

**RESPONSE OF THE AUSTRALIAN GOVERNMENT
TO THE PRODUCTIVITY COMMISSION INQUIRY REPORT**

NO. 27, 16 MARCH 2004

**National Workers' Compensation and
Occupational Health and Safety Frameworks**

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OVERVIEW

1. The Final Report of the Productivity Commission's (Commission) inquiry into national occupational health and safety (OHS) and workers' compensation arrangements has identified a lack of national consistency in these programmes.
2. The Commission found fundamental differences in Australian workers' compensation arrangements. The differences relate to design elements of the schemes in terms of coverage, benefits and self-insurance obligations. The result is a compliance burden for multi-State employers and uncertainty for employers and employees.
3. In regard to OHS arrangements, the Commission found that these also exhibited inconsistencies, however not to the extent of workers' compensation. While all parties, including State and Territory (State) governments, subscribe to national consistency, in practice the legislative frameworks for both OHS and workers' compensation continue to exhibit inconsistencies.
4. There are ten separate OHS statutory regimes along with other statutory regimes that regulate aspects of OHS. The compliance burdens and costs imposed by multiple regimes, regulations, administration and enforcement, compounded by regular amendment, are a feature of OHS across the jurisdictions. The Commission's report recognises the benefits of nationally consistent frameworks, but demonstrates that current approaches are not achieving this goal.
5. The Commission has proposed a model to progressively move Australia to nationally consistent arrangements, similar to that presented in the Commission's Interim Report. The essential features of the model are:
 - replace the tripartite National Occupational Health and Safety Commission (NOHSC) with a smaller body appointed on the basis of skills and expertise;
 - require all jurisdictions to adopt uniform OHS regulation;
 - shared funding of NOHSC between the Government and the States;
 - the Government to develop an alternative national workers' compensation scheme to operate in parallel with existing State schemes under a three step process:
 - Step 1: allow eligible corporations to self-insure under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) scheme;
 - Step 2: establish a national self-insurance scheme for corporations not eligible under Step 1; and
 - Step 3: establish a national premium-paying scheme.
 - corporations gaining coverage under Step 1 to have the choice of national OHS coverage under the Government's OHS scheme;

- establish, by legislation, a workers' compensation body to develop nationally consistent scheme elements; and
 - the Workplace Relations Ministers' Council (WRMC) to oversee the framework.
6. While supporting a number of the Commission's recommendations the Government does not support the key elements of the Commission's proposed national framework model. These include:
- replacing NOHSC with a smaller body appointed on basis of skills and expertise;
 - requiring all jurisdictions to adopt uniform OHS regulations;
 - sharing funding of NOHSC between the Government and the States;
 - developing an alternative national workers' compensation scheme to operate in parallel with existing State schemes as proposed under Steps 2 and 3 of the Commission's model; and
 - establishing, by legislation, a workers' compensation body to develop nationally consistent scheme elements.
7. The Government's decision not to support these recommendations is based on the premise that the role of the Australian Government is to facilitate the development of a nationally consistent framework for OHS and workers' compensation rather than developing national template OHS safety standards or be in the business of providing national workers' compensation. It was also evident from responses to the Commission's Interim Report that the model proposed by the Commission would not be acceptable to States, major employer and employee groups. In particular there was concern over the impact that a national compensation scheme would have on small business and the viability of State schemes themselves as larger multi-State corporations withdrew to take part in a national scheme.
8. Instead the Government is developing a number of alternative strategies that builds on cooperation with the States and key industry parties to achieve nationally consistent frameworks. The key element of this strategy is to revitalise the national consultative arrangements through the establishment of a new non-legislative Advisory Council that will cover for the first time both OHS and workers' compensation.
9. The role of the national Advisory Council, to be named the Australian Safety and Compensation Council, will be to develop the broad policy and strategic directions for the OHS and workers' compensation programmes under the guidance of the Workplace Relations Ministers' Council, aimed at achieving national consistency in both OHS and workers' compensation.

GENERAL COMMENTS

10. These general comments are intended to provide context to the responses to individual recommendations made by the Productivity Commission in its Final Report into National Workers' Compensation and Occupational Health and Safety Frameworks, No. 27, 16 March 2004.

Workplace injury and disease in Australia - Putting the problem into perspective

11. Workplace injury and disease in Australia is a significant human and economic issue. In the financial year 2001-02, the various workers' compensation schemes compensated close to 300 fatalities as a result of workplace injury and disease. Compensated injuries and disease resulting in one week or more off work amounted to 14.1 cases per 1000 workers.¹ Compared to other developed countries, Australia's workplace health and safety performance is about 100 per cent below the world's best in terms of workplace incidents that result in a fatality.²
12. The available evidence suggests however, that the total number of workplace injuries and diseases in Australia may be much higher than the number of eligible workers for compensation. A survey by the Australian Bureau of Statistics found that over a twelve month period, five per cent of the work-force, or 477,800 workers, experienced a work-related injury or illness.³ This equated to an incidence of injury rate of 49.3 per thousand employees, compared to an incidence rate of 14.1 reported by workers' compensation schemes.
13. The Commission reports that the economic cost of workplace accidents to workers, employers and the community is estimated to be in excess of \$31 billion annually or some 4.3 per cent of Gross Domestic Product. The human cost in terms of pain and suffering to the injured workers and their families is impossible to quantify.

Current Workers' Compensation and OHS Arrangements

14. The Commission found fundamental differences in Australian workers' compensation arrangements. The differences relate to the design elements of the schemes in terms of coverage, benefits and self-insurance obligations. The result is a compliance burden for multi-State employers and uncertainty for employers and employees. Multi-state corporations employ over a quarter of Australian employees and the costs to them of meeting the requirements of the various jurisdictions, rather than those of a single national scheme, can be in the order of millions of dollars a year.

¹ NOHSC, *Comparative Performance Monitoring Fifth Report*, November 2003, Australian Government, p9.

² International Labour Office, <http://laborsta.ilo.org/> Yearly statistics of occupational injuries

³ ABS, *Work-related Injuries Australia*, Cat. No. 6324.0

15. Scheme differences also provide difficulties for workers who operate across jurisdictions. Differences in the definition of 'employee' may mean that a worker is covered by one scheme, but not by another.
16. One result of the design of the State schemes is that the Australian Government's social security schemes have become a 'de-facto' workers' compensation scheme. The taxpayer funded income support and health schemes, are required to support a substantial number of workers who have suffered a work-related injury or disease.
17. The Commission also found that the current approach to delivering national consistency in OHS has not worked. The compliance burdens and costs imposed by multiple regimes, regulations, administration and enforcement, compounded by regular amendment, are a feature of OHS across the jurisdictions, although not to the same degree as with workers' compensation.
18. Recognition of common issues in OHS faced by all jurisdictions, and the need for greater consistency led to the establishment of the NOHSC in 1985. Essentially, NOHSC's function is to develop national workplace standards and codes of practice for adoption by the jurisdictions in their regulatory framework. NOHSC has developed a number of important national safety standards, but the Commission noted that, in practice, these standards are rarely accepted by individual jurisdictions. Instead, it is normal for the State jurisdictions to adopt them with modifications ranging from substantial to trivial or to reject them.
19. The Government has made administrative changes to the operations of NOHSC, but its functions and overall activities have remained largely unchanged since 1985. Further, NOHSC has consumed considerable resources in developing standards. For example, a national standard on dangerous goods declared in 2001 cost over \$6m to develop, involving over 100 meetings of NOHSC committees. Three years later only two jurisdictions have adopted the standard into their regulatory framework, albeit inconsistently.
20. Under its establishing legislation, the *National Occupational Health and Safety Commission Act 1985* (NOHSC Act), NOHSC has an 18 member board appointed on the basis of representation. The Commission considered NOHSC's size and composition make it an ineffective board of management.

Small Business

21. The Commission has reported on the impact of its proposals on small business. It reports that small business would not be adversely affected by allowing eligible corporations entry into the Commonwealth workers' compensation scheme. The Commission considers under its proposed OHS model all workers and business, including small business would benefit from the more timely development and uptake of 'best practice' workplace safety procedures. In addition, greater OHS uniformity would assist those small to medium enterprises that wish to expand beyond their State boundaries.

Design elements

22. All Australian workers' compensation schemes are experiencing difficulties adapting to contemporary work practices. This has exacerbated the inconsistencies across schemes, particularly in core areas of coverage, benefits, compensable injuries and diseases and injury management.
23. Poor injury management by the schemes, along with scheme design, is resulting in more persons being unable to return to work following a workplace accident. Factors contributing to the falling return to work rates include increased use of redemption of benefits by schemes; access to common law damages, and injured workers being 'parked' on benefits for a limited period and then effectively discharged without any further income support, medical benefits, rehabilitation or return to work assistance.
24. In developing a nationally consistent framework for OHS and workers' compensation the Government asked the Commission to consider and report on a number of key design elements common to OHS and workers' compensation schemes, such as access and coverage issues; premium setting principles; access to common law damages and injury management approaches.
25. The Commission in its report has recommended a number of core principles that need to be considered in the design of a national framework for OHS and workers' compensation. These principles relate to issues such as, access and coverage; injury management; common law access; statutory benefits structures; premium setting; role of private insurers; self-insurance; and dispute resolution in workers' compensation.
26. For example in the area of access and coverage, the Commission found that jurisdictions primarily base their definition of the work relationships that should be covered under workers' compensation schemes on the common law definition of employee. However, in their workers' compensation legislation, each jurisdiction supplements the common law definition through use of a unique set of inclusions ('deeming') and exclusions.
27. The complexity of these current arrangements and inconsistencies across States can lead to confusion for workers and employers about their legal rights and obligations. This particularly affects parties which operate interstate.

RESPONSES TO RECOMMENDATIONS

Recommendation 1

The Commission recommends that the following features be included in a cooperative occupational health and safety national framework model in Australia:

- a National Occupational Health and Safety Commission (NOHSC) of five to nine members appointed by the Minister on the basis of their expertise and skills, the appointment to be approved by the Workplace Relations Ministers' Council;
- clear specification of the objective of achieving uniform national occupational health and safety legislation and regulation in all jurisdictions in the NOHSC enabling legislation;
- agreement by all jurisdictions to adopt, without variation, the legislation and regulations proposed by NOHSC and approved by the Council;
- NOHSC have the ability to appoint advisory bodies, noting the importance of consulting with employers, unions and all jurisdictions;
- specified timetables for Council review of proposals from NOHSC, similar to those applying in relation to food standards – the process to be prescribed in the legislation; and
- funding of NOHSC shared by the jurisdictions, together with a commitment to funding the research and data collection necessary to ensure the development of a best practice national occupational health and safety system.

Government Response

28. The Government does not support this recommendation.
29. The Government does not consider that the proposal for a smaller board, appointed on the basis of their skill and expertise, and with no obligatory requirement to include industry representatives, is a viable option. Based on the State governments' response to the Interim Report it is unlikely that States would agree to the proposed uniform legislative regime required under the Commission's model.
30. The Commission's findings, do however demonstrate that current national consultative arrangements are not working. The Government considers it is therefore timely to further pursue greater national coordination of these programmes through the establishment of a non-legislative national OHS and workers' compensation advisory council – the Australian Safety and Compensation Council (ASCC). The ASCC would develop the policy and strategic direction for these programmes under the guidance of the Workplace

Relations Ministers' Council (WRMC). The Federal Minister for Workplace Relations and Employment will appoint members to the ASCC and invite State governments and industry parties, including those representing the views of small business, to nominate members.

31. The primary function of the ASCC will be to recommend initiatives to the WRMC aimed at national consistency in OHS and workers' compensation. There is a continuum between prevention, efficient compensation insurance and effective injury management. OHS activities are reliant on the workers' compensation system claims to improve the management of risk and hazards in the workplace. Likewise, the workers' compensation system only comes into play when prevention activities fail. Having separate advisory forums or legislative bodies – as recommended by the Commission – would be duplicative and not build on the synergies between the systems.
32. The ASCC would assume the OHS activities of NOHSC to the extent that it would identify and recommend national workplace safety standards for adoption into regulations. Ideally, a lead jurisdiction would be nominated to develop a standard as a regulatory instrument.
33. Similarly the work of the ASCC on workers' compensation would be to identify and recommend to WRMC design elements of schemes to gain consistency in the regulatory framework. For example, a number of submissions from large businesses to the Commission sought consistent national self-insurance arrangements. The Council could propose minimum national prudential and regulatory requirements for self-insurance to be adopted by all jurisdictions. As the Commission noted, such consistency would reduce business cost and overcome the need for a single national scheme.
34. The Council would also have responsibility for oversighting and coordinating national research into OHS and workers' compensation matters along with promoting workplace safety and rehabilitation and return to work of injured employees.

Recommendation 2

The Commission recommends that the Australian Government amend the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, to enable those employers who are licensed to self-insure under the Australian Government's workers' compensation scheme to elect to be covered by the Australian Government's occupational health and safety legislation. This legislation would be extended to cover those insuring under any future alternative national premium-paying insurance scheme.

Government Response

35. The Government supports this recommendation with modification.

36. The Government considers that there is merit in the Commission's recommendation to open up access to the Government's OHS regime to give those firms granted a self-insurance licence under the SRC Act scheme the choice of a single set of national OHS rules. The Government's workers' compensation and the OHS schemes are effectively integrated and there are benefits to employers having coverage under both schemes. For these reasons, the Government does not support eligible firms having the choice as proposed by the Commission. Instead the Government will accept this recommendation by amending the OHS(CE) Act to require coverage of non-Commonwealth employers who gain a self-insurance licence under the SRC Act scheme.

Recommendation 3

The Commission recommends that the Australian Government develop an alternative national workers' compensation scheme to operate in parallel to existing State and Territory schemes by taking the following steps progressively:

- step 1 – immediately encourage self-insurance applications from employers who meet the current competition test to self-insure under the Comcare scheme, subject to meeting its prudential, claims management, occupational health and safety and other requirements;
- step 2 – commence, at the same time, the development of an alternative national self-insurance scheme for corporate employers who wish to join such a scheme, and who meet prudential, claims management and other requirements;
- step 3 – in the longer term, consider the establishment of an alternative national premium-paying insurance scheme for corporate employers who so wish, including small to medium enterprises, which would be competitively underwritten by private insurers and incorporate the national self-insurance scheme established under step 2.

Government Response

37. The Government supports Step 1 of this recommendation to the extent that the Minister for Employment and Workplace Relations has a legislative duty to consider applications on their merit.
38. The Government does not support Step 2 or Step 3 of this recommendation.
39. The Commission's national workers' compensation proposal would result in a substantial shift to the Government of responsibility for an area of the economy that is traditionally a State matter.
40. The trends of increasing cost and complexity of these schemes will continue. Increased shifting of workplace injury costs to the Government's social welfare programmes will also continue unless design elements of the State schemes are

addressed. In addition, these programmes face a number of major policy challenges. For example, reduced coverage, the changing nature of working arrangements and the alarming increase in the incidence and cost of stress claims, particularly in the public sector. The Government considers that it has a responsibility to provide national leadership to have such issues addressed which would be provided through the establishment of the ASCC.

41. Effective OHS and workers' compensation systems are integral to gaining good workplace relations outcomes. The Commission's model would however, establish national institutional bodies that remove the influence of industry parties and States might have on the policy direction of these core workplace relations areas. Responses to the Commission's Interim Report also demonstrated that any attempt by the Government to legislate for the Commission's model. would not be supported by the States, major employer groups and unions.

Recommendation 4

The Commission recommends that the current regulatory framework for the oversight of the Australian Government's workers' compensation schemes and occupational health and safety regimes be strengthened by progressively developing the Safety, Rehabilitation and Compensation (SRC) Commission as a stand-alone regulator. The SRC Commission to:

- be controlled by a board of independent directors appointed for a fixed term on the basis of their expertise and skills;
- have a full-time director appointed as chairperson; and
- be provided with its own staff and funding.

Government Response

42. The Government supports further examination of the recommendation.
43. The Commission's recommendation to strengthen and progressively develop the Safety, Rehabilitation and Compensation Commission (SRCC) as a stand-alone regulator was made to support their recommendation for the government to develop an alternative national workers' compensation scheme to operate in parallel with existing State schemes under a three step process.
44. Under the Commission's proposed workers' compensation model, it considered that the existing institutional arrangements for Comcare would require extensive modification and development to support the Australian Government's expanded role in providing better national frameworks for workers' compensation (and OHS).

45. The Government has previously indicated that it does not support the Commission's proposal for a national workers' compensation scheme, however it does consider that there is merit in examining in more detail the Commissions' recommendation that the SRCC become a stand-alone regulator.

Recommendation 5

The Commission recommends that, independent of, and operating in parallel to, the progressive development of a national workers' compensation scheme, the States and Territories join with the Australian Government to establish immediately a new national body for workers' compensation having the following features:

- establishment by Australian Government legislation with an independent board of five to nine members appointed by the Minister on the basis of their relevant expertise and skills, the appointment to be approved by the Workplace Relations Ministers' Council (the Council);
- it would develop nationally consistent scheme elements for consideration and approval by the Council, collect data and undertake/coordinate analysis of research, and monitor and report on the performance of workers' compensation schemes. It would take over the current performance monitoring role of the Council;
- its priority work areas would be determined by the Council;
- it would have the ability to appoint advisory bodies, noting the importance of stakeholder concerns and operational matters to maintaining the contemporary relevance of workers' compensation schemes; and
- its funding would be shared by the jurisdictions.

The Australian, State and Territory governments would retain responsibility for implementation, with a view to improving the performance of their respective schemes and, over time, achieving national consistency.

Government Response

46. The Government does not support this recommendation.
47. The Government considers that the establishment of a separate body for workers' compensation to run in parallel with NOHSC would be duplicative and not build on the synergies between the OHS and workers' compensation systems. The most effective injury management programme a workers' compensation scheme can establish is one that provides a seamless continuum of injury prevention and rehabilitation services that have a workplace focus. The workers' compensation scheme can make an effective contribution to injury prevention, while at the same time facilitating early intervention in the event of

an injury and integrating medical and rehabilitation process with employment practices to achieve a durable return-to-work.

48. As previously stated the Government has recommended the establishment of a new advisory council, the ASCC, to coordinate policy development and strategic directions for both workers' compensation and OHS programmes under the guidance of the WRMC.

Recommendation 6

The Commission recommends the following as principles to use when defining an employee, to determine coverage under compulsory workers' compensation schemes:

- employer control, recognising that the common law 'contract of service' provides a solid basis for defining an employee in most situations;
- certainty and clarity, as coverage under workers' compensation should be clear to both workers and employers at the commencement of the work relationship. For certain groups of workers and types of work relationships, deeming may be necessary;
- administrative simplicity, to reduce the costs of administration and enforcement;
- consistency with other legislation, to capture significant informational benefits and cost savings; and
- durability and flexibility, to deal with a wide variety of work arrangements.

Government Response

49. The Government supports this recommendation in-principle.
50. The Government recommends that the ASCC provide advice on the development of the Commission's recommended principles to use when defining an employee to determine coverage under compulsory workers' compensation schemes. The Australian Government's position on these principles would also be presented to the ASCC as part of the development process.

Recommendation 7

- The Commission recommends the following as principles to use when defining a work-related fatality, injury and illness under compulsory workers' compensation schemes:
- definition of injury and illness to be comprehensive in terms of coverage and medical injuries and illnesses to include aggravation, acceleration, deterioration, exacerbation or recurrence of a medical condition;
- definition of work-relatedness to be in terms of 'arising out of or in the course of employments', as used by nearly all jurisdictions;
- definition of attribution, 'a significant contributing factor', which is used in a number of jurisdictions, to be a minimum benchmark, while the 'major contributing factor' would add clarity;
- coverage for journeys to and from work not to be provided, on the basis of a lack of employer control, availability of alternative cover and in most instances and the ability to be dealt with under enterprise bargaining; and
- coverage for recess breaks and work-related events to be restricted, on the basis of lack of employer control, to those at workplaces and at employer sanctioned events.

Government Response

51. The Government supports this recommendation in-principle.
52. The Government recommends that the ASCC provide advice on the development of the Commission's recommended principles to use when defining a work-related fatality, injury and illness under compulsory workers' compensation schemes. The Australian Government's position on these principles would also be presented to the ASCC as part of the development process.

Recommendation 8

The Commission recommends the following as principles to facilitate durable return to work:

- early intervention, including the early notification of claims and the provisional assignment of liability;
- workplace-based rehabilitation where possible, at the pre-injury workplace, noting the various schemes aimed at overcoming the particular difficulties faced by small to medium enterprises in the is respect; and
- return to work programs developed and implemented by a committed partnership of the employer, employee and treating doctor, drawing on the services of a rehabilitation coordinator and allied health professionals as required.

Government Response

53. The Government supports this recommendation in-principle.
54. The Government recommends that the ASCC provide advice on the development of the Commission's recommended principles to facilitate durable return to work. The Australian Government's position on these principles would also be presented to the ASCC as part of the development process.

Recommendation 9

The Commission recommends that common law should not be included in a national framework for workers' compensation on the grounds that it:

- does not offer stronger incentives for accident reduction than a statutory, no-fault scheme;
- can provide lump sum compensation which may prove inadequate to the longer term needs of seriously injured workers;
- may over-compensate less seriously injured workers who, in the normal course of events, could be expected to rehabilitate and return to work;
- delays rehabilitation and return to work (if there are psychological benefits to be derived from receiving a lump sum, these could be obtained through statutory benefits); and
- is a more expensive compensation mechanism than statutory workers' compensation.

If common law is to be included in a national framework, then access should be restricted to:

- the most seriously injured workers (subject to meeting an impairment threshold); and
- non-economic loss only.
- Where common law access is retained, jurisdictions might give consideration to:
 - imposing restrictions on plaintiff legal fees (including incentives for early settlement);
 - mandatory settlement conferences (which include an exchange of offers); and
 - legislative provision to encourage early rehabilitation by plaintiffs.

Government Response

55. The Government supports this recommendation in-principle.
56. The Government recommends that the ASCC provide advice on the development of the Commission's recommended principles in regard to access to common law. The Australian Government's position on these principles would also be presented to the ASCC as part of the development process.

Recommendation 10

The Commission recommends the following principles be used in the development of nationally consistent benefit structures:

- the provision of sufficient incentives for injured or ill employees to participate in rehabilitation. Benefit step-downs and caps are generally the most appropriate mechanisms for providing these incentives;
- benefits not to be so ‘low’ as to result in workers bearing an unacceptably high burden of workplace injury or illness. Employer to face appropriate incentives to promote workplace safety. Income replacement to be related to pre-injury average weekly earnings, including any regularly received overtime;
- all reasonable medical and rehabilitation expenses to be reimbursed by the scheme;
- access to lump sum payments, which are intended to compensate those suffering a permanent impairment, to be based on meeting minimum impairment thresholds, while minimising the extent to which the availability of such payment delays rehabilitation and return to work; and
- such structures, and health and income support schemes, minimise the extent of any cost-shifting.

Government Response

57. The Government supports this recommendation in-principle.
58. The Government recommends that the ASCC would provide advice on the Commission’s recommended principles for developing nationally consistent benefit structures. The Australian Government’s position on these principles would also be presented to the ASCC as part of the development process.

Recommendation 11

The Commission recommends the following be used as premium setting principles to meet the objectives of: the full funding of schemes; incentive to prevent workplace fatality, injury and illness and to promote rehabilitation and return to work; stability; and administrative simplicity for employers:

- no cross-subsidisation between employers through premiums as it distorts pricing signals. If cross-subsidisation is to exist, it should be minimal and transparent;
- premiums be set efficiently. In essence, premiums for large employers to be based on experience rating. Premiums for small to medium employers to be based on industry class rating (where the classes reflect common risk profiles) accompanied by experience rating to the degree appropriate, and by explicit, cost-effective financial incentives for preventing workplace fatality, injury and illness, and for promoting rehabilitation and return to work;
- compliance by private insurers with relevant requirement under the **Insurance Act 1973** (particularly the prudential standard governing liability valuation for general insurers), to ensure full funding of the schemes. There should be separate but light-handed regulatory monitoring of the premiums set by private insurers; and
- premiums be set by public insurers so as to achieve full funding, with independent monitoring by a separate body to ensure transparency of any differences between appropriate and actual premiums.

Government Response

59. The Government supports this recommendation in-principle.
60. The Government recommends that the ASCC would provide advice on the Commission's recommended principles for premium setting. The Australian Government's position on these principles would also be presented to the ASCC as part of the development process.

Recommendation 12

The Commission recommends the following regulatory framework which would allow licensed insurers to provide coverage under all schemes:

- in privately underwritten schemes, it should be sufficient for insurer licensing requirements to rely on Australian Prudential Regulation Authority authorisation under the *Insurance Act 1973* as evidence that prudential concerns are satisfied;
- in publicly underwritten schemes, competitive outsourcing to appropriately skilled and resourced service providers to be supported by carefully designed and monitored contracts; and
- were the Australian Government to establish a national insurance scheme as an alternative to existing schemes, it should be e privately underwritten by insurers authorised by Australian Prudential Regulation Authority under the *Insurance Act 1973*.

Government Response

61. The Government supports this recommendation in-principle.
62. The Government recommends that the ASCC would provide advice on the Commission's recommended regulatory framework to allow licensed insurers to provide coverage under all schemes. The Australian Government's position on these principles would also be presented to the ASCC as part of the development process.

Recommendation 13

The Commission recommends the following principles be used for assessing self-insurance licence applications under the national self-insurance scheme:

- self-insurers to demonstrate appropriate prudential and claims management requirements, to ensure that they can adequately fund and manage claims;
- prudential requirements to be based on financial capability (including actuarial evaluation of claims liability), bank guarantees and reinsurance policies;
- remaining risks to be reduced further by making provision for a post-event levy;
- occupational health and safety requirements to apply equally to all employers; and
- there to be no explicit minimum employee requirement as it adds no prudential or operational value.

Self-insurers under the national scheme should withdraw from, rather than be recognised under, any or all other schemes.

Government Response

63. The Government supports this recommendation in-principle.
64. The Commission's recommendation to use the above principles for assessing self-insurance licence applications is made primarily to support their recommendation for an alternative national workers' compensation scheme under a three step process. As previously stated the Government does not support Steps 2 and 3 of this model.
65. In its report the Commission proposed that the existing self-insurance requirements of the SRC Act administered by Comcare would continue to apply under Step 1 of their model. The Commission, assisted by advice from the Australian Government Actuary, assessed the self-insurance requirements of the SRC Act and found them to be sound. It was also noted that the prudential requirements had been strengthened in response to advice from the Government Actuary. The Comcare scheme's self-insurance requirements are already based on these principles with the exception of provisions for a post-event levy.
66. To further strengthen the prudential requirements of the Comcare scheme the Government recommends that the ASCC provide advice on the development of the Commission's recommended principles used for assessing self-insurance licence applications under Australian workers' compensation schemes, and for the ongoing monitoring of the prudential soundness of self-insurers. The

Australian Government's position on these principles would also be presented to the ASCC for incorporation in the development process.

Recommendation 14

The Commission recommends the following features of mechanisms to manage and resolve disputes about claims in an equitable and effective manner:

- be tailored to deal with the disputes arising from the specific workers' compensation scheme that it supports and the broader dispute resolution culture of the jurisdiction within which it operates;
- be supported by claims handling methods that minimise the likelihood of disputes arising in the first place. These include:
 - the provision of information about the scheme to stakeholders which explain their benefits and rights;
 - informed initial claims decisions based on an early exchange of all available information; and
 - use of provisional liability/payments for a limited period; and
- applications to be screened, using the least invasive methods first. These include:
 - a requirement for claims managers to provide for, and injured workers to first use, internal review procedures;
 - use of alternative dispute resolution procedures involving mediation/conciliation and arbitration, with incentives for the use of the least invasive;
 - identification and, as appropriate, rectification of informational and power imbalances;
 - appeals allowable to a suitable court on points of law; and
 - use of independent medical panels to provide final and binding determinations on question of medical opinion.

Government Response

67. The Government supports this recommendation in-principle.
68. The Government recommends that the ASCC would provide advice on the development of the Commission's recommended features of mechanisms to manage and resolve disputes about claims in an equitable and effective manner.

The Australian Government's position on these principles would also be presented to the ASCC as part of the development process.