • monitor and review the capacity of agents to undertake effective management of complex claims; • take action to address the recommendations of the July 2000 evaluation report in relation to the co-ordinated care program (CCP) difficulties and the absence of stakeholders' (i.e. medical practitioners, claimants and agents) knowledge and commitment to the program; • implement formal monitoring mechanisms that require agents to provide appropriate information on the operation and outcomes of the CCP. This should include assurance that CCPs are available to all injured workers who would benefit from co-ordinated care; and • review, in consultation with agents, the information provided to them to ensure that it provides up-to-date and comprehensive guidance in the management of the CCP.
Re-introduction of common law	6.34	<p>The Authority should continue to closely monitor its management of common law claims. In particular, the Authority needs to:</p> <ul style="list-style-type: none"> • ensure agents promptly identify potential common law claims; • reinforce to agents the importance of implementing case management plans; • ensure all common law staff of each agent are adequately trained; and • periodically establish the level of expertise and understanding of the new impairment assessment requirements by the medical profession and agents.

RESPONSE provided by Chief Executive, Victorian WorkCover Authority

The Authority welcomes the Auditor-General's assessment that the case for change is proven, and his broad endorsement of the strategy. The recommendations in this audit report are consistent with the Authority's own analysis of areas in need of improvement, and support the actions the Authority is taking to address these challenges. A consistent theme throughout audit's recommendations is the importance of rigorous monitoring on a range of levels, a view the Authority supports.

New approach to claims management (paras 1.13 to 1.21)

The Authority considers that the new claims management model reflects a major change in how the claims of injured workers will be managed in Victoria. The Authority recognises the challenges of implementing such change in a relatively short time frame, and has put in place a detailed project plan. An experienced project team is being supported by highly qualified project management and subject matter experts. A very rigorous monitoring regime is in place, to ensure management and the Board can track the program's progress, and a detailed communication and consultation plan is being executed.

The Authority welcomes audit endorsement of the key design features of the new claims management model.

With respect to injury prevention (paras 1.17 and 1.18), the Authority considers that preventing workplace injury, illness and death is not only a social imperative, it is critical to the long-term viability of the WorkCover scheme. In seeking to achieve this, the Authority has recognised the importance of creating a dedicated prevention unit targeting those industries that present the highest risk. A strong feedback loop exists between claims and injury prevention activity. The targeting strategies – for example, through the Focus 100 and Sprains and Strains programs – rely on close monitoring of claims data.

A key component of WorkCover's increased emphasis on prevention had been its constructive compliance strategy. This has involved a deliberate strengthening of both incentives and sanctions – as demonstrated by the \$5 million Safety Development Fund, and a doubling in the number of prosecutions for breaches of workplace health and safety laws.

Through the new WorkSafe brand, we are also embarking on a major campaign of attitudinal change within the community. The Authority considers WorkSafe is the priority for improving injury prevention.

Nevertheless, the Authority recognises that agents should continue to play an important but complementary role in prevention activities, and are responsible for providing, on behalf of the Authority, injury prevention, risk management and other occupational health and safety services. The new model and the remuneration arrangements create incentives for agents to continue to provide this service.

The co-ordinated care program (paras 1.22 to 1.23)

The new claims management model is intended to address problems such as those outlined with the co-ordinated care program in paras 1.22 and 1.23 in the report. The agents will be required to have higher levels of expertise within specialist teams that will focus on long-term claims. The Authority intends to work with its agents to increase the professionalism of agent staff, in part by improving the level of training that agent staff receive.

The new model is based on more active and structured monitoring of agents and claimant outcomes. The documentation provided to agents is being improved, and the monitoring regime will involve auditing by the Authority of high value work practices to ensure greater consistency of agent decisions.

RESPONSE provided by Chief Executive, Victorian WorkCover Authority - continued

The Authority notes that audit has also raised concerns regarding what it considers are ongoing stakeholder problems with the co-ordinated care program. The Authority recognises that the performance of the WorkCover system can only improve with and through our stakeholders. Their involvement in tackling the risks and opportunities ahead is vital. To achieve this, the WorkCover Advisory Committee has been re-invigorated, as has the Rehabilitation and Compensation Working Group, with the active involvement of employer groups, unions, health professional groups, the legal profession and agents. The Claims Management Project team has embarked upon a comprehensive communication process, including Update Bulletins, one-on-one meetings and regular group briefings. There have also been in-depth interviews with injured workers and union representatives.

Re-introduction of common law (paras 1.24 to 1.26)

The introduction of common law access for workers who were seriously injured on or after 20 October 1999 represents an important challenge. The Authority recognises that common law was poorly managed in the past and that the successful management of new common law liabilities is critical to the continuing financial viability of the WorkCover scheme.

The key to managing common law effectively and ensuring seriously injured workers receive their appropriate entitlements, is early identification and preparation. To this end, WorkCover has appointed an experienced team of in-house senior legal counsel, who work closely with agents and legal panel solicitors, to improve liability management.

The Legal Project within the Claims Management Implementation Program is built on the learnings and successes of the Authority's recent strategies to manage pre-1997 claims. The results of this active management approach to pre-1997 claims are already emerging, with the June 2001 actuarial valuations recognising the early gains that have been made. This project will ensure the effective implementation of a long-term and rigorous approach to the effective management of new common law, and address the issues raised in this audit.

Part 2

Background and audit approach

ROLE OF THE VICTORIAN WORKCOVER AUTHORITY

2.1 The Victorian WorkCover Authority is responsible for administering the State's WorkCover scheme which provides rehabilitation and compensation for workers injured during the course of their employment. Workers' compensation is compulsory, requiring all employers (some 194 800) to purchase annual insurance policy cover from agents of their choice. At November 2001, 10 private sector companies had been appointed as agents to collect premiums and manage WorkCover claims on behalf of the Authority¹.

2.2 The WorkCover scheme (and its predecessor, WorkCare) has received, since 1985, in excess of 685 600 claims from injured workers, excluding claims for journeys to and from work which are not the Authority's responsibility. An additional 2 529 claims have been lodged with the Authority by dependents of those killed in a work-related accident.

2.3 Table 2A shows the nature, number and injury profile of claims managed (for which a payment was made) during 2000-01 by the Authority's agents. Benefits totalling \$1 141 million were provided to injured workers during the year (refer to paragraph 3.4 for further analysis).

**TABLE 2A
NATURE, NUMBER AND INJURY PROFILE OF WORKCOVER CLAIMS
MANAGED DURING 2000-01**

<i>Injury profile</i>	<i>Claim numbers (a)</i>	
	<i>Long-term claims (b)</i>	<i>Other(c)</i>
Fractures	1 540	5 132
Sprains or strains	16 548	42 919
Contusion or crushing	963	3 434
Mental stress	1 574	3 809
Open wound	596	4 333
Other	2 614	12 097
Total	23 835	71 724

(a) At the 30 June 2001, agents reported 31 126 open claims.

(b) Long-term claims are those claims receiving more than 52 weeks of compensation.

(c) Other claims represent simple claims that require limited case management and medical/return to work support.

Source: Information provided by the Victorian WorkCover Authority

¹ There are also currently 35 employers who self-insure by managing and bearing the costs of their work-related accident risks in-house rather than insure with the Authority. In determining whether an employer is suitable to self-insure, the Authority examines such aspects as the employer's financial viability, capacity to administer claims for compensation, the incidence and cost of injuries to workers and employees' working conditions. Where a body corporate ceases to be a self-insurer at its own request it may elect to retain these liabilities, or if the self-insurance arrangements are revoked, the Authority will assume the liabilities. Where this occurs, the amount of the liabilities is assessed by an actuary appointed by the Authority and is a debt due to the Authority. This debt is protected by a bank guarantee provided by the self-insurer in the Authority's favour for 150 per cent of the annually assessed liabilities of the self-insurer.

2.4 In early 2001, the Authority undertook a detailed review of its performance in key areas of the WorkCover scheme. It assessed that the current claims management system was not operating efficiently or effectively. Specifically, the WorkCover system had been performing poorly on all key indicators of performance (refer also to Part 3 of this report) as follows:

- little reduction, since 1993, in the number of traumatic injuries and no significant reduction in work-related fatalities, contributing to increasing numbers of long-term claims and claim payments;
- little change in the rates of return to work after injury for the last 7 years;
- increasing duration of time off work as a result of injury;
- increasing premium rates;
- worsening of the scheme's financial position; and
- declining employee satisfaction and low rates of community and stakeholder satisfaction with WorkCover.

2.5 The system is complex. It is also undergoing substantial change as follows:

- The re-introduction of common law rights for seriously injured workers;
- The commitment of the Authority, under a new chairman and chief executive, to a reform agenda to address past inadequacies in performance and management;
- The overhaul of the claims management system. External consultants were engaged by the Authority to develop a more effective claims management model (refer to Part 4 of this report). The Authority is now initiating an extensive tender process to determine its claims agents for the coming 4 years; and
- A premium review to be completed in 2002.

AUDIT APPROACH

Audit objectives and scope

2.6 The objectives of the audit were to assess the management of claims, including whether:

- actions taken by the Authority to reform claims management would redress past deficiencies and improve the overall performance of the scheme;
- the Authority had adequately managed the co-ordinated care program; and
- the Authority has put in place appropriate strategies to adequately mitigate the key risks associated with the re-introduction of common law rights for seriously injured workers.

2.7 The audit included an examination of:

- the proposed claims management model developed by an international management consulting firm engaged by the Authority, including its alignment with best practice systems of claims management;
- the Authority's management of the co-ordinated care program, including an evaluation of the program undertaken in March 2000 by an external consultant engaged by the Authority; and
- strategies implemented by the Authority for the re-introduction of common law rights for seriously injured workers.

2.8 Discussions were undertaken with industry groups involved in the provision of services to WorkCover claimants including:

- WorkCover Working Party of the Law Institute, Victoria;
- Victorian Employers Chamber of Commerce and Industry; and
- Victorian Self-Insurers Association.

Period covered by the audit

2.9 The audit examined the initiatives undertaken by the Authority, during 2000-01 to the date of preparation of this report, to improve the management of the claims portfolio and implement the proposed claims management model. Strategies to mitigate the risks with the re-introduction of common law from October 1999 were also examined.

Compliance with auditing standards

2.10 The audit was performed in accordance with Australian Auditing Standards applicable to performance audits and, accordingly, included such tests and other procedures considered necessary in the circumstances.

Assistance to the audit team

2.11 Specialist assistance was provided by:

- Mr Alan Clayton, an expert in the areas of insurance and accident compensation, who reviewed the Authority's new claims management model; and
- Dr Maree Dyson, Director, Dyson Consulting Group, a specialist in disability and human services, who undertook a review of the co-ordinated care program.

2.12 Support and assistance was provided to my officers and the specialists by the management and staff of the Authority. I wish to express my appreciation to the Authority for this assistance.

Part 3

Key challenges facing the Authority in managing claims

THE WORKCOVER SCHEME IN BRIEF

Legislation

3.1 The Victorian workers' compensation scheme is defined in the *Accident Compensation Act 1985* and the *Accident Compensation (WorkCover Insurance) Act 1993*. The objectives of the Authority, as defined in section 19 of the *Accident Compensation Act, 1985* are to:

- “... manage the accident compensation scheme as effectively and efficiently and economically as is possible;
- administer the *Accident Compensation Act 1985*, the *Accident Compensation (WorkCover Insurance) Act 1993*, the *Workers' Compensation Act 1958*, the *Occupational Health and Safety Act 1994*, the *Dangerous Goods Act 1985* and any other relevant Act;
- assist employers and workers in achieving healthy and safe working environments;
- promote the effective occupational rehabilitation of injured workers and their early return to work;
- encourage the provision of suitable employment opportunities to workers who have been injured;
- ensure appropriate compensation is paid to injured workers in the most socially and economically appropriate manner and as expeditiously as possible; and
- develop such internal management structures and procedures as will enable the Authority to perform its functions and exercise its powers effectively, efficiently and economically”.

Compensation

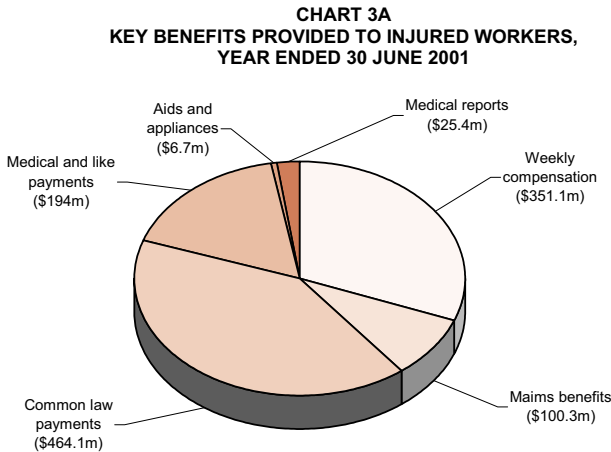
3.2 The scheme aims to rehabilitate and compensate injured workers. Compensation for injured workers is only payable where work was a “significant contributing factor” to injuries and diseases sustained by the worker. All worker entitlements are defined by the legislation and include weekly benefits that vary with the degree of assessed impact on their capacity to work and the duration of injury. Specific payments associated with loss of limbs, pain and suffering are also available to workers.

3.3 A comprehensive outline of the benefits payable and the services provided by the Authority to those persons injured in work accidents is outlined in sections 92 to 99 of the Act. Benefits include:

- income replacement, based upon a worker's pre-injury average weekly earnings;
- compensation for dependents in the event of a worker's death; and

- reasonable costs of medical and like services, including medical treatments, hospital services, nursing, ambulance, medicines, physiotherapy, chiropractic, osteopathy and other services.

3.4 During 2000-01, benefits totalling \$1 141 million were provided to injured workers. Key benefit categories, together with associated expenditure for the year ended 30 June 2001, are provided in Chart 3A.



Source: Information provided by the Victorian WorkCover Authority.

3.5 In May 2000, following the enactment of the *Accident Compensation (Common Law and Benefits) Act 2000*, the right of seriously injured workers to sue for common law damages was re-instated. A worker is now able to access common law damages (for injuries occurring after 20 October 1999) where that person:

- has a 30 per cent or more whole-of-person impairment, assessed in accordance with the *American Medical Association Guide* (4th Edition); or
- satisfies the *narrative test*, which considers the consequences of the injury to the worker in terms of any impairment or loss of body function, disfigurement, or mental or behavioural disturbance or disorder.

Injury prevention

3.6 The prevention of work-related injury, illness and death is a key focus of the Authority in managing the scheme. Consequently, a significant aspect of the Authority's operation is the conduct of research on workplace injury and disease, the initiation of education and advertising campaigns, and workplace inspections aimed at improving workplace health and safety. During 2000-01 the Authority's field staff (around 250 officers) undertook around 59 800 visits to workplaces. Prevention activities are the responsibility of the Authority's WorkSafe Victoria arm.

3.7 The legislative framework also aims to promote accident prevention through incentives to improve workplace safety. The scheme seeks to reward employers whose efforts lead to a reduction in the level of industrial accidents and penalise those employers with poor accident records. It does this through an injury experience system which is used as the basis for calculating employers' workers' compensation premiums. A key component of the Authority's overall prevention approach is to pursue criminal prosecutions against those employers whose negligence has resulted in, or contributed to, a workplace injury, illness or death. The legislation imposes significant penalties for those who are found guilty of non – compliance with occupational health and safety legislation or workers' compensation requirements.

Claims management

3.8 The Authority's agents administer claims submitted by workers who are injured or, on behalf of those killed in a work-related accident, collect premiums and provide occupational rehabilitation and risk management services to employers and workers. Specifically, claims agents interact with injured workers, employers, lawyers, doctors and rehabilitation providers to ensure that the injured worker receives appropriate and timely treatment services and compensation for his or her injury or illness, and that this occurs in an efficient and effective manner. Incentives also exist for employees, employers, agents and occupational rehabilitation service providers to agree on desirable workplace-based programs aimed at the return and reintegration of injured or ill employees to the workplace.

3.9 Agents do not perform certain insurance functions such as underwriting or pricing (which are retained by the Authority), nor do they manage and invest the scheme's funds. Agents are remunerated by the Authority through service and performance fees apportioned on the basis of market share. The performance of each agent is monitored through analysis of the data generated by the Authority's central claims processing system, audits conducted by independent auditors and surveys of both claimants and employers.

3.10 In managing claims on behalf of the Authority, agents must adhere to operating principles issued by the Authority which reflect the Accident Compensation Act and Regulations. Agents are expected to meet the needs of individual workers and focus upon their early return to work. Key aspects addressed by the operating principles include:

- decision-making;

- claims management;
- occupational rehabilitation and return to work;
- dispute resolution;
- contact with the public and complaints handling; and
- fraud and disclosure of information.

Financial operations

3.11 The WorkCover scheme is funded primarily from workers' compensation premiums received from employers and from returns generated on investment funds of the Authority. Table 3B sets out the operating performance and financial position of the Authority for the 5 year period 1996-97 to 2000-01.

TABLE 3B
SUMMARY OF THE AUTHORITY'S OPERATING PERFORMANCE,
FINANCIAL POSITION AND FUNDING LEVEL, 1996-97 TO 2000-01
 (\$million)

<i>Item</i>	1996-97	1997-98	1998-99	1999-2000	2000-01
<i>Operating performance</i>					
Revenue					
Premium revenue	914	960	1 185	1 243	1 591
Investment income	617	437	329	589	300
Other revenue	20	19	14	23	21
(Expenditure)					
Net claims paid	(895)	(955)	(1 056)	(1 239)	(1 225)
Movement in outstanding claims liabilities	(540)	(385)	(433)	(511)	(704)
Other expenditure	(167)	(199)	(215)	(232)	(244)
Net financial result before tax profit/(loss)	(51)	(123)	(176)	(127)	(261)
<i>Financial position</i>					
Outstanding claims liability (a)	3 505	3 890	4 323	4 834	5 538
Net assets	3 509	3 771	4 027	4 411	4 855
Surplus/(deficiency)	4	(119)	(296)	(423)	(683)
Funding level (per cent) (b)	100.1	96.9	93.2	91.2	87.7

(a) Represents net present value of estimated future claim payments.

(b) Represents the percentage of the scheme's net assets in relation to its outstanding claims liability.

Source: Authority's Annual Reports.

3.12 Over the 5 year period, the funding level of the Authority, represented by the proportion of net assets held by the Authority to outstanding claims liability, has continued to deteriorate and the Authority has incurred increasing operating losses. The increase in the operating loss for the year ended 30 June 2001 has arisen largely because of a significant increase in outstanding claims liabilities, reflecting the Authority's external actuary's revised assessment of the cost of pre-1997 common law claims, and to a lesser extent, the goods and services tax. A substantial reduction in investment revenue earned by the Authority compared with the previous 12 months also impacted on the operating loss.

RESPONSE provided by Chief Executive, Victorian WorkCover Authority

Despite a challenging year, WorkCover moved closer to being fully funded through the scheme's first-ever write-down of liabilities and higher than benchmark investment returns. Moreover, although the financial position of the Authority appears to have deteriorated on the basis of data from previous annual reports, it is worth noting that:

- *based on revised actuarial valuations the funding ratio has improved over the past 2 years;*
- *unfunded liabilities reduced by \$391 million during the 6 months from December 2000 to June 2001; and*
- *over the 6 months from December 2000 to June 2001 WorkCover received an actuarial release - or write-down in its liabilities - of \$130 million.*

These outstanding results represent the first time in the scheme's history that there has been a financial turnaround through strong management rather than legislative change and/or a reduction in workers' benefits. Based on the projections of WorkCover's independent actuaries, the scheme is now expected to reach full funding by June 2004 - 2 years earlier than forecast.

THE CASE FOR CHANGE

3.13 In mid-2000, the Authority assessed that, if it was to achieve its legislative objectives, a marked improvement in operations was required in all core business areas. *Strategy 2000*, developed by the Authority, provides a plan for the re-focus of WorkCover's business and the revitalisation of the Authority over the next 3 years.

3.14 The key directions of *Strategy 2000*, together with the major areas of focus for the Authority, are outlined in Table 3C.

TABLE 3C
KEY DIRECTIONS OF STRATEGY 2000

<i>Direction</i>	<i>Major areas of focus</i>
Develop more effective claims management	<ul style="list-style-type: none"> • Common law liabilities: focus to be on quality case preparation by legal specialists and early identification of cases with litigation potential. • Claims management model: implementation of a model that optimises return to work for injured workers.
Increase the emphasis on prevention (a)	<ul style="list-style-type: none"> • "Worst" industries: manufacturing, construction, transport and storage, and public sector and community services. • 100 "worst" employers: 100 employers accounted for 9 per cent of all claim payments. • Common injury types: sprains and strains accounted for 62 per cent of all claim payments, or \$573 million during 1999-2000. • Work-related deaths: many factors other than disease and injury will need to be investigated and targeted with farming receiving particular focus. • Major hazard facilities: need to focus on those workplaces that have low probability risk but potentially disastrous consequences. The Authority will oversee implementation of the new regulations for major hazard facilities. • Prosecutions: more aggressive stance to be taken on prosecution as well as high publicity of prosecution cases.
Revitalise WorkCover	<ul style="list-style-type: none"> • Performance as a system manager: requires clear accountabilities and re-engineering of business processes. • Cultural change: incorporating the promotion of innovation, continuous improvement and rewarding performance. • Stakeholder support: need to find the most effective means of gaining co-operation, either through financial incentives or collaborative forums.

(a) The Authority also embarked on a comprehensive review of its premium structure and processes in 2000-01. Broadly, the aims of the review are to simplify the WorkCover premium system, improve communications with employer's and increase incentives for small-business employers to improve their safety and return-to-work performance.

Source: *Strategy 2000* document, Victorian WorkCover Authority.

3.15 In implementing *Strategy 2000*, the Authority in 2001 undertook a detailed review of its performance in the key areas of the WorkCover scheme. The review drew upon recent research and reports provided to the Authority, as well as international best practice, to identify the critical gaps in the current system and the potential gains from adopting strategies based on best practice.

3.16 One outcome of the review was a report entitled *The Case for Change*. This report highlights key challenges facing the WorkCover scheme in managing and delivering a workers’ compensation system that effectively and safely returns injured workers to the workplace and community, at a reasonable cost to the community. Subsequently, the Authority has commenced implementation of strategies and initiatives aimed at improving the scheme’s performance in all core business areas. This Report focuses on the initiatives to increase the efficiency and effectiveness of claims management.

KEY CLAIMS MANAGEMENT CHALLENGES FOR THE WORKCOVER SCHEME

3.17 Table 3D outlines the key claims management challenges identified by the Authority, and the corresponding performance concern of the Authority in each area.

**TABLE 3D
CLAIMS MANAGEMENT CHALLENGES FOR THE WORKCOVER SCHEME**

<i>Key challenge</i>	<i>Performance</i>
Encouraging timely claim notification	Delay in claim notification adversely affecting outcomes
Enhancing the effectiveness of medical and like services	Sustained growth in medical and like expenditure but no apparent improvement in return to work
Improving return to work	Static return to work rate in recent years
Developing the services agents provide	Average satisfaction with the services agents provide
Addressing long-term claims	Long-term claims are increasing
Restoring a sustainable common law system	In the past, the delivery of common law benefits became financially unviable

Source: The Case for Change, Victorian WorkCover Authority, 2001.

3.18 The Authority’s analysis of key trends and statistics in these key areas is summarised in the following paragraphs. This information reinforces the Authority’s concern that it has not been achieving one of its key aims of returning injured workers to employment.

Encouraging timely claim notification

3.19 The notification of a claim is the first step in the process of managing an injury and returning a worker to the workplace. The longer it takes for a claim to be notified, the longer it takes for the management of the injury and the claim to commence.

3.20 Despite a legislative obligation for employers to forward a claim to their authorised agent within 10 days of being advised by the worker of a work-related injury, during 1999-2000, 40 per cent of claims were not reported within the statutory 10 day period as follows:

- 23 per cent of claims were reported 11 to 21 days after accident advice;

- 10 per cent reported within 22 to 42 days;
- 5 per cent reported within 43 to 90 days; and
- 2 per cent reported over 90 days.

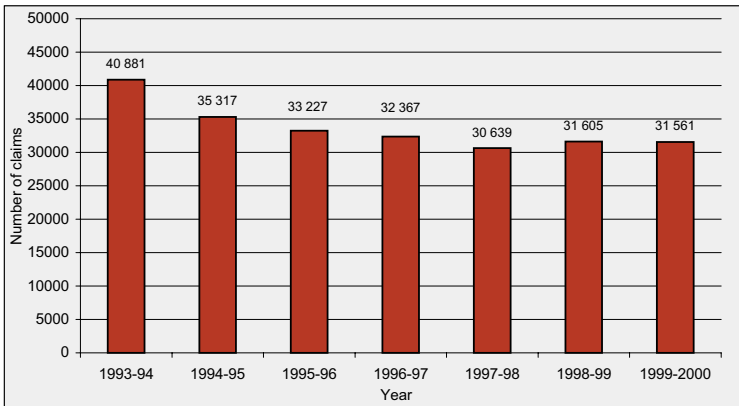
3.21 Employers who do not have reasonable cause to forward claims to their agent within the statutory 10 day period may incur an additional premium or the cost incurred by the Authority as the result of their failure to submit the claim as required. We were advised that, during 2000-01, only one employer was prosecuted for failing to forward a claim to the agent in accordance with legislative requirements.

3.22 Delays in claim notification adversely impact on an injured worker's access to appropriate treatment and services and return to work. There are also adverse impacts on employers in terms of both the costs to the business of having an injured worker absent from the workplace and the increase to their WorkCover premium. Research commissioned by the Authority in 2001 indicates that a reduction in the duration of a claim by between 6 and 7 per cent could be achieved if the reporting and acceptance of a claim occurred within the statutory requirement of 10 days.

Enhancing the effectiveness of medical and like services

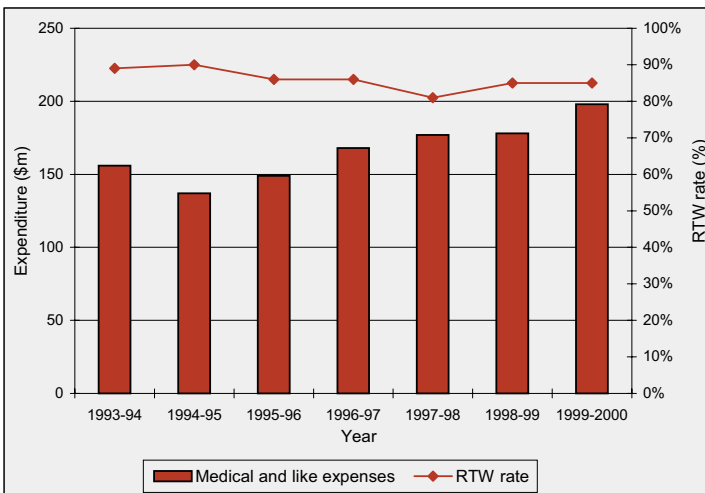
3.23 Effective injury management relies on injured workers receiving appropriate and timely assistance to promote their rehabilitation and early return to work. The Authority has identified that, although there has been a sustained growth in medical and like expenditure over a period of 7 years to June 2000 (from \$156 million in 1993-94 to \$198 million in 1999-2000), there has been no corresponding improvement in the scheme's return to work rates. Furthermore, the number of workers compensation claims reported to the Authority over this period has significantly reduced from 40 881 claims in 1993-94 to 31 561 claims in 1999-2000. Details of the claims reported to the Authority, and its return to work rate, and medical and like expenditure for injured workers over the 7 year period, are shown in Charts 3E and 3F.

CHART 3E
WORKCOVER CLAIMS REPORTED TO THE AUTHORITY,
1993-94 TO 1999-2000



Source: The Authority's Annual Reports.

CHART 3F
MEDICAL AND LIKE EXPENDITURE AND THE RETURN TO WORK RATE,
1993-94 TO 1999-2000 (a)



(a) Medical and like expenditure comprises hospital, physiotherapy, chiropractor/osteopathy, occupational therapy, ambulance, medical practitioner, rehabilitation, psychology and counselling, personal and household, and pharmacy costs.

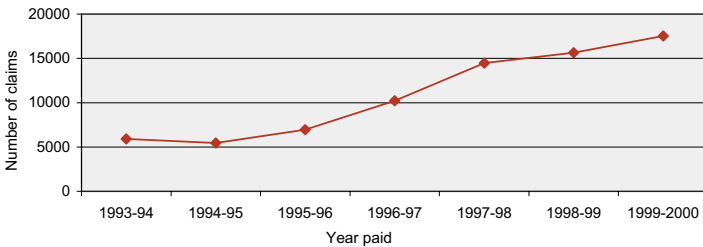
Source: *The Case for Change*, Victorian WorkCover Authority, 2001 and the Authority's Annual Reports.

3.24 Key components of medical and like services expenditure and the increases over the 7 year period to June 2000, were:

- occupational rehabilitation services, \$4.2 million to \$21.4 million (410 per cent increase);
- psychology and counselling costs, \$4.2 million to \$7.3 million (74 per cent increase);
- pharmacy costs, \$5.6 million to \$13.3 million (138 per cent increase); and
- personal and household costs, \$3.6 million to \$12 million (234 per cent increase).

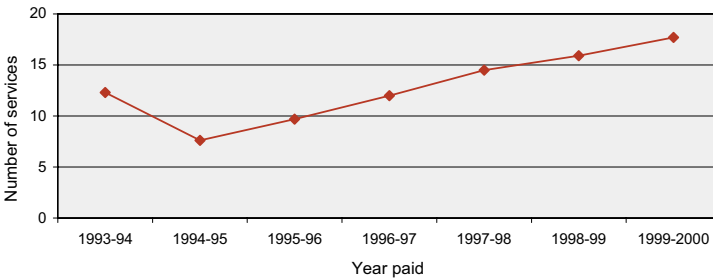
3.25 As highlighted in Charts 3G and 3H, over this 7 year period, the number of claims receiving occupational rehabilitation services (services designed to directly assist an injured worker return to the workplace) and the number of services provided in respect of each claim have substantially risen.

**CHART 3G
NUMBER OF CLAIMS RECEIVING OCCUPATIONAL REHABILITATION,
1993-94 TO 1999-2000**



Source: *The Case for Change*, Victorian WorkCover Authority, 2001.

**CHART 3H
NUMBER OF OCCUPATIONAL REHABILITATION SERVICES PER CLAIM,
1993-94 TO 1999-2000**



Source: *The Case for Change*, Victorian WorkCover Authority, 2001.

3.26 Recent research commissioned by the Authority relating to occupational rehabilitation services found that “... *both agents and providers identify poor communication between parties, inconsistent co-ordination and management of cases, a lack of shared goals among key parties regarding rehabilitation and return to work, and inadequate data systems, as significant issues impacting on the effectiveness of return to work efforts. The [WorkCover] system is characterised by a lack of standardised occupational rehabilitation performance information, including outcome measures*”.

Improving return to work

3.27 While employers have a primary responsibility for the return to work of an injured worker, agents also have a significant role in ensuring employers are aware of their obligations to encourage the early return to work of injured workers.

3.28 Specifically, the *Accident Compensation Act* 1985 requires employers to develop return to work plans for injured workers who have been unable to work for a total of 20 days. In a survey of injured workers conducted by the Authority in 1999-2000, 71 per cent of respondents had received compensation for more than 20 days, but almost half of these respondents reported having no return to work plan in place.

3.29 Employers also have a statutory obligation to offer suitable employment to an injured worker who is able to work within 12 months after weekly benefits commence. However, the 1999-2000 survey found that, 8 months after injury, one in 4 respondents had not returned to work due to losing their job. Almost one in 10 respondents encountered barriers to re-entering the workforce as a result of direct actions taken by employers, including dismissal by employers (7 per cent) and retrenchment (2 per cent).

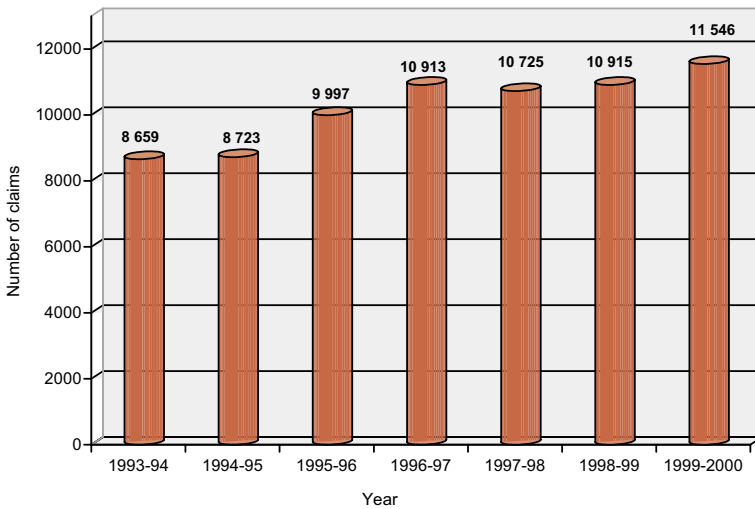
3.30 Failure to comply with the legislative requirements regarding return to work could result in the imposition of substantial fines on the employer. However, this area is fraught with conceptual and procedural difficulties, and to date there have been no successful prosecutions. We were advised by the Authority that there are significant legal challenges involved in successfully prosecuting such offences. For example, the criminal burden of proof is difficult to discharge where there may be conflicting views about the nature of *suitable employment*. In addition, workers dismissed from their pre-injury position will often pursue the matter through the industrial relations system. Success in the industrial relations system can reduce the worker’s motivation to assist the Authority’s investigations.

3.31 A survey conducted in 2001 by the Authority of customer satisfaction with agent services indicated employers were only moderately satisfied with the services they receive from agents directed at return to work. A comment from an employer reflects the situation, “*Claims officers have the nominal responsibility for managing cases, however, most claims officers do not have the training or experience to actively manage the return to work process in those cases where more than administrative case management is required*”.

Addressing long-term claims

3.32 Over a 7 year period to 1999-2000, the number of long-term claims (those that have received weekly compensation for more than 1 year) has been gradually increasing. Similarly, the compensation and medical and like benefits paid in respect of long-term claimants has increased over this period by 105 per cent (\$382.4 million, 1993-94 to \$784.1 million, 1999-2000). Chart 3I shows the 7 year trend in the number of long-term claims

CHART 3I
NUMBER OF OPEN LONG-TERM CLAIMS,
1993-94 TO 1999-2000



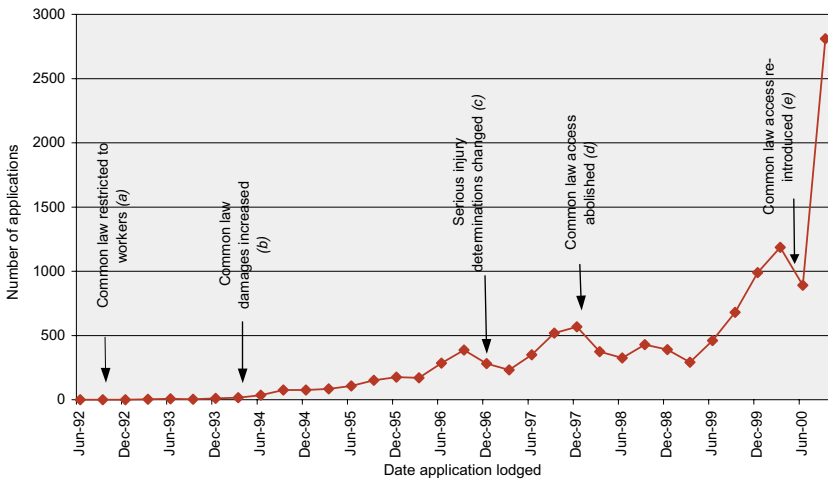
Source: The Case for Change, Victorian WorkCover Authority, 2001.

3.33 The concern for the Authority is the disproportionate number of long-term claims attributable to the key industry sectors of manufacturing and construction, and to the nature of injuries, predominantly, sprain and strains. Four industries – manufacturing, community services, trade and construction – account for over 75 per cent of claims with a duration of one year or longer. Care models for soft tissue injuries demonstrate that the right treatment at the right time can significantly reduce the time it takes for an injured worker to return to work. The increased proportion of sprains and strains among long duration claims has become a key focus of the Authority’s injury management and prevention strategies.

Restoring a sustainable common law strategy

3.34 The Authority's management of common law has, over the years, been characterised by significant and unpredicted increases in the number of common law applications, legislative change (both restricting and then restoring access to benefits), and the implementation of varying management strategies, all of which have contributed to a highly unstable management environment. Chart 3J provides the number of common law applications which have been lodged with the Authority since June 1992 and highlights the large number of legislative amendments.

**CHART 3J
COMMON LAW: NUMBER OF APPLICATIONS AND SIGNIFICANT LEGISLATIVE
AMENDMENTS, JUNE 1992 TO JUNE 2000**



- (a) Common law claims restricted to workers with serious injury (greater than or equal to 30 per cent impairment) and benefits capped to a maximum level, (legislation passed 30 November 1992).
- (b) Common law damages increased, (legislation passed January 1994).
- (c) Serious injury determinations changed to require 30 per cent or more impairment, (legislation passed January 1997).
- (d) Common law access abolished for work-related accidents occurring on or after 12 November 1997, (legislation passed December 1997).
- (e) Common law access re-introduced from 20 October 1999, (legislation passed May 2000).

Source: *The Case for Change*, Victorian WorkCover Authority, 2001 and information provided by the Authority.

3.35 Recent research initiated by the Minister for WorkCover found that the Authority’s past “... *management of common law, particularly the run-off of pre-1997 claims, has been the subject of considerable criticism within the legal community and from scheme participants, including employers, self-insurers and claims agents*”. The Authority has also identified a number of other deficiencies in its past management, namely, its:

- inadequate in-house capability to manage common law;
- limited preliminary investigation to identify claims with common law potential;
- focus on ensuring process compliance rather than on outcomes; and
- fixed case preparation costs irrespective of case complexity and potential payout.

3.36 The Authority is in the process of implementing initiatives to improve the management of common law claims, and its related impact on the long-term financial viability of the scheme. These initiatives are discussed in Part 6 of this report.

Developing the services agents provide

3.37 In the Authority’s latest customer satisfaction survey, only one of 13 authorised agents was perceived to offer a high level of service in the areas of injury prevention, claims management, return to work and rehabilitation, communication, dispute resolution and general service provision, to both employers and injured workers. Most agents were rated as providing an “average” service only.

AUDIT COMMENT

3.38 Key claims management information compiled by the Authority highlighted that this aspect of the WorkCover scheme has been performing poorly for several years. The case for change is proven and the Authority has been open in its assessment of past inadequacies. It has recognised the need for considerable reform. The remainder of this report examines the proposed reforms in the claims management model, the co-ordinated care program and management of common law and provides where possible our assessment of the adequacy of these reforms.

Part 4

New approach to claims management

THE NEW CLAIMS MANAGEMENT MODEL

4.1 In 2000, the Victorian WorkCover Authority began a detailed review of its claims management model. Following a tender process, an international management consulting firm was engaged in March 2001 to develop a best practice management solution that would deliver significant improvements in the efficiency of the claims management system and improved outcomes for injured workers.

4.2 The review included examining:

- the entities that should be involved in the claims management process and the market structure (extent of outsourcing if any);
- how the process should work (information and decision-making flows within the system);
- how to best provide incentives for agents;
- the processes that should be in place to facilitate effective monitoring; and
- the use of information technology.

4.3 The new claims management model subsequently proposed by the management consulting firm was endorsed by the Authority in July 2001. The model is scheduled to be introduced from 1 July 2002 and implemented in stages by December 2002. The fee paid to the management consultants for undertaking the review totalled \$2.4 million.

4.4 Under the new claims management model, the existing structure of the system remains essentially intact. The key features of the new model (including its alignment to best practice) and our assessment of its capacity to effectively address the deficiencies with the existing model are detailed in this Part of the report.

OVERALL ASSESSMENT

4.5 Compared with existing arrangements, the new claims management model incorporates better to best practice design features of claims management in a workers' compensation scheme. The 3 key elements of early notification, risk assessment and multi-disciplinary claims teams should, with proper implementation and operation, enhance the prospects of appropriate and more timely intervention, better treatment regimes and improved return to work prospects for the injured worker. Furthermore, greater use can be made of the claims management process to identify those claims where opportunities exist to recover claim costs and, in turn, reduce scheme liabilities.

4.6 At the date of audit, more work was still being undertaken in finalising the agents' remuneration scheme. We cannot, therefore, comment on the overall appropriateness of the approach adopted in this area.

4.7 The new claims management model is focused on improving claims management, particularly return to work, and the financial sustainability of the scheme. The success of the new model will be dependent on the quality of the agents, effective operational arrangements, improved injury management and pro-active oversight. The design did not specifically address the potential for the claims management process to contribute to reductions in the risk of future injury and disease. The Authority needs to consider how to better link its claims management experiences with injury prevention during the current premium review, with the activities of WorkSafe Victoria and explicitly with its claims management model, as occurs in some international best practice systems. Maintaining the day-to-day operation of the scheme, while introducing substantial changes, will be a challenge for the Authority.

MAINTENANCE OF THE CURRENT STRUCTURE OF THE SYSTEM

4.8 The Authority has determined that the current structure of the system should remain essentially intact. Improvements are, therefore, expected to derive from the more efficient and effective functioning and greater oversight of claims management. While we recognise there are examples of both efficient and inefficient outsourced and insourced models, this approach has been adopted despite past poor performance and the success of different approaches elsewhere.

Retention of outsourced claims management

4.9 The new system will involve a continuation of the existing arrangements of outsourced claims management by private sector agents. The Authority has not determined the number of agents it will engage but this will be resolved through an open tender process, scheduled to be completed by April 2002. The management consultants maintained that:

- “... performing most claims activities is important, but not critical, to managing the Authority’s risks;
- the Authority, as a monopoly provider, is unlikely to be as capable and efficient in the short or long-term as multiple agents;
- the principal/agent tension between the Authority and its agents can be mitigated through much stronger and more active management, sharper performance management and through encouraging competition amongst agents;
- the transition costs of bringing activities back in-house would be very significant, and would outweigh any benefits; and
- overseas experience suggests that there is no one model of in-sourcing or outsourcing that delivers superior benefits”.

4.10 We found that the consultant's analysis of best practice undertaken as part of the review was strongly influenced by North American approaches, with limited reference to successful schemes in other countries, especially Europe. We also consider it placed great weight on the history of the current scheme, the consequences of system failure for Victorian workers and the limited current capacity of the Authority to implement models which involved bringing all its claims management activities in-house in the short-term. This has led to a cautious approach of limited change in market structure.

4.11 Such caution may be appropriate. We agree that there is no one "best" model for the operation of a workers' compensation system which is superior in every jurisdiction at every time. There are examples of highly efficient and effective in-sourced monopoly providers (e.g. British Columbia and Washington State), and very inefficient ones (e.g. West Virginia). The best in-sourced monopoly provider may outperform the best outsourced competitive provider because it can focus on synchronising all elements of the scheme including injury prevention, injury management and claims management. However, the worst monopoly provider can be extremely inefficient.

4.12 We cannot, therefore, be definitive about the appropriateness of the outsourced approach. However, its success will be dependent on substantially improving the performance of the agents. This requires attention to 4 key areas:

- High quality agents. The Authority has not determined which and how many agents it will engage. A tender process is underway, with formal tenders to be called in mid December 2001, bids submitted by mid-January 2002 and final decisions in mid-April 2002;
- Effective operational arrangements. A major deficiency of the current model has been the variability and, in some cases, limited use of specialist resources to manage claims. Currently, these are at the discretion of the agents, but the new model prescribes the composition and activities of agents' claims management teams. The Authority will now require agents to:
 - establish multi-disciplinary teams with designated competencies within these teams (refer paragraphs 4.25 to 4.32); and
 - segment and manage claims according to claims characteristics (refer paragraphs 4.38 to 4.39);
- Improved injury management. The Authority has accepted the findings of a recent review of injury management and established an injury management team to implement the findings of the review in conjunction with the new claims model (refer paragraphs 4.42 to 4.46); and
- More pro-active oversight. The Authority has recognised the traditional approach is not sufficient in this area, and is committed to much closer monitoring of the performance of its agents (refer paragraphs 4.47 to 4.51).

Retention of current approach to injury prevention

4.13 The design of the new claims management model does not specifically address the potential for the claims management process to directly contribute to reductions in the risk of future injury and disease. Under the current WorkCover system, injury prevention is predominantly the responsibility of the WorkSafe Victoria arm of the Authority. As well as the regulatory regime, workplace inspections and prosecutions, the Authority sees a key injury prevention policy lever as the link between employer premiums and workers' compensation claims.



A WorkSafe Victoria inspector discusses workplace safety.

4.14 Agents are required, both currently and in the new model, to provide injury prevention, risk management and other occupational health and safety services, including promotion of occupational health and safety to employers and workers, participating in the Authority's prevention strategies, working with employers to increase awareness of claims costs and causes, and reporting occupational health and safety issues and practices. The amount and way in which this is done is not mandated in the model and is at the discretion of the agents.

4.15 We were advised by the Authority that all agents currently offer risk management services aimed at assisting employers to develop and monitor accident prevention strategies. A survey of employers undertaken by a research consultant engaged by the Authority in September 2000 reported that only 29 per cent of employers (30 per cent, 1999) had received assistance from their agent in identifying potential hazards at their workplace. Of those employers not receiving this service, 3 in 10 employers advised they would like agents to provide assistance in this regard.

4.16 Employers have some incentive to seek out agents who can provide assistance in injury prevention. The premium paid by employers reflects the industry rate, over which individual employers have no control, and, depending on the firm's size, their own claims experience. Because employers seek to reduce their premiums, they will ideally choose an agent who can provide assistance in injury prevention. However, employers have a tendency not to change agents frequently and usually have limited knowledge of the comparative performance of agents in injury prevention.

4.17 The means by which agents are remunerated now and in the new model provides very limited incentives for agents to provide injury prevention services. Their fee is related to the number of employers and the quantum of premiums insured, the number of claims managed and their performance in claims management and returning claimants to work. There is potential for the Authority to identify injury prevention as a high value work practice for which agents would receive an annual adjustment based on their performance. This aspect of remuneration is likely to be used initially to encourage improved injury management.

4.18 Another approach, which might have been considered by the Authority, is an explicit link to injury prevention through inclusion of some injury prevention capacity in the agents' claims management teams. Embedding a strong feedback loop from claims management to injury prevention contributes to preventing or mitigating the pain and losses from injury and disease, while also having an impact upon reducing liabilities.

4.19 Particular industries and workplace conditions have recurring injuries. For example, workers with white collar and professional backgrounds have both a very low incidence of traumatic injury and low severity consequences from such injury. Other industries, such as construction and mining, have a much higher incidence of injury and much higher severe consequences. This recurrent pattern can be seen in workers' compensation claims.

4.20 Some of the best practice claims management systems have information systems that are explicitly designed to identify injury by occupation, type of injury and the activity associated with the injury. Identifying and making changes to eliminate or reduce the possibility of future injury, or mitigating the consequences of exposure, has positive consequences in both lessening the level of injury and suffering to the worker, and also the cost of injury to the workers' compensation system.

4.21 Having an injury prevention capacity within each claims team, or at least shared between a number of claims teams, aids the identification of these patterns and guides action to either remove, block or mitigate the consequences of the particular injury producing process or activity. This form of risk management feedback is a defining element of 2 of the highest regarded international workers' compensation systems: the Caisse Regionale d'Assurance Maladie (CRAM) in France, and the German Berufsgenossenschaften.

4.22 In the French system, for instance, highly qualified injury prevention personnel (often engineers with significant industry experience) are involved in the investigation of the causes of work-related injuries. These persons are empowered to recommend changes to workplace operations that would prevent or mitigate future injuries, and which are within the economic capacity of the enterprise to implement. Failure to make such changes can result in the imposition of significant premium penalties (up to 200 per cent).

4.23 The scheme's injury prevention objective could have been supported by prescribing within the new claims management model clearer expectations of the amount and mechanisms for the injury prevention role of agents. The Authority has advised that other mechanisms are a higher priority for achieving the scheme's injury prevention objectives. Given the past poor workplace injury experience, these other mechanisms will need to be strengthened, including increasing the consequences for employers of high injury rates in the current premium review, incorporating incentives for injury prevention in the agents' remuneration structure and enhancing the effectiveness of WorkSafe Victoria.

Recommendation

4.24 The Authority should:

- monitor the impact of the underlying structural arrangements on the achievement of the scheme's objectives, with a view to reassessing over the next 4 years whether the improvements sought have been realised; and
- maximise the potential for injury prevention in the system through the use of all available mechanisms, including the activities of WorkSafe Victoria, employer premiums, incentives for agents and integration of injury prevention within the claims management model.

RESPONSE provided by Chief Executive, Victorian WorkCover Authority

The Authority agrees with the recommendations.

The Authority will be closely monitoring and refining the underlying structural arrangements as it implements the new model.

Retention of outsourced claims management (paras 4.9 to 4.12)

The new claims management model represents a major reform in how the claims of injured workers in Victoria will be managed. In determining whether the structure for claims management should be changed considerable weight was placed on the lack of evidence that any alternative structure would be clearly superior in the Victorian environment. Audit appears to support this conclusion in noting in 4.11 that there is no one best model. Since the benefits of major structural changes were assessed as low, and the transition costs high, the existing structures were largely retained.

Retention of current approach to injury prevention (paras 4.13 to 4.23)

The Authority is currently undertaking the third phase of its review of the Premium system, which will include an examination of how to strengthen incentives for injury prevention through workers' compensation insurance. This analysis will include an examination of how agents can better complement the injury prevention incentives in the premium system and link claims with the agents' injury prevention activity.

KEY FEATURES OF THE CLAIMS MANAGEMENT MODEL

Mandatory multi-skilled management teams

4.25 Under the new claims management model, all agents will be required to establish multi-disciplinary claims management teams. Their composition is outlined in Table 4A.

**TABLE 4A
AGENTS' CLAIMS MANAGEMENT TEAM STRUCTURE**

<i>Specialist position</i>	<i>Role</i>
Case Manager	<ul style="list-style-type: none"> • Primary responsibility for the management of each claim within their portfolio and primary point of contact for both the injured worker and employer. • Responsibility for the case management of a maximum of 80 claim files.
Health Management Specialist	<ul style="list-style-type: none"> • Provision of expert opinion on injury management and return to work related issues. • Encourage providers to take accountability for diagnosis, opinions, treatments and costs. • There must be 0.2 effective full-time Health Management Specialists for each 6 case managers within each agent.
Technical Manager	<ul style="list-style-type: none"> • Provide analysis on all technical and legal issues relevant to case management. • As a minimum, technical managers must have: <ul style="list-style-type: none"> • 5 years experience in WorkCover claims management with current standing as a Senior Claims Officer or equivalent; or • 3 years experience as a law clerk or paralegal in the statutory personal injury field; or • a Bachelor or Laws degree. • There should be a mix of technical managers with each qualification at each authorised agent and there must be 1 full-time technical manager for each 6 case managers within each agent.
Injury Management Advisors	<ul style="list-style-type: none"> • Develop and promote injury management strategies and provide coaching and advice to case managers regarding treatment and return to work issues enabling effective claims strategies to be implemented on all high risk claims. • As a minimum, the injury management advisor must be experienced in the occupational rehabilitation field and qualified as: <ul style="list-style-type: none"> • a physiotherapist; or • a chiropractor; or • an osteopath; or • an occupational therapist; or • a nurse. • There must be 1 full-time injury management advisor for each 6 case managers within each agent.

Source: Information Memorandum-Provision of claims management services by authorised agents, Victorian WorkCover Authority, October 2001.

4.26 Agents are also required to appoint a dedicated Impairment Benefit Specialist (IBS), who will take responsibility for managing, in consultation with the multi-disciplinary team (as specified in Table 4A), the processing of claims for impairment benefits. Each IBS is responsible for processing a maximum of 100 open impairment benefit claims at any one time and can be expected to manage a total of 150 claims each year. Each agent must appoint at least one IBS who must, as a minimum, have:

- at least 5 years claims management experience;
- completed a comprehensive training program conducted by the Authority or the Transport Accident Commission; and
- 2 years experience in reviewing and analysing whole person impairment assessments.

4.27 Additionally, agents are required to appoint a full time Senior Legal Manager. As a minimum, the Manager must hold a Bachelor of Laws degree, a current practising certificate and have at least 5 years experience in legal practice in the personal injury field.

4.28 The multi-disciplinary teams within each agent will be responsible for handling all claims (except low risk claims) according to the segmentation rules (risk assessment principles) that are discussed in paragraphs 4.38 to 4.39. Caseloads will be specified for each team member and agent remuneration will reflect these caseloads.

4.29 The specification of the composition of multi-disciplinary claims management teams is consistent with best practice design principles. It is a concept that has become generally established within better performing workers' compensation jurisdictions. Nevertheless, we consider that the overall effectiveness of multi-disciplinary claims teams could be impacted upon by the following 3 factors:

- appropriateness of, and compliance with, the prescribed caseload requirements which are currently subject to consultation as part of the tender process;
- limited availability of qualified staff (refer paragraphs 4.30 to 4.32); and
- absence of specific linkage to injury prevention (as discussed previously in paragraphs 4.13 to 4.23).

4.30 The WorkCover system has difficulty recruiting and retaining qualified and skilled staff. Agents have commonly reported annual turnover rates of around 15 per cent. Other organisations within the industry, i.e. the Transport Accident Commission and TAC Law, are competing for largely the same type of staff as the Authority's authorised agents. In recent times, this has resulted in salary inflation for the more highly skilled and sought after staff e.g. persons with a common law background.

4.31 The implementation of the new claims management model could, at least in the short-term, exacerbate the issue. The Authority expects that the new claims management team structure will provide better opportunities for skills acquisition and career progression, reducing turnover and maintaining experience within the system. However, securing appropriately experienced and knowledgeable specialists is a critical element of the new model and is likely to pose a problem for agents.

4.32 The Authority's claims management implementation strategy includes, as one of the 13 implementation projects, the development of an education and training program to enhance the agents' staff capability. Training opportunities will be provided to enhance the skills and experience of existing staff and train new staff. The likely difficulties in recruiting suitably qualified impairment benefit specialists is the subject of a specific training strategy, which provides agents with training through co-location of experienced Authority and Transport Accident Commission staff, and a phased introduction of the staffing requirements, to be completed by the end of 2002.

Greater emphasis on early notification of injury

4.33 Employers have a range of obligations in the WorkCover system, both in respect of occupational health and safety, and for workers' compensation matters. Under the new model, the duties of employers will not change significantly, except that they will be encouraged to notify agents of claims earlier. The proposed changes are 2-fold, namely:

- During 2002, the Authority and agents will encourage employers to report lost-time injuries by telephone, and undertake education activities to encourage early reporting. Despite a statutory obligation for employers to forward a claim to their authorised agent within 10 days of the accident, currently 40 per cent of claims are reported out of time; and
- Following this voluntary reporting phase, the Authority will aim to move from phone reporting to formal lodgement of claims by phone, using new technology.

4.34 The emphasis placed on early notification of injuries by employers is consistent with best practice. While early notification by itself is not a guarantee of better results, it does provide a springboard for more effective management through early and appropriate intervention. The first few days after an injury are crucial for determining the future dynamics of a claim, ensuring appropriate treatment for the injured worker and in the development of return to work initiatives.

4.35 One recent study by a leading United States insurer identified that claims reported 2 weeks after occurrence on average cost 18 per cent more than those reported in the first week. Claims reported in the third and fourth week after occurrence cost approximately 30 per cent more than those reported in the first week. Claims reported after one month of occurrence on average cost 45 per cent more than those reported in the first week.

4.36 In the early 1990s, a United States insurance company found that the introduction of a toll-free telephone reporting system, in conjunction with an extensive employer education program, led to a dramatic improvement in the timeliness of its intervention. Early intervention improved the effectiveness of the insurer's claims management: legal involvement in the claims process was halved and both the time and cost of settled claims were reduced (24 per cent and 31 per cent, respectively).

4.37 We support encouraging voluntary compliance through provision of information on the benefits of, and incentives to encourage, early notification. However, given the likely benefits of early notification, maintenance of the statutory requirement for employers to notify lost time injury claims, stronger enforcement of that requirement and a potential reduction in the statutory employer reporting period, will remain important.

Enhanced focus on classifying injury types

4.38 The new model will require all claims agents to both segment existing claims, and to triage new claims into a number of categories according to claims characteristics that reflect likely outcomes. For instance, a worker with a simple limb fracture who is likely to have a relatively trouble-free return to work in pre-injury employment compared with a person with a stress claim who may face a lengthy claims duration and uncertain return to work. The Authority proposes to assist agents in making these risk assessments by refining an existing risk assessment tool and developing software that will allow the automatic application of decision rules for new claims.

4.39 The new model envisages the following high-level claims classifications:

- Low risk claims. These claims will be allocated to the Claims Processing segment for expedited processing. Such claims will not be actively managed because of the expectation that maximum medical improvement and successful return to work can be achieved with relatively straightforward management. However, it is proposed that these claims be rigorously monitored for change of status so that a more interventionist approach can be adopted if such claims significantly depart from their earlier prognosis;
- High risk claims. These claims will be allocated to the multi-disciplinary teams for early intervention and active management by agents. Such claims present risks such as prolonged medical treatment or low rates of return to work. Agents will manage medical and return to work providers in accordance with evidence-based protocols, and using a network of job search and occupational rehabilitation providers. There is also intended to be a more effective impairment assessment process, identification of claims with common law potential and assistance in their early management, and identification of claims with recovery potential; and

- Long-term management claims. These include claims where 52 weeks of compensation has been paid, workers have been unable to return to work and claims involving the most serious of injuries, such as quadriplegia, paraplegia and acquired brain injury (catastrophic claims). These claims will also be the subject of active management by the multi-disciplinary claims teams. According to the prospects of return to work, such claims will be divided into long-term care and long-term return to work categories. The emphasis in these cases will be upon the implementation of customised processes to deal with difficult issues surrounding these claims, such as psychological and social issues.

Enhanced system of claims risk assessment

4.40 The proposed system of claims risk assessment is in accordance with best practice principles. Compared with the current practice in Victoria, it is more systematic and includes a reassignment process after 12 months into long-term care and long-term return to work streams. It also incorporates risk assessment software to apply a set of decision rule, and monitor outcomes against original decision rule allocations, in order to continuously refine the decision rules.

4.41 Decision rules will be developed from a retrospective analysis of claims which identifies the features that resulted in the particular outcomes that occurred. The challenge with any risk assessment system is in the application of the decision rules, either implicitly in the case of an experienced claims officer, or through expert system software-based solutions. Taking the universe of incoming claims and applying risk assessment principles prospectively and under real-time pressures will require both high quality risk assessment software and experienced and intuitive claims officers to complement the computerised assessments. There are, however, significant staff shortages in the present system, particularly with experienced staff in the areas demanding more complex skills (refer paragraphs 4.30 to 4.32).

Improved pro-active injury management

4.42 The Authority, in an initiative separate to the claims management review, commissioned the Millard Centre (an entity located in Canada specialising in injury management) in late 2000 to undertake a gap analysis of the WorkCover system's injury management capability. The cost of this review was around \$351 000. The Centre found that there was a significant opportunity for improvement in the injury and claims management practices within the Victorian system, particularly in relation to return to work outcomes, claims costs and stakeholder involvement and satisfaction.

4.43 The Millard Review reported that the successful implementation of a comprehensive injury management approach is contingent upon the Authority adopting a number of key principles as follows:

- timely determination of claims entitlement;
- timely access to healthcare services;

- investment in high quality healthcare delivery;
- involvement of the primary care physician; and
- collaboration with healthcare providers and professional associations.

4.44 An injury management team has been established to implement these findings, in conjunction with the new claims model. The team's first task has been to establish an evidence-based care model for sprains and strains, which make up over half of the Authority's claims. The model, which reflects the evidence that the most appropriate assessment and rehabilitation for these injuries is multi-disciplinary in nature, is being piloted from the end of October 2001. Workers with a sprain or strain injury who have been off work for 6 weeks or more will be given the opportunity to participate in a multi-disciplinary assessment of their condition, and to participate in inter-disciplinary rehabilitation.

4.45 The multi-disciplinary claims management team will be responsible for assisting the implementation of the sprains and strains care model by:

- identifying injured workers who should be given the opportunity to participate in a multi-disciplinary assessment; and
- approving the provision of rehabilitation services recommended by the assessment team and the worker's treating practitioner.

4.46 The Authority will evaluate the effectiveness of the sprains and strains care model in improving the outcomes for injured workers, prior to making the program more widely available for injured workers with sprains and strains in 2002. This project provides an example of the importance of the Authority's role in piloting new approaches to demonstrate their effectiveness and then ensuring these approaches are taken up by its agents.

Closer monitoring of agents

4.47 The present system adopts a 2 phase approach to agent monitoring:

- each agent appoints an independent auditor to conduct audits and report to the Authority; and
- the Authority contracts an external accounting firm to conduct audits of its agents.

4.48 The audit process has been limited, typically focusing on assessing compliance with claims management processes and the achievement of milestones (e.g. eligibility decision made within 28 days), rather than on claimant outcomes achieved.

4.49 Under the new model, it is proposed to substantially modify the nature of the monitoring system to one that involves file reviews by highly experienced claims handlers, together with electronic targeting, by data analysts, of problematic files. Under both the file review and electronic targeting procedures, the monitoring criteria will be determined by the Authority and the tasks undertaken by a team of senior review officers. At the date of audit, the specific nature of the reviews had not been finalised.

4.50 We consider file reviews should also encompass an assessment of agents' performance against best practice case management standards and outcomes achieved for claimants in terms of the Authority's objectives. My October 2001 report *Management of major injury claims by the Transport Accident Commission*, could assist the Authority in this regard.

4.51 The remuneration system for agents is used to align the actions by agents with the desired goals of the Authority. In recent years, there has been a change in the mix of incentives to provide greater reward for the achievement of outcomes compared to compliance with processes (e.g. reduction in claims liabilities). At the date of this audit, the Authority was consulting with prospective tenderers regarding the detail of the remuneration system proposed under the new model. The final remuneration system will be included in the request for tender for agents in December 2001.

Greater interaction with workers and service providers

4.52 Except for claim notification requirements, most of the day-to-day processes relating to acceptance and payment of entitlements and provision of services will not change under the new model. However, it is intended that greater interaction will occur between workers and service providers.

Workers

4.53 There are a number of obligations placed upon workers under the *Accident Compensation Act* 1985. These include reporting an injury as soon as possible to the employer, supplying medical certificates and making every reasonable effort to return to work. The new model will not impose any significant new obligations upon workers. Its major impact will be the manner in which their injuries are managed under the new risk-based, segmented claims system. More active management of medical and return to work outcomes under the new model, including the establishment of a network of job search providers, is intended to provide a more intensive interaction between multi-disciplinary claims teams and workers with more complex medical conditions and return to work issues.

Medical and other service providers

4.54 Under the WorkCover scheme, medical and like services are provided by a range of health professionals, including medical practitioners, physiotherapists and chiropractors.

4.55 The major impact of the new model upon medical and other service providers will be in the nature of their interaction with the claims management process. The multi-disciplinary claims management teams are to work closely with medical and return to work providers to ensure that workers gain access to appropriate and timely rehabilitation. The sprains and strains pilot project discussed in paragraphs 4.42 to 4.46 may demonstrate the benefits of multi-disciplinary assessment and rehabilitation. The Authority will need to ensure that such benefits are integrated into the claims management process.

Legal providers

4.56 Injured workers may use a legal practitioner to assist them with their WorkCover claim. This assistance is most likely for disputed claims and certain types of claims (e.g. impairment benefit and fatality claims), and would occur with almost all common law claims.

4.57 The existence in the claims teams of dedicated expertise on technical and legal issues, with a sound understanding of the legislation, is expected to result in a greater degree and sophistication of preparation of legal matters, both statutory claims and common law matters, than was the case in the past. The new model also proposes a greater emphasis upon recovery actions and a small number of external providers will be engaged by the Authority to pursue recovery opportunities.

4.58 We support the actions taken by the Authority and consider they are conducive to achieving the desired outcome of greater interaction between workers and service providers.

Recommendation

4.59 We recommend that the Authority closely monitor claims management performance, incorporating a rigorous cost-benefit analysis and ascertaining the views of key stakeholders. Specific attention needs to be given to:

- ensuring multi-disciplinary teams are staffed with appropriately experienced and knowledgeable specialists;
- ensuring mandated caseloads are appropriate;
- vigorously pursuing employers who fail to comply with the statutory reporting requirements for lost time injury claims;
- ensuring that demonstration projects which identify better practice approaches are integrated into the claims management model; and
- incorporating within the proposed case file reviews, assessments of agents' performance against best practice case management standards and outcomes achieved for claimants.

RESPONSE *provided by Chief Executive, Victorian WorkCover Authority*

The Authority agrees with the recommendations.

The Authority is committed to improving the quality and timeliness of care and benefits provided to injured workers. Through the early provision of appropriate treatment, injured workers are far more likely to return to work promptly, minimising the disruption to their lives and the social and financial impact of their injury.

A dedicated project team incorporated the feedback from a wealth of national and international experience and research, as well as the lessons gleaned from key stakeholders such as injured workers, employers, unions, agents, and the Authority's staff to develop a more efficient claims management model for Victoria. The Authority has recognised that implementation will require close attention to many issues, including those raised by audit, to ensure the new model generates the benefits envisaged.

IMPLEMENTATION OF THE NEW MODEL

4.60 The change program associated with the new claims management model (scheduled to be introduced on 1 July 2002 and fully operational in December 2002) requires considerable resourcing. Indicative implementation costs are estimated to be in the order of \$10 million to \$13 million in 2001-02 and \$5 million to \$7 million in 2002-03.

4.61 Sixty-five per cent of the costs in 2001-02 are for information technology systems development and 60 per cent of the costs in 2002-03 are for one-off agent transition costs. This significant investment in information technology will be directed at:

- improved front-end data capture and automated claims risk assessment which will enable:
 - telephone operators to collect initial claims data and register claims;
 - segmentation of claims into risk categories; and
 - claims managers to be alerted to new claims depending on risk category and employer;
- developing an online tool to assist:
 - claims teams review treatment and return to work outcomes; and
 - claims managers to be alerted to new claims depending on risk category and employer;
- targeting systems to identify files with certain attributes (e.g. common law and recovery potential, excessive treatment costs, simple claims becoming complex); and
- management information systems for measuring and monitoring the Authority and agents' performance (e.g. return to work outcomes, common law performance, recovery performance and new information systems performance).

4.62 In recognition of the importance and magnitude of the task, the Authority has established a Program Management Office to manage the implementation and transition. An experienced consultant, specialising in implementing large change programs has been engaged to lead the implementation process.

4.63 The Program Management Office is overseeing the activities of 13 implementation teams, monitoring adherence to milestones and is empowered to take remedial action where necessary. Each team is led and staffed by the Authority's most experienced and knowledgeable personnel in the particular area for which the team is responsible (e.g. agent remuneration, claims processes, notification and triage and injury management). To avoid past failings by the Authority, team leaders have been removed from their day-to-day operational responsibilities to allow them to focus on the implementation tasks.

4.64 We consider that, although the action taken to date is appropriate, implementation of the new model constitutes a risk to the Authority. Specifically, the Authority needs to make and integrate a large number of changes, many substantial in nature, within a relatively tight timeframe. This involves the management and coordination of the implementation teams, while continuing to manage the Authority's present claims management operations and any emerging issues. The management of agents during the transition presents additional issues mainly due to the uncertainties agents will have concerning their future role in the workers' compensation system.

Recommendation

4.65 We recommend that the Authority closely monitor implementation of the new model and immediately address any significant shortcomings.

RESPONSE *provided by Chief Executive, Victorian WorkCover Authority*

The Authority agrees with the recommendation.

Project management for this program includes a very rigorous monitoring regime to ensure management and the Board can track each project's progress, and respond quickly to any emerging problems.

A detailed communication and consultation plan is also being executed.

Part 5

The co-ordinated care program

INTRODUCTION

5.1 In December 1996, the *Accident Compensation Act* 1985 was amended to allow co-ordinated care programs (CCP) to be implemented as a pilot program for managing injured workers. The aim of the program is to promote cost-effective health care practices that emphasise restoring an injured worker's health, providing the best possible quality of life, and enhancing their work potential. A CCP is a written agreement between a worker, doctor and agent to provide reasonable, appropriate and necessary medical and like services that will assist the worker following injury. These include medical, hospital, nursing, personal and household, occupational rehabilitation and ambulance services, as well as referrals to community, recreational and cultural services. Should the injured worker not comply with his or her responsibilities under the agreement, workers' compensation benefits may be withdrawn.

5.2 CCPs are established at the instigation of an agent and focus on claims that are complex, problematic, long-term and high cost. Generally, these include claims where workers have sustained a severe or profound injury, including an acquired brain injury (ABI) or spinal cord injury (SCI) resulting in paraplegia or quadriplegia, chronic pain with medication problems and post-traumatic psychiatric illness.

5.3 At October 2001, the Authority's agents reported that only around 70 injured workers were managed under a CCP. This represents less than 1 per cent of total open claims at 30 June 2001. Tables 5A and 5B highlight the injury profile and the benefits provided to these injured workers during 2000-01.

**TABLE 5A
INJURY PROFILE OF WORKERS ON CCP**

<i>Nature of injury (a)</i>	<i>% cases</i>
Sprains and strains	30
Fractures	22
Concussion	15
Multiple injuries	10
Contusion/crushing	4
Circulatory	4
Stress	3
Burns	3
Other (b)	9
Total	100

(a) Injury reported at lodgement of claim.

(b) "Other" injuries include internal injuries, open wounds, superficial injuries, exposure and muscle-skeletal injuries.

Source: Information provided by the Victorian WorkCover Authority.

**TABLE 5B
KEY BENEFITS PROVIDED TO WORKERS ON CCPs,
2000-01**

<i>Benefits provided</i>	<i>\$million</i>
Weekly compensation	1.2
Medical and like benefits	2.5
Other benefits	0.3
Total	4.0

Source: Information provided by the Victorian WorkCover Authority.

5.4 To assist agents in determining when a CCP should be established, the Authority issued guidelines in 1999 specifying the circumstances where a worker may benefit from a CCP. These include the following situations:

- a worker does not return to work within normal recovery time;
- reasonable concerns exist regarding the use of analgesics for non-malignant pain;
- complex treatment is required due to the severity of injury (e.g. claimants who undergo spinal implant therapy for treatment of chronic, intractable pain);
- additional treatment complications are present, such as drug addiction or mental illness;
- long-term treatment services have been of minimal benefit to the worker; and
- a worker constantly changes their medical practitioner.

5.5 The Authority has subsequently revised the CCP guidelines and reissued them to agents in October 2001. The new guidelines focus on the types of injuries sustained by workers who may be considered for the CCP, namely, workers who have an acquired brain or spinal injury, a serious injury to 2 or more body systems, amputation of whole or partial limbs and those requiring urgent surgery for complex medical conditions.

5.6 Table 5C outlines the key features of the CCP.

TABLE 5C
KEY FEATURES OF THE CO-ORDINATED CARE PROGRAM

- The CCP must be instigated and approved by the agent.
- Responsibility for the identification, engagement and review of services needed to rehabilitate the injured worker rests with the medical practitioner and the worker. A specialist case manager may be utilised by the practitioner to assist the development of the CCP.
- Funding by the agent is only for services stated in the CCP together with any emergency or urgent services and reasonable and appropriate changes from the CCP.
- The CCP for the injured worker must include goals and expected outcomes and set dates for review by the agent, treating practitioner and injured worker.
- The worker's medical practitioner should review services on a regular basis to ensure that service outcomes are being achieved.
- The agent cannot cease an existing CCP without a review of the CCP by a suitably qualified medical practitioner.
- Compensation in respect of medical and like services provided to the injured worker may be withdrawn should he/she not comply with any aspect of the CCP, e.g. failure to undertake a medical examination.
- Workers have access to conciliation and appeal mechanisms should they not agree with decisions regarding their CCP.

Source: Information provided by the Victorian WorkCover Authority.

OVERALL ASSESSMENT

5.7 The CCP was introduced as a means of formalising the management of injured workers and the roles and responsibilities of key parties – the worker, medical practitioner and the agent. The aim of the CCP is to ensure the efficient and effective management of the care of the most complex of injured workers, those who have physiological and psychological conditions accompanying severe disabilities.

5.8 The Authority has not implemented appropriate mechanisms to ensure agents who have primary responsibility for managing the CCP are achieving better outcomes in health, independence and self-management for those participating in the program.

5.9 Key program operational information is not obtained by the Authority to assure itself that those who would benefit from co-ordinated care are actually receiving such care. At October 2001, there were only around 70 injured workers involved in a CCP, a very small proportion of the long-term WorkCover claims managed by agents. Nevertheless, concerted attention to this high cost area of claims management is likely to yield improved rehabilitation for workers.

5.10 The Authority has recently determined that, in future, CCP claims are to be managed by agents' multi-disciplinary claim teams.

RESPONSE provided by Chief Executive, Victorian WorkCover Authority

The Authority is committed to providing the right care at the right time. Where a co-ordinated care program is the appropriate tool to ensure the right care is provided, then this should be used. The ability to manage more complex claims will improve with the implementation of the new long-term care teams within agents. This will involve better claims management procedures, dedicated teams, and staff with the appropriate skills and experience (see Part 4, New approach to claims management). An example of the approach the Authority is adopting to ensure more appropriate care is the Sprains and Strains care model. This will provide agents with clear procedures, consistent across the scheme and understood by all parties – providers, workers and employers.

The Authority also notes that since the co-ordinated care evaluation was released, it has become evident that efforts to implement co-ordinated care within the health sector more broadly has in many cases proved to be much more difficult to implement than anticipated. This broader experience has also raised doubts about the extent to which this tool is one that should be widely used, rather than offered to a narrow set of claimants as it is currently. Audit has observed that only a small proportion of long-term claimants are on co-ordinated care programs, but the Authority is not aware of evidence that significant numbers of claimants who would currently benefit from the co-ordinated care program are unable to access it.

HOW IS THE CCP ORGANISED?

Role of the agents

5.11 Under the CCP, the identification, implementation and co-ordination of timely and appropriate services for the injured worker is the responsibility of the worker and their medical practitioner. However, the agent instigates the CCP and maintains overall responsibility for the injured worker's rehabilitation, including:

- approval of the care program established by the worker and their medical practitioner;
- ongoing review to ensure the aims of the program are being achieved and that the program remains relevant in meeting the worker's needs;
- alteration of the care program to improve the worker's care and treatment; and
- cancellation of the care program if services are no longer required (e.g. the worker's injury has stabilised, or the worker has returned to work).

5.12 Several of the larger agents have dedicated injury management professionals to manage CCP claims, while the other agents use claims officers for the management of both CCP and standard claims.

Role of the Authority

5.13 Responsibility for overseeing the management by agents of injured workers on CCPs rests with the Authority's Rehabilitation and Compensation Business Unit and, specifically, a project officer. That person's responsibilities include:

- provision of advice on the management of injured workers with complex and chronic conditions (e.g. substance abuse and misuse, psychiatric illness, acquired brain injury, major amputations and ongoing pain);

- provision of injury management training and development for agents, medical practitioners and other stakeholders;
- recruitment of appropriate specialist resources (e.g. case managers) required to advise agents and other medical practitioners; and
- liaison with key stakeholders in relation to the Authority's injury management practices.

5.14 Over the past 2 to 3 years, the Authority has, in implementing CCP:

- consulted extensively with key stakeholders, including the Australian Medical Association, agents and Trades Hall Council;
- developed guidelines and standard letters for each stage of the program;
- appointed specialists to provide advice to agents and medical practitioners, e.g. case managers with expertise in acquired brain injury and knowledge of community-based programs and services;
- produced reference material on acquired brain injury and chronic pain; and
- provided program information and materials to relevant stakeholders.



Information provided by the Authority to stakeholders involved in the co-ordinated care program.

WHAT ARE THE BENEFITS FOR WORKERS ON A CCP?

5.15 The Authority’s 1999 guidelines highlighted, *“It is the scheme’s experience that, when there is inadequate planning and there is no co-ordinated care program in place, services may be provided in an ad hoc fashion as a reaction to worker and family demands...”* Co-ordinated care is designed to encourage the worker and his or her medical practitioner to take responsibility for the co-ordination of health care services and, when appropriate, employment services. The agent is to be provided with appropriate information (e.g. medical certificates) to facilitate appropriate claims management.

5.16 Aside from the development and approval of a structured program of care, other expected benefits include:

- increased communication between the parties involved in the care of the injured worker;
- improved information for decision-making;
- a sense of action and containment in relation to complex and often costly claims;
- a greater level of protection for vulnerable claimants;
- a method of solving difficult problems, such as the prescribing habits of a medical practitioner, working more effectively with an “unco-operative” claimant, or delays in approvals by agents; and
- more certainty for claimants, agents and other stakeholders in claimant management.

SCOPE FOR IMPROVED PROGRAM OPERATION

5.17 In July 2000, an evaluation of the CCP’s processes and outcomes was presented to the Authority by an external consultant. The methodology used in the evaluation included:

- an analysis of economic and service usage data to compare the outcomes and costs of claimants under CCP with those claimants receiving standard care;
- interviews with key stakeholders, including medical practitioners, agent managers and staff, rehabilitation and case management service providers and employees of the Authority; and
- detailed case studies of 7 injured workers (comprising ABI and chronic pain conditions) covering:
 - a review of claimant records, including service use patterns and associated costs; and
 - interviews with the worker, family members, agent, case manager and medical practitioner.

5.18 Our audit examined:

- the Authority's role in monitoring the CCP implemented by their agents;
- the information provided to agents by the Authority to assist their management of CCP claims; and
- the evaluation of the program undertaken by the external consultant in March 2000 (report issued July 2000).

5.19 Our findings, together with the results of the July 2000 evaluation, are outlined in the following paragraphs.

Agents' lack of appropriately qualified resources

5.20 The agreement between the Authority and agents requires agents to employ appropriately qualified and experienced staff to effectively manage claims on behalf of the Authority. The Authority has a responsibility to provide advice and training to claims staff where complex management situations arise.

5.21 Since the commencement of the CCP in 1997, the Authority has, by necessity, provided a high level of support and advice to agents, who lack appropriate resources or expertise. The Authority's involvement in CCP cases includes:

- undertaking a detailed review of the case;
- provision of general support and advice to the agent and case manager (where applicable);
- assisting the agent to develop a co-ordinated care plan;
- liaison with various parties including treating practitioners, lawyers and conciliators; and
- assisting with representation to external agencies, i.e. Victorian Civil and Administrative Tribunal.

5.22 At the date of audit, the Authority's Rehabilitation and Compensation Business Unit was responsible for providing support in the management of around 12 injured workers (17 per cent of claimants on CCPs) who had been referred to the Authority by the agents. Referral of cases to the Authority may also occur through the Ombudsman's Office, conciliators, the claimant or family. The nature of cases referred to the Authority for assistance in management included:

- cases involving complex medical treatment, i.e. spinal implantation therapy and acquired brain injury;
- issues where questionable medical management are raised, i.e. substance abuse;
- claimants involvement in the judicial system;
- claimants have personality and psychiatric conditions which are complicating their management; and

- other challenging management issues, i.e. special accommodation needs.

5.23 In some cases, the injuries sustained by some claimants had evolved into complex biological-psychosocial conditions (affecting worker’s body, mind and social functions). The following cases provide examples of complex CCP cases where the Authority is currently assisting their management.

Example 1:

An injured worker had become addicted to prescription drugs and was living in a poor situation following an accident at work. A care plan was developed which emphasised the need for detoxification treatment to stabilise his medical condition and his living conditions.

Example 2:

A care plan was established for an injured worker who had been unable to return to work after having suffered a minor fracture of the hand a number of years previously. He had been treated by a medical practitioner with medication for psychiatric illness and is now virtually bed/house-bound with major mental and psychiatric problems.

5.24 Agents have the primary responsibility to manage claims. While there may be circumstances in which the Authority chooses to maintain close scrutiny of particularly complex cases, we consider that the extent to which the Authority becomes involved in assisting agents’ case management should be closely monitored.

RESPONSE provided by Chief Executive, Victorian WorkCover Authority

The Authority clearly recognises the primary role of agents to manage claims. As part of this, the Authority has recognised that improving the skills and experience of agent staff will be essential to the effective implementation of the new model. The Authority intends to closely specify the skills that will be required in the agent’s claims teams. For instance, it is intended that the long-term care teams, which will manage co-ordinated care claimants, will have experienced occupational rehabilitation professionals as Injury Management Advisors, and access to qualified medical practitioners in the role of Health Management Specialists.

Stakeholders’ absence of program knowledge

5.25 The evaluation report highlighted that, while stakeholders unanimously supported the concept of CCP as a means of rehabilitating injured workers, every stakeholder group encountered some problems with the program. For example:

- Medical practitioners, as major participants in the program, often had a poor level of knowledge and understanding of the CCP process. Practitioners indicated that the program’s demands on their time presented major barriers to their commitment in the process;
- Claimants’ lack of knowledge of CCP, and limited direct involvement in the development of care plans, is a barrier to achieving positive outcomes;
- Agents were slow to approve services and expenditure not on care plans and often this caused problems for claimants; and

- Agents do not always participate in training offered by the Authority to update their knowledge of the program. In early 2000, only half the agents attended relevant training.

5.26 The evaluation noted that many of the problems stakeholders encounter with CCP have their origins (and solutions) within the broader WorkCover system, including the need for the Authority to provide greater resources to monitor and enforce CCPs and the provision of incentives for stakeholders to achieve claimant outcomes. They went on to say: “... *to date resourcing, support and available expertise via the Authority has been sporadic*”.

5.27 The consultant recommended that action be taken by the Authority to resolve implementation difficulties. Action was also required to increase stakeholder understanding of their roles and responsibilities and the program’s purpose, structure and processes. While the Authority has since provided training for agents and industry groups, further actions are to be considered by the Authority in the context of the implementation of the new claims management model.

RESPONSE provided by Chief Executive, Victorian WorkCover Authority

The Authority recognises that the performance of the WorkCover system can only improve with and through our stakeholders. Their involvement in tackling the risks and opportunities ahead is vital. To achieve this, the WorkCover Advisory Committee has been re-invigorated, as has the Rehabilitation and Compensation Working Group, with the active involvement of employer groups, unions, health professional groups, the legal profession and agents. The Claims Management Project team has embarked upon a comprehensive communication process, including Update Bulletins, one-on-one meetings and regular group briefings. There have also been in-depth interviews with injured workers and union representatives.

More specifically in relation to co-ordinated care, since the July 2000 evaluation the Authority has sought to further improve the information available about this program to claimants and other stakeholders by:

- *liaising with stakeholders as required on specific issues;*
- *reviewing and revising guidelines and standard letters for each stage of the program;*
- *providing training for new acquired brain injury case managers and ongoing training for other case managers; and*
- *providing additional program information and materials to relevant stakeholders.*

Inadequate monitoring by the Authority

5.28 We found that the Authority undertook limited monitoring of the ongoing operation of the CCP and, specifically, the extent to which injured workers receive appropriate services to enable them to achieve a quality of life and access return to work opportunities. Most of the information received by the Authority in relation to workers participating in a CCP is generated through informal mechanisms, such as meetings with representatives of the agents. A formal reporting mechanism has not been established to inform the Authority of the key achievements of the program in terms of the effective and efficient management of complex claims, or operational information (e.g. benefits paid, level of CCP claims).

5.29 Key deficiencies in monitoring the CCP identified by audit and the evaluation consultant were that:

- Agents are not formally required to notify the Authority when initiating a CCP for an injured worker. As result, the number and specific details of injured workers participating in the program is not known;
- A claims streaming or risk identification process is not adopted by agents (other than major trauma injuries) to ensure that all relevant cases that should be managed under the CCP are actually included. In view of the criteria to be considered for establishing a CCP (refer paragraph 5.4 of this report), the number of CCP cases (around 70 as at October 2001) is low (less than 1 per cent) when compared with long-term WorkCover claims;
- The database established to facilitate program reporting by the agents, although integrated with the Authority's key payments system (*ACCtion*) is not utilised by all agents;
- Systematic monitoring is not undertaken by the Authority to ensure agents comply with the CCP guidelines and practices in the management of injured workers, including the provision of services and benefits. Moreover, only broad cost categories (case management services and program costs) are monitored;
- Agents do not monitor compliance by claimants with care plan requirements. This inhibited both the enforcement of claimant and stakeholder obligations within the CCP and assessment of the responsiveness of care plans to meet claimant's current needs; and
- Information on the effectiveness of the program in restoring workers' health, improving their quality of life and return to work opportunities is not currently collected by agents.

5.30 These shortcomings in the Authority's monitoring of the effectiveness of the CCP may mean the full benefits of co-ordinated care are not being realised. Notwithstanding the evaluation finding that, "*The program appears to generate positive outcomes for most claimants including improved quality of life ...*," the consultants recommended that the "*Authority monitor content, implementation and outcomes of claimant care plans. This would require the development of:*

- *a user-friendly system for collecting and monitoring information on care plans and their implementation (preferably one that integrates with existing Authority and agents' systems);*
- *appropriate outcome measures; and*
- *the Authority's capacity (with appropriate review and oversight) to provide sanctions and rewards to stakeholders regarding adherence to CCP processes, demonstration of improved claimant outcomes and systemic improvements attributable to the CCP process".*

5.31 At the date of our audit, no action had been taken to address the recommendations arising from the evaluation and specifically, the development of appropriate measures and systems to facilitate effective monitoring of the program by the Authority. We were advised by the Authority that this was to be considered in the context of the implementation of the new claims management model. The Authority has recently decided that CCP claims (complex and long-term claims also referred to as *catastrophic* claims) will be managed by agents' multi-disciplinary claims teams (refer paragraphs 4.25 to 4.32 and 4.39). It will be important for the Authority to now address the matters raised in the evaluation as a priority.

Inadequate work practices and policies

5.32 The provision of adequate and appropriate guidance to agents, medical practitioners and other key stakeholders is critical to ensure consistency in the management of injured workers, compliance with legislative processes and an appropriate focus upon the key elements of claims management. This is particularly important for those agents currently experiencing high levels of staff turnover.

5.33 Documentation provided by the Authority to assist agents in managing injured workers on a CCP has included:

- a claims manual, with information on managing claims, standards to be achieved for each individual worker in terms of health care and rehabilitation, independence and informed decision-making, and the process for managing complaints against agents;
- general guidelines (1999) for the CCP (refer paragraph 5.4);
- information regarding serious injuries, including back pain, brain injury and chronic pain (e.g. definitions, management issues);
- information specifically for medical practitioners involved in the development of CCPs;
- details of approved special needs providers for agents to contact for advice; and
- proforma letters for injured workers, medical practitioners and service providers which address operational and legal matters.

5.34 Our examination of this documentation, disclosed that:

- standard letters issued by agents were very legalistic in nature, which may inhibit their understanding by injured workers;
- information within the claims manual was broad and lacked detailed guidance for managing complex claimants; and
- although there is some flexibility in the services and benefits that can be provided to injured workers on a CCP, this was not specifically explained nor were expenditure limits specified (e.g. the level of counselling services available for standard claims can be exceeded for those workers on a CCP).

Recommendation

5.35 The Authority should:

- Monitor and review the capacity of agents to undertake effective management of complex claims;
- Take action to address the recommendations of the July 2000 evaluation report in relation to program difficulties and the absence of stakeholders' (i.e. medical practitioners, claimants and agents) knowledge and commitment to the program;
- Implement formal monitoring mechanisms that require agents to provide appropriate information on the operation and outcomes of the CCP. This should include assurance that CCPs are available to all injured workers who would benefit from co-ordinated care; and
- Review, in consultation with agents, the information provided to them to ensure that it provides up-to-date and comprehensive guidance in the management of the CCP.

RESPONSE provided by Chief Executive, Victorian WorkCover Authority

The Authority intends to address audit's recommendations, including the concerns raised in the July 2000 evaluation through the implementation of the new claims management model. See earlier comments for more detailed information on how this will be achieved.

The Authority recognises that in the past, it has relied on agents to manage injuries, and has provided limited guidance or support. Under the new claims management model, the Authority is already establishing for a major injury type, sprains and strains, a set of clear procedures, consistent across the scheme and understood by all parties – providers, workers and employers.

Detailed procedures are being developed to assist agents manage claims, including for the long-term care teams. These teams will manage co-ordinated care claimants under the new claims management model.

Part 6

Re-introduction of common law

INTRODUCTION

6.1 Access to common law damages for seriously injured workers has undergone a number of changes under the Victorian WorkCover scheme (and its predecessor) since its inception in September 1985. A key factor occasioning these changes has been the inability of the WorkCover Authority (and its predecessor) to effectively manage common law, which in turn contributed to the scheme's poor financial viability. A chronology of key events in relation to common law entitlements appears in Table 6A.

**TABLE 6A
CHRONOLOGY OF KEY EVENTS**

September 1985. Common law rights established in Accident Compensation legislation.

September 1985 - November 1992. Common law access restricted to pain and suffering (or non-financial loss) only. Common law actions were pursued through litigation and injured workers had no access to pecuniary loss damages.

June 1992 - November 1992. Former WorkCare scheme facing a deficit of \$1.9 billion. Victorian WorkCover Authority established with responsibility for the prevention, compensation and rehabilitation functions of workers' compensation. Common law rights for injured workers extended to allow recovery of damages for loss of earning capacity for seriously injured workers, where the injury was due to employer negligence.

June 1992 - November 1997. The inability of the WorkCover Authority to effectively manage the common law function and other factors (e.g. altering the discount rate from 6 per cent to 3 per cent, increasing the cap on common law pain and suffering damages, allowing injured workers to claim secondary or consequential psychological conditions for the purposes of the 30 per cent impairment test), began to threaten the financial viability of the WorkCover scheme. Specifically:

- while aggregate claim numbers (and traumatic injuries) had fallen dramatically, the numbers assessed as "seriously injured" continued to grow;
- while only 500 common law writs per year were expected, the volume of writs had reached 3 000 per year and continued to grow; and
- WorkCover common law payments had risen from \$17.9 million in 1995-96 to \$139.7 million in 1996-97, and continued to grow.

November 1997. The Government removed the rights of seriously injured workers to recover damages under common law. Deficiencies with the management of the common law function included:

- Little accountability about decisions taken regarding the determination of serious injury;
- Limited legal expertise within the Authority regarding interpretation of serious injury;
- Insufficient knowledge of case law within legal panels at the solicitor and junior barrister levels; and
- Absence of a strategy regarding the Authority's management of common law claims. Priority was given to minimising legal costs rather than the proper management of common law cases.

October 1999. Access to common law rights for seriously injured workers was restored. Seriously injured workers who satisfy the deeming test of 30 per cent or greater whole of person impairment, or alternatively satisfy the narrative test of serious injury, can gain access to common law damages.

May 2000. The Government amended the legislation requiring all serious injury applications for injuries prior to 12 November 1997 to be lodged by 30 August 2000. This was undertaken to enable the Authority, and the Government, to have a better appreciation of the quantum of outstanding liabilities. Several thousand serious injury applications were subsequently received, including over 2 800 in the period 11 to 31 August. As payments averaged around \$225 000 per claim, the Authority faced a significant financial risk which had to be tackled immediately.

OVERALL ASSESSMENT

6.2 The Authority has acknowledged that successful management of common law liabilities is critical to the continuing financial viability of the WorkCover scheme. To redress past deficiencies and mitigate the risks associated with the legislative changes, 3 key drivers have been identified: improved case preparation, adopting a strategic focus to litigation and consistency in case management.

6.3 Since adopting the new strategies, the estimated liability for outstanding old common law claims has decreased, but reviews by the Authority suggest that agents have less than satisfactory capability to properly manage new common law claims. Some agents have not always followed initial procedures directed at the early identification of potential common law claims and their improved management. There are also risks associated with legal interpretation which are outside the Authority's control. At the same time, the backlog of potential new common law claims that could require active management is estimated to be growing. The financial position of the scheme remains poor. The Authority's actuary (Tillinghaust – Towers Perrin) has recently estimated that the scheme will not reach full funding until June 2004 (albeit 2 years earlier than projected).

6.4 We are satisfied that the actions taken to date are appropriate. However, it is not possible to make definitive judgements regarding the likely success or otherwise of the Authority's management strategies.

STRATEGIES TO MITIGATE COMMON LAW CLAIM RISKS

6.5 The Authority's *Strategy 2000* acknowledges that the successful management of common law liabilities is critical to the continuing financial viability of the WorkCover scheme and has identified 3 key drivers for its successful management, namely:

- *improved case preparation* – through employing 8 in-house Senior Legal Counsel to assist the 10 legal firms who represent the Authority;
- *adopting a strategic focus to litigation* – through focusing on the identification and management of cases that will potentially have the greatest impact on the financial viability of the scheme; and
- *consistency in case management* – through improved case preparation and strategic case management to ensure the delivery of improved litigation outcomes, including the timely payment of benefits to entitled recipients.

6.6 In line with this acknowledgement, the objectives of the Authority's common law strategy are to:

- “*identify those claims where the worker may have a potential to initiate common law proceedings;*
- *develop strategies to actively manage such claims to:*

- *involve stakeholders;*
 - *utilise the expertise of external providers, including rehabilitation companies, investigators, solicitors and barristers;*
 - *protect the serious injury threshold;*
 - *foster return to work;*
 - *reduce claims costs;*
 - *encourage early, positive and transparent decision-making;*
 - *ensure those cases which proceed to court are appropriately prepared and that the decision to proceed to litigation is justified from a scheme viewpoint; and*
 - *ensure that those claims, which satisfy the serious injury threshold, are managed in such a manner so as to contain quantum;*
- *be proactive in the management of these claims rather than reactive;*
 - *appropriately measure the performance of the various providers of services in relation to the management of common law claims and to provide feedback and assistance so as to further enhance case management; and*
 - *integrate this management plan with existing systems and policies of the Authority so as to further enhance the achievement of scheme objectives”.*

6.7 Consistent with the objectives of the common law strategy, and in recognition of the need to drastically improve its management, the Authority’s legal unit has also adopted strategies aimed at more effective management of common law matters. These strategies include:

- establishing an experienced team of in-house senior legal counsel to focus on liability management;
- conducting peer reviews on serious injury and common law cases, covering:
 - all serious injury determinations;
 - statutory offers; and
 - all serious injury and common law hearings;
- briefings of experienced barristers representing the Authority;
- risk segmentation and accountability on Senior Legal Counsel for effective management of risk segments;
- managing and monitoring the Authority’s legal panel with a view to improving initial decision-making, and achieving a consistent approach to the management of common law cases;
- developing litigation kits on risk segments to assist with improved legal knowledge and case preparation; and

- improving liaison with stakeholders, including the Authority's legal panel, agents, the Australian Plaintiff Lawyers' Association, major plaintiff law firms, the courts, Trades Hall Council and employers.

6.8 The Authority's strategy also requires its agents to employ technical managers and an in-house senior legal manager to assist with the management of claims which are identified as having common law potential, and to involve the Authority's legal panel as and when required on such claims.

Impact of common law strategies

6.9 As the Authority's new approach to managing existing common law claims has only been in place since November 2000, it is too early to determine whether or not the strategies have been effective in achieving the desired outcomes. Nevertheless, the Authority believes that the market now perceives that the Authority is determined to manage its liabilities in a pro-active and consistent manner. One of the Authority's external actuaries reported that discussions with a plaintiff law firm disclosed that the market (plaintiff firms, the bar and the courts) has recognised several areas of improvement, such as the use of senior counsel by the Authority, better preparation of denials to serious injury applications and subsequent challenges to denials.

6.10 Improvements to date in the financial management of claims, albeit over a short period of time, include:

- a reduction in the initial serious injury acceptance rate (from over 50 per cent for applications received prior to July 2000 to 11 per cent for applications received after 1 July 2000);
- a write down of \$127 million in estimated common law liabilities at December 2000 to \$1 275 million at June 2001;
- an increase in the percentage of applicants not contesting serious injury claims denied by the Authority;
- a reduction in the serious injury reversal rate at the originating motion stage; and
- a reduction in the average payment from approximately \$220 000 to \$195 000 per claim.

6.11 The Authority's 2 external actuaries have confirmed improved management of old common law claims. Tillinghast-Towers Perrin, the actuary whose valuation is currently used for the audited accounts, reported that the WorkCover scheme's estimated net outstanding claims liability at 30 June 2001 was \$5 516 million. This was \$130 million less than the previous valuation, which was conducted at 31 December 2000. This improvement included a reduction in the estimated liability for common law claims of \$127 million. The other actuary (Taylor Fry) reported that the WorkCover scheme's estimated net outstanding claims liability at 30 June 2001 was \$5 290 million, compared to a projected value of \$5 560 million at 31 December 2000, a decrease of \$270 million.

6.12 This, in part, was attributable to:

- the higher than expected number of late common law applications resolved for zero cost during the 6 months to June 2001; and
- a reduction in the assumed proportion of late common law claims (pre-November 1997) assumed to settle for some cost.

FUTURE CHALLENGES TO COMMON LAW

6.13 Notwithstanding the positive financial results to date achieved by the Authority, it has identified a number of challenges that need to be overcome to successfully mitigate the risks posed by the reinstatement of common law entitlements. These include:

- ensuring early identification of common law claims, including the accuracy of the estimated level of potential new claims;
- implementing case management plans;
- improving agents' common law expertise;
- improving the management of the serious injury threshold; and
- ensuring proper management of the narrative test for serious injury.

Ensuring early identification of potential common law claims

6.14 As part of the Authority's education process, in September 2000 agents were provided with documentation to assist in the early identification of claims with common law potential. A subsequent review by the Authority in August 2001 identified that, with few exceptions, the identification process is not yet sufficiently rigorous and is capable of improvement.

6.15 Specific concerns identified by the Authority were that:

- some doubts exist about accuracy of the estimated level of potential common law claims (around 3 600 as at August 2001); and
- given the general uncertainty surrounding the evolution of soft tissue injuries, with approximately 60 per cent of potential claims constituting "sprains and strains", there is some uncertainty about these claims.

Implementation of case management plans

6.16 The new procedures for managing potential new common law claims focused on the preparation of a case management plan. However, the Authority found from its August 2001 review that the procedures had been implemented in some, but not yet all cases. Most agents did not yet manage potential common law claims in a significantly different way to normal claim files. The legal project within the Claims Management Implementation Program is designed to address these challenges, flagging files with common law potential and managing them.

6.17 The Authority found that the variability in implementing these new procedures was primarily due to agents prioritising their resources to manage the “run-off” of existing common law claims. Both agents and legal panel firms have not focussed their limited resources on improving the case management process for new common law claims. To address this issue, the Authority is launching an interim strategy to assist agents in December 2001, which will cover the 7 month period until the transition to the new claims management model.

6.18 The Authority recognises the need to hasten this aspect of new common law management in order to meet the goals of *Strategy 2000*. The Authority also recognises that, as there is a growing backlog of potential common law claims, it is essential that an effective process is in place by which such claims can be identified as early as possible, and appropriate case management procedures implemented.

Improving agents' common law expertise

6.19 In the new claims management model, each agent will be required to have detailed knowledge of relevant legislation, Medical Panel procedures, the serious injury threshold, issues of negligence and the manner in which damages are assessed. The Authority will assess each agent's relative performance in controlling workers' participation rates in new common law damages and the average quantum of such damages. The results of the Authority's August 2000 review suggest that, presently, most agents do not have the necessary expertise or resources to properly manage new common law claims.

6.20 The Authority's legal team will provide training. Currently, this team is concentrating on educating agents as to the impairment assessment guidelines as specified in the *American Medical Association Guide* (4th edition).

Improve management of serious injury threshold

6.21 A crucial aspect of new common law claims will be the management of the 30 per cent serious injury threshold. Under the amended legislation, a worker cannot apply for serious injury under the narrative test (which considers the consequences of the injury to the worker in terms of any impairment or loss of body function, disfigurement or mental or behavioural disturbance or disorder) without first having their level of impairment assessed as being above the threshold. This is a significant change from the previous common law legislation.

6.22 Unlike old common law, the impairment assessment is to be conducted using the *American Medical Association Guide* (4th Edition). As a result, the Authority has initiated an ongoing education program, conducted by staff from its legal unit, to raise the level of expertise and understanding of both the medical profession and agents regarding the new impairment assessment requirements.

6.23 The Authority's external actuaries also identified the need to ensure that the Authority's data capture systems integrate information related to impairment benefits and common law information, as this will assist in the identification of claims with common law potential. The actuaries indicated that it is likely significant numbers of impairment assessments, which could potentially flow into common law claims, will start to be made from late 2001. Accordingly, the actuary recommended that these data systems be fully developed and tested prior to that stage. This is currently being addressed by the Authority.

Ensuring proper management of narrative test for serious injury

6.24 One of the central reasons offered by the then government regarding its decision to abolish workers' right to access common law (effective from November 1997) was the significant impact the narrative test for serious injury was having on the scheme's viability.

6.25 Over the course of the 1990's, the control expected over common law access through the deeming test threshold was overtaken by the narrative test of serious injury. Various expert analyses concluded that the varying judicial interpretations of the narrative test clouded the meaning of serious injury and, over time, had the effect of watering down the application of the test for the determination of serious injury.

6.26 This interpretation issue contributed to the situation whereby:

- over 80 per cent of all serious injury applications resulted in a damages payout; and
- around 85 per cent of successful serious injury applications used the narrative test to gain common law access.

6.27 The narrative test for serious injury has been modified. The legislation now requires that, to claim damages for pain and suffering, a worker must prove that:

- the consequences of the impairment result in “very” considerable pain and suffering; and
- this is permanent.

6.28 It is in the area of accessing the narrative test to recover damages for economic loss that significant changes have been made. In order to access a claim for economic loss, a worker must show the injury results in a loss of gross income of 40 per cent or more after rehabilitation and retraining. For the court to be satisfied that the consequences of an injury are serious, it must be satisfied that the consequences are “very” considerable and permanent, meaning indefinitely for the foreseeable future. The insertion of permanent is intended to remove the former ambiguity around the notion of what was deemed to be long-term by the medical and legal professions.

6.29 The narrative test also introduces a new concept of a 40 per cent threshold of loss of earning capacity. The criteria for loss of earnings capacity includes the worker’s capacity to earn income on a “before and after injury” basis and also takes into account the relative age of the worker and the impact this would have on their earnings potential.

6.30 Successful rehabilitation and retraining of injured workers to undertake employment are critical factors to confining the costs of the WorkCover scheme. In this context, the new legislation provides that, for the purposes of proving loss of earning capacity in a serious injury application, the worker bears the onus of proving an inability to be retrained or rehabilitated or to undertake suitable employment.

6.31 The Authority has recognised that there is a risk that the opportunity to satisfy the 40 per cent economic loss threshold could bring into conflict the motivation to undergo rehabilitation and retraining and returning to suitable work. Accordingly, the new legislation provides a qualification on the loss of earnings capacity threshold. A worker will not establish the loss of earning capacity threshold where the worker’s participation in rehabilitation, retraining or suitable employment would result in the worker earning more than 60 per cent of their gross pre-injury income.

6.32 Although the Authority’s 2 external actuaries expect that the number of new common law claims will be lower than those experienced under old common law as a result of the tightened narrative test, each have differing estimates of the financial impact. One actuary (Tillinghast-Towers Perrin) has indicated that if these assumptions are too low, and the test is totally ineffective, the estimated liability would increase by 1.4 per cent or \$77 million. Equally, if the number of new common law claims resolved for some cost was 20 per cent lower than they assumed, then liabilities would decrease by 1.3 per cent or \$72 million. The other external actuary (Taylor Fry) has indicated that, if these assumptions are too low, and the tightened narrative has no effect, new common law numbers could be as high as 2 000 per annum (commencing from 1999), and this would increase common law gross liabilities by \$142 million.

6.33 While the narrative test for serious injury has been tightened, the real impact of the new legislation will not be known until an interpretation of the provisions is made by the judiciary. To this extent neither the Authority nor this Office is in a position to assess the financial ramifications to the scheme nor how best to mitigate this risk.

Recommendation

6.34 The Authority should continue to closely monitor its management of common law claims, in particular, the Authority needs to:

- ensure agents promptly identify potential common law claims;
- reinforce to agents the importance of implementing case management plans;
- ensure all common law staff of each agent are adequately trained; and
- periodically establish the level of expertise and understanding of the new impairment assessment requirements by the medical profession and agents.

RESPONSE *provided by Chief Executive, Victorian WorkCover Authority*

The Authority agrees with the recommendations, which are consistent with the actions currently being taken to improve the management of common law.

The introduction of common law access for workers who were seriously injured on or after 20 October 1999 represents an important challenge. The Authority recognises that common law was poorly managed in the past and that the successful management of new common law liabilities is critical to the continuing viability of the WorkCover scheme.

The key to managing common law effectively and ensuring seriously injured workers receive their appropriate entitlements, is early identification and preparation. To this end, WorkCover has appointed an experienced team of in-house senior legal counsel, who will work closely with agents and legal panel solicitors, to improve liability management.

The Legal Project within the Claims Management Implementation Program is built on the learnings and successes of the Authority's recent strategies to manage pre-1997 claims. The results of this active management approach to pre-1997 claims are already emerging, with the June 2001 actuarial valuations recognising the early gains that have been made. This project will ensure the effective implementation of a long-term and rigorous approach to the successful management of new common law, and address the issues raised in this audit.

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