

**“ACT Workers Compensation – How do we make it work better?”**

**an issues paper  
for the**

**Review of ACT Workers Compensation System**

**on behalf of:**

**ACT Chief Ministers Department**

**by**

**Australian Health & Safety Services Pty Ltd,  
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## Introduction

On 11/11/06 the Chief Ministers Department requested tenders for a review of the ACT workers compensation system. Seven tenders were received by the closing date of 30/11/06. The selected tender was by our consortium, consisting of Australian Health & Safety Services Pty Ltd, Dibbs Abbott Stillman & Cumpston Sarjeant Pty Ltd.

In our tender, we said would prepare an issues paper, setting out the terms of reference of the review, and seeking the help of persons with experience of the ACT scheme.

This issues paper compares the performance of the ACT workers compensation scheme with other Australian schemes. There are many uncertainties and gaps in the available data. But it is clear that some of the objectives of the 2002 ACT workers compensation reforms have not been fully achieved.

We think a broadly based approach is needed, to identify present problems, and to suggest better ways of achieving agreed objectives.

We would like to interview at least 50 persons who have made workers compensation claims since July 2002. We also want to meet with service providers, employers and insurers willing to help the review.

The Government requires a report from the Review by the end of June 2007 and help from all involved will be needed to meet this tight timetable

Our consortium has occupational health and safety, workers compensation, legal and actuarial skills. We have set aside part of our tender price for professional advice on areas beyond these skills, or where there are possible conflicts of interest.

Unless otherwise identified, the opinions in this paper are our own.

The contents of this paper are

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## **1 Terms of reference**

The statement of requirements in the request for tender said in part

*The review of the operation of the scheme will include the following:*

- a) *Comparative analysis of ACT premiums and those of other jurisdictions having particular regard to the differing profiles of each jurisdiction in terms of size, risk profile, etc.*
- b) *Identification of the factors that contribute to the high premium rates in the ACT in light of the industry profiles.*
- c) *An assessment of the claim costs by payment type and identification of the cost drivers in the scheme.*
- d) *An analysis of legal costs, separately assessing costs for insurers / employers and those incurred on behalf of workers. This analysis should consider the nature of such costs (e.g. disbursements for expert reports, legal fees per se, etc.).*
- e) *An analysis of the cost and effectiveness of the rehabilitation provisions within the Act, including an assessment of the level of compliance with the return to work requirements and the impact these requirements are having on duration rates/continuous rates and costs, and whether there are any identifiable trends from a medical perspective.*
- f) *An analysis of the current and future viability of the ACT workers' compensation scheme. This should include an analysis of the impact of employers leaving the premium pool to self-insure under the ACT scheme or Comcare. The impact of two workers' compensation schemes (public and private sectors) operating in the ACT should also be considered.*
- g) *Identification of sustainable benefit structure for the scheme including an analysis of the impact of common law on the scheme, noting the treatment of this issue in other jurisdictions.*
- h) *A comparative analysis of definitions of wages, worker and injury across jurisdictions and a recommended approach that is appropriate for the ACT scheme.*
- i) *An analysis of the extent to which the objectives of the 2002 amendments to the Act are being achieved and identification of any barriers that have emerged with regard to achievement of those objectives.*
- j) *An analysis of the interaction between the workers' compensation scheme and other insurance schemes, for example compulsory third party insurance.*
- k) *Identification of elements of the Act and its administration that could be amended to achieve consistency with the workers' compensation schemes of the Australian States and the Northern Territory.*
- l) *Having regard to all of the above, changes to the current scheme design that would be likely to improve scheme performance.*
- m) *The review is to consider any other substantive inquiries that have been undertaken.*
- n) *The review will encourage participation from stakeholders and the community.*

## 2 Workers Compensation – State by State Comparison

The comparison of Workers Compensation provisions across the 9 principal jurisdictions in Australia (for the purposes of this exercise we have excluded the Seafarers Scheme) is very problematic.

As shown in the Table from page 5, some of the elements that fundamentally impact on the cross jurisdictional scheme comparison and performance of the scheme are somewhat obtuse in that they are hidden within definitions of various aspects of the different schemes or are artificially created by levels of step down, cut offs and impairment percentages related to defined specific aspects or events within the applicable legislation.

Examples of these elements are:

### Weekly benefit:

This is variously defined as being:

- Full normal weekly earnings (Comcare, ACT, NT, SA, Tasmania, and WA); and
- A % of this figure (Qld and Vic) or as Award Wage rates (NSW).

This makes the comparison of the impact of the cost of claims problematic from one jurisdiction to another given that what is paid varies from one jurisdiction to another.

### Step downs in benefit levels:

Step down benefits vary from jurisdiction to jurisdiction and are hailed as one of the principal incentives to change claimant behaviour in terms of the potential loss of income bringing about an enhanced effort to return to pre-injury performance rather than suffer such a loss.

Within this element there appears some confusion regarding the level of benefit to be paid and the artificial insertion of a “social security” framework depending on the level at which the step down will place the claimant.

Generally, the step downs occur at varying levels and at varying timeframes: As an example of this the following is highlighted:

- **ACT** has a step down to 65% of PIE but this is codified on the basis of this amount being not less than the Federal Minimum Wage, which advantages low income workers by boosting their step down income to a level that they may not have been receiving:
- **NSW** ties its step down for low income workers to a floor of \$153, irrespective of pre-injury income:
- **NT** uses a step down of 75% of Normal Weekly Earnings or 150% of average weekly earnings, which adds an additional concept of having to differently define these elements as a starting point before being able to arrive at the end point:
- **Queensland** has a step down to 75% of NWE at 26 weeks but qualifies this by stating that there is an additional step down to 65% of this amount at 52 weeks:
- **SA** has a step down to 80% of NWE at 52 weeks:
- **Tasmania** has a step down to 85% of NWE at 13 weeks and again at 78 weeks to 80% of NWE.
- **Victoria** has a base rate of entitlements set at 95% and a step down to 90% at 13 weeks for serious injures or to 70% at the same time for partial incapacity.
- **Comcare** has only one step down to 75% of Pre Injury Earnings (PIE) at 45 weeks:

From this it can be seen that there is no consistency in approach and that this has the potential to result in vastly differing behaviour by claimants regarding the potential financial impact of step downs during the compensation process.

## **Deductibles**

Although not specifically referred to in the table another aspect that varies significantly from jurisdiction to jurisdiction is the concept of deductibles, where on top of paying the premium to the insurance provider, the employer pays the first amount of any claim.

In some cases this is set at a fixed amount and in others it relates to the first number of days lost and medical costs incurred.

In the ACT scheme, costs are apportioned to the claim from the first medical cost and the first day lost, thus in comparison this can significantly increase costs, particularly in the large number of small claims that would in other jurisdictions be paid for directly or contributed to more significantly, by employers.

## **Age Limitations:**

Cessation of benefits, like many other provisions changes from jurisdiction to jurisdiction. The ACT in common with the majority of other jurisdiction ceases benefit payments at age 65, irrespective of financial limits on the claim.

## **Impairment:**

It is in this area where there is the greatest level of variation and complexity with jurisdictions varying in the method used to assess impairment, the basis on which the impairment is assessed (whole person impairment or other form of assessment) to the imposition of threshold limits both in terms of quantum and eligibility. In order to achieve comparability there is a need for commonality in terms of interpretation of impairment.

## **Common Law:**

This is perhaps the most contentious aspect of workers compensation and the one which gives rise to the greatest level of conflict and resultant adversarial cost than any other element.

Only one jurisdiction, the NT has fully abolished Common Law claims. Other jurisdictions have variously abolished Common Law and then following improved scheme performance have re-introduced them. In the ACT there is unlimited access to Common Law as well as the provision to concurrently pursue Statutory Scheme benefits.

## **General Comments:**

The above elements serve only to highlight the complexity of workers compensation and the variety of approaches that have been adopted at a State and Territory level.

The following table compares the schemes on a broad basis and is useful in comparing benefits and provisions across jurisdictions.

### Workplace Injury Compensation – State by State Comparison

	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Comcare
<b>Current Legislation</b>	<i>Workers Compensation Act 1951 (No.2) (ACT)</i>	<i>Workers' Compensation Act 1987(NSW); Workplace Injury Management &amp; Workers' Compensation Act 1998 (NSW)</i>	<i>Work Health Act 1986 (NT); Work Health Court Rules 1998 (NT); Work Health Regulations 1987 (NT); Work Health (Occupational Health &amp; Safety) Regulations (NT)</i>	<i>Workers' Compensation &amp; Rehabilitation Act 2003(Qld); Workers' Compensation &amp; Rehabilitation Rules 2003 (Qld)</i>	<i>Worker's Compensation &amp; Rehabilitation Act 1986 (SA)</i>	<i>Workers' Rehabilitation &amp; Compensation Act 1988 (Tas); Workers' Rehabilitation &amp; Compensation Regulations 2001(Tas)</i>	<i>Accident Compensation Act 1985 (Vic)</i>	<i>Workers' Compensation &amp; Injury Management Act 1981 (WA)</i>	<i>Safety, Rehabilitation &amp; Compensation Act 1988 (Cth)</i>
<b>Weekly Benefits</b> <i>Initial income replacement</i>	Full normal weekly earnings	Award rate wages excluding overtime and penalty rates	Full normal weekly earnings	85% of normal weekly earnings	Full normal weekly earnings	Full normal weekly earnings	95% of normal weekly earnings	Full normal weekly earnings	Full normal weekly earnings
<b>Step down to</b>	The higher or either 65% of normal weekly earnings, or the federal minimum wage.	90% of average weekly earnings of full-time adult <sup>1</sup>	The lesser of 75% of normal weekly earnings, or 150% of average weekly earnings	75% of normal weekly earnings	80% of normal weekly earnings	85% of normal weekly earnings	90% of normal weekly earnings for a serious injury; or 70% of normal weekly earnings for partial incapacity.	The higher of 85% of normal weekly earnings, or award rate wages.	75% of normal weekly earnings
<b>Step down at</b>	26 weeks	26 weeks	26 weeks	26 weeks <sup>2</sup>	52 weeks	13 weeks <sup>3</sup>	13 weeks	13 weeks	45 weeks
<b>Limits</b>	Weekly benefit limited to 150% of average weekly earnings for full-time adults.	Payments shall not exceed \$354.40 per week after the initial 26 weeks from date of injury <sup>4</sup>	None	After 5 years if permanent impairment is greater than 15% weekly benefit is either 65% of normal weekly earnings or the amount of a single pension.	Weekly payments limited to 2 times average weekly earnings	None	Weekly benefits limited to \$903	Weekly payments limited to 2 times average weekly earnings	Weekly benefit limited to 150% of average weekly earnings for full-time adults.

<sup>1</sup> However, if total weekly earnings is less than \$187.10 per week the employee shall receive the lesser of either 100% of their normal weekly earnings or \$153

<sup>2</sup> Step down again at 52 weeks to 65% of normal weekly earnings

<sup>3</sup> Step down again at 78 weeks to 80% of normal weekly earnings.

<sup>4</sup> If worker is 21 years of age or older payments should not be less than \$187.10 per week.

	<b>ACT</b>	<b>NSW</b>	<b>NT</b>	<b>Qld</b>	<b>SA</b>	<b>Tas</b>	<b>Vic</b>	<b>WA</b>	<b>Comcare</b>
<i>Cessation of payments</i>	At age 65	May be stopped after 2 years <sup>5</sup>	At age 65	Once the combined weekly compensation payments and lump sum for permanent impairment payable for one injury or for multiple injuries sustained if one "event" reaches \$200,000. (medical and like expenses are not included in this sum) or when there is maximum medical improvement reached, i.e.: condition has plateaued/stabilised	At age 65	9 years after date of injury	Weekly payments of compensation cease after 130 weeks unless the claimant is totally incapacitated in which case they continue to age 65 years.  Medical expenses continue to be paid for 12 months after the 130 week period	Once employee has been paid prescribed amount <sup>6</sup> (currently \$152,070); or upon 65 Years of age.	At age 65

<sup>5</sup> If reason for unemployment is due to a reduction in the labour market, or due to unreasonable rejections of suitable employment by employee

<sup>6</sup> May be extended by 75% where employee can show total permanent incapacity.

	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Comcare
<b>Rehabilitation</b> <i>Employee to take part</i>	Subject to suspension of entitlements	No	Subject to reduction or cancellation of entitlements	Subject to suspension of entitlements	Yes	No	Can be ordered to attend rehabilitation interview	Can be ordered by a dispute resolution body	Subject to suspension of entitlements.
<i>Employer to provide suitable duties</i>	As specified by employer's insurer	Yes	Yes, or help employee find alternative employment.	Yes	Yes	Yes for a period of 12 months	Yes	Yes	Yes
<i>Compulsory appointment of rehab/RTW coordinator</i>	No	For large employers	No	Yes	Yes	If employer employs more than 50 employees.	Yes	Is encouraged by Commission	No
<i>Position kept open</i>	Not specified	6 months	Not specified	12 months	Not specified	12 months	12 months <sup>7</sup>	Not specified.	Indefinitely
<b>Permanent Impairment</b>	Entitlements scaled for particular injuries according to table of maims.	Entitlements increase at 10%, 20%, 40% & 75% thresholds with an increase of 5% for back-related injuries.	Entitlements equal to 208 times average weekly wage for permanent impairments greater than 85%; for impairments between 15% -85% entitlement is equal to 75% of 208 times average weekly wage; for impairments between 5% - 15% entitlements are scaled.	Entitlements scaled according to type of injury and degree of whole body impairment according to the regulations.	Entitlements scaled for particular injuries according to schedule 3; for injuries with total impairment of greater than 55% entitlements are awarded at 1.5 times prescribed amount for that injury.	Entitlements are calculated at thresholds of 5% - 70% whole person impairment and greater than 70% whole person impairment.	Entitlements are scaled according to the percentage of whole person impairment. With thresholds at 10% and 30%.	Entitlements assessed according to "compound discount table"	Entitlements determined in accordance with "approved Guide."
<i>Minimum threshold to be established for general loss</i>	None	None	5%	None	None	5%, excluding loss of, or partial loss of finger or toe	10%	None	10%
<i>Hearing loss</i>	6%	6%	Not specified	None	5%	5%	No specified	10%	5%
<i>Psychiatric injuries</i>	Not specified	15% for primary psychological conditions; Not applicable to secondary psychological claims.	Not specified	No threshold, capped at \$200,000	Not specified.	10%	30%	None	10%

<sup>7</sup> Subject to employer proving unjustified hardship as a result of keeping the position open



	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Comcare
<b>Common Law<sup>8</sup></b>	Unlimited claims available	Claims available	Common law claims abolished from 1 January 1987	Claims available	Claims against employer abolished 3 December 1992; Limited claims available against 3 <sup>rd</sup> parties <sup>9</sup>	Claims available	Claims available for injuries suffered on or after 20 October 1999	Claims available	Claims available for non-economic loss only
Caps	None	Damages are not capped but are subject to a 5% discount rate.	N/A	None	Subject to scaled value in accordance with <i>Civil Liabilities Act 1936 (SA)</i>	None	Pecuniary damages are limited to awards of greater than \$44,730 and less than \$1,006,760 General damages for pain & suffering are capped at \$438,320	For whole person impairments of between 15% - 24% damages are capped at \$319,349; Where whole person impairment is in excess of 25% there is no cap on available damages. <sup>10</sup>	Non-economic loss claims capped at \$110,000 <sup>11</sup>
Thresholds	None	Employee must establish at least 15% Whole person impairment to have access to common law remedies.	N/A	None	N/A	Employee must establish at least 30% whole person impairment to have access to common law remedies.	Employee must establish either 30% permanent impairment; or at least 40% loss of earning capacity for pecuniary loss damages	Employee must establish at least 15% whole person impairment to be able to claim damages. <sup>12</sup>	Employee must establish 5% permanent impairment for loss of hearing, taste, smell, fingers & toes or 10% permanent impairment <sup>13</sup> for all other losses.

<sup>8</sup> Statutory Workers' Compensation schemes are based on a "no fault" regime so that an employee does not need to establish fault on behalf of the employer in order to access benefits from the legislation. Alternatively, a claim for workers' compensation under the common law is treated as a tort and, resultantly, an employee needs to establish that the employer breached their duty of care in order to be entitled to the benefits of compensation.

<sup>9</sup> Civic Liabilities Act (SA) 1936

<sup>10</sup> In assessing whole person impairments any secondary psychological /psychiatric injuries are disregarded.

<sup>11</sup> Not applicable to dependants or in third party claims.

<sup>12</sup> A person may bring an action under common law in respect of whole person impairment of less than 15%, but can only obtain a finding negligence – no award of damages may be given.

	<b>ACT</b>	<b>NSW</b>	<b>NT</b>	<b>Qld</b>	<b>SA</b>	<b>Tas</b>	<b>Vic</b>	<b>WA</b>	<b>Comcare</b>
<i>ADR</i>	Conciliation & Arbitration	Mediation <sup>14</sup>	N/A	Compulsory conferencing to be held within 3 month of commencement of proceedings, further ADR may then be ordered by the Court	N/A	None for common law claims	Compulsory settlement conferencing.	Conciliation, mediation and possibly arbitration	None for common law claims
<i>Limitation Periods</i> <sup>15</sup>	Injuries suffered after 1 July 2002 must be commenced within 3 years of injury.	Generally action cannot be commenced until 6 months after date of injury, but a claim must be commenced within 3 years of that injury.	N/A	Must be commenced within 3 years of date of injury.	Must be commenced within 3 years of date of injury.		Must be commenced within 6 years of date of injury.	Must be commenced within 12 months of date of injury or commencement of weekly payments.	No limitation

<sup>14</sup> Dispensed with if insurer wholly denies liability.

<sup>15</sup> Subject to extensions from the Court.

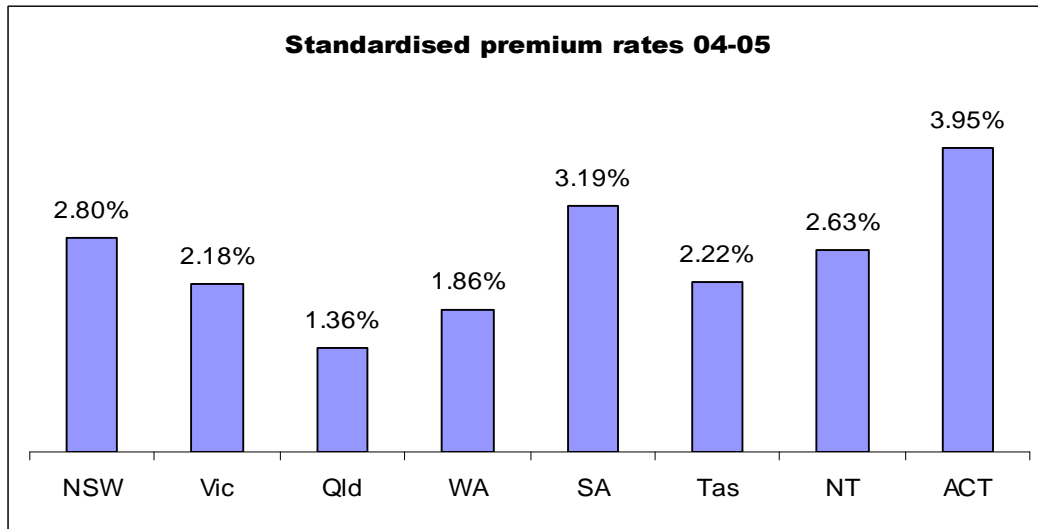
	<b>ACT</b>	<b>NSW</b>	<b>NT</b>	<b>Qld</b>	<b>SA</b>	<b>Tas</b>	<b>Vic</b>	<b>WA</b>	<b>Comcare</b>
<i>Election of avenues</i>	May pursue common law & statutory claim concurrently until awarded damages	May pursue common law & statutory claim concurrently until awarded damages	N/A	If injury is less than 20% permanent employee must elect to pursue common law avenue or statutory benefit.	May pursue common law claim against 3 <sup>rd</sup> party & statutory claim against employer concurrently until awarded damages	May pursue common law & statutory claim concurrently until awarded damages	May pursue common law & statutory claim concurrently until awarded damages	Where whole person impairment is between 15% - 24% an employee surrenders all statutory rights upon commencement of common law proceedings; if impairment is assessed to be in excess of 25% the employee may pursue common law & statutory claim concurrently.	Irrevocable decision to pursue claim in common law relinquishes statutory benefits. <sup>16</sup>
<i>Recoverability of payments by statutory body</i>	Statutory payments recoverable upon common law award of damages	Future weekly payments cease and past weekly payments are deducted from common law award of damages.	N/A	Not specified	Statutory payments recoverable upon common law award of damages.	Damages reduced according to statutory entitlements already paid.	Damages reduced according to statutory entitlements already paid	After an amount of damages has been determined by the Court, but before judgment is entered, the employee may elect whether to take common law damages or statutory benefits. Statutory payments recoverable upon election of the employee to take common law award of damages.	Statutory payments recoverable upon common law award of damages

<sup>16</sup> Not applicable to dependants' actions.

	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Comcare
<b>Journey Entitlements</b>	Entitlements cover journeys to and from place of employment "without deviation" to: <ul style="list-style-type: none"> <li>Place of residence</li> <li>Place of education</li> <li>Place of medical facility</li> <li>Any place for the purposes of work.</li> </ul>	Entitlements cover journeys to and from place of employment to: <ul style="list-style-type: none"> <li>Place of residence</li> <li>Place of education</li> <li>Place of medical facility</li> <li>Any place for the purposes of work.</li> </ul>	Entitlements cover journeys "by shortest route" to and from place of employment to: <ul style="list-style-type: none"> <li>Place of residence</li> <li>Place of education</li> <li>Place of medical facility</li> <li>Any place for the purposes of work</li> </ul>	Entitlements cover journeys to and from place of employment to: <ul style="list-style-type: none"> <li>Place of residence</li> <li>Place of education</li> <li>Place of medical facility</li> <li>Any place for the purposes of work</li> </ul> <p>However, employment does "not need to be a significant contributing factor to the injury."</p>	Entitlements cover journeys to and from place of employment to on reasonable route (including deviations that do not increase risk to the employee): <ul style="list-style-type: none"> <li>Place of residence</li> <li>Place of employment</li> <li>Any Place for the purposes of work.</li> </ul> <p>However, the fact that a worker "has an accident in the course of a journey to or from work does not in itself establish a sufficient connection between the accident and the employment.</p>	Entitlements only cover journeys to and from place of residence and place of employment if journey is made on request of employer or for the purposes of work.	Entitlements cover journeys to and from place of employment to: <ul style="list-style-type: none"> <li>Place of education</li> <li>Place of medical facility</li> <li>Any place for the purposes of work</li> </ul>	No entitlements for injuries arising out of journeys.	Entitlements cover journeys to and from place of employment to: <ul style="list-style-type: none"> <li>Place of residence</li> <li>Place of education</li> <li>Place of medical facility.</li> </ul> <p>Any place for the purposes of work</p>
<i>Boundaries</i>	Boundary of property	Place of 'pick-up'	Not specified	Boundary of property	Not specified	Not specified	Not specified	N/A	Boundary of property

### 3 Comments on each term of reference

#### a) Comparative analysis of ACT premiums and those of other jurisdictions



The above premium rates are from page 19 of "Comparative performance monitoring report" (Workplace Relations Ministers Council, 8th edition September 2006). Standardization of these premiums to account for fundamental scheme differences, together with adjustments for industry mix is taken from page 57 of the 7<sup>th</sup> edition. The differences taken into account in these estimates are

- exclusion of coverage of journey claims
- inclusion of self-insurers
- exclusion of superannuation as part of the remuneration
- standardization of non-compensable excesses.
- Industry mix.

NSW, Victoria and Queensland have all had significant premium reductions since 04-05, and it is likely that the comparative position of the ACT private scheme against these states has worsened.

#### b) Identification of the factors that contribute to the high premium rates in the ACT

The observed differences in average premium may largely be due to differences in

- Risk profiles
- Level and duration of weekly benefits
- Statutory benefits for impairments and pain and suffering
- Availability of redemptions
- Access to common law
- Administration expenses

- Inadequate information available to insurers
- Profits.

The effects of some of these differences are visible in the following scheme comparisons:

### Estimated premium rates for 06-07

Benefit type	06-07 premiums as a % of wages								
	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Comcare
Weekly	0.44%	0.63%	0.71%	0.29%	1.10%	0.42%	0.42%	0.51%	1.58%
Common law	0.60%	0.08%		0.42%		0.24%	0.24%	0.21%	0.00%
Legal	0.34%	0.12%	0.24%			0.13%		0.11%	0.23%
Legal - common law				0.06%			0.06%		
Legal - statutory				0.01%			0.03%		
Permanent impairment		0.17%	0.06%		0.44%		0.10%	0.06%	0.10%
Pain and suffering		0.07%							0.08%
Commutations		0.03%	0.51%		0.39%			0.23%	
Lump sums	0.46%			0.16%		0.37%			
Medical/rehabilitation				0.16%		0.40%			0.81%
Medical	0.26%	0.33%	0.30%		0.40%				
Doctor							0.08%	0.18%	
Hospital				0.05%			0.06%	0.08%	
Para-medical							0.08%	0.10%	
Personal & household services							0.01%		
Travel				0.01%					
Investigation	0.08%	0.07%					0.01%		
Medical reports - impairments							0.02%		
Medical reports - other							0.03%		
Rehabilitation	0.14%	0.09%	0.12%		0.11%		0.03%	0.06%	
Death		0.02%	0.04%				0.01%	0.00%	
Other payments		0.02%	0.04%		0.26%			0.07%	0.04%
<b>Total</b>	<b>2.32%</b>	<b>1.63%</b>	<b>2.02%</b>	<b>1.16%</b>	<b>2.71%</b>	<b>1.56%</b>	<b>1.18%</b>	<b>1.62%</b>	<b>2.84%</b>
Recoveries		0.11%		0.04%	0.19%	0.00%	0.07%		0.09%
Risk premium	2.32%	1.52%	2.02%	1.11%	2.52%	1.56%	1.11%	1.62%	2.75%
Expenses & levies	0.55%	0.40%	0.52%	0.09%	0.48%	0.56%	0.36%	0.42%	0.33%
Profits	0.27%		0.26%			0.20%		0.18%	
<b>Total premium</b>	<b>3.13%</b>	<b>1.92%</b>	<b>2.80%</b>	<b>1.20%</b>	<b>3.00%</b>	<b>2.32%</b>	<b>1.47%</b>	<b>2.22%</b>	<b>3.08%</b>
<b>Total as % of risk premium</b>	<b>135%</b>	<b>126%</b>	<b>138%</b>	<b>108%</b>	<b>119%</b>	<b>149%</b>	<b>132%</b>	<b>137%</b>	<b>112%</b>

Notes regarding sources of the above information:

ACT risk premium estimates for each type of benefit are from PwC's report of 14/7/06 "Review of the ACT Workers Compensation Scheme as at 31 December 2005", derived as described in 1c. Risk premiums are estimates of the cost of claims as a percentage of wages, after allowing for inflation and interest, but not for any expenses or profit. Total premiums were estimated from PwC's risk premiums by adding a loading of 35% for commission, expenses and profit. PwC note in 2.1.3 of their report that "After discussion with insurers, we understand that a loading of around 35% would be appropriate". Profits were estimated as 8.5% of total premiums, based on the 8.5% assumed in "2005 scheme review and suggested 2006/07 industry premium rates for the Tasmanian workers compensation scheme" a report dated April 2006 by Julie Evans and Robin Bateup to WorkCover Tasmania.

NSW values are from page 17 of "Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 30 June 2006", a PwC report dated 14/11/06 to the NSW WorkCover Authority.

NT estimates are based on "Review of the Northern Territory Workers Compensation Scheme as at 30 June 2005" a Finity report dated 21/12/05 to the Scheme Monitoring Committee, Finity's premium estimates allowed for a 15% prudential margin on outstanding claims, which may be about 9% of total premiums.

Queensland estimates are based on the 1.20% average premium applying from 1/7/06, allocated in proportion to the 05-06 payments, recoveries and expenses, as shown in the annual report of WorkCover Queensland. Their actuarial report is not available.

SA estimates are derived from payment compositions and the overall levy rate in the 05-06 annual report of WorkCover SA.

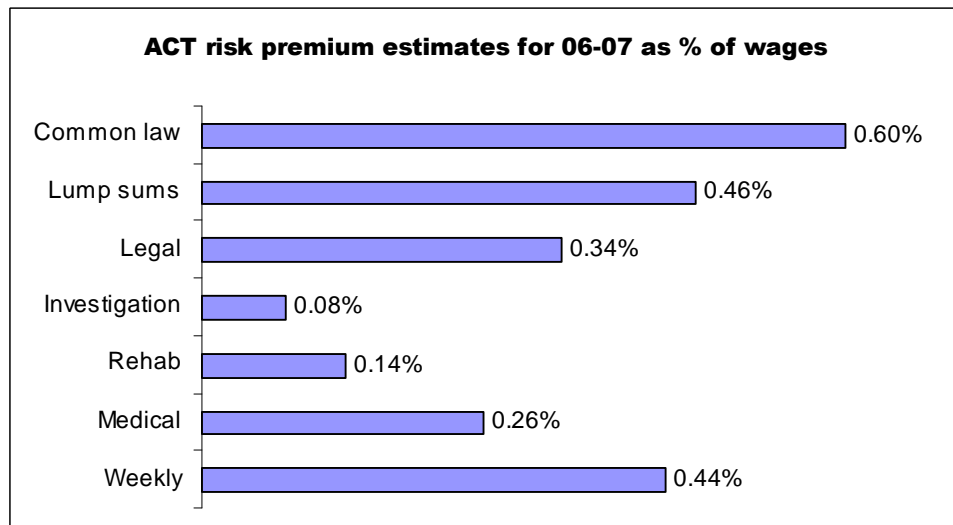
Tasmanian net costs, expenses and profits are from pages 26-27 of volume 1 and page 20 of volume 3 of "2005 scheme review and suggested 2006/07 industry premium rates for the Tasmanian workers compensation scheme", a report dated April 2006 by Julie Evans and Robin Bateup to WorkCover Tasmania.

Victorian values are from page 8 of "Actuarial valuation of outstanding claims as at 31 December 2005" a PwC report dated 11/4/06 to the Victorian WorkCover Authority.

The 1.62% risk premium estimated for WA was obtained by deducting 15.57% expenses and 8% contingencies from the 2.117% average rate on page 13 of "Actuarial assessment of the recommended premium rates for 2006/07 including allowance for the 2004 Reform Act" a PwC report to WorkCover WA dated 12/4/06. This was split between payment types as in B5. Expenses including brokerage were assumed to be 18.97% of gross premiums, and profit 8% of gross premium.

Comcare estimates are for ACT public servants only. Risk premiums and expense estimates are from appendix V7.A of Taylor Fry's "Actuarial report as at 30 June 2006", dated 6/6/06, to Comcare Australia. Risk premiums as percentages of wages are derived from the overall 3.08% shown for the ACT in Comcare's 05-06 report.

**c) An assessment of the claims costs by payment type and identification of cost drivers**



These risk premium estimates are from the total risk premium estimate of 2.32% for 06-07 on page 8 of the PwC report of 14/7/06, allocated in proportion to the claim size estimates on page 6 of their report. The PwC estimates for weekly payments, legal costs, lump sums and common law are particularly uncertain, as insufficient time has elapsed since the 2002 reforms to allow reliable estimates.

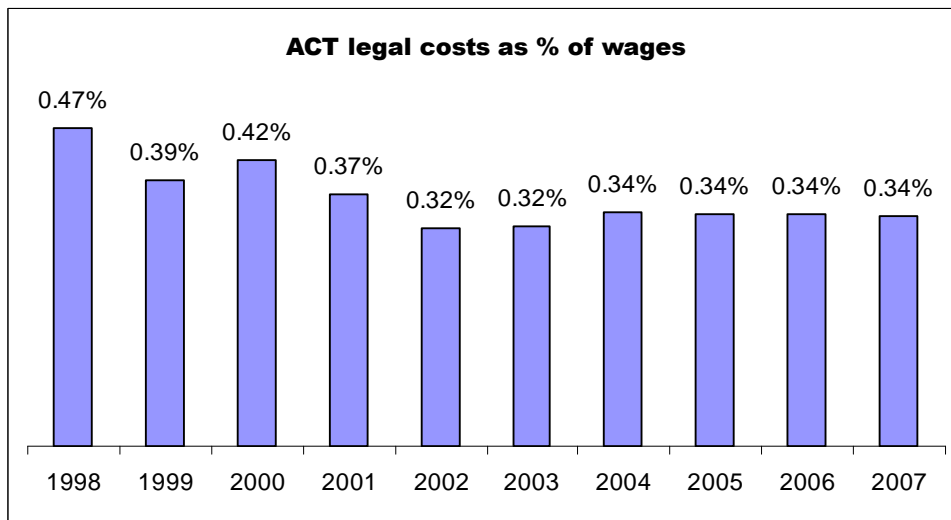
The main cost drivers in the ACT scheme are

- Weekly payments until retirement age, at rates linked to indexed pre-injury earnings
- Personal injury plans for workers with significant injury, and provision of vocational rehabilitation
- Lump sums for redemptions and permanent impairments
- Common law, without thresholds or limits, and with no mandatory discount rate
- Expenses and profits of private insurers.

Experience from other schemes suggests that some of these ACT benefits may be costing more than necessary. Detailed case studies within the ACT, and help from organizations within and outside the ACT, will be needed to identify inefficiencies.



#### d) Analysis of legal costs



On page 44 of their report of 14/7/06, PwC said

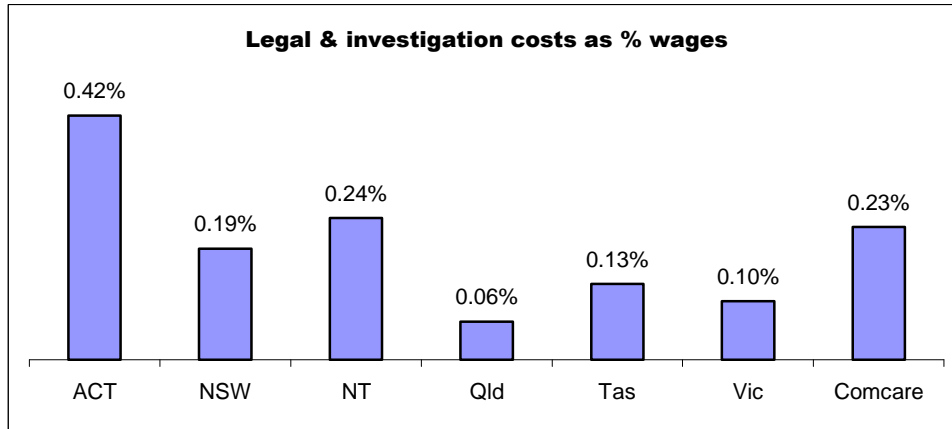
*We understand that the Civil Law (Wrongs) Act have pushed some legal costs onto the claimant rather than the insurer. Additionally, the changes to lump sum settlements for permanent impairment may have led to a delay in legal settlements, and hence legal payments. It is anticipated however that the total legal payments for accident years following the reforms will be similar to that experienced prior.*

The demise of the application of the Civil Law (Wrongs) Act to workers compensation claims from September 2005 means the process has been simplified with consequent cost savings. Previously there was a duplication of process and ambiguity in relation to the process requirements (particularly rehabilitation) of both that Act and the Workers Compensation Act.

There is no indication that the 2002 changes to lump sum settlements for permanent impairment have led to a delay in legal settlements. At the end of 2006 there have been almost no disputes regarding permanent impairment claims.

The graph on PwC's page 44 shows that legal costs have been substantially lower for accident years 02-03 and on and we suspect PwC's legal cost estimates for recent years are too high.

If the ACT courts are now resolving workers compensation cases more promptly, then the estimation method used by PwC may be overestimating legal costs and common law payments



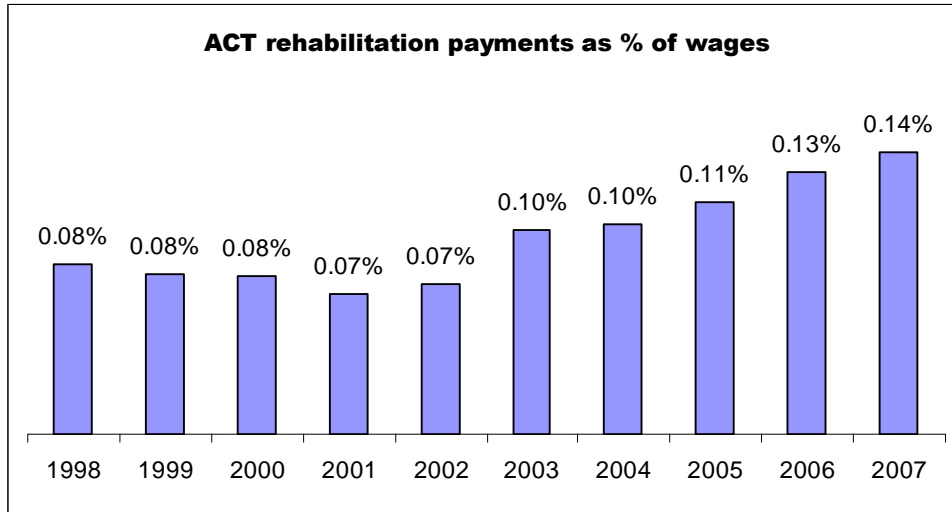
The above graph shows that estimated ACT legal and investigation costs, as a % of wages, are more than double those in NSW, Victoria, Queensland and Tasmania.

It is surprising that Queensland, with common law costs of 0.42% of wages, compared with ACT's 0.60%, has legal costs that are apparently only one-seventh of those in the ACT. Examination of Queensland's dispute resolution procedures may suggest better procedures for the ACT.

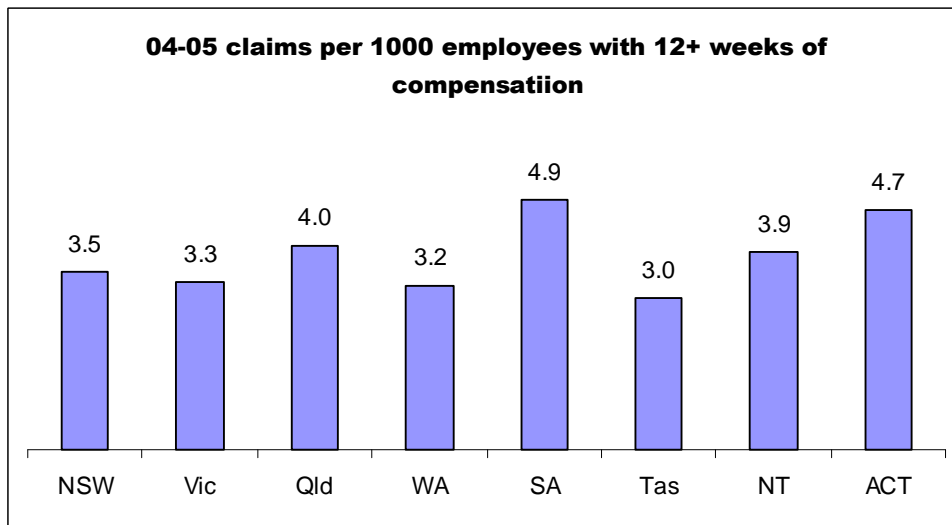
One issue is the effectiveness of the Magistrates Court in handling workers compensation disputes. The ACT Auditor General's Office, in its 20/9/05 "Performance Audit report – Courts administration" commented

*"The workers compensation list is considered effective as it leads to the disposal of a large number of complex matters in a relatively brief period ... despite the callover process, a large number of cases that are likely to settle are listed for hearing."*

**e) Analysis of the cost and effectiveness of the rehabilitation provisions**



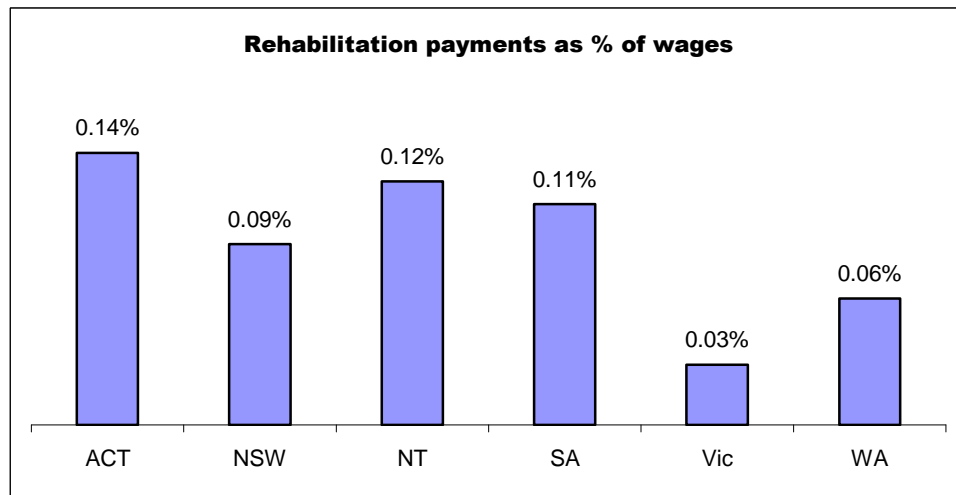
On page 38 of their 14/7/06 report, PwC note that the utilization of rehabilitation benefits following the 2002 reforms has increased significantly. This greater expenditure does not appear to have improved return to work rates, as the following graph (from page 7 of "Comparative performance monitoring report" (Workplace Relations Ministers Council, 8th edition September 2006), shows that the number of claims per 1000 employees with 12+ weeks of incapacity has remained higher than any state except SA.



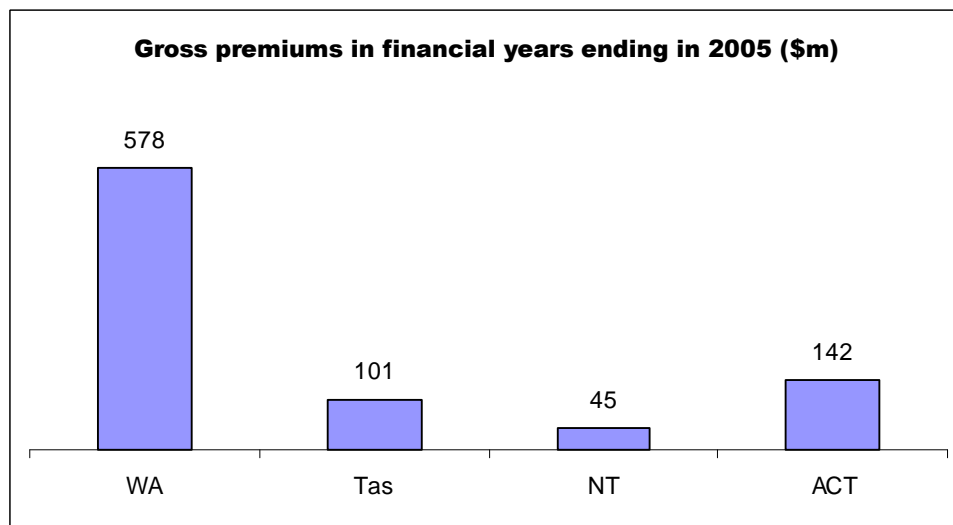
Under sections 98 and 99 of the amended Workers Compensation Act 1951, the insurer has to establish a personal injury plan for a worker with significant injury, and ensure that useful vocational rehabilitation is provided. Under sections 100 and 101, the employer and the injured worker have to take part and co-operate in the establishment of the personal injury plan, and the worker must comply with reasonable obligations under the plan.

The utilization graphs on pages 38 and 39 of the PwC report of 14/7/06 suggest that the proportion of injured workers receiving rehabilitation is highest in the third quarter after the accident quarter. As rehabilitation treatment is generally considered important within the first few weeks of injury, it may be that the commencement of rehabilitation is being unreasonably delayed in some instances. Rehabilitation may also be being continued after it has ceased to be useful.

This is in contrast to the requirement, based on discussions with those within the industry, of the need to commence rehabilitation at 7 days. They indicate that rehabilitation is being used in a scattergun approach on a high number of claims that do not need nor will gain any benefit from rehabilitation intervention. These cases according to medical indications are those that are self-healing within 10 – 14 days, and could account for up to 80% of all claims, including those with no time lost.



#### f) Analysis of the current and future viability of the ACT workers' compensation scheme



Gross premium revenues for WA, Tasmania and the NT are from Table 10 of APRA's "Half yearly general insurance bulletin December 2005", issued 3/8/06. Premiums for ACT are from "ACT workers compensation scheme (private sector) snapshot - 1999/2000 to 2004/2005", ACT WorkCover 13/9/06.

ACT private insurers have premiums about 44% higher than those in Tasmania, and about triple those in the NT. ACT is more compact, and has reasonable medical services, perhaps making it more attractive to private insurers. Vero and Zurich have ceased to be agents for NSW WorkCover, but still operate in the ACT. Page 10 of the PwC report of 14/7/06 lists eight insurers in the ACT market, accounting for 98% of the market.

Whilst the small number of self-insurers has a minimal impact on the ACT Scheme (9 self-insurers account for less than 3% of the total premium pool), the impact of local operations of multi-national companies opting into the Comcare scheme is much more difficult to predict.

It must be borne in mind however that whilst an employer leaving the scheme takes premium out of the pool, they also take all their claims costs from the pool and assume responsibility for all the associated administrative expenses.

Having common benefits for ACT public and private employees would add at least \$30m to the notional premium pool, and this would help finance the running of the Default Insurer, WorkCover and the courts.

#### g) Identification of sustainable benefit structure for the scheme

Sustainable benefits for the ACT depend on the economic effects of high workers compensation premiums. This is an issue which we will explore in our discussions with stakeholders and the community.

It is possible that businesses locate in Canberra because they have specific reasons for doing so. They may often be low-risk industries, such as consulting and research, for which workers compensation premiums are a minor concern. The ACT's 2.5% unemployment rate in October 2006 suggests that workers compensation costs are not currently harming the employment prospects of ACT residents.

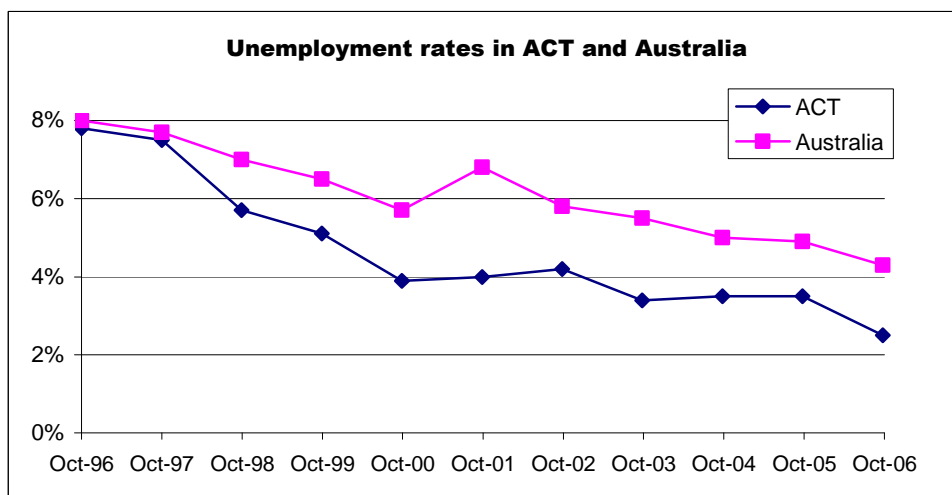
But high workers compensation premiums increase the costs of service industries, such as construction, cleaning, retail stores, health and aged care. This increases the prices of homes and services for ACT residents. Labour-dependent industries such as tourism and aged-care may avoid new investment in the ACT. High premiums make the ACT economy more fragile, with less flexibility to cope with changes in government policy.

The present ACT benefit structure may be sustainable if present inefficiencies are reduced. Both legal and rehabilitation costs seem too high, suggesting that dispute resolution systems are not working quickly enough. If appropriate rehabilitation can be promptly delivered where needed, return to work rates should improve, and payments for weekly benefits and common law should be significantly reduced. Insurer expenses and profits should drop in proportion to benefits. Injured workers and employers would benefit.

The provision of better information to insurers could also help reduce premiums. For example, WorkCover ACT could follow the example of WA and Tasmania, and provide insurers early each year with an actuarial report setting out the available scheme data, and recommending premium rates for each industry.

If reducing present inefficiencies and improving information flows leaves ACT premiums at levels considered to be too high, then there is a wide range of devices that could be copied from other jurisdictions. Examples of such cost-saving measures are discussed in 3l) of this paper.

Introducing a high statutory discount rate for common law, capping damages and imposing an impairment threshold test for common law could all help reduce common law payments and their associated legal costs? But such measures could increase the numbers of those remaining on weekly benefits, leaving little net savings. Limits on total weekly payments, as in Queensland, WA and Tasmania, might also be needed to give low premiums.



## **h) Definitions of wages, worker and injury across jurisdictions**

The current legislation defines broadly the concept of who is a 'worker' as a means of broadening the coverage of the Act to as wide a scope as is possible, however in doing so has resulted in continuing confusion and argument as to the scope of the definitions.

Issues are in relation to the definition of a worker, particularly the tests involving "regular and systematic" which is the test used to distinguish between subcontractors and employees. Recent Court decisions where workers were apparently subcontractors (as there were irregular and unsystematic payments) have favored an interpretation which concluded that those workers were employees. A major issue arises and has not been dealt with by the 2002 amendments in relation to the dichotomy between the classification of workers/subcontractors for premium purposes as opposed to the interpretation of the Act categorizing those persons when claims are made.

The confusion surrounding the concepts of 'wages' for the purposes of premiums and 'earnings' for the purposes of payments to injured workers also adds significantly to a lack of clarity and understanding to these provisions, not only for employers, but also for the accountancy and broker professions and is further compounded by varying interpretations by insurers.

## **i) Achievement of objectives of the 2002 amendments**

The presentation speech to the ACT Legislative Assembly for the Workers Compensation Amendment Bill 2001 and the Workers Compensation Regulations 2001 said in part

*The Government's exposure draft embodied a range of very important measures. They were all designed to get injured workers well, rehabilitated and back to work in a speedy but durable fashion. They sought to remove the 'pot of gold' mentality amongst some sectors of the community while acknowledging that injured workers should not be consigned to poverty as some of them are under the current arrangement.*

*I take this opportunity to remind members of the key features of the exposure draft legislation. They were*

- *Employers, insurers, treatment providers, and the injured worker must participate in an injury management plan, with new requirements relating to the early reporting, actioning and decision making on claims*
- *Statutory benefits for workers injured for periods greater than 26 weeks increased from being the lowest in the country to a responsible level that does not leave them in poverty*
- *Insurance companies able to offer employers innovative insurance policies, subject to minimum requirements, rather than the mandatory, inflexible arrangements currently prevailing*
- *Insurers required to take a more pro-active role in the treatment, rehabilitation and return to work of injured workers*

- *Insurers to demonstrate that they have effective cost containment measures in place in relation to medical, rehabilitation and legal services to maintain their approval to operate in the ACT*
- *New requirements for the approval of the various service providers involved in injury management and rehabilitation as well as brokers and agents*
- *Continued unfettered access to common law but with streamlined processes leading to early directions being given by the Court and the option for Court directed mediation.*

*While tabling the exposure draft legislation, I commented that every jurisdiction in Australia and around the world constantly grapples with the competing objectives of workers compensation arrangements. On the one hand the arrangements must ensure that injured workers are properly treated, supported and remunerated while on the other hand the costs of the schemes need to be kept reasonable and affordable for business.”*

From this and other sources, we understand that the objectives of the 2002 reforms were to

- ensure fairness and equity to injured workers
- incorporate sound economic practice for the privately underwritten scheme that operates in the ACT
- shift the focus of the scheme to injury management so as to enable the early and sustainable return to work of injured workers.
- continue unfettered access to common law
- keep costs affordable.

The high scheme costs, high rehabilitation expenditures and low return to work rates suggest that these objectives have not been fully achieved. Anecdotal evidence suggests that some rehabilitation expenditure is ineffective or counterproductive, and that the delays and costs of legal disputes are sometimes needlessly high.

The principal shift in the scheme in relation to early reporting and early intervention has had mixed results, according to the limited information that is available.

The delay between date of injury and date of notification has improved significantly, which in turn results in an earlier potential commencement of rehabilitation. But the legislative compulsion to commence rehabilitation on all claims with more than 7 days lost time may be misdirected, and in fact a waste of time and effort in terms its contribution to better outcomes in many cases that have a predictable rate and path of recovery.

The focus of the scheme on injury management and the compulsory nature of rehabilitation services have meant that funds are sometimes expended on rehabilitation programs which are unnecessary or counter-productive. Although the aim of assisting early and sustainable return to work is commendable, it is not always appropriate and some claims are better handled without compulsory return to work/rehabilitation compliance.



We understand that the number of litigated workers compensation claims has reduced since the 2002 amendments. When available, court statistics may show that the number of arbitrations resulting from disputed claims have fallen dramatically. The lower numbers of litigated workers compensation claims obtain hearing dates in the Magistrates Court more expeditiously, which should reduce costs.

Whilst arbitrations have fallen, the new procedure in the 2002 amendments allowing conciliations for issues in dispute whilst a claim has been accepted has hardly been used. There have been only a handful of conciliations in the past few years indicating that most issues arising during the course of an accepted claim have been settled by agreement with the insurers.

In relation to permanent impairment claims and the prospect that they would increase dramatically as a result of the Table of Maims following the 2002 amendments, there is no evidence of an increase in permanent impairment disputes which require arbitration in the Courts. It appears that these too are settled directly with the insurers without recourse to litigation.

#### **j) Interactions between workers compensation scheme and other schemes**

Issues have arisen between workers compensation insurers and the monopoly CTP insurer, NRMA in relation to dual insurance claims. That is, where the employer's indemnity policy and the CTP policy both apply to the same claim. In NSW the law has changed as a result of the High Court case of *Allianz v. GFS* to the extent that there is no CTP insurance contribution to liability unless the claim arises as the result of a defect in the motor vehicle. Previously all that was required was some negligence (usually on the part of the employer) then both policies would apply providing the workers compensation insurer with a 50% reduction on its liability. Recently the NRMA has refused to accept dual insurance claims as they are mounting a challenge through the ACT Court of Appeal in line with the High Court decision which affected NSW claims. This is an issue as many common law workers compensation claims arise out of the use of a motor vehicle for which the NRMA can be responsible for 50% of the liability.

There are proposals to dispose of journey and recess claims under the Comcare System and in light of that development consideration might be given to relieving private sector ACT employers of the responsibility for accidents which occur on a journey to work which are the fault of the employee.

#### **k) Amendments to achieve consistency with other workers compensation schemes**

As every workers compensation scheme in Australia is different, it would be impossible to eliminate all the inconsistencies between ACT and the other schemes. But it should be possible to find ways in which needless inconsistencies can be eliminated, and to work with other jurisdictions towards greater consistency.

The ACT private scheme, located as an island within a much larger geographical region into which and from which significant business is transacted and sharing its jurisdiction with another scheme altogether (Comcare) suffers significantly with an identity crisis.

One glaring example of this confusion arises in the arena of medical certificates. Each of the three jurisdictions (NSW, Comcare and ACT) all have their own medical certificates, each slightly different in design and with differing instructions as to their completion. Overlay this with the standard 'sick' certificate that is still used at Canberra Hospital and we have a situation where the employer,

employee, rehabilitation provider and insurer could be dealing with one of four different certificates and trying to decipher what the worker is suffering from and how to treat and work out liability and forward claims management.

### **l) Changes to scheme design likely to improve scheme performance**

Scheme costs may be reduced, and return to work rates may be improved, by fine-tuning the existing system, removing blocks and improving incentives. For example

- Encouraging the prompt use of rehabilitation in appropriate cases
- Finding quick, cost-effective methods of resolving disputes
- A process where there can be a resolution of claims with resignation if appropriate in order to achieve finality in circumstances where it is undesirable for a worker to return to pre-injury employment
- Giving the Magistrates Court power to apportion liability between insurers of the same employer when that issue requires arbitration (not resolved in the 2002 amendments)

Major reductions to scheme costs would probably have to come from some of the measures used in other jurisdictions, for example

- Injury thresholds for access to common law benefits, as used in various forms in NSW, Victoria, Queensland, WA and Tasmania
- Stopping medical expense payments for workers accepting common law awards, but excluding such expenses from the calculation of the award (NSW)
- Ceasing weekly payments when a monetary limit is reached (Queensland and WA)
- Ceasing weekly payments beyond 104 weeks for all except the severely injured (Victoria)
- High discount rates for common law settlements (NSW, Victoria, Queensland, WA and Tasmania).

### **m) Consideration of other substantive inquiries**

We are aware of the following substantive inquiries and relevant actuarial reports in the ACT

- Noeline Woof and Samantha King (2006) "Review of the ACT workers compensation scheme as at 31 December 2005", report to the Insurance Council of Australia, PricewaterhouseCoopers, Sydney, 14 July, 61 pages plus appendices
- PricewaterhouseCoopers (2001) "Review of the ACT workers compensation scheme as at 30 June 2000", report to the Insurance Council of Australia, Sydney, 12 February

- Legislative Assembly ACT (2000) "Report of the Select Committee on the Workers' Compensation System in the ACT", Canberra, May
- ACT Occupational Health and Safety Council (2000) "Framework for a New Workers' Compensation Scheme for the Private Sector: Report of the Workers' Compensation Monitoring Committee", Canberra, March
- Greg Taylor & Michael White (1990) "Review of the ACT workers compensation scheme", report to the ACT government, Coopers & Lybrand, Sydney, 27 August, xiii + 136
- Richard Cumpston (1987), "Policy objectives for workers compensation in the ACT", report to the Commonwealth Department of Territories, Mercer Campbell Cook & Knight, Melbourne, 3 July
- Legislative Assembly ACT (1996) Select Committee Report into Public Sector Workers Compensation, Canberra,
- Tillinghast Review "ACT Public Sector Workers Compensation Arrangements, 1995
- Marsh and McLenan "ACT Public Sector Workers Compensation Arrangements, 1995

Some of the substantive inquires and relevant reports in other jurisdictions have been

- John Walsh and Michael Playford (2006) "Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 30 June 2006", report to the NSW WorkCover Authority, PricewaterhouseCoopers, Sydney, 14 November, 48 + 274 pages + appendices
- NSW Legislative Council General Purpose Standing Committee No 1 (2005) "Personal injury compensation legislation", Sydney, December, xxxi + 247
- Chris Latham (2006) "Actuarial valuation of outstanding claims as at 31 December 2005", report to the Victorian WorkCover Authority, PricewaterhouseCoopers, Melbourne, 11 April, 106 pages + appendices
- WorkCover Queensland (2006) "Annual report 2005-2006", Brisbane, 87 pages
- Peter Lurie & Chris Latham (2006) "Actuarial assessment of the recommended premium rates for 2007/2007 including allowance for the 2004 Reform Act", report to WorkCover Western Australia, PricewaterhouseCoopers, Perth, 12 April, 156 pages
- Julie Evans and Robin Bateup (2006) "2005 scheme review and suggested 2006/07 industry premium rates for the Tasmanian workers compensation scheme", a report to WorkCover Tasmania, Bateup Consulting, Melbourne, April
- Grellman RJ (1997) "Inquiry into workers compensation system in NSW – final report" Sydney September
- McKinsey and Company (2003) "Partnership for recovery – caring for injured workers and restoring stability to workers compensation ins NSW" Sydney September 120 pages

- Geoff Atkins and Clive Amery (2000) "Actuarial costing of options for the working party on restoration of access to common law damages for seriously injured workers" Trowbridge Consulting, Melbourne February 133 pages
- Gillian Harrex and David Mintoy (2005) "Review of Northern Territory Workers Compensation Scheme as at 30 June 2005", Finity report to the Scheme Monitoring Committee, 21 December, 42 pages
- Alan Greenfield and Andrew Kowk (2006) "Actuarial report as at 30 June 2006, Volume 7 2006/07 Premium Pool ACT", Taylor Fry report to Comcare Australia, 6 June, 25 pages plus appendices

Cumpston Sarjeant has a library of annual reports from each non-private workers compensation and compulsory third party scheme in Australia, covering almost every year since these schemes were established. They also have annual reports from the regulators of some competitive schemes, such as workers compensation in WA and Tasmania, and compulsory third party insurance in NSW and Queensland. These annual reports are helpful sources, particularly for WorkCover Queensland, whose actuarial reports are not available under the Queensland Freedom of Information Act.

#### **n) Encouragement of participation from stakeholders and the community**

We think it crucial that individuals with experience in the ACT workers compensation system, and organizations representing persons helping those injured and their employers contribute their knowledge to this review.

The ACT workers compensation system is complex, and unlike any other system in Australia. Relying on experience from other systems, or on actuarial analyses for the ACT system, may give misleading estimates and poorly based recommendations. The detailed knowledge of many people with different experiences in the ACT system is essential to this review.

We would like to interview at least 50 workers who have made workers compensation claims since July 2002, and write summaries of their experiences, omitting details that might identify the worker, employer, insurer and service providers. As far as possible, we will confirm these summaries with the insurer.

These summaries will be included in our report, together with the views of service providers, employers and insurers.

Encouraging the participation of stakeholders and the community in this review, and publishing the experiences of individuals, should improve the chances of sound recommendations being accepted by ACT elected representatives.

## **4 Proposed approach to carrying out the work**

### **4.1 Proposed timetable**

The project will be conducted in the following broad timeframe:

#### **Stage 1 – January to mid February**

Agree Plan, sign contract and develop and distribute issues paper

#### **Stage 2 – mid February to end March**

Seek submissions and conduct interviews

#### **Stage 3 – April**

Evaluate input and commence drafting report

#### **Stage 4 – May to mid year**

Consult on draft report and prepare final report

### **4.2 Receipt of Submissions**

Individuals and organizations wishing to be part of the review are requested to contact the review team (see document at end of issues paper) as soon as possible or have written submissions to the review team by the end of March 2007.

## **5 Meeting each of the requirements in Section 3 of the Issues Paper**

### **a) Comparative analysis of ACT premiums and those of other jurisdictions**

The review team will update the comparisons on page 19 of the 8<sup>th</sup> edition of the “Comparative Performance Monitoring Report”, adjusting for risk profiles and announced premium rate changes.

The review team will try to quantitatively explain the observed differences in average premium rates in terms of differences in

- Risk profiles
- Level and duration of weekly benefits
- Statutory benefits for non-economic loss
- Access to common law
- Administration expenses
- Inadequate information available to insurers
- Profits.

The review team will not expect to be able to explain all the differences between average premiums, as differences in administrative and legal processes can have major effects.

### **b) Identification of factors that contribute to the high premium rates**

ACT WorkCover has a database called the Accident Injury Management System (AIMS). WorkCover publishes statistics of premiums and claims from 00-01 on, but has not so far published any breakdowns of payments by type. As details of each payment by date and type are regularly supplied to the database by insurers and self-insurers, we expect to be able to analyze payments by type from each accident year from 00-01 on. This source should provide data to 31/12/06. The review team will compare the AIMS data with the insurer data used by PwC, and investigate any major discrepancies.

The review team will compare actual payments by type in calendar year 2006 with projections based on the estimation models used by PwC in their report of 14/7/06. This will help us detect assumptions not compatible with recent experience – for example, we suspect that legal costs in 2006 will prove lower than PwC’s projection.

The review team will use the payment and case estimate details in the AIMS database to make our own estimates of the risk premiums needed in 06-07 for each payment type.

### **c) Assessment of claims costs by payment type and identification of costs drivers**

Looking at the ACT payment details by type and duration, and making comparisons with similar data from other jurisdictions, shows some significant differences. To see whether these differences reflect ACT legislative or administrative problems, more detailed data on individual cases will be needed. The review team will interview injured workers on a voluntary basis to discuss their experiences and perceptions of the efficacy of the help provided to them. We would like to interview at least 50 persons injured after 1/7/02, when the 2002 changes took effect. If not enough injured workers respond to our

advertisements, we will attempt to contact workers who have been involved in settled cases at the Magistrates or Supreme Courts.

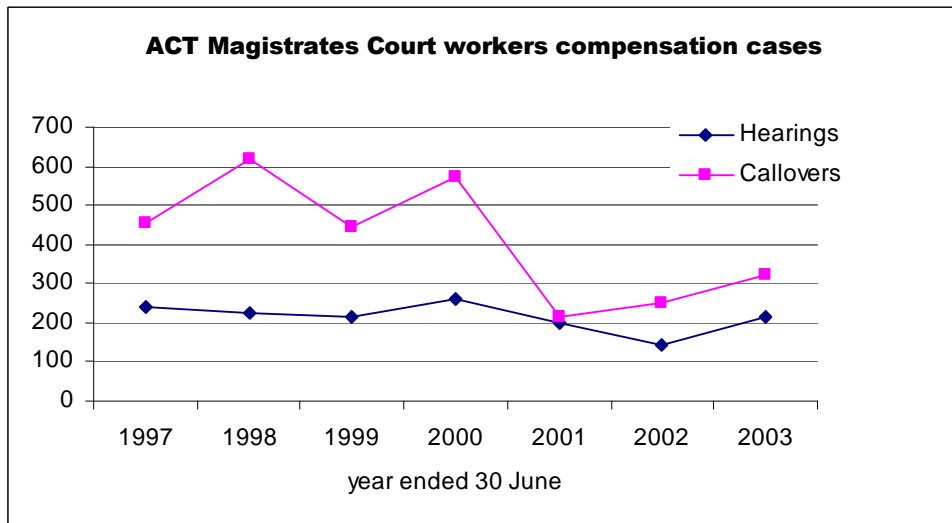
The review team will also talk with persons routinely providing help to injured workers, including, doctors, treatment providers, rehabilitation providers, legal practitioners and insurance claim staff. These will be persons responding to our advertisements, or persons nominated by their professional organizations or employers.

These interviews of injured workers and service providers, together with data from AIMS and other jurisdictions, should help us identify and analyze the major cost drivers.

#### d) Analysis of legal costs

Legal costs are available from the AIMS database, although there are no separate headings for plaintiff and defendant costs, or separate headings for statutory and common law costs. Costs charged directly by plaintiff solicitors to their clients will not be available, as these are not known by insurers. Investigation and medico legal costs are also available, again without separation.

Our interviews with plaintiff and defendant lawyers will help understand the observed costs. Injured workers will be asked about their perceptions of the effectiveness of the legal help provided to them, and about the legal fees deducted from their settlements. Comparisons with other jurisdictions will be made where feasible.



The above statistics for the ACT Magistrates Court are from annual reports of the Department of Justice and Community Services up to 02-03. While these numbers have not been published in the Department's annual reports from 03-04 on, we understand from discussion with the Registrar of the Magistrates Court on 24/11/06 that it may still be possible to provide them. The review team will seek the co-operation of the Magistrates and Supreme Courts in providing data for the review.

#### **e) Analysis of the cost and effectiveness of the rehabilitation provisions**

Rehabilitation costs are available from the AIMS database, without subdivision by type of service. Our interviews with rehabilitation providers and claimants will help understand the observed costs and durations. The review team will seek the views of relevant organizations on the effectiveness of the rehabilitation provisions. Comparisons with other jurisdictions will be made where feasible.

#### **f) Analysis of the current and future viability of the ACT workers compensation scheme**

The review team will look at employers with a potential to self-insure in the ACT or under Comcare, to see whether greater self-insurance would threaten the viability of the ACT scheme. The review team will ask the insurers currently operating in the ACT whether a reduction in the premium pool would affect their willingness to provide workers compensation insurance in the ACT.

#### **g) Identification of sustainable benefit structure for the scheme**

The review team will provide estimates of the premium changes likely to result from the adoption of the NSW, Victorian, Queensland and Comcare common law structures in the ACT. We will also provide estimates of the premium changes likely to result possible from statutory benefit changes in the ACT. The review team will make recommendations about the different types of common law and statutory benefit changes feasible for workers compensation in the ACT.

#### **h) Definitions of wages, worker and injury across jurisdictions**

The review team will make an analysis of the definitions of wages, worker and injury across jurisdictions, including Comcare. Our interviews with employers, injured workers and lawyers should help detect any problems which need fixing. Actuarial reports for other jurisdictions have provided estimates of the effects of changes, for example the inclusion of superannuation contributions in wages. One issue is the treatment of wages sacrificed as superannuation contributions, as recent tax changes may have made such amounts very significant for older workers.

#### **i) Achievement of objectives of 2002 amendments**

The review team will

- Identify the objectives of the government at the time, and the objectives of those moving amendments to the legislation, based on the government's documents and Hansard
- Comment on the extent that those objectives have been achieved, based on our interviews with individuals and organizations, and on the actuarial statistics for ACT and other jurisdictions
- Recommend ways in which the 2002 objectives might be more fully achieved.



## **j) Interactions between workers compensation scheme and other schemes**

The review team will

- Identify interactions between the ACT workers compensation scheme and other schemes inside and outside the ACT, based on our interviews with individuals and organizations, and on our analysis of past reviews for the ACT and other workers compensation schemes
- Provide order of magnitude estimates of the number and size of such interactions
- Suggest measures to make such interactions less difficult for those involved, and less costly overall.

## **k) Amendments to achieve consistency with other workers compensation schemes**

The review team will

- Identify inconsistencies with other schemes, particularly those which do not appear to reflect the fundamental philosophy of the ACT scheme, and those where ACT practice appears inferior
- Report on current attempts by other jurisdictions to bring their benefits and scheme administration closer together
- Recommend changes which could be made to achieve greater consistency
- Provide order of magnitude estimates of the number and size of such changes.

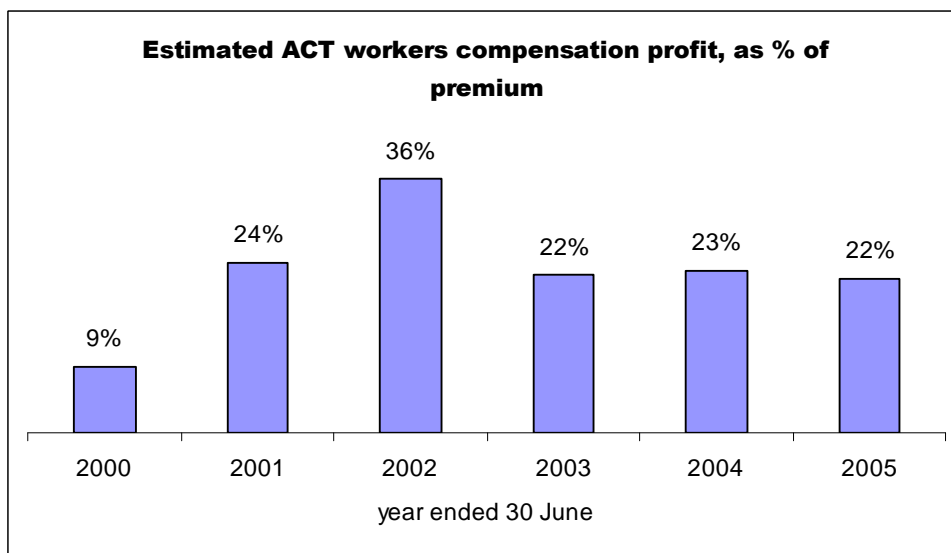
## **l) Changes to scheme design likely to improve scheme performance**

This will bring together the results of the whole review, and provide a basis for actuarial costing and legislative debate. The review team will

- Recommend a wide variety of changes to the ACT scheme design or administration, some seeking to help the injured more effectively, and others seeking to reduce overall scheme costs
- For each recommendation, explain the objective intended to be achieved
- For each recommendation, provide an order of magnitude estimate of its likely effect
- Recommend sensible combinations of recommendations
- Suggest a timetable for further costing, debate and implementation.

We will not confine our recommendations to benefits or case management procedures. For example, we believe that publication by WorkCover ACT of an actuarial report each year on reasonable premiums for each industry would help insurers obtain profits closer to their reasonable expectations. Such actuarial reports are published annually by WorkCover WA and WorkCover Tasmania. The

latest WA report assumed a contingency margin of 8% of premiums, and the latest report for Tasmania assumed a profit loading of 8.5% of gross premium. By contrast, estimated ACT profits have been



We have estimated ACT profits by comparing actual premium rates from the AIMS database with reasonable premium estimates derived from PwC's report of 14/7/06. Reasonable premiums were estimated from PwC's risk premiums by adding a loading of 35% for commission, expenses and profit. Risk premiums are estimates of the cost of claim as a percentage of wages, after allowing for inflation and interest, but not for any expenses or profit. PwC note in 2.1.3 of their report that "After discussion with insurers, we understand that a loading of around 35% would be appropriate". We assumed that this 35% included allowance for profits of 8.5% of gross premiums, as assumed in Tasmania.

The unusually high profits made by insurers in 01-02 may partly have resulted from a pessimistic estimate in a 12/2/01 PwC report to the Insurance Council of Australia. That report recommended a risk premium rate for 00-01 of 3.38% of wages. Section 2.1 of their report of 14/7/06 suggests that a risk premium of about 2.07% would have been appropriate for 00-01. The recommendation in their 12/2/01 report was thus about 63% too high.

#### **m) Consideration of other substantive inquiries**

The review team will look at all ACT substantive inquiries in the last 20 years, and at all substantive inquiries in other jurisdictions in the last 7 years. The last 7 years have been a period of major change for the NSW, Victorian, Queensland, WA and Tasmanian schemes, and enough time has elapsed for the results of these changes to be reasonably clear. Some of these inquiries had narrow terms of reference, or were for schemes very different in character to the ACT private workers compensation system.

In our report, we will

- List the inquiry reports we have read
- Comment on their relevance to the ACT

- Where relevant, use them as a basis for estimates and recommendations

#### **n) Encouragement of participation from stakeholders and the community**

The issues paper will be distributed widely and input sought from as broad a cross section of organizations as is possible. Some organizations already identified are:

- ACT and Region Chamber of Commerce
- ACT Bar Association
- ACT Law Society
- ACT Self-Insurers
- Australian Business Ltd
- Australian Lawyers Alliance
- Australian Medical Association (ACT)
- Australian Rehabilitation Providers Association (ACT)
- Business ACT
- Canberra Business Council
- Housing Industry Association
- Insurance Council of Australia
- Law Council of Australia
- Master Builders Association
- Australian Hotels Association
- UnionsACT
- CFMEU
- LHMWU
- ACTCOSS

We will try to meet with anyone making a submission, and with their permission, will list their identities in our report. With their permission, we will make any written submissions available on a website.



## 6 The review team

### 6.1 Our firms

Australian Health & Safety Services Pty Ltd, Dibbs Abbott Stillman & Cumpston Sarjeant Pty Ltd all have considerable expertise relevant to the review, and long records of timely completion of tasks to high standards.

- Australian Health and Safety Services Pty Ltd has operated in the ACT and NSW for 7 years. David Segrott, who will lead the whole project, is a member of the ACT OHS Council and ACT Workers Compensation Advisory Committee. He will step down from the Council and the Committee for the duration of the project. He advises employers in the ACT and NSW.
- Dibbs Abbott Stillman is a large legal firm, created by merging several long-established firms. It acts in many personal injury matters, generally for defendants. Keith Fleming, who will lead the provision of legal advice for the project, is managing partner of the firm in the ACT.
- Cumpston Sarjeant Pty Ltd was formed in 1996 by amalgamating two actuarial firms. Directors of the firm often give evidence in personal injury matters, generally at the request of plaintiffs. Richard Cumpston, who will lead the actuarial advice for the project, has given advice in relation to many of the accident compensation schemes in Australia and NZ.

### 6.2 Review team members and backups

Key Personnel	Organization	Backup
David Segrott	Australian Health & Safety Services	John Carlton
Keith Fleming	Dibbs Abbott Stillman	Colin Maclachlan
Eric Goonitillke	Dibbs Abbott Stillman	Geoff Wilson
Peter Woulfe	Dibbs Abbott Stillman	Nick Thompson
Richard Cumpston	Cumpston Sarjeant	Hugh Sarjeant
Corey Plover	Cumpston Sarjeant	John Rawsthorne
Paul Thomson	Cumpston Sarjeant	Monika Skaliotis

## **7 How to be Part of the Review**

There are a number of ways in which you can help make a contribution to the review:

- Make a written submission
- Be part of a structured interview process

### 7.1 Make a Written Submission

Any group or individual may make a written submission, either addressing the terms of reference in part or in whole or a freeform submission outlining your views or experience in relation to the current ACT Workers Compensation Scheme.

Written submission authors may be contacted and offered an interview opportunity to expand on their submission.

### 7.2 Be part of a Structured Interview Process

Individuals (claimants or treatment providers) may nominate to be part of a structured interview process. (It is anticipated that a maximum of 50 individuals will be interviewed as part of this process)

The objective of this part of the process is to add a level of individual experience to the review so that the outcomes can reflect actual experience from within the scheme.

Note: Nominees for interview will be required to complete a nomination form (see next page) and submission of this form will not necessarily guarantee an interview.

**ACT Workers Compensation Review**

**Nomination for Individual Interview  
(All information on this form will be treated as confidential)**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ (H) \_\_\_\_\_ (W) \_\_\_\_\_ (M)

Date of Injury: \_\_\_\_\_

Name of Employer at Time of Injury: \_\_\_\_\_

Name of Insurer (if known): \_\_\_\_\_

Claim Number (if known): \_\_\_\_\_

Nature of Injury:

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Outcome of Claim: \_\_\_\_\_

Summary of Comments to be expanded upon at Interview:

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Send form to:

Australian Health and Safety Services  
PO Box 250  
KIPPAX ACT 2615

Fax: (02) 6259 0134

Email: [dsegrott@webone.com.au](mailto:dsegrott@webone.com.au)