

7-23-1998

## Victorian Workers' Compensation System: Review and Analysis, Volume II

H. Allan Hunt

*W.E. Upjohn Institute for Employment Research, [hunt@upjohn.org](mailto:hunt@upjohn.org)*

Peter S. Barth

*University of Connecticut*

Alan Clayton

*Bracton Consulting Services*

Ralph W. McGinn

*Workers' Compensation Board of British Columbia*

---

### Citation

H. Allan Hunt, Peter S. Barth, Alan Clayton, and Ralph W. McGinn. 1998. "Victorian Workers' Compensation System: Review and Analysis, Volume II." Report submitted to Victorian WorkCover Authority.

<https://research.upjohn.org/reports/138>

This title is brought to you by the Upjohn Institute. For more information, please contact [repository@upjohn.org](mailto:repository@upjohn.org).

# **W.E. UPJOHN INSTITUTE for Employment Research**

## **VICTORIAN WORKERS' COMPENSATION SYSTEM: REVIEW AND ANALYSIS**

### **VOLUME II**

**H. Allan Hunt**  
Assistant Executive Director  
W.E. Upjohn Institute for Employment Research

**Peter S. Barth**  
Department of Economics  
University of Connecticut

**Alan Clayton**  
Bracton Consulting Services  
Victoria Australia

**Ralph W. McGinn**  
Workers' Compensation Board of British Columbia

Submitted to Victorian WorkCover Authority

23 July 1998

## Table of Contents

|  |            |
|--|------------|
| Foreword.....  | vii        |
| <b>1 INTRODUCTION .....</b>  | <b>1-1</b> |
| Background.....  | 1-1        |
| Goals of WorkCover .....   | 1-2        |
| Reducing Claims.....   | 1-3        |
| Reducing Litigation Costs .....  | 1-5        |
| Health Care Costs .....  | 1-6        |
| Benefits and Return to Work .....  | 1-6        |
| Changing Tactics .....   | 1-8        |
| Conclusion .....   | 1-10       |
| <b>2 LEGISLATIVE CHANGES .....</b>   | <b>2-1</b> |
| Introduction.....  | 2-1        |
| <i>Accident Compensation (Occupational Health and Safety) Act 1996</i> ..... | 2-1        |
| <i>Accident Compensation (Further Amendment) Act 1996</i> .....              | 2-3        |
| Assessment of Impairment.....  | 2-4        |
| Lump Sum Payments for Maims and Pain and Suffering.....                      | 2-5        |
| to be Paid by Installment  |            |
| Self-Insurance and Self-Management.....                                      | 2-6        |
| Prohibited Conduct Relating to Touting for Claims .....                      | 2-7        |
| Coordinated Care Programmes .....  | 2-7        |
| The Accident Compensation (Miscellaneous Amendment) Act .....                | 2-8        |
| Common Law.....  | 2-8        |
| Death Benefits.....  | 2-9        |
| Weekly Payments.....   | 2-11       |
| Permanent Impairment Non-economic Loss Benefits .....                        | 2-13       |
| Impairment Assessment .....  | 2-16       |
| Coverage Issues .....  | 2-17       |
| Premium.....   | 2-17       |
| Dispute Resolution.....  | 2-18       |
| <b>3 VWA STRUCTURE AND PERFORMANCE.....</b>                                  | <b>3-1</b> |
| Introduction.....  | 3-1        |
| VWA Structure .....  | 3-2        |
| Scheme Performance .....   | 3-4        |
| Economic Forces.....   | 3-5        |
| Prevention Activity .....  | 3-6        |
| Number of Claims.....  | 3-7        |
| Claim Payments .....   | 3-9        |
| Administration .....   | 3-10       |
| Financial Status.....  | 3-11       |
| Conclusion .....   | 3-12       |

|  |      |
|--|------|
| 4 PREVENTION .....   | 4-1  |
| Developing Synergies with Other VWA Divisions .....                    | 4-1  |
| Management Structure .....   | 4-5  |
| Human Resource Skill Adjustments .....                                 | 4-6  |
| Procedure Manuals .....  | 4-6  |
| Community Collaboration .....  | 4-6  |
| Service Quality Assurance .....  | 4-7  |
| Specialised Skill Development .....                                    | 4-8  |
| Inspector Support .....  | 4-8  |
| Other Resource Allocation Issues .....                                 | 4-9  |
| Information Sources .....  | 4-10 |
| Conclusion .....   | 4-10 |
| <br>   |      |
| 5 ATTENTION POINTS .....   | 5-1  |
| Introduction .....   | 5-1  |
| Restated Attention Points from 1996 .....                              | 5-1  |
| G-1. Amazing Transformation .....                                      | 5-2  |
| G-3. Cultural Change through Media .....                               | 5-2  |
| I-4. Economic Incentives for Insurers .....                            | 5-2  |
| C-2. Erosion of the “Serious Injury” Threshold .....                   | 5-3  |
| C-3. Consistency and Comprehensiveness of the Table of Maims .....     | 5-3  |
| C-7. Problems in the Setting of Reasonable Medical and Like Fees ..... | 5-4  |
| Additional Attention Points - 1998 .....                               | 5-4  |
| System Design Issues .....   | 5-5  |
| WorkCover Goals Are Being Met .....                                    | 5-5  |
| Common Law .....   | 5-5  |
| Lump Sum Settlements .....   | 5-7  |
| Long-Term Cases .....  | 5-9  |
| Privatisation .....  | 5-9  |
| Expansion of Self-Insurance .....                                      | 5-9  |
| Alternative Insurer Arrangements .....                                 | 5-10 |
| Prevention Issues .....  | 5-10 |
| Internal Communication and Consultation .....                          | 5-10 |
| Stakeholder Input .....  | 5-11 |
| Adapting to Change .....   | 5-11 |
| Safety Map .....   | 5-11 |
| Systems, Data, Targets .....   | 5-11 |
| Performance Measurement .....  | 5-12 |
| Medical Issues .....   | 5-12 |
| The AMA Guides .....   | 5-12 |
| Medical Panels .....   | 5-12 |
| Section 112 Examinations .....   | 5-12 |
| Medical and Other (Treatment) Costs Are Growing Rapidly .....          | 5-14 |
| Coordinated Care .....   | 5-14 |
| Some General Observations .....  | 5-14 |
| On the Role of Lawyers .....   | 5-15 |

|  |      |
|--|------|
| How Benefits are Perceived in Victoria ..... | 5-15 |
| Appendix.....                                | A-1  |

## List of Tables

|   |      |
|---|------|
| 2.1 Accident Compensation (Occupational Health and Safety) Act 1996 |      |
| Summary of Provisions .....   | 2-20 |
| 2.2 Accident Compensation (Further Amendment) Act 1996              |      |
| Summary of Provisions .....   | 2-21 |
| 2.3 Accident Compensation (Further Amendment) Act 1996              |      |
| Summary of Provisions .....   | 2-23 |

## List of Figures

|      |   |      |
|------|---|------|
| 3.1  | Victorian WorkCover Authority Organisation Structure..... | 3-14 |
| 3.2  | Employment in Victoria.....                               | 3-15 |
| 3.3  | Unemployment Rate .....                                   | 3-16 |
| 3.4  | Average Weekly Earnings .....                             | 3-17 |
| 3.5  | Number of Inspections.....                                | 3-18 |
| 3.6  | Number of Improvement Notices .....                       | 3-19 |
| 3.7  | Number of Prohibition Notices.....                        | 3-20 |
| 3.8  | Number of Prosecutions.....                               | 3-21 |
| 3.9  | Claimants in Receipt of Weekly Benefits During Year.....  | 3-22 |
| 3.10 | Standard Claims Reported .....                            | 3-33 |
| 3.11 | Fatal Only Claims .....                                   | 3-24 |
| 3.12 | Medical Only Claims .....                                 | 3-25 |
| 3.13 | Hearing Loss Only Claims.....                             | 3-26 |
| 3.14 | Claimants in Receipt of Table of Maims Payments.....      | 3-27 |
| 3.15 | Common Law Settlements - Total Loss.....                  | 3-28 |
| 3.16 | Total Claim Payments.....                                 | 3-29 |
| 3.17 | Medical and Like Payments.....                            | 3-30 |
| 3.18 | Weekly Benefit Payments.....                              | 3-31 |
| 3.19 | Statutory Maximum Weekly Benefits .....                   | 3-32 |
| 3.20 | Average Weekly Benefits .....                             | 3-33 |
| 3.21 | Death Claim Payments.....                                 | 3-34 |
| 3.22 | Permanent Impairment Payments .....                       | 3-35 |
| 3.23 | Common Law payments .....                                 | 3-36 |
| 3.24 | Legal Costs .....   | 3-37 |
| 3.25 | Total Scheme Administration Costs .....                   | 3-38 |
| 3.26 | Permanent Commission/VWA Staff.....                       | 3-39 |
| 3.27 | Average Premium Rate .....                                | 3-40 |
| 3.28 | Premium/Levy Income.....                                  | 3-41 |
| 3.29 | Fund (total assets) .....                                 | 3-42 |
| 3.30 | Gross Liabilities.....                                    | 3-43 |
| 3.31 | Net Profit/Loss for Year .....                            | 3-44 |
| 3.32 | Funding Ratio .....                                       | 3-45 |

## Foreword

The interviews and other field work for Volume I of this study were completed in June, July, and August of 1996. In January 1997, following our normal procedure, we filed a draft report (without attention points) for circulation to those interviewed. Our review and analysis process depends very heavily on the judgment and perspective of those knowledgeable about the system whom we interview; our role is to act as the translators and integrators who put the picture together from their insights. Our draft reports are sent to the parties interviewed for review of the content, to make sure we “got it right.” We were unable to obtain feedback promptly on this particular draft report. Both insurance industry and organised labour representatives asked for more time in which to complete their review of our draft. Other reviewers simply didn’t make our deadline for return of comments.

Many of the people that we had interviewed were intimately involved in negotiations and political manoeuver around what eventually became the November 1997 WorkCover amendments. They simply did not have the time to read our rather lengthy draft report and to give us the feedback we sought. Largely as a result of this delay, but also because of subsequent availability problems for various project team members, we were not able to file our report until August 1997, nearly a full year after the field work had been completed.

By that time, the system had changed significantly (particularly with the merger of HSO and VWA) and it made our report somewhat dated. With the enactment of the June and December 1996 bills, several of the features we described in volume I no longer were relevant, and our report seemed badly out of date. After the VWA implemented their reorganisation plan late in 1997, and the fractious debate over the December 1997 legislation was completed, it seemed like things had started to settle down again.

We agreed with the VWA to update the original study. Holding our staffing to a minimum and proceeding as quickly as possible, we agreed that a second volume to the report would be desirable. In June 1998, four of the original six authors returned to the study of workers’ compensation in Victoria. The result is this volume of our findings in 1998, 2 years on from our initial look in 1996. This volume is less comprehensive than our 1996 report. One way of comparing the two efforts is in the number of interviews conducted. In 1996, our team of six scholars completed nearly 300 interviews, whereas in 1998 we completed slightly less than 100. Because of the limitations of time and staffing, we could not reexamine all areas that were of



interest in 1996. In particular, we did not reexamine the relationship of the VWA with the authorised insurers, the insurance pricing mechanism, or the occupational rehabilitation system.

Volume II was not designed to replace anything in volume I, but it represents additional observational material from a later point in time. Frequent reference is made to material in volume I, and the reader who is not intimately familiar with the workers' compensation scene in Victoria will want to read both volumes together in order to get a full and balanced perspective.

This report is organised into five chapters. The introductory chapter recalls the original goals of WorkCover and outlines the strategies that the Government has followed over the last several years to achieve those goals. While the methods have changed, usually in response to emerging problems, the ultimate goals have remained essentially as they were described by the Minister in 1992.

Chapter 2 outlines the legislative changes of 1996 and 1997. Remarkably, there have been three major legislative enactments in the 2 years since June of 1996; they are described and put into context in this chapter. Chapter 3 describes the current (June, 1998) organisational structure of the VWA and provides an overview of the performance of Victoria's workers' compensation system for the past 10 years. Areas covered in the performance review include prevention activities, number of claims, claim payments, administration of the scheme, and the financial status of the fund.

Chapter 4 provides a progress report on the state of occupational safety and health practice and policy under the newly reorganised Field Services Division of the VWA. Changes since 1996 and remaining challenges are discussed here. The emerging integration of mission and synergy of operations are a major focus of this review. Finally, chapter 5 reports our attention points anew. We restate some of the 1996 attention points, where an update is needed. Then, we take a fresh look at the strengths and weaknesses of the system as we see them in June 1998.

## Chapter 1 INTRODUCTION

### Background

Workers' compensation and occupational health and safety practices in Australia have evolved in a unique manner, strongly influenced by the English tradition until very recent times. But since the early 80's, the Victorian workers' compensation system and the occupational health and safety system have followed a more independent course, first tacking to the left and then to the right, but clearly moving away from their English traditions (see chapter 2 in volume I).

Health and safety and workers' compensation were important political issues in the Victorian election campaign of 1982, which was won by the Labor Party, after nearly 30 years in opposition. With the subsequent enactment of the *Accident Compensation Act 1985* and the *Occupational Health and Safety Act 1985* under the Labor Government, Victoria embarked on new approaches to regulating workplace health and safety and to compensating and rehabilitating the victims of workplace injuries and diseases. Thus, the origin of the policies we review here is really quite recent, no more than 15 years ago.

It is also clear that the failures of the WorkCare workers' compensation system were a factor in the voters turning out the Labor Government in 1992. So, as detailed in volume I, the current WorkCover system only dates from 1 December 1992, or less than 6 years ago. Seen in this perspective, the Victorians have been remarkably successful at developing a uniquely Australian model of workers' compensation in a very short period of time. Along the way they have shown both the courage to try new ideas and the integrity to discard them when they do not work. But to observers from North America, the pace of change in the Victorian environment has been startling.

While there has been frequent legislation and more or less continuous change in the workers' compensation system in Victoria in the past 6 years, it seems to us that the architects of the system have continued to refine the model based on experience, coming closer and closer to achieving their ultimate goals. To be sure, there have been both strategic and tactical changes along the way, but the underlying philosophy has remained constant and the system has clearly attained the goals set in 1992.

In the last 2 years, the Victorian workplace safety and health and workers' compensation system has continued to evolve rapidly. Both supporters and detractors of the government can see the continuity in the evolution. This report recounts many, but by no means all, elements of

that policy evolution. The question is whether the system is now ready for a period of stability. Employer costs are the lowest in Australia, the system is fully funded, the question of privatisation of the insurance underwriting seems to have been laid to rest, and there are far fewer workplace injuries and fatalities in Victoria. The government policy has succeeded in achieving the goals set out in 1992.

The challenge that remains is to make this revolution last. Minister Hallam has said, “the true test of our policies will be if they survive the next change of government.” There has been a great deal of labour resentment about some of the policy changes, enough to bring 100,000 demonstrators onto the streets on a day of protest in October 1997. The government has taken on the labor lawyers and legislated them out of the system, through the imposition of a modern dispute resolution system and taking away worker access to common law remedies for workplace injuries. The current leadership of the VWA believes “At the end of the day, all that counts is the performance of the system for injured workers and their employers.” On that score, the Victorian workers’ compensation and workplace safety and health system is doing very well indeed.

#### Goals of WorkCover

Workers’ compensation in Victoria has been subject to almost continuous change since November 1992 when the Government enacted the *Accident Compensation (WorkCover) Act 1992*. Consider that the underlying law change late in 1992 was followed by more legislation in May 1993, May 1994, June 1996 (3 bills), December 1996, and November 1997. Yet the same essential goals have remained clearly and firmly in place throughout this period.

The goals of the 1992 reforms, as expressed at the time of the second reading of the bill by the responsible Minister, Mr. Roger M. Hallam, were to:

- Adequately and fairly compensate injured workers;
- Reduce the cost of workers’ compensation;
- End the overcompensation of the partially incapacitated and those with minor injuries and the under compensation of the severely injured;
- Make Victorian industry more competitive with other states;
- Make return to work, rather than compensation, the main objective of the scheme;
- Eliminate the \$2.1 billion of unfunded liability that had built up in the WorkCare scheme; and
- Allow employers fair access to the system.

At first appearance this set of goals may appear to be mutually inconsistent. In particular, is the goal of reducing system costs compatible with the goal of assuring that injured workers would be adequately and fairly compensated? After all, a commonly held perception is that jurisdictions with relatively expensive workers' compensation programmes are those that offer generous benefits to their workers. And by parallel, this viewpoint holds that relatively inexpensive jurisdictions must provide only inadequate and unfair benefits.

These perceptions are rejected by experts who have observed jurisdictions having both relatively high costs to employers combined with low benefits to workers (the worst of all worlds), and some other jurisdictions with relatively low costs to employers and high levels of benefits (the best of all worlds). Though all jurisdictions can be expected to desire to have the best of all worlds, attaining that is no simple task. Further, the goal of eliminating the \$2.1 billion of unfunded liability in Victoria could be made more difficult to achieve in an environment where the goal of lower employer costs was also a high priority of the scheme.

In order to accomplish its goals, the WorkCover scheme, by statute and implementation, fixed its sights on those elements that might drive down system costs without doing harm to those workers whose economic security depended upon it. The plan was predicated on the theory that lowering system costs would make some resources available to increase the benefits available to certain workers (those with the most severe injuries), allow the fund to eliminate its deficit position, and also permit employer costs to be reduced. Essentially, four sets of measures were taken to implement such a strategy.

### Reducing Claims

In a sequential context the first step in reducing costs was to reduce the number of claims for compensation. An obvious, though challenging, method to achieve that was through the implementation of occupational safety and health programmes that would result in fewer workplace injuries and illnesses. A variety of policies can contribute to such a plan, but the most substantial step, undertaken in 1996, was the repositioning and restructuring of the state's occupational safety and health agency to align it with WorkCover goals. Another very important measure was the adoption of experience rating in the premium system as a means of encouraging positive prevention practices by employers.

At least three other measures taken supported the goal of reduced claims. One of these was to limit the use of lump sum settlements. A widely-held view is that the presence of lump sum settlements can “attract” minor, or nuisance claims. For example, the availability of such settlements may induce claims from persons whose condition may not have arisen out of the work environment or who have not suffered compensable injuries or illnesses at all. Insurers may be tempted to settle these claims with a lump sum payment, rather than incur the costs of defending them, with the possibility also of losing them. The 1992 law curtailed the availability of lump sum settlements on the grounds that they retard the return to work by injured workers. This motivation was also behind the increase in the employer “excess,” or deductible, from 5 to 10 days in 1993. However, it also had the effect of reducing the number of claims the VWA and the authorised insurers had to cope with.

Sizable lump sum benefits, were still available to persons receiving benefits under sections 98 and 98A. These payments, which in some cases could be quite large, might also induce individuals to seek these benefits and encourage their solicitors to pursue them vigorously. This source of lump sum payments may not be so likely to expand claims for weekly compensation as it might be to increase claims for this specific type of benefit. However, with certain conditions, such as hearing loss, there may be no claim for weekly benefits, and the potential availability of the maim benefit is the chief source of the claim.

Several steps have been taken to discourage claims for hearing loss. A number of measures have been aimed specifically at perceived abuses involving such claims. As a result of these and a more general concern, the government ordered steps to crack down on the conduct relating to the touting of claims. Yet another set of measures to reduce the volume of claims shifted the responsibility for injuries sustained in accidents during travel to and from the workplace from the VWA to the Transport Accident Commission (TAC). This change reduced the costs of workers’ compensation and made the scheme conform more closely with practices in North America and less like the systems in western Europe. It also implemented the philosophy that employers should not have to pay for things over which they exercise no control.

Reducing the number of claims for workers’ compensation is no simple task, at least in an environment where the employment level is stable or growing. When the goal is to achieve this without undermining the rights and economic security of workers, it is especially ambitious. The WorkCover scheme employed several measures to accomplish this. Insofar as they proved

to be successful, they allowed the programme to provide greater attention to the claims that remained, and to aid in the control of system costs.

### Reducing Litigation Costs

A second set of measures aimed at reducing costs, without necessarily paring back benefits, was focussed on the programme's litigation costs. If the resources spent on litigation could be lowered, the outcome could be lower insurance costs for employers and higher benefits paid to workers. Indeed, if this was successful it would also allow the paying down of the unfunded liability. In general, litigation costs can be lowered by reducing the frequency of controversy and the intensity of dispute, as represented by the stage at which the dispute is ultimately resolved. Moreover, if the direct costs of disputes, i.e., legal and forensic medical costs could be cut back from where they had been, it would result in a win-win outcome for both employers and for workers.

In order to reduce the system's litigation costs, the WorkCover scheme was designed to limit the number of disputes, to deal with ones that did arise in an expeditious manner, and to discourage extended and costly litigation. A variety of provisions in the law reflect this, but there were two areas that were central to these efforts. First, most disputes, though not for all issues, were channelled into conciliation. The strategy depended upon prompt access to the Conciliation Service and it sought to minimise solicitor involvement at that level. Indeed, many issues that went to Conciliation hardly qualified as disputes. However, they could have easily resulted in contention and court involvement without the intervention of the Conciliation Service. Solicitor involvement was discouraged by prohibiting payment of those fees by the insurer. In fact, initially it was not certain that the solicitor would even be permitted to attend the conciliation session.

The second major attack on litigation costs depended upon the Medical Panels. Because disputes over "medical questions" could be decisively resolved by the Panel's findings, it was thought that extended controversy over medical matters could be avoided by the prompt referral to and decision of the impartial doctors. If the Medical Panels were successful it was envisioned that there would be less need for court involvement and avoidance of the "duelling docs syndrome" that is found in many other jurisdictions.

Several other measures were designed to complement these steps designed to limit system transactions costs. Disputes over relatively small sums of money were directed to the Magistrates' Courts, rather than the costlier and more formal County Courts. Also, one might argue that the offset applied to potential damages awards for benefits paid under section 93 or 98 (and 98A) reduced, and may have eliminated, the incentive to seek damages in some cases.

### Health Care Costs

A third set of steps designed to reduce system costs without jeopardising worker income security entailed improved controls over health care costs, without diminishing the quality of services provided. Clearly, the most direct route to such controls is by assuring that fees for medical and like services are not excessive. Worldwide, many jurisdictions have responded to rapidly growing health care costs by adopting fee schedules. A number of these have found that unless some controls over utilisation of health care are imposed also, fee schedules alone may be ineffective in achieving the desired economies.

Though it was not possible to push down the scale of medical fees in nominal terms, it was possible to minimise or prevent increases at a time when the average level of overall prices was rising. Additionally, the authorised insurers were encouraged to monitor the type and quantity of services provided to prevent inappropriate or superfluous treatment and billing. The development of treatment protocols is also consistent with these measures. Without doubt, a tactic that was employed by the VWA from the outset in order to achieve its goals was to attempt to control the medical and like costs of the programme.

### Benefits and Return to Work

A fourth set of measures to achieve cost controls was aimed at return to work. The strategy has been a complex one because of the expressed goal to redistribute benefits away from those who were thought to be overcompensated to those who were believed to be under compensated. It involved discriminating between those whose condition warranted more generous benefits and those whose circumstances did not. The matter was not simplified by the multiplicity of compensation benefits, i.e., weekly benefits, maims benefits, and damages at common law. This tricky balance was to be sought while reducing system costs and assuring that benefits were fair.

The centerpiece of the strategy to limit benefit costs, at least in situations where the injury or illness was not severe, was based on the concept of “serious injury.” A “serious injury” was defined as one that would be rated at 30 percent or more according to the *AMA Guides to the Evaluation of Permanent Impairment* (2nd Edition). No benefit reductions were envisioned for persons judged to be “seriously injured,” indeed for these workers higher benefits could be forthcoming. The concept was used to affect benefits in several circumstances. First, it was believed that the bulk of injured workers would recover fully and return to employment within 26 weeks from the date of injury. A person eligible for workers’ compensation benefits was to receive 95 percent of the worker’s pre-injury average weekly earnings, a generous rate when measured against standards in most other jurisdictions.

However, the replacement rate dropped to 70 percent after 26 weeks of incapacity where the worker remains totally incapacitated, but was not found to be “seriously injured.” [The rate may drop below 70 percent if there is partial incapacity and no “serious injury.”] For a “seriously injured,” and totally incapacitated worker, the rate dropped to 90 percent after 26 weeks. The point is simply that the scheme sought to prevent the very high wage replacement rate from inducing persons to unreasonably prolong their period of benefits and delay their return to work. “Serious injury” was the line drawn to separate those whose wage replacement rate would drop more or less.

Similarly, a worker’s entitlement to benefits was to cease 104 weeks from the time of incapacity if the worker was neither totally and permanently incapacitated, nor “seriously injured.” To cope with the very substantial buildup of long-term compensation recipients inherited in 1992, and to prevent any recurrence of the problem, the 104-week threshold was seen as a source of significant cost reduction, with no harmful effect for workers who had significant disabilities.

The 104-week limitation can also be seen as a crude alternative to “notional earnings” for the difficult task of assessing permanent partial disability benefits. Rather than attempt to estimate what the specific earnings impact of a permanent partial disability might be, Victoria chose to simply say that those who can work get 2 years of income maintenance benefits, while those who cannot work, get benefits for life.

Aside from the obvious cost savings that the 104-week limit would provide, it was also seen as a way to counteract a perception that workers’ compensation had encouraged some



considerable degree of malingering under WorkCare. To protect those workers with severe medical conditions, the “serious injury” criterion would allow the continuation of long-term benefits.

Another way that the new scheme could target benefits to those with more severe conditions was to use the “serious injury” concept as a requirement to access the common law for damages from the employer. Several other measures in the law can also be considered as limiting potential benefits. The statute provided that damages for either pecuniary losses or for pain and suffering had to be above certain specified amounts. This eliminated claims that were likely to involve small amounts of money. Upper bounds were also specified for either type of damages.

### Changing Tactics

The process of implementing a dramatically new law such as WorkCover is a dynamic one. All the parties involved in the system, including the courts, shape the workings of the law. And as the parties adjust to the evolving law and learn how to use it for their own purposes, it is transformed such that unforeseen strengths and weaknesses become evident. In at least two very significant areas, the “serious injury” concept and the Medical Panels, what developed as the law evolved was quite different than was planned. In response to these developments changes were made, primarily as reflected in the amendments to the laws in 1996 and 1997. However, those changes seem to be fully consistent with the explicit goals of the 1992 statute. They appear to result not from any change in the Government’s objectives, but rather, a recognition that certain measures had been less successful than anticipated.

From the Authority’s perspective, the key concept of “serious injury” was undermined from two sources. As noted in chapter 6 of our volume I, a series of decisions by the courts, in particular in Bowles, Hanrahan, Nichols, and indirectly but significantly Petkovski, all served to lower the bar for claimants seeking access to common law damages. The other attack on “serious injury” emerged as impairment ratings were pushed up to and beyond the 30 percent threshold by adding psychological impairment onto the rating for physical impairment. Placing a quantitative rating on a psychological impairment can be particularly subjective and is bound to involve a higher variance than in the case of most, if not all, physiological impairments. Certainly, the development of what some call physical-mental cases appeared to reduce the screening power that was expected of the “serious injury” criterion. The result of the undermining of the concept

of “serious injury” was that in 1997 the concept was abandoned and access to common law was ended for injuries occurring after November 12, 1997.

The important role envisioned for the Medical Panel process also was weakened by a combination of circumstances. In particular, the excessive burden placed on the process beginning in 1994 meant that significant delays, costs, and other problems would and did result. Curiously, the rating of impairment was not a subject that resulted in a “medical question.” As such, evaluations of impairment made by a Medical Panel were not binding upon both sides of a dispute. Differences over the assessment of a maim might still cause a claimant to seek satisfaction at court, or at least begin the process and then accept a settlement along the way. This reality frequently led to higher payments made by insurers under sections 98 and 98A than would otherwise have been made. In 1997 the law was amended so that a dispute over an impairment rating is considered to be a “medical question” and will be settled decisively by a medical panel.

Aggregate benefit payments for maims grew substantially after 1993/94. [see Table 5.5, volume I] As greater attention was focussed on these claims, evident shortcomings in the scheme to compensate for such conditions warranted attention or repair. The schedule of injuries had survived virtually intact from its 1914 origins. No uniform guide or standard existed with which to rate impairments, with only a few exceptions. That is, only impairments to the back, neck and pelvis were required to be rated according to the *AMA's Guides to the Evaluation of Permanent Impairment*, 2nd edition. However, some persons doing these ratings had little experience with or training in the use of the Guides, or in the rating of impairment generally.

A consequence of the lack of uniform standards or the inappropriate application of the Guides could be inconsistent ratings which would result in dispute and contention. The absence of uniform and consistent standards also hampered the provision of benefits for pain and suffering [section 98A]. Another concern held by some was that many jurisdictions had already adopted the Guides in a 4th edition, presumably an improved version of the earlier one still in use in Victoria. Also, critics pointed to the availability of maims benefits for injuries to certain portions of the body, but none for injuries and illnesses affecting other parts. After the 1997 amendments, all impairments (except hearing loss) are to be rated in a uniform manner, that is, with the use of the AMA Guides (4th Edition).

## Conclusion

It is clear in 1998 that the government's core goals of 1992 remain central to the scheme. Friends and critics alike accept that the Authority has not strayed from its task of reducing system costs, thereby helping to make Victoria's employers competitive with firms in other states and countries. Moreover, the system has achieved these lowered employer costs while eliminating the large unfunded liability of the system. Most of the indicators reflecting return to work also demonstrate the achievement of the original aims of WorkCover.

From the beginning, the WorkCover scheme has provided greater benefits for those workers with the more severe injuries and illnesses. This rationalisation of benefits is not generally appreciated by organised labour, at least not yet. In the 1997 amendments, a steeply tiered benefit schedule was placed into effect for the non-economic loss benefit. Indeed, those persons with impairment rates of less than 10 percent are to receive no such benefits, with benefits rising steeply as impairments are rated higher. Tension still exists over the notion that such "permanent partial disability" benefits should be based on the degree of disability, rather than strictly on the basis of medical impairment. However, the Victorian system is moving toward a more objective basis for evaluating the degree of permanent partial disability.

The Conciliation Service has been an effective agency in providing a forum to those who have disputes. It has operated with only small backlogs and is generally available promptly to those who must utilise its services. And it has provided employers with an opportunity to be heard in the dispute resolution process as the government desired.

Finally, it remains to be seen whether the government will be successful in removing the lawyers from the system, by ending common law as well as other measures to reduce lawyer involvement. The courts have yet to provide interpretation to much of the WorkCover statute. Until they do, we should proceed cautiously in pronouncing a success.

This report continues with a detailed account of the legislative changes since our initial field work in 1996. Then we will review the overall system performance for the last 10 years, with a special focus on changes since 1991-92, the last full year of WorkCare. Next we turn our attention to recent changes in the prevention system. The report concludes with a set of attention points, which represent our judgment about significant accomplishments and remaining challenges for the system.

## Chapter 2 LEGISLATIVE CHANGES

### Introduction

The *Accident Compensation Act 1985* (ACA) is a statute which has been subject to a process of almost continuous amendment. Since receiving assent on 30 July 1985, and with most of its provisions coming into effect on 31 August 1985, it has been amended on some 40 occasions in the ensuing 13 years of operation. While many of these have been minor changes inserted by a range of other legislative measures, this process has included 14 pieces of amending legislation overtly designed to effect changes to particular aspects of the scheme. Since the WorkCover changes in late 1992, the ACA has been amended on 21 occasions with six of these being interventions to tailor scheme design. It is the last three of these changes that are subject to review in this chapter.

For ease of reference, the text will refer to these three measures—the *Accident Compensation (Occupational Health and Safety) Act 1996*, the *Accident Compensation (Further Amendment) Act 1996* and the *Accident Compensation (Miscellaneous Amendment) Act 1997*—as the July 1996, the December 1996, and December 1997 legislation, respectively, in accordance with the month in which each statute received assent. Similarly, in order not to overburden the text, the range of issues encompassed by each of these Acts will be outlined in a Table, while the discussion will address the context and major provisions of the legislation. Given the very specific focus of the July 1996 legislation, the Table will equate heavily with the text.

### *Accident Compensation (Occupational Health and Safety) Act 1996*

The Accident Compensation (Occupational Health and Safety) Bill received its second reading on 30 May 1996 in the Legislative Assembly and on 20 June 1996 in the Legislative Council. It was assented to on 28 June 1996 and the substantive measures contained in it took effect on 2 July 1996.

The integration of health and safety and workers' compensation functions within a single body, brought about by this legislation, was not an unexpected move. It took place against a backdrop of debate about the role of occupational health and safety and its relationship to workers' compensation. The view that there should be greater integration between these two systems was given voice in the federal Industry Commission report on Work, Health and Safety as well as by the Victorian Auditor-General.

Even before the July 1996 legislation, the VWA had begun to take a strong focus upon injury prevention and occupational health and safety issues. This was manifested in its “Safety, Think it, Talk it, Work it” advertising campaign, in a number of initiatives in selected industries such as the TruckSafe programme, and in a targeted regional injury prevention programme in the Ballarat area. There was clearly a view within the VWA that health and safety represented the next frontier and offered synergies between the insurance system and applied prevention initiatives. This view was strongly expressed in the Minister’s second reading speech where he referred to “the synthesis of the elements of health and safety, workers’ compensation and rehabilitation” as providing “a more structured and targeted approach to research, employer best practice, and information programmes aimed at improving the health, safety, and well being of all Victorians.”

The July 1996 changes to the ACA were aimed at ensuring that the Act provided the requisite legislative authority and power for the VWA to legally take on various tasks being given to it and to be appropriately accountable in its administration of these tasks. To this end the objectives and powers of the VWA needed to be suitably augmented, as well as ensuring that the VWA’s Ministerial accountability extends to this new role.

In an operational sense, the major change to the ACA related to details concerning the WorkCover Authority Fund. Provision had to be made for the handling of a range of penalties recovered and fees payable under the various health and safety statutes. For instance, penalties can be recovered for offences under the *Occupational Health and Safety Act 1985*, the *Dangerous Goods Act 1985*, the *Equipment (Public Safety) Act 1994*, the *Mines Act 1958*, and the *Road Transport (Dangerous Goods) Act 1995*. As well, there needed to be provision to receive any amount certified by the Treasurer, after consultation with the Minister, as a contribution from the Consolidated Fund to the costs and expenses of the administration by the Authority of the various health and safety statutes. On the other side of the ledger, it was necessary to provide for the payment of moneys from the WorkCover Authority Fund for purposes required by regulation and that land or buildings owned by the VWA could be used in its administration of the health and safety legislation as well as the ACA.

Because the existing statutory structure with respect to the regulation of health and safety was left largely intact, the major contentious issue involved the transfer of staff from the Department of State Development to the VWA. The mechanism employed by the July 1996

legislation involved a written designation by the Minister of those persons who are to transfer to the VWA. The basis of transfer was that the transferring staff were to be employed by the VWA on the same basis as it employed its existing staff and on terms and conditions determined by the Minister to be no less favourable than the existing conditions enjoyed by the transferees, and on the basis that they retained their superannuation and accrued leave entitlements.

The transfer, however, involved the transfer of staff ceasing to be officers or employees of the public service, and it was necessary to preclude possible legal action in respect to this change of status. The legislation contains a provision precluding the Supreme Court from adjudicating upon the provision in the legislation that no entitlement to compensation lies in respect of a person ceasing to be a public servant by virtue of the transfer.

The rest of the July 1996 legislation involves highly specific changes to the *Dangerous Goods Act 1985*, the *Equipment (Public Safety) Act 1994*, and the *Occupational Health and Safety Act 1985* mainly of a terminological nature to reflect the transfer of responsibility to the VWA, and a range of transitional measures to ensure the continuing validity of activities undertaken by various persons prior to the transfer. Outside of these considerations, the only substantive measure relates to a provision inserted into these health and safety statutes giving authorisation to an inspector to take affidavits for any purpose relating to, or incidental to, his or her role as an inspector.

#### *Accident Compensation (Further Amendment) Act 1996*

The Accident Compensation (Further Amendment) Bill received its second reading on 14 November 1996 in the Legislative Assembly and on 4 December 1996 in the Legislative Council. It was assented to on 17 December 1996.

Apart from measures providing greater flexibility and responsibility to employers in the areas of self-insurance and agency arrangements, this legislation has a strong element of regulatory control over particular areas in which problems had begun to emerge. This can be seen in the provisions drafted in response to unscrupulous agent behaviour in respect to hearing loss claims, and in those changes to the assessment of impairment directed to psychological or psychiatric conditions arising as a consequence of, or secondary to, a physical injury. Many of the measures set forth in this legislation break new ground, such as the proposal for the payment of lump sums by installment, or introduce approaches which are relatively novel in the

Australian environment, such as in the case of the provisions in respect of coordinated care programmes.

### Assessment of Impairment

The Act makes some significant changes to the system under which assessment of impairment is conducted. Before this legislation, the ACA mandated that the assessment of impairment of a worker, for the purpose of determining whether he or she has a serious injury, and in respect of certain injuries in the table of maims, must be made according to the second edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* or a subsequent prescribed edition of those guides.

The new section greatly amplifies that situation and provides a greater degree of flexibility by providing, first, for the possibility that alternative methods may be used; secondly, for greater guidance in the use of the chosen instrument of assessment and, thirdly, for the possible requirement of specialist training of doctors undertaking impairment assessment. Thus, the new section provides that assessment of impairment may be undertaken according to regulations prescribing the methods of assessment. If no such regulations are in force, then the assessment will be made according to the second edition of the AMA Guides. As well, the Minister may issue operational guidelines for the use of the prescribed methods, or of the AMA Guides, and require that the assessment be undertaken by medical practitioners who have successfully completed a training course, approved by the Minister, in the application of the appropriate instrument.

The more controversial aspect of the changes to impairment assessment lies in the stipulation that, in assessing a degree of impairment under the new section 91 regime, regard must not be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, a physical injury. Presumably in order to avoid a sudden rush filing of claims, the commencement of this change was made with effect from the day of the second reading speech in the Legislative Assembly, namely 14 November 1996. As well, the legislation amended the *Transport Accident Act 1986* to insert an identical provision to govern impairment assessment under that statute, changes which also took effect from 14 November 1996.

This restriction was motivated by concern over the increasing number of workers who were able to obtain a 'serious injury' classification in situations where the degree of physical impairment was assessed at less than 30 percent but where an aggregation of an assessed impairment for a secondary psychological or psychiatric injury, impairment or symptom allowed the 30 percent impairment threshold to be exceeded. The view expressed in the second reading speech was that the action taken in the legislation was necessary "to ensure that the classification of serious injury remains within the bounds originally envisaged by the government." The Government was careful to point out that the move does not affect situations where there is a direct relationship between the compensable situation and the psychological injury such as a bank teller traumatised as the result of a bank robbery.

#### Lump Sum Payments for Maims and Pain and Suffering to be Paid by Installment

Over the last decade there has developed a considerable corpus of literature, including reports of inquiries into accident compensation systems, which takes the view that lump sum compensation is not the most appropriate method of providing financial support for injured persons. In particular, lump sum compensation is seen as militating against effective rehabilitation and return-to-work outcomes. As well, some studies have reported cases of the lump sum payment being badly managed or dissipated.

These views are articulated in the second reading speeches in explaining the rationale for a measure in the December 1996 legislation which provides that any amount of compensation for maims under section 98 of the Act over \$5,000 and any amounts of compensation for pain and suffering under section 98A of the Act must be paid in equal monthly installments over a 5-year period. This measure also makes provision for an adjustment factor in the payment mechanism to take account of prevailing interest rates and establishes time lines for payments and procedures for making payment. Thus, the first installment under this system must be made within 14 days after the amounts payable under sections 98 and 98A are determined or agreed and each subsequent installment is payable on the first day of each following month and must be paid within 7 days. Failure to comply with these time frames results in a liability to pay interest calculated at a prescribed rate for the outstanding period in addition to the installment amount. If a worker dies before all installments due to him or her are made, the worker's personal representative can apply for payment of the total of the amount of outstanding installments.



This section has not yet been proclaimed. Since the *Accident Compensation (Miscellaneous Amendment) Act 1997* introduces a measure that covers essentially the same ground as this provision, it is difficult to see how both provisions could stand together. It would therefore appear likely that this unproclaimed measure will require further legislative attention before being activated.

### Self-Insurance and Self-Management

The December 1996 legislation contains a series of measures directed towards developing greater employer responsibility and involvement in workplace safety and claims management. These include important changes to the threshold requirements for self-insurance and in the introduction of agency arrangements whereby employers who are unable or unwilling to take on the financial responsibility entailed with self-insurance can nevertheless take on a range of tasks formerly conducted by the employer's insurer.

The Victorian workers' compensation system has traditionally taken a more restrictive view to access to self-insurance than most other Australian schemes. From 1946 to 1985 this option was closed to new applicants and confined to companies who held existing self-insurance approval. In 1985, while this bar was removed, significant threshold conditions were imposed upon all self-insurers; in particular, a requirement that companies have at least 1,000 employees in Victoria and net assets of least \$200 million. The employment requirement was subsequently lowered to 500 employees.

The December 1996 legislation moves markedly away from this approach by substituting, for minimum employee and net asset requirements, a simple provision that a body corporate shall not make an application for approval as a self-insurer "unless it satisfies the prescribed minimum requirements as to financial strength and viability." This measure has not yet been proclaimed and presumably will not be proclaimed until the VWA promulgates regulations detailing these minimum requirements. The legislation also continues a process of devolving responsibility for scheme approvals from the Minister to the VWA by vesting the decision for self-insurer approvals in the VWA.

In terms of employer self-management, the legislation introduces a new Division into the ACA, titled 'Agency Arrangements,' which provides a framework for employers to enter into arrangements with an authorised insurer under which the insurer appoints the employer as its

agent in relation to the carrying out of specified functions. Under this proposed framework, the VWA maintains a strong element of regulatory oversight and control with power to veto, vary, or terminate arrangements. The areas in which an employer can act in place of an insurer under an agency arrangement are largely claims focussed and include assessment of initial entitlement, arranging medical examinations, and issuing notices under the Act. As with the change to the threshold requirements for self-insurance, this initiative has not yet come into force.

#### Prohibited Conduct Relating to Touting for Claims

This measure in the December 1996 legislation is modelled upon similar provisions in the New South Wales *Workers Compensation Act 1987*. Its specific targets are a number of organisations which have actively and aggressively promoted the lodgment of hearing loss claims for a fee. However, the provisions of the new Division in the ACA dealing with this issue can be easily activated to cover other types of claims. The measure makes it an offence for an agent to engage in prohibited conduct in relation to “protected claims.” At the moment only hearing loss claims fall into the category of protected claims but others can be declared by regulation.

The provisions in this Division operate to impose penalties upon agents engaging in prohibited conduct and also prevents them from recovering a fee for such activity. Prohibited conduct involves inducing a client or encouraging others to make claims and use the agent or engaging in unsolicited contact with a person to encourage him or her to make a claim. The legislation provides for a penalty on an agent who engages in prohibited conduct of \$2,000 for a first offence and \$5,000 for a second and subsequent offence. The VWA can also notify insurers that a specified agent is restricted or prohibited from the recovery of fees. As well, the VWA can, in writing, prohibit an agent from acting for any person in connection with any claims or in connection with specified types of claims. The penalty for contravention of such a direction is \$20,000.

#### Coordinated Care Programmes

The “managed care” movement, which has played an important part in American health care arrangements for some time now, has been slow to develop in Australia. The provision in the December 1996 legislation to insert a new section 99AAA into the ACA dealing with co-

ordinated care programmes is one of the first steps in this direction. It is, however, clearly viewed as an experiment with the legislation providing that it will cease to operate on 1 January 1999. Since the measure commenced operation on 1 July 1997, there will be only an 18-month period to assess its effect and effectiveness.

Under this system, a worker may be required to submit a written coordinated care programme outlining the medical, hospital, nursing, personal and household, occupational rehabilitation, and ambulance services required for the worker's injury. As well, details as to the type, extent, and frequency of such services must be specified. This programme is prepared by a medical practitioner nominated by the worker or, if the worker does not comply with this requirement, a medical practitioner may be appointed to prepare the programme.

The second reading speech indicates the circumstances in which it is intended that a worker may be required to submit a coordinated care programme. These include situations where the worker has not recovered sufficiently to return to work within the normal recovery period and current treatment is considered inappropriate or ineffective, where there has been an inappropriate use of opioid analgesics, and where there is evidence of 'doctor shopping.'

#### *The Accident Compensation (Miscellaneous Amendment) Act*

The Accident Compensation (Miscellaneous Amendment) Bill received its second reading on 12 November 1997 in the Legislative Assembly and on 9 December 1997 in the Legislative Council. It was assented to on 23 December 1997. In terms of public debate, the central and most controversial item in this measure was the abrogation of the right of an injured worker to recover damages at common law. However, this statute also makes some fundamental alterations to a range of other elements of the WorkCover scheme, particularly in the area of statutory benefits. Indeed the title of the statute, the *Accident Compensation (Miscellaneous Amendment) Act*, belies the fact that it introduces the most sweeping changes to the WorkCover system since the 1992 legislation which inaugurated the WorkCover regime.

#### Common Law

The abolition of the right to recover damages at common law took effect from 12 November 1997, the date of the second reading of the Bill in the Legislative Assembly. The main provision in this respect is the new section 134A(1) that this legislation inserts into the

ACA which states that:

[a] worker who is, or the dependants of a worker who are or may be, entitled to compensation in respect of an injury arising out of or in the course of, or due to the nature of, employment on or after 12 November 1997 shall not, in proceedings commenced in respect of the injury or otherwise, recover any damages of any kind.

However, the new section 134A(2) provides an exception to this exclusion in the case of proceedings under Part III of the *Wrongs Act 1958*, in the case of a death of a worker which arises out of a transport accident, and in circumstances where there would be an entitlement to compensation under the ACA. As well, section 135C, which the December 1997 legislation also inserts into the ACA, provides that a dependent of a worker may recover damages under Part III of the *Wrongs Act* in respect of the death of a worker in circumstances other than a transport accident. In this situation, however, the maximum amount of damages which may be recovered is \$500,000.

Workers who were injured before 12 November 1997 have up to 3 years from the date of their injury to initiate proceedings for damages at common law in respect of such injury, with the stipulation that no proceedings may be commenced after 31 December 2000. In cases where the cause of action arose before 12 November 1997, but the incapacitating effects of the injury were not known until after that date, the 3-year limitation period begins to run from the date of such knowledge.

The abolition of the common law action also extends to actions by injured workers against third parties. However, the VWA can recover from a negligent third party the amount of statutory compensation paid to the worker.

#### Death Benefits

Another area in which the December 1997 legislation makes significant changes is in respect of death benefits. These changes apply to both the nature and level of the statutory lump sum payable to the dependent spouse and children of a deceased worker (which is the traditional form of death benefit in Australian workers' compensation schemes), and in the introduction of an additional benefit, that of an income support pension paid to dependent spouses and children and related to the worker's pre-injury average weekly earnings (PIAWE).

The defining date for the changes to death benefits is again 12 November 1997. In the case of the statutory lump sum payable to dependants, the situation for a worker who died in compensable circumstances on 11 November 1997 is that there would be a maximum amount of \$134,430 payable for all dependants, other than children of the deceased worker, with a separate amount for each dependant child or full-time student varying according to age. Thus a child under 1 year of age would be entitled to \$25,620 while a full-time student (between 16 and 21 years of age) would be entitled to \$5,790.

In the new regime after 12 November the system is significantly different with the statutory lump sum received varying according to the number of dependent children. For instance, where the worker leaves a dependent spouse (or dependent spouses) and only one dependent child, the amount of compensation payable is \$157,500 to the dependent spouse (or if more than one dependent spouse to those spouses in equal shares) and \$17,500 to the dependent child. Where there are 2 to 5 dependent children, there is a total pool of \$175,000 out of which \$8,750 is payable to each dependent child with the balance payable to the dependent spouse/s. Where there are more than 5 dependent children the total pool of \$175,000 is divided into two sub-pools with an amount of \$131,250 payable to the spouse/s and a second pool of \$43,750 divided among the dependent children in equal shares.

For compensable deaths after 12 November 1997 there is also a system of income support pensions for dependent spouses and children. As with the lump sum payments, this system is subject to a number of permutations depending upon the family configuration left behind by the deceased worker. If a worker leaves behind a dependent spouse the spouse entitlement is for 95 percent of the worker's PIAWE, capped at \$850 a week, for a period of 13 weeks, at which time there is a step down to 50% of the worker's PIAWE again capped at \$850 a week. This payment continues for a period of 3 years and is not means tested against any personal earnings of the spouse. If there are dependent children, each child has an entitlement, beginning 13 weeks after the death of the worker, to a pension at the level of 5 percent of the worker's PIAWE, to a maximum total amount of 25 percent of PIAWE if there are more than 5 children. This pension continues until the child reaches 16 years of age or, if a full-time student, until he or she ceases to be a student or the end of the calendar year in which he or she turns 21 years of age, whichever is the earlier. There are further permutations to this system in the case where the worker leaves more than one dependent spouse and in the situation of orphan children.

## Weekly Payments

The system of weekly payments has also been significantly changed as a result of the December 1997 amendments. Prior to 12 November 1997, this system of benefits involved workers receiving 95 percent of their PIAWE for the first 26 weeks of incapacity. After 26 weeks there was a trifurcated level of benefits depending upon whether the worker was classified as having a 'serious injury' or whether the classification was in terms of 'total and permanent incapacity' or of 'partial incapacity.' The post-26 week benefit levels were 90 percent of PIAWE for serious injury cases, 70 percent for workers classified as totally and permanently incapacitated and 60 percent for those classified as partially incapacitated. Benefits for partial incapacity ceased after 104 weeks.

Under the new legislation, there is a move away from benefit entitlement predicated upon injury status to one based upon work capacity. The relevant distinction is between workers who have a current work capacity and those who do not. The legislation defines the concept of 'current work capacity' as meaning "a present inability arising from an injury such that the worker is not able to return to his or her pre-injury employment but is able to return to work in suitable employment."

For claims lodged on or after 12 November 1997, where entitlement arises after that date, injured workers receive a benefit of 95 percent of PIAWE for the first 13 weeks of benefit entitlement (called the first entitlement period) where they have no current work capacity subject to the maximum payment of \$850 a week (125 percent of average weekly earnings). For workers with a current work capacity, payments during the first entitlement period are the difference between 95 percent of the worker's PIAWE and the worker's notional earnings, again subject to a ceiling of \$850 a week.

During the second entitlement period (an aggregate period of 104 weeks of benefit entitlement including the first entitlement period) the benefit payable to workers with no current work capacity is 75 percent of PIAWE, subject to the weekly maximum of \$850. For workers with a current work capacity the benefit payable is the difference between 60 percent of the worker's PIAWE and 60 percent of the worker's notional earnings or the difference between

\$510 and 60 percent of the worker=s notional earnings, whichever is the lesser of these two calculations.<sup>1</sup>

In both the first and second entitlement periods, a worker's entitlement to benefits is dependent upon compliance with a series of statutory obligations. These obligations include making reasonable efforts to participate in an occupational rehabilitation service or return-to-work plan, making reasonable efforts to return to work in suitable employment, and participation in various assessments of work capacity, rehabilitation progress and the like. Failure to so comply can lead to loss of benefits.

After 104 weeks, a worker's entitlement to benefits cease unless the worker is assessed as having no current work capacity and is likely to continue indefinitely to have no current work capacity. Where these conditions are satisfied, weekly benefits continue to be paid at the rate of 75 percent of PIAWE, subject to a ceiling of \$850 a week. Workers receiving these post-104 week benefits are subject to complying with a similar range of obligations as pertain to benefit entitlement in the earlier periods and failure to comply is similarly visited with cessation of benefits. There is a requirement for ongoing assessment of workers receiving these benefits "as often as may be reasonably necessary," a stricture which equates to at least once every 2 years.

While, generally, benefits for workers with a current work capacity cease after 104 weeks, there is a category of such workers to whom benefits may be paid after this 104-week period. These are workers who have returned to work for a period of not less than 15 hours a week and who are in receipt of current weekly earnings of at least \$100 and, additionally, because of their injury are (and are like to continue indefinitely to be) incapable of undertaking further or additional work or employment which would increase their current weekly earnings. Such workers are entitled to benefits at the rate for workers with a current work capacity during the second entitlement period.

In accordance with the 'no disadvantage' policy which characterises the Government's approach to benefit changes in this legislation, workers whose claims were lodged prior to 12

---

<sup>1</sup> It should be noted that the notional earnings provision, while authorised by statute, is not being applied at present in Victoria.

November 1997 and who are either on or are subsequently determined to have an entitlement to weekly payments, will continue to be paid at their existing rate but will be classified in accordance with the new classifications and progressively assessed under the new classification requirements. Thus, workers formerly classified as totally and permanently incapacitated are deemed to have no current work capacity and those formerly assessed as partially incapacitated are deemed to have a current work capacity. However, workers classified as seriously injured will continue to receive weekly payments based on 90 per cent of PIAWE for as long as they continue to meet the 30 per cent impairment threshold.

#### Permanent Impairment Non-economic Loss Benefits

Another area in which the November 1997 legislation has made significant changes is in respect to compensation for permanent impairment. The table of enumerated bodily losses, in Victoria traditionally referred to as the 'Table of Maims,' has been part of Victorian workers' compensation legislation since the original statute enacted in 1914. Indeed, before 1985 this was a dominant form of compensation for permanent partial disabilities. However, over the last decade and a half, the basis and function of the Table of Maims has undergone a considerable transformation.

Whereas, under the former *Workers' Compensation Act 1958*, payment of a benefit under the Table of Maims acted to cut-off receipt of weekly benefits, the *Accident Compensation Act 1985* made such payments additional to any other compensation payable under the Act. As well, in its WorkCare manifestation, compensation under section 98 was characterised as being "in respect of permanent impairment and other non-pecuniary loss." Following the WorkCover changes in 1992, the section 98 Table reverted to the terminology of 'Compensation for Maims' but, at the same time, supplemented this Table with a separate statutory provision for compensation for pain and suffering (Section 98A).

The November 1997 legislation returns to the language of >compensation for non-economic loss.= However, its most radical departure from the past is in moving beyond the enumerated list of impairments to a system of whole person impairment. While injuries incurred prior to 12 November 1997 will continue to be assessed in accordance with sections 98 and 98A of the Act, new claims (i.e., those incurred on or after 12 November 1997) will be determined by either section 98C or by section 98E. The primary provision is section 98C. A worker who



suffers a compensable injury which results in a permanent impairment, as assessed in accordance with the regime outlined in section 91 of the Act, is entitled to compensation for non-economic loss according to the terms of section 98C. This is not automatic since section 98C sets certain threshold conditions, screening out claims where the degree of impairment is less than 10 percent, in the case of physical impairment, and where the degree of impairment is less than 30 percent, in claims for permanent psychiatric impairment.

The 10 percent whole person impairment threshold for physical injuries is justified by the Government as being the level currently applying under the Transport Accident Act (the scheme of no-fault and common law benefits for motor vehicle accidents in Victoria) and under the federal Comcare system (the workers' compensation system for federal public sector employment). Having overcome the threshold, the compensation payable under section 98C is streamed to a number of bands according to the assessed degree of impairment.

The first band encompasses situations where a worker's degree of impairment is assessed as being between not less than 10 percent and not more than 30 percent. In such cases there is a base payment of \$5,000 and an additional amount of \$2,000 for each percentage of impairment in excess of 10 percent. The second band (> 30 percent and < 70 percent) has a base sum of \$45,000 and percentage increments of \$3,250, while for the third band (>70 percent and < 80 percent) the base amount is \$175,000 with percentage increments of \$12,500. For any assessed impairment in excess of 80 percent there is a single stipulated payment of \$300,000.

Again, in accordance with the Government's 'no disadvantage' policy, section 98E may provide some form of safety net, at least in situations where the worker's injury is of a type which is encompassed in the traditional Table of Maims. Section 98E has appended to it a Table which is largely reflective (although differing in some respects) of the losses detailed in the section 98 Table of Maims. The compensation amounts in the section 98E Table range from \$3,228 for the loss of a toe at the joint to \$161,390 for eight specified conditions such as total loss of the sight of both eyes (or of an only eye), quadriplegia and paraplegia. It provides an alternative in circumstances where a worker suffers a compensable injury resulting in a total loss under the section 98E Table and the amount which would be payable under section 98C for this condition would be less than that provided for under the section 98E Table. In such situations the worker can claim under section 98E rather than 98C.

The December 1997 Act also lays the basis for significant changes in the manner in which payments for non-economic loss are to be made. This follows upon the initiatives in the *Accident Compensation (Further Amendment) Act 1996*, noted above, which provided for the installment payment of maims payments in excess of \$5,000 over 5 years. That 1996 initiative was not activated and this later legislation revisits the issue in a somewhat different way. This is not, however, immediately evident since section 36 of the 1997 Act inserts a new section 98D into the ACA which simply states that “[c]ompensation for non-economic loss calculated under section 98C or 98E is to be paid as a lump sum.” However, this is clearly intended as an interim or holding position since section 38 of the same statute is headed “Section 98D substituted.” This new section 98D has not been proclaimed but, when activated, will provide an entirely different regime for the payment of compensation for non-economic loss under sections 98C and 98E.

Under the proposed new regime, non-economic loss payments up to \$10,000 will be paid by way of a lump sum. Where the payment is between \$10,000 and \$30,000, it will be dealt with by an initial lump sum of \$10,000 and monthly installments of \$600 in accordance with a statutory formula. In cases where the non-economic loss payment is greater than \$30,000, one-third of this sum will be paid as an initial lump sum (rounded up to the nearest \$100) with the balance in monthly installments of \$600, in accordance with one or other of the statutory formulae depending upon the number of such monthly payments. The Act provides for time lines for payments and for procedures for making payments that essentially mirror those proposed in the initiative for installment payment of maims and statutory pain and suffering entitlements in the *Accident Compensation (Further Amendment) Act 1996*.

The reason for not immediately implementing this new system of payment of non-economic loss benefits by a combination of initial lump sum and subsequent monthly installments lies in Commonwealth/State relations and the taxation treatment that would be accorded to distributions made on an installment basis, together with the impact that such installment payments would have upon a worker's entitlement to social security payments. As stated in the second reading speech, the Victorian government continues to argue that “an impairment payment remains a capital sum whether paid as a lump sum or by installment. This has been accepted by the Commonwealth in relation to taxation.” As well the Victorian government “is continuing to press the Commonwealth to treat installments as having no effect on any social security entitlement.” Accordingly, “until such time as the government receives a

favourable response to this request, all payments will be made as a single lump sum as currently occurs.”

It should be noted that the 1998 Federal Budget included changes to social security arrangements which impinge upon this area. Although these changes do not precisely dovetail with the Victorian approach, nevertheless, they appear drafted in conscious regard of the section 98D arrangements. The federal initiatives will treat lump sum payments made solely for non-economic loss of up to \$10,000 as a lump sum and also provide that such a lump sum will not affect Commonwealth pension or allowance entitlement. Any non-economic loss lump sum payments in excess of \$10,000 will be assessed as ordinary income spread over the 26 fortnights (1 year) from receipt and accordingly will affect Commonwealth benefit entitlement. However, if the amount in excess of \$10,000 was not paid as a single lump sum but as a series of installments, then such entitlement may not be affected since the federal changes allow installment of up to \$2,000 within a 28-day period to be disregarded for benefit assessment. These federal initiatives are scheduled to take effect from 1 July 1999. It would appear that there will be a need for some amendment of the new section 98D to align it with the federal changes, but a major impediment for the introduction of the section 98D proposals appears to have been removed by the 1998 Federal Budget.

#### Impairment Assessment

Also on the horizon as result of the December 1997 legislation are further refinements to the system of assessment of impairment. These build upon the initiatives in the *Accident Compensation (Further Amendment) Act 1996*, described above, which introduced the new section 91 into the ACA. The December 1997 measure provides that the principal instrument for impairment assessment from 1 September 1998 will be the fourth edition of the *American Medical Association's Guides to the Evaluation of Permanent Impairment*. However, different approaches from that taken in the fourth edition of the AMA Guides are stipulated in three areas of assessment. First, in respect of psychiatric impairment, the relevant instrument will be the *Clinical Guides to the Rating of Psychiatric Impairment* prepared by the Medical Panel (Psychiatry). Secondly, hearing losses will be assessed using current National Acoustic Laboratory methods which will be converted to a whole person impairment percentage. Thirdly, the chapter of the fourth edition of the AMA Guides dealing with pain will be excluded. The

basis given by the Government for the exclusion is that this chapter provides no workable methodology for ascribing a percentage impairment to the assessment of chronic pain and that each individual chapter on a body system includes a component for pain.

### Coverage Issues

One of the ongoing issues for workers' compensation schemes is determining the boundaries of scheme coverage in the light of changes in working relationships and in response to social programmes, particularly those targeting unemployment. The Commonwealth Government has adopted elements of North American 'workfare' initiatives in its 'work for the dole' programme and a number of employment related issues, including those associated with workers' compensation coverage, have surfaced in respect of this scheme. The Commonwealth Government is attempting to devise its own insurance arrangements for participants in this programme and the move to exclude programme participants from the definition of 'worker' in the ACA and from being treated as employees for the purposes of the Occupational Health and Safety Act in the December 1997 legislation is in response to a request from the Commonwealth Government. The Victorian Government, however, has held off proclaiming these provisions until it is satisfied that programme participants are adequately insured and that employers are protected from legal action arising out of an injury to a programme participant.

### Premium

The December 1997 legislation amends the ACA to make clear that "a reference to remuneration includes a reference to superannuation benefits." This change affects superannuation benefits paid or payable in respect of services rendered by a worker after 1 January 1998. It brings the definition of remuneration into line with that which applies in the *Pay-roll Tax Act 1971*. Given the increasing resort to salary packaging which includes a significant employer superannuation contribution, this change is likely to have an important effect upon premium income and amplify the revenue gains which will flow from the increase in the average premium rate to 1.9 percent of payroll, with effect from 1 July 1998.

## Dispute Resolution

The legislation makes a number of changes to the dispute resolution process which further strengthens the role of the non-court processes, in particular the operation of conciliation officers and of medical panels. Prior to these changes, court proceedings could only be instigated once a certificate from a conciliation officer had been issued stating that all action in respect of conciliation had been taken, or after the expiry of 28 days from the date of lodgment of the referral to conciliation. From 1 February 1998 proceedings may not be brought in the Magistrates' Court or County Court unless the dispute has been referred to conciliation and the conciliation officer has issued a certificate stating that the officer is satisfied that all reasonable steps have been taken by the claimant to settle the dispute.

A conciliation officer may request parties to the conciliation to produce specified documents or information regarded as relevant to the dispute. A failure to comply with such a request has the effect that any such document or information cannot be tendered in evidence in future proceedings relating to the dispute. The authority of conciliation officers to direct payment of the arrears of weekly payments has been increased from a period of 10 weeks to 24 weeks. If a conciliation officer gives a direction concerning the payment of weekly payments, that officer may also direct the payment of the reasonable cost of medical and like expenses provided during the period of the direction on weekly payments. In situations where the dispute revolves solely around the payment of medical and like expenses, and the conciliation officer is satisfied that there is no genuine dispute, that officer may give a general direction for payment of such costs up to an amount of \$2,000 in respect of the relevant injury.

The legislation also greatly strengthens the powers of medical panels. Previously, the opinion of a medical panel on a medical question had binding effect only when the question had been referred to the medical panel by a court. Now the opinion of a medical panel on a medical question is to be accepted as final and conclusive and binding upon courts and all other decision makers in the scheme, regardless of whence the referral to the medical panel came or when the medical question was referred.

The legislation also adds to and subtracts from the institutional landscape relating to dispute resolution. The addition comes through its amendment of the provision governing the functions of the VWA to allow that body to "establish and fund a WorkCover Advisory Service." It is intended that this service will be provided without charge to both workers and employers.

Similar bodies operate in a number of North American jurisdictions. At the level of subtraction the legislation removes the existing jurisdiction of the Administrative Appeals Tribunal to deal with matters concerning the payment of medical and like expenses. This jurisdiction will transfer to the Magistrates' and County Courts, although the AAT will determine any matter brought before it prior to the date of transfer of jurisdiction.

Table 2.1 Accident Compensation (Occupational Health and Safety) Act 1996  
Summary of Provisions

| Area of Change  | Changes Effected  |
|---|---|
| Amendment of the <i>Accident Compensation Act 1958</i> (ACA)        | <ul style="list-style-type: none"> <li>• Amendment of powers of the VWA to undertake this new role.</li> <li>• Amendment of objectives of the VWA in respect of this new role.</li> <li>• Ensuring the VWA's Ministerial accountability extends to this new role.</li> <li>• Requirement for payment into the WorkCover Authority Fund of various penalties recovered and fees payable under various health and safety statutes, together with contributions from the Consolidated Fund relating to the administration of such statutes by the VWA.</li> <li>• Ensuring that money can be paid out of the WorkCover Authority Fund for purposes required by regulation and that land or buildings owned by the VWA can be used in its administration of occupational health and safety legislation as well as the Accident Compensation Act.</li> </ul> |
| Transitional Provisions Relating to the Transfer of Staff           | <ul style="list-style-type: none"> <li>• Requirement for written designation by the Minister of those persons administering the occupational health and safety legislation who are to transfer to the VWA.</li> <li>• Specification of the terms and conditions under which persons so designated are to transfer to VWA employment</li> <li>• Limitation of the jurisdiction of the Supreme Court to prevent it adjudicating on the issue that no entitlement to compensation lies in respect of a person ceasing to be an officer or employee of the public service by virtue of the legislation.</li> </ul>  |
| Amendment of the <i>Dangerous Goods Act 1985</i> (DGA)              | <ul style="list-style-type: none"> <li>• Substitution of the term "Authority" (i.e., VWA) for "Director-General" and allied changes of this nature to reflect the transfer of responsibility to the VWA.</li> <li>• Insertion of a provision giving authorisation to an inspector to take affidavits for any purpose relating to or incidental to his or her role as an inspector.</li> <li>• Insertion of a new section in the DGA relating to the transfer of responsibilities.</li> <li>• Emendation of some minor typographical errors.</li> <li>• Transitional provisions in respect of the transfer dealing with such matters as documents issued by the Director-General and inspectors.</li> </ul>  |
| Amendment of the <i>Equipment (Public Safety) Act 1994</i>          | These provisions amending the E(PS)A essentially mirror the changes made to the DGA outlined immediately above.   |
| Amendment of <i>Occupational Health and Safety Act 1985</i> (OH&SA) | Similarly the amendments (ss 50-70) made by this statute to the OH&SA are in essentially the same terms as the Parts amending the DGA and E(PS)A.   |

Table 2.2 Accident Compensation (Further Amendment) Act 1996  
Summary of Provisions

| Area of Change  | Changes Effected  |
|---|---|
| Assessment of Impairment                                | <ul style="list-style-type: none"> <li>• Insertion of a new section 91 into the ACA governing impairment assessment, providing for the instrument for assessment, manner of assessment, and training for assessors.</li> <li>• Provision that, in assessing the degree of impairment under the new section 91 regime, regard must not be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, a physical injury.</li> </ul>   |
| Payment of Lump Sum Maims Payments in Excess of \$5,000 | <ul style="list-style-type: none"> <li>• Insertion of a new section 98B into the ACA providing that any amount of compensation for maims under section 98 of the Act over \$5000 and any amounts of compensation for pain and suffering under section 98A of the Act must be paid in equal monthly installments over a 5-year period. [NYO]</li> </ul>  |
| Coordinated Care Programmes                             | <ul style="list-style-type: none"> <li>• Insertion of a new section 99AAA into the ACA establishing a system of coordinated care programmes governing the provision and management of compensable medical and like services to workers.</li> </ul>  |
| Agency Arrangements                                     | <ul style="list-style-type: none"> <li>• Insertion of a new Division into the ACA enabling arrangements between an authorised insurer and an employer whereby the latter acts as the insurer’s agent in relation to specified provisions of the Act. [NYO]</li> </ul>   |
| Approval of Self-Insurers                               | <ul style="list-style-type: none"> <li>• Substitution of meeting ‘prescribed minimum requirements as to financial strength and viability’ for existing requirements for approval of self insurers. [NYO]</li> <li>• Substitution of the VWA for the Minister as the entity responsible for self insurer approvals.</li> </ul>   |
| Prohibited Conduct Relating to Touting for Claims       | <ul style="list-style-type: none"> <li>• Insertion of a new Division into the ACA entitled ‘Prohibited Conduct Relating to Touting for Claims’ prohibiting certain conduct by persons in the facilitation of claims, especially hearing loss claims, by workers and providing for a system to police this prohibition and for sanctions against such prohibited conduct.</li> </ul>   |
| Refinement of Existing Provisions                       | <ul style="list-style-type: none"> <li>• Refining the operation of existing provisions in the ACA, including:</li> <li>• benefit calculation for serious injury;</li> <li>• determination of the degree of impairment in the case of injuries to the back, neck or pelvis in section 98;</li> <li>• treatment of superannuation and termination payments in section 96;</li> <li>• procedure for setting the maximum compensable cost level for medical and like services under section 99;</li> <li>• dramatic increase in the statutory penalty for breach of various secrecy provisions in the Act.</li> </ul> |
| Minor Technical Amendments                              | <p>A considerable number of minor technical amendments, including changes to:</p> <ul style="list-style-type: none"> <li>• the definition of “medical question” and “notional <a href="#">earnings@</a>;</li> <li>• the nature of scheme costs to which self-insurers must contribute;</li> <li>• the awarding of costs in the County Court.</li> </ul>   |



| <b>Area of Change</b>          | <b>Changes Effected</b>   |
|--------------------------------|---|
| Amendment of Other Legislation | <p>Amendment of the <i>Accident Compensation (WorkCover Insurance) Act 1993</i> in respect to:</p> <ul style="list-style-type: none"> <li>• the process for the estimation of rateable remuneration;</li> <li>• allowing premium reductions in cases of insurer/employer agency arrangements;</li> </ul> <p>Amendment of the <i>Transport Accident Act 1986</i>;</p> <ul style="list-style-type: none"> <li>• adoption of the ACA provisions in regard to psychiatric and psychological conditions in impairment assessment;</li> <li>• determination of the level of fees, costs etc in respect of services and provisions in a manner similar to that adopted under the ACA.</li> </ul> |

NYO – Not Yet in Operation

Table 2.3 Accident Compensation (Miscellaneous Amendment) Act 1997  
Summary of Provisions

| <b>Area of Change</b>                                    | <b>Changes Effected</b>  |
|--|--|
| Abrogation of the Right to Recover Damages at Common Law | General abrogation of the right to recover damages at common law with effect from 12 November 1997 for injuries occurring in compensable circumstances. An exception applies to a wrongful death action relating to a transport accident occurring in circumstances compensable under the ACA. A further exception exists in relation to a wrongful death action in circumstances other than a transport accident but with damages capped at \$500,000.  |
| Death Benefits   | The nature and level of the statutory lump sum death benefit payable to a dependent spouse and dependent children is changed significantly with this sum varying according to the number of dependent children. Also a system of income support pensions for dependent spouse/s and children, based on the pre-injury average weekly earnings (PIAWE) of the deceased worker has been introduced. Both changes operative from 12 November 1997.  |
| Weekly Payments  | The system of weekly payments is restructured with a move away from a system of benefit entitlement (and benefit level) predicated upon injury status to one based upon work capacity. The new defining distinction is between workers who have a current work capacity (CWC) and those who do not. Benefits operate in three stages—first 13 weeks, weeks 14 to 104 and post 104 weeks. In the first two stages different benefits operate according to whether the worker has a CWC or not, with a step down at 13 weeks. In the post 104-week period, benefits generally cease for workers with a CWC although there is a stipulated area which is excepted from such benefit extinguishment. The new system operates from 12 November 1997, although there is some grandfathering of previous benefit entitlements under a ‘no disadvantage’ policy.                           |
| Permanent Impairment Non-economic Loss Benefits          | Compensation for impairment is significantly transformed from the traditional table of enumerated losses to a system of whole person impairment. Threshold levels of 10 percent impairment operate in the case of physical impairment and 30 percent impairment in claims for permanent psychiatric impairment. For impairments above these thresholds, compensation is streamed to four payment bands depending upon the level of assessed impairment. Again, under the ‘no disadvantage’ policy, a separate Table is available for impairments which may attract lesser payments under the new system than under the old. These provisions operate from 12 November 1997. A further change to installment payment of permanent impairment lump sum entitlement has not yet been activated pending resolution of issues associated with taxation and social security entitlement. |
| Impairment Assessment                                    | Change to 4 <sup>th</sup> edition of the AMA Guides for assessment of physical impairment and a locally produced guide for psychiatric impairments to take effect from 1 September 1998.   |

| <b>Area of Change</b> | <b>Changes Effected</b>   |
|-----------------------|---|
|                       | Also changes to the assessment of hearing loss and of pain.   |
| Coverage              | Coverage exclusion in respect of 'work for the dole' programs. [NYO]  |
| Premium               | Inclusion of superannuation payments after 2 January 1998 in the definition of 'remuneration' for premium assessment purposes.  |
| Dispute Resolution    | There is a further tightening of the conditions precedent to a matter being heard by the court system. Additional powers and authority is given to conciliation officers in a number of areas. The powers of medical panels are enhanced. Authority is given to establish and fund a WorkCover Advisory Service to provide free assistance to workers and employers. The jurisdiction of the Administrative Appeals Tribunal to deal with disputes over medical and like service payments is removed. |
| Penalties             | There is a five-fold increase in the maximum penalties for offences under various health and safety measures and also for employer non-compliance with provisions of the Act dealing with occupational rehabilitation.  |

## Chapter 3 VWA STRUCTURE AND PERFORMANCE

### Introduction

Our practice is to complete the description of a workers' compensation system with an overview of its performance for the past 10 years. However, before beginning that analysis, it is worth commenting on the remarkable degree of change in the Victorian workers' compensation system in the past decade. Even apart from the "sea change" in 1985 to WorkCare and the subsequent one in 1992 to WorkCover, there has been substantive legislation nearly every year that affected the operation of the system. (See chapter 2)

Thus, this analysis cannot truly compare apples to apples. It is not possible to hold "other things constant" because the system has been evolving continuously. However, it still is necessary to answer the basic questions about workers' compensation system performance: How many work-related injuries and illnesses are there? What is being done to prevent these injuries and illnesses? How many workers are getting compensated and in what amounts? How many dollars are being spent, in benefit payments and administrative costs? What is the cost of the system to employers? Is the system financially sound?

Our analysis will highlight changes since 1991-92, the last full year of the WorkCare system. This will help to provide an appreciation of the magnitude of the changes that have occurred in Victoria. The system performance data are presented in bar graph format. This has two virtues; first, it facilitates a quick impression of the trends, and second, it does not foster a false impression of precision in the numbers. Because of the extensive system changes described throughout both volumes of our report, this is a more appropriate level of analysis. However, the numbers underlying our graphical analysis are also presented in appendix table A-1.

The chapter begins with a brief account of the structure of the VWA as at 1 June 1998. Then we will turn to the performance analysis; working through trends in the general economic environment, prevention activities, the number of claims, the benefits flowing to claimants, the cost and staffing levels to administer the system, and finally premium rates and funding status.

## VWA Structure

Figure 1 shows the organisational structure of the VWA, as at 1 June 1998. It is substantially different from what was reported in Chapter 3 of Volume I of our report. This reflects the reorganisation that was implemented on 17 February 1998. This reorganisation represents the latest step in the implementation of the merger of VWA and the Health and Safety Organisation which was legislated in June 1996, and followed a careful evaluation and internal consultative process among the VWA leadership during the latter half of 1997. As compared with 1996 (figure 3.1 in volume I), this structure is flatter and more streamlined, with significant integration of insurance and health and safety support functions.

The inspectorate was left intact under the Director of Field Services, though slightly reorganised and dropping the matrix management structure which combined management of field staff with a statewide content focus (Dangerous Goods, Plant Hazards, or Work Environment Hazards). There are four groups (Central, Western, Eastern, and Northern) reporting to the Manager of Field Operations. In addition, there is a Field Support Unit and a Technology Branch, which includes Chemical Technology, Engineering, Ergonomics, Occupational Hygiene, and Management Systems. The Division also has an Operations Planning Unit reporting to the Director of Field Services. The Field Services Division had a complement of 292 personnel as at 31 May 1998.

The changes since the merger in 1996 have been very significant. For example, the time in the field has increased by 27 percent through 31 March 1998 over the year earlier; the goal is a 30 percent increase by the end of the year (30 June 1998). Additional significant gains in field time are anticipated, as the Division seeks to raise the percentage of available time spent in direct service delivery from 46 percent at 31 March 1998 to 60 percent in the future. Ultimately, the goal is to double the field time hours with no increase in staff complement.

Operations Management had a complement of 135 personnel at 31 May 1998. Operations Management Division is responsible for regulation of insurers and other providers under the scheme. Reporting to the Director of Operations Management are Managers of Evaluation and Compliance, Litigation and Prosecution, and Service Management. The Manager of Evaluation and Compliance is responsible for compensation investigation and health and safety investigation. The Manager of Litigation and Prosecution is responsible for compensation and safety and health prosecutions, the upcoming runoff of common law cases, plus the remaining

runoff of Section 98 and 98A cases, and the new Impairment Benefits. The Manager of Service Management is responsible for provider service management, self-insurance, systems, implementation, and pre-1985 insurer programmes.

The Policy Division had a staff of 69 persons at 31 May 1998. This division is responsible for legislative services, performance monitoring, strategic policy, research and development, and injury management. There are a number of interesting initiatives underway in this division, which essentially acts as the spearhead for change at the VWA. Future changes in the scheme are being reviewed and tested in the Policy Division today.

The Conciliation Service had a complement of 69 persons at 31 May 1998. The personnel who work at the Conciliation Service are employees of the VWA. However, the Conciliation Officers are appointed by the Minister and the VWA does not have the power to hire and fire them. The operation of the Conciliation Service has not changed significantly since the field work for volume I of this report. It remains an effective and efficient operation which forestalls more serious (and costly) disputes in upwards of 70 percent of cases referred for conciliation.

The Information Services Division, with 71 employees, and Corporate Services, with 54 employees, serve the needs of the VWA as central service staffs. Information Services has not changed in organisation since 1996 and is hard at work developing a new data system that will integrate the claims and field services data to provide workplace profiles. The new Corporate Services Division pulls together areas of Personnel and Industrial Relations, Legal Services, Organisational Development, and Finance that support the operation of the VWA as an organisation. Last, but by no means least, is the Public Affairs Division. With a staff complement of 34, the Public Affairs Division represents the public face of the VWA. The Public Affairs Division maintains an active media presence that promotes specific public awareness campaigns through electronic and print media. There is also an aggressive outreach effort that brings the VWA message to individual workplaces, as well as trade shows, industry gatherings, and other opportunities to reach target audiences. The VWA has had a recent, successful campaign to promote rollover protection for older farm tractors, as well as a continuing active safety promotion campaign, and notable success with a back care promotion programme, developed in combination with the professional provider organisations in Victoria.

## Scheme Performance

We will review here the highlights of scheme performance over the last 10 years, largely ignoring the specific changes in legislation, administration, and measurement that affect the numbers. As indicated in the introduction to the chapter, it is understandable that we do not have strict comparability in every case, and to some degree this can be misleading. We use the numbers as broad indicators of direction, and will present them in graphical form to emphasize the fact that we are trying to paint a statistical picture, but with a very broad and imprecise brush.

The presentation will begin with a look at some of the economic forces underlying the performance of the workers' compensation system. Then we turn to measures of some of the activities to promote health and safety in Victoria's workplaces. The manager of the workers' compensation scheme, the Victorian WorkCover Authority, absorbed the former Health and Safety Organisation in July 1996. With this change came a transfer of health and safety to a new Minister in the government as well as some significant changes in leadership. Chapter 8 in volume I recounted the story of relentless change and reorganisation that has plagued the health and safety organisation. These changes aside, we will endeavour to look at those performance measures that are available for the entire period. This will gain us an overview of the way in which the safety and health mission has been pursued in Victoria, as well as how it may have contributed to reducing the number of compensable occupational injuries and illnesses.

Then we will move on to look at the number of claims of different types; followed by an examination of the aggregate costs of those claims. Again, there have been significant changes in the definitions and in practice with regard to different types of injuries. We will seek an overview of the trends without getting bogged down in the details of measurement. Next we review the cost of administering the system. In this case, Victoria is fortunate (at least in comparison with U.S. jurisdictions) in having good data on the administrative costs of processing claims and settling disputes. By virtue of the publicly funded nature of the Victorian system, it is possible to track most administrative costs, including friction costs, through payments to vendors of the various services.

However, Victorian employers have a 10-day "excess" which amounts to a deductible for the first 10 days of disability and the first \$426 of medical and like costs. There are no data available on these private costs. Thus comparisons with other jurisdictions are difficult. Self-

insured employers are another notable gap in the data system, since there are virtually no data available about their performance. But there are only 23 such employers and they constitute only about eight percent of the overall workers' compensation benefit payments.

The analysis will finish with a look at the employer's cost of insurance (not including the 10-day employer "excess"), and the funding status of the scheme as a whole. We will find that employer's costs have been very substantially reduced in Victoria in the last several years. Despite this trend, the scheme is fully funded, and has been for the past 5 years. This is an impressive performance, indeed.

### Economic Forces

Figure 3.2 shows the trend in employment in Victoria for the last 10 years. Employment has grown by only 8.5 percent over the decade, or 0.9 percent per year. Annual figures and rates of change are reported in Appendix table A-1. Total employment in Victoria peaked in 1989-90 and is just returning to that level in 1998. The loss of 200,000 jobs in the recession of the early 90's clearly bolstered the political resolve of those who believed that the WorkCare workers' compensation system in Victoria was "part of the problem."

The unemployment rate in Victoria is shown in figure 3.3. Again, the rapid increase in unemployment in the early 90's was a force for social change. The stubborn persistence of unemployment since also has had a fundamental impact on the balance of power between workers and employers in Victoria. This is expressed in figure 3.4, which indicates that labour market developments served to restrain wage growth. In fact, average wages in Victoria rose by less than the growth in prices in 6 of the past 10 years. The result is a decline in real wages for the decade, by about 2.7 percent. Thus, it would be fair to say that economic conditions for workers in Victoria have been difficult since 1990.

Underlying economic conditions affect workers' compensation systems both directly and indirectly. The number of workers obviously affects the number of people exposed to workplace hazards, but labour market conditions can also affect the likelihood of filing a workers' compensation claim, especially for long-term chronic problems like overuse syndrome. There can also be an indirect effect, expressed through the political system or, perhaps even the judicial system. In North America, it is clear that broad economic and political changes affect both the number of claims and their ultimate disposition.



It is within this context that the WorkCover scheme must be evaluated. Victoria has made a remarkable transition in just 5 short years. But there is still tremendous controversy about the changes to the workers' compensation and workplace health and safety system in Victoria. That should not be surprising given the magnitude of change in recent years. But feelings have been running extraordinarily high in Victoria. On October 29, 1997, organised labour and the plaintiff lawyers' association turned out an estimated 100,000 demonstrators against the restriction of access to common law for injured workers. A former Coalition Minister who once held the portfolio for safety and health resigned from Parliament partly in protest over the government's workers' compensation reforms. A bye-election was won handily by the Labor Party representative, which further fired the hopes of those in opposition. But, the Government prevailed and passed its workers' compensation reform bill in December, 1997 (as outlined in chapter 2). The bitterness that remained over these issues, and the distorted perceptions that can result were very obvious to us upon our return to Victoria in June 1998. That is why it is important to have recourse to the performance numbers.

#### Prevention Activity

As indicated in chapter 8 of our first volume, this has occurred against a backdrop of constant change for the health and safety function in Victoria; only the latest being the absorption of the Health and Safety Organisation (HSO) by the VWA in July 1996. Nevertheless, the basic legislative mandate has remained constant since the passage of the Occupational Health and Safety Act in 1985. By statute, Victoria has pursued a performance based approach to occupational health and safety since that date. But in practice, the tradition of standards enforcement has died hard in this environment. Many of these problems are recounted in volume I, but here the internal contradictions of the past decade come into sharp focus in a very mixed performance record.

Figure 3.5 shows the number of inspections conducted in each year since 1990-91. The peak in 1993-94 was actually not related to any of the changes in the workers' compensation system, but represented a special statewide campaign to register all boilers in Victoria. There is little trend apparent in these data before WorkCover was enacted in 1992, and actually a negative trend from 1993-94 through 1996-97. This may reflect the internal confusion within the organisation as much as any conscious decision at that time (see chapter 8 of volume I). The

increase in 1997-98 (not shown in the figure) is the result of a major push to get more resources into the field after the merger of VWA and HSO.

Figure 3.6 shows the trend in the number of improvement notices issued per year since 1990-91. Improvement notices are written directions requiring a person or organisation to fix a breach of the law. It is obvious that there have been some very dramatic changes here, again reflecting changes in policy and considerable internal turmoil as the HSO went through repeated reorganisations in the early 1990=s. Nevertheless, the degree of fluctuation shown in the figure is highly unusual in large administrative systems like this one.

The number of prohibition notices shows a clearer trend, as demonstrated in figure 3.7. Prohibition notices are written directions prohibiting an activity that the inspector believes involves or will involve an immediate risk to the health and safety of any person. The activity cannot be started again until an inspector certifies that the risk has been removed. The number of such citations declined rapidly from 1991, as HSO tried to effect a change from a prescriptive tradition to a more behavioural or performance oriented approach. The number of prohibition notices has bounced back rapidly since 1996 as more attention has been focussed on the enforcement effort and more resources have been put into the field.

Figure 3.8 displays the number of prosecutions for health and safety violations (under all three acts, see chapter 8 of volume I for details). With the exception of 1990-91, there have been about 70 prosecutions annually, with an upward trend evident in the last 3 years. The use of prosecutions for health and safety violations is somewhat controversial, as discussed in volume I. Employers continue to feel that prosecutions are incompatible with the model of the inspector as a consultant, and labour feels that the number of prosecutions is symbolic of the (inadequate) degree to which employers are held responsible for the safety and health of their workers.

### Number of Claims

Figure 3.9 shows the number of claimants in receipt of weekly benefits during the last 10 years. It represents the “stock” of claims, rather than the flow since any claimant who receives weekly payments in the given year is included. But it shows how dramatically the population of workers’ compensation claimants in Victoria has been reduced. Over the 10 years, the number of weekly benefit claimants has been reduced by 58 percent, or 9.2 percent per year. Looking just at the WorkCover period, the reduction has been 52 percent since 1991-92, or 12.3 percent per

annum. This magnitude of gross change is unprecedented, and it reflects a number of different influences. We will attempt to disentangle those influences in the remainder of the chapter.

Figure 3.10 shows that the number of “standard claims” has declined by 48 percent over the decade (7 percent per annum); from about 60 thousand per year to just over 31 thousand in 1996-97. This number should be less affected by changes in statute, since “standard claims” exclude both the effects of the increase in the employer “excess” to 10 days and the elimination of journey claims from WorkCover. Moreover, this downward trend appears to be continuing, with a further decline of 2 percent in the first 6 months of 1997-98 over 1996-97.

This reduction in claims is borne out by the similar reduction in the number of fatal claims shown in figure 3.11. These declined by 62 percent in the past decade, or 10.2 percent per annum. Similarly for the number of “claims incurred,” as estimated by the actuarial consultants to the VWA. This series (not shown in figure) shows a decline of 61 percent, or 10.0 percent per annum for the 10 years under review.

Figure 3.12 demonstrates that this decline also applies to “medical only” claims. These claims, which do not involve lost work time, have declined from over 18,000 in 1992-93 to under 10,000 in 1996-97. There has been an even more precipitate decline in hearing loss claims (figure 3.13), from about 10,000 in 1993-94 to less than 2,000 in 1996-97. This followed the raising of the threshold to qualify for hearing loss benefits in 1994, and subsequent efforts to discourage “rorting” of the system for hearing loss claims. This is another demonstration of the government’s determination to resolve what they regard as a policy problem. Hearing loss claims have become a “problem” in other jurisdictions around the world. What is different in Victoria is the aggressive policy response to the problem, and the continued follow through until the problem is resolved.

There has been a more modest decline in the number of claimants in receipt of table of maims (permanent partial) payments, from about 11,000 in 1993-94 to under 8,000 in 1996-97, as shown in figure 3.14. However, the average table of maim payment has been rising rapidly over the same period, so that total payments for table of maims injuries have actually increased as we shall see in the next section. Finally, figure 3.15 shows the number of common law settlements over the last 10 years. This series peaks in 1992-93, with the filing of a massive number of claims preceding the implementation of WorkCover on 1 December 1992.

## Claim Payments

Figure 3.16 shows the 10-year trend in total claim payments. The rapid growth in total claim payments under WorkCare is apparent. For the 5 years from 1987-88 through 1992-93, the annual growth rate in total claim payments was in excess of 16 percent. The 37 percent drop from 1992-93 to the following year demonstrates the major change of direction in workers= compensation in Victoria. Overall, scheme payments have been quite stable under WorkCover until the 24 percent increase in 1996-97. Thus at the end of the period, total claim payments were still nearly 20 percent less than at their peak in 1992-93.

Figure 3.17 presents the trend in medical and like payments. This includes treatment by medical doctors, physiotherapists, occupational rehabilitation providers, etc. The figure shows the same basic pattern, although the decline in 1993-94 was not as dramatic (25 percent) and the bounce back was more rapid. The result is that medical and like payments in 1996-97 were only about 12 percent less than at their peak in 1992-93.

Figure 3.18 demonstrates that weekly benefit payments have been more stable. There was no discernible trend in the last few years of WorkCare, with weekly benefit payments hovering around the \$400 million mark from 1988-89. WorkCover reduced this substantially in 1993-94 partly with the change in the employer excess from 5 to 10 days. However, weekly benefit payments began to grow rather strongly again after 1994-95 as benefit levels were increased.

Figure 3.19 shows the changes in the maximum weekly benefit specified by statute. The maximum benefit has increased by 45 percent, or 4.2 percent per year, over the last 10 years. Thus, maximum benefits have expanded slightly faster than average weekly earnings, which increased by 38 percent over the same period. Figure 3.20 shows that the increase in the average weekly benefit in Victoria has been slower than the increase in the maximum. Actually the growth in average weekly benefits has been only 3.3 percent per year, or almost one full percentage point below the growth in the maximum. This reflects the relatively stagnant wage picture in Victoria, as well as the loss of some manufacturing jobs. But, the fact that the maximum benefit has risen more rapidly than the average wage also means that more workers will qualify for the statutory wage replacement level and the maximum benefit will limit weekly compensation for relatively fewer workers.

Payments for death claims are shown in figure 3.21. This category shows a more dramatic decline from 1991-92, declining by 61 percent, but also a sharper rise after 1994-95,

rising by 43 percent to 1996-97. For the entire decade, death payments rose by nearly 43 percent, even though the number of fatal claims dropped by 62 percent. This means there was a very significant increase in the average compensation per fatality.

Figure 3.22 gives the results for payments in compensation for permanent impairment (table of maims) in Victoria. The pattern here is for strong growth throughout the period, with the exception of 1992-93 to 1993-94, apparently reflecting the initial influence of WorkCover in encouraging earlier claims, before the changeover to WorkCover. This is the only year-to-year decrease evident on the figure, and it is the only pause in the growth of table of maims payments since these were first instituted in 1985. Over the 10-year period of the figure, table of maims payments grew by 28 percent per year!

Figure 3.23 reports claim payments made under the provisions of common law. Since workers' compensation in Victoria was not an exclusive remedy, as in North America, the worker was entitled to pursue tort relief for workplace injuries. However, both remedies were not available for the same injury, so workers' compensation benefits had to be paid back from any settlement that an injured worker might secure at common law. The rapid escalation of these payments, identified as a "blowout" in Australian parlance, seems to account for some of the determination of the government to get this area under control. At any rate, common law costs seemed to be under control in the first few years of WorkCover, only to begin to escalate again in 1996-97, leading to the government's decision to attempt to end access to common law completely in the spring 1997 legislative session.

Overall, legal costs have been substantially reduced by the WorkCover reforms. The desire to speed resolution and reduce the formality of procedures was one of the cornerstones of the changes to the workers' compensation system. Figure 3.24 shows that legal costs peaked at \$121 million in 1992-93, or just over 10 percent of benefit payments, and then have been reduced to approximately \$75 million per annum under WorkCover. It remains to be seen how much the repeal of common law access will affect the level of legal costs, as the runoff of the pending claims will likely take several more years.

### Administration

The cost of administering the workers' compensation scheme is another element in evaluating the system's efficiency and effectiveness. Figure 3.25 reports the total scheme

administration costs for the past 10 years under WorkCare and WorkCover. The reported level includes payments to agents and authorised insurers, although it does not include the cost of administration by self-insured employers.

The figure shows that costs have been quite constant since 1989-90. The level of \$183 million for administration, means that the scheme devotes about 17 percent of the annual outflow of dollars to administration. About \$100 million of the administration costs support the VWA itself, including the safety and health services, insurer regulation, scheme supervision, dispute resolution, and other services.

Figure 3.26 shows the variation in the permanent staff level of the VWA, and its administrative predecessor, the Accident Compensation Commission. The doubling of the staff in 1996-97 represents the merger of the formerly independent Health and Safety Organisation (HSO) with the VWA. The current staff level of just over 600 individuals seems marginal to pursue the overall mission and goals of the VWA. However, it remains to be seen how much time in the field can be generated from the current Field Services Division inspection resources and whether additional resources could reduce injuries and claims still further.

### Financial Status

For employers, the “bottom line” on workers’ compensation is “how much does it cost?” This is not exclusively an Australian phenomenon, but a refrain that is heard throughout North America as well. Figure 3.27 displays the average workers’ compensation insurance premium rate for Victorian employers for the last decade. As recounted in chapter 2 of volume I, the ACC under WorkCare had attempted to stem the tide of rising insurance rates in the late 80’s, with some success as indicated by the figure. But holding the rate at a relatively high 3.30 percent was not sufficient to satisfy employers or voters, and the WorkCover scheme has had employer costs, and their implications for economic development and job growth in mind from the start.

Figure 3.27 indicates the success the government has achieved in lowering workers’ compensation rates for Victorian employers. At the 1996-97 rate of 1.8 percent, the scheme has attained a reduction of 45 percent over the peak rate of 3.3 percent. The rise to 1.9 percent on a slightly elevated wage base (reflecting the inclusion of superannuation in the base effective 1 July

1998) does not substantially change this picture. System administrators are confident they can maintain the 1.9 percent rate for the foreseeable future. The government is determined to hold the current premium rate.

Figure 3.28 shows that premium income has not declined as rapidly as the premium rate. This reflects the fact that assessable payrolls have been growing at more than 5 percent per year throughout the last decade. In addition, there has been the very positive contribution of double digit investment earnings to funding the Victorian workers' compensation scheme in the past several years. In fact, investment earnings constituted nearly 25 percent of scheme income in 1995-96 and 40 percent in 1996-97.

The growing health of the fund can also be seen by comparing figure 3.29, which represents total assets held, with figure 3.30, which represent gross liabilities. Of course, liabilities represent new claims as well as revaluations by the independent actuaries and legislative changes to the scheme itself. Nevertheless, total assets have mounted steadily during the WorkCover period, surpassing \$3.5 billion by June 30, 1997.

The last two figures tell this story from a different perspective. Figure 3.31 shows the net gain or loss for the fund for each of the last 10 years. The last time a significant loss occurred was in 1988-89, when liabilities grew by \$2,000 million more than assets. Since that year, the scheme has operated either with a significant gain (in 1989-90, 1990-91 and 1992-93) or near neutrality. This is reflected in figure 3.32 which shows the funding ratio for the Victorian workers' compensation scheme. At the beginning of the decade, funding ratios were between 40 and 50 percent; meaning that the scheme held less than half as much in assets as its estimated future obligations. However, the financial health of the scheme was rapidly repaired under WorkCover and the scheme has been essentially fully funded since 1994-95.

## Conclusion

Reflecting upon the past decade of performance by the Victorian workers' compensation scheme, the greatest impression is of constant evolution. As discussed throughout the study, the changeover from WorkCare to WorkCover was a fundamental system change, sustained and supported by a new and different political philosophy. System architects moved swiftly and boldly toward the objectives stated by Minister Hallam in 1992 (see chapter 1), within actually

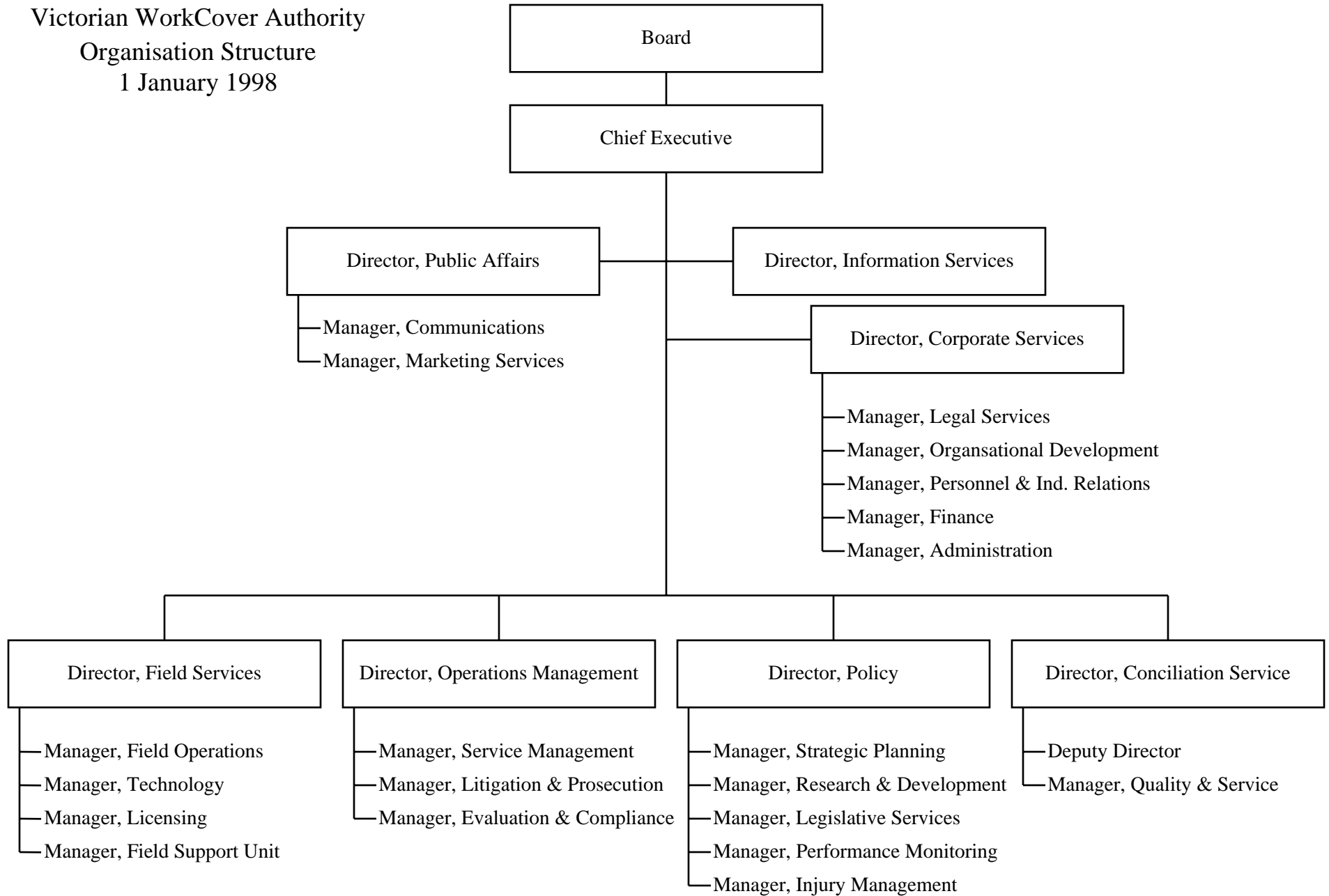
just a few weeks of being elected. They have persisted with the plan since, despite obstacles and objections.

This persistence has clearly been reflected in the performance of the scheme. Many fewer injuries are being recorded, fewer claims are being filed, and costs to employers are down substantially. The accomplishments of the WorkCover scheme are really quite remarkable. However, workers' compensation systems are like balloons; when you squeeze one place, there is a bulge (or blowout) created somewhere else. In the Victorian case, the biggest bulge came in permanent partial disabilities (table of maims, pain and suffering, and common law). However, the government moved very aggressively in 1996 and again in 1997 to stop this development in its tracks. Now the challenge is to stabilize the system, consolidate the gains, and make "the Victorian revolution" permanent.

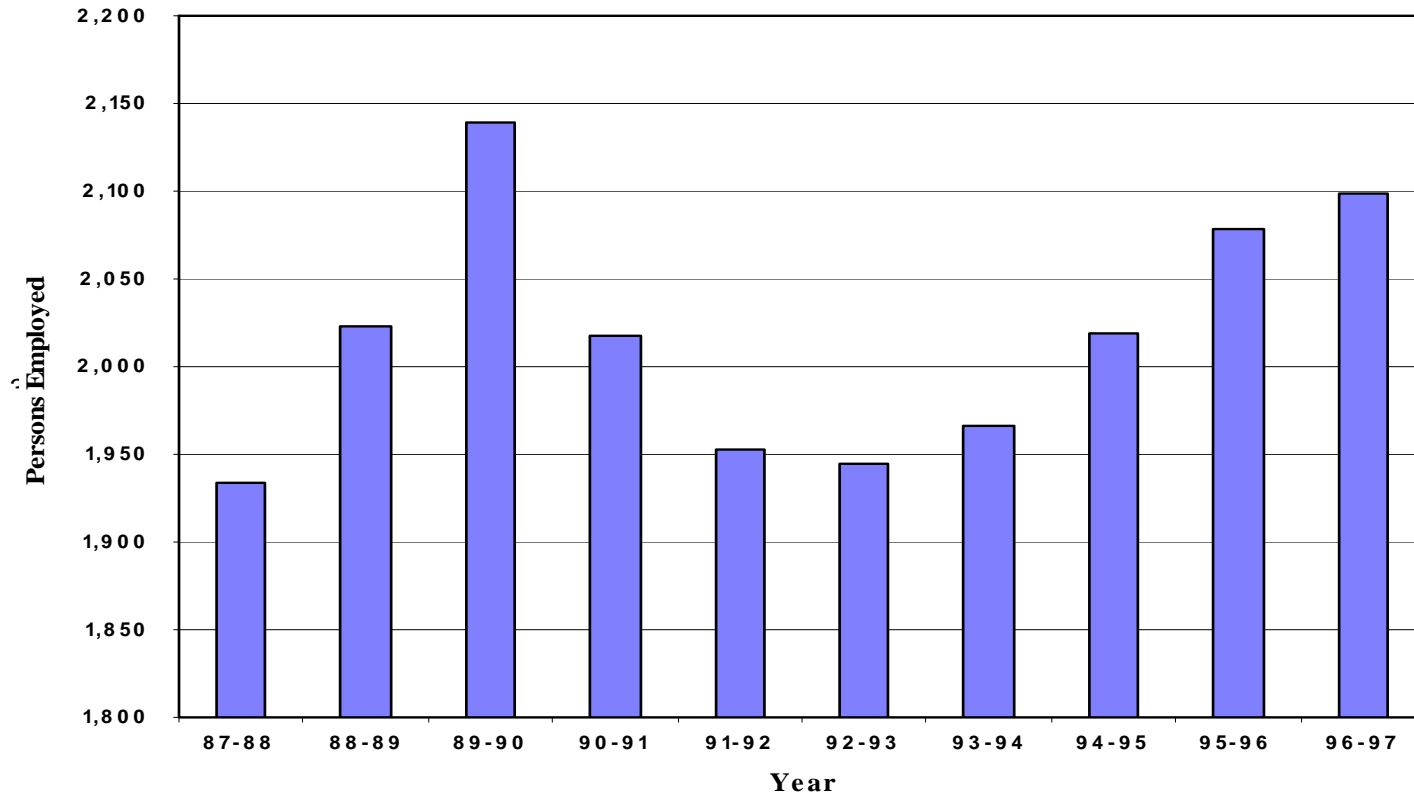


**Figure 3.1**

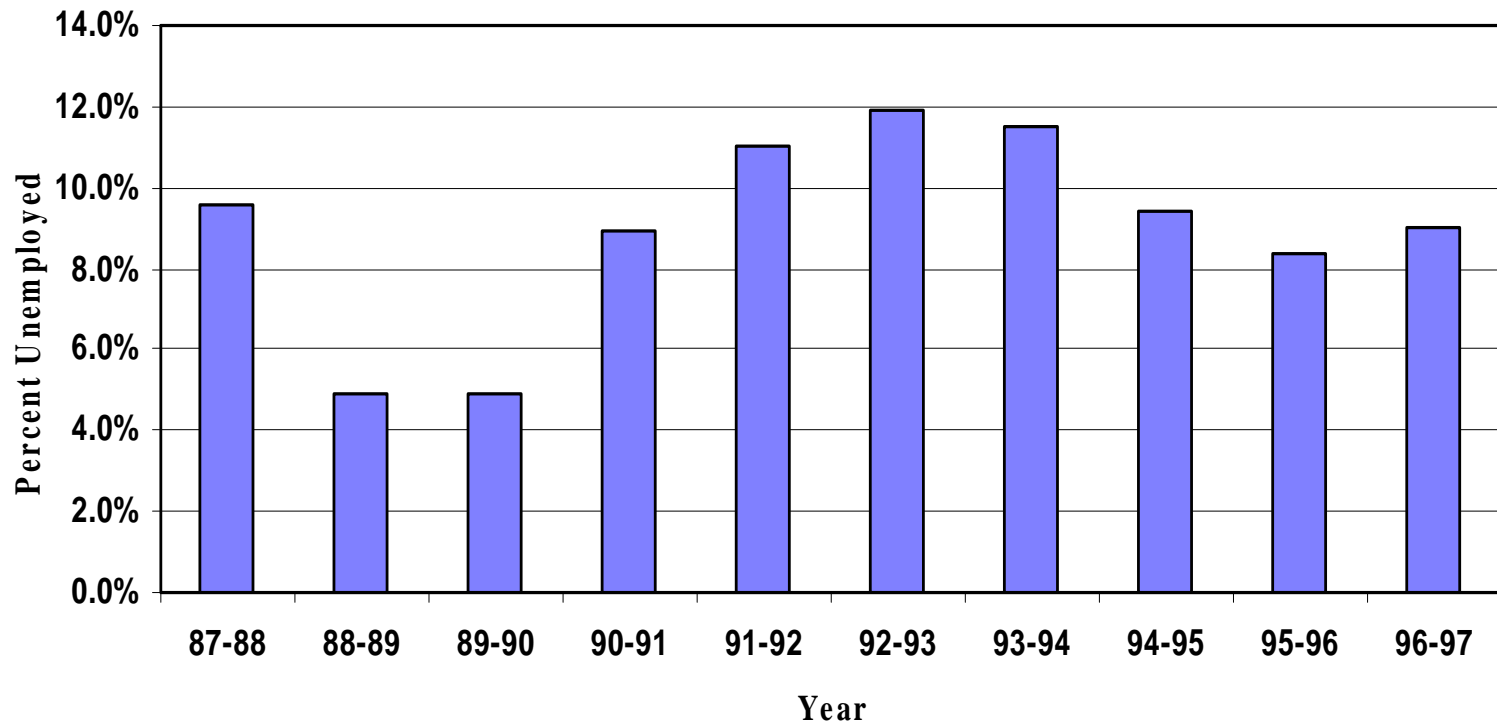
Victorian WorkCover Authority  
Organisation Structure  
1 January 1998



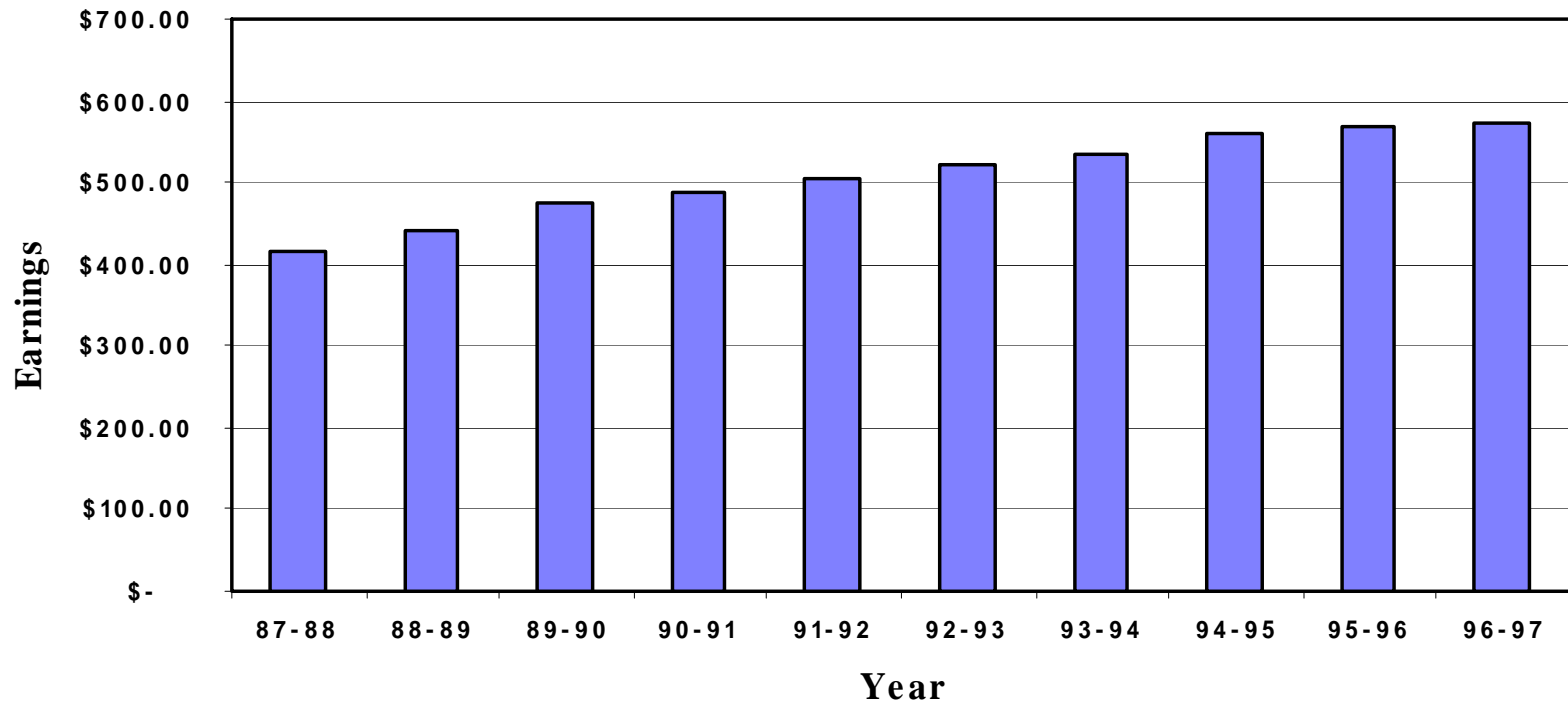
**Figure 3.2**  
**Employment in Victoria**



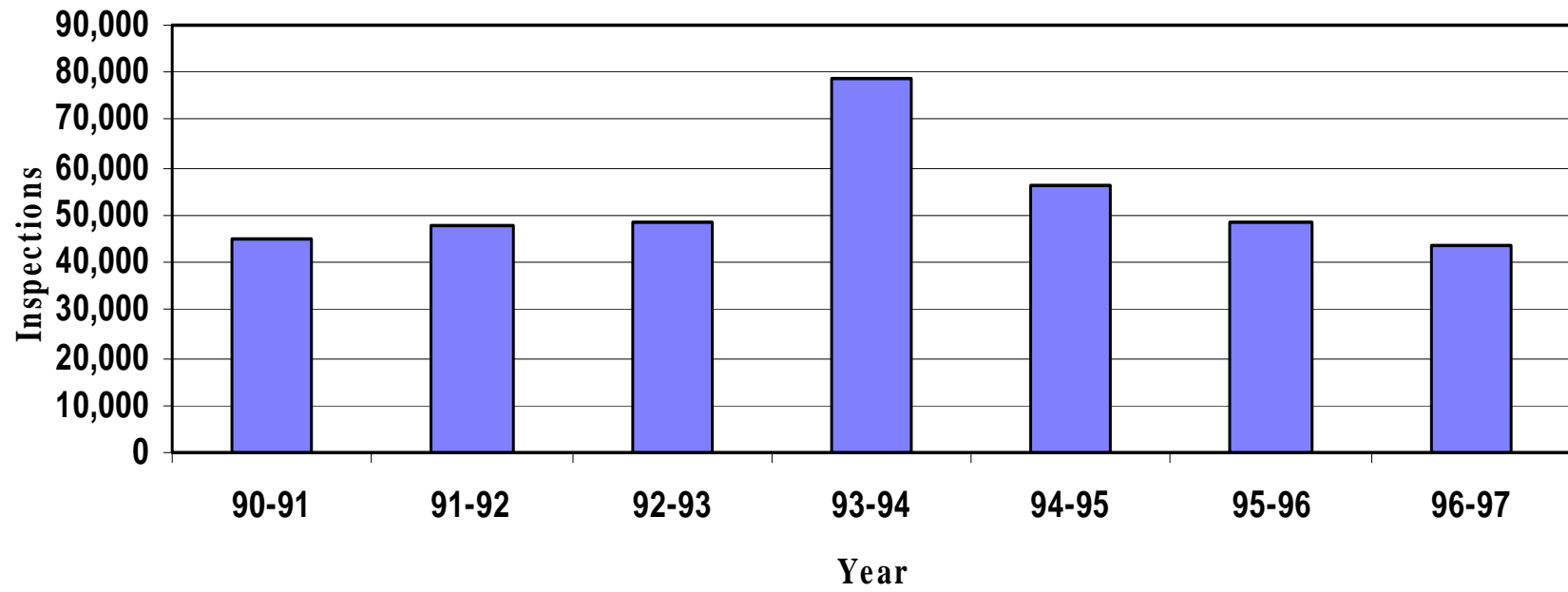
**Figure 3.3**  
**Unemployment Rate**



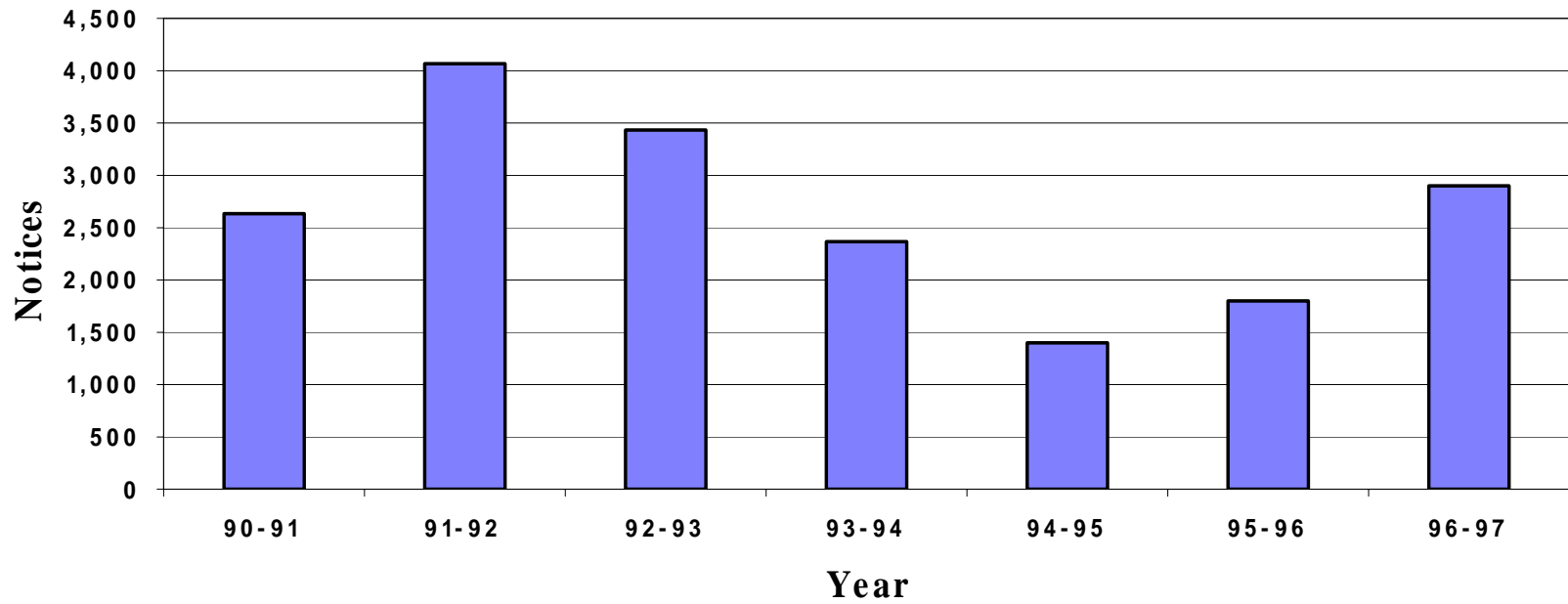
**Figure 3.4**  
**Average Weekly Earnings**



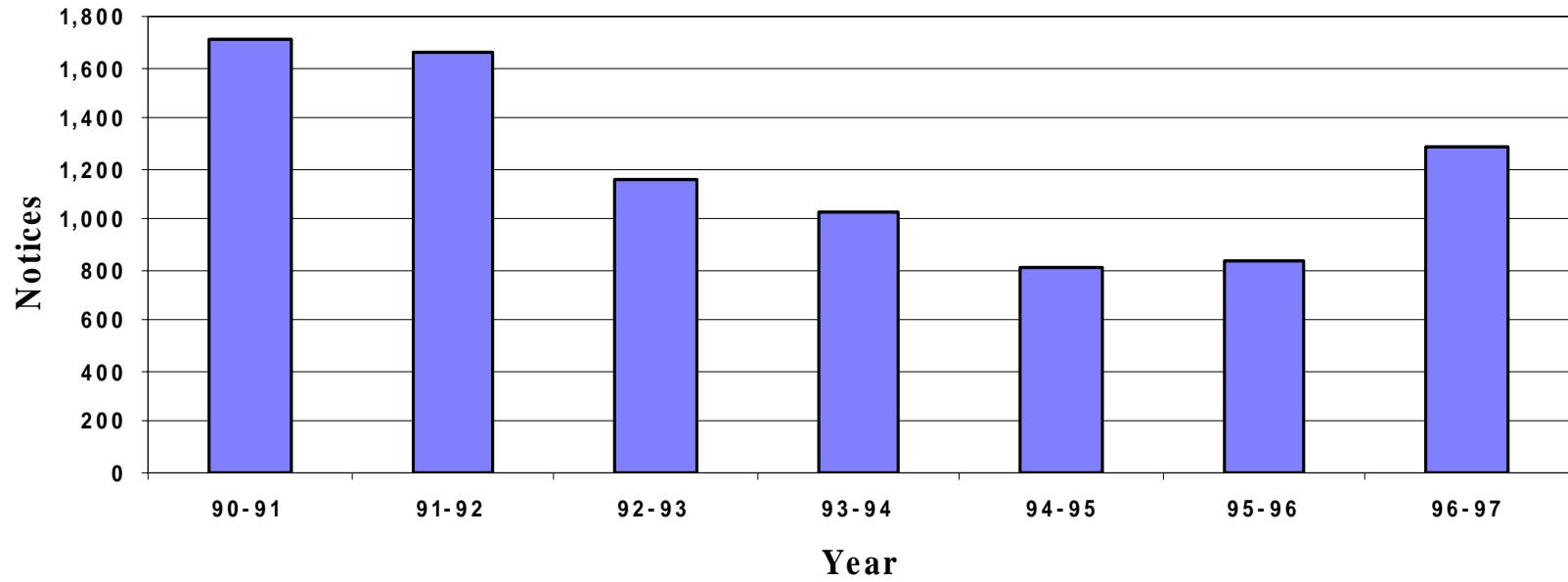
**Figure 3.5**  
**Number of Inspections**



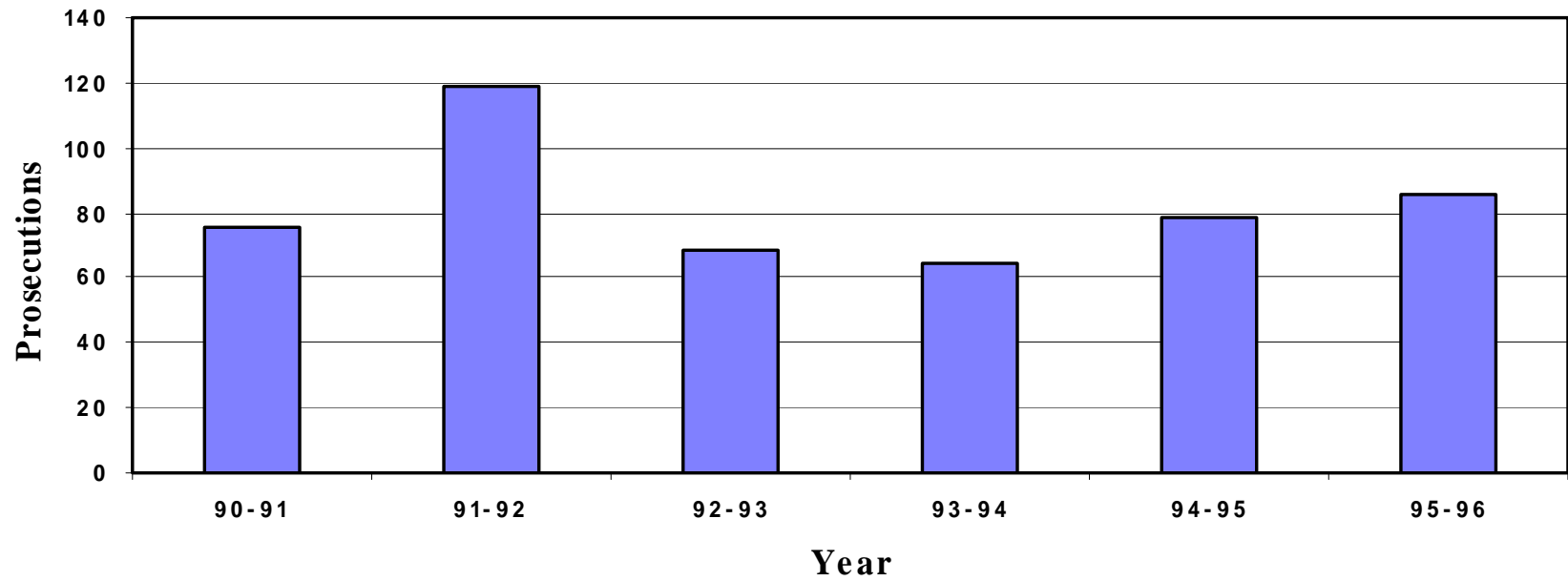
**Figure 3.6**  
**Number of Improvement Notices**



**Figure 3.7**  
**Number of Prohibition Notices**

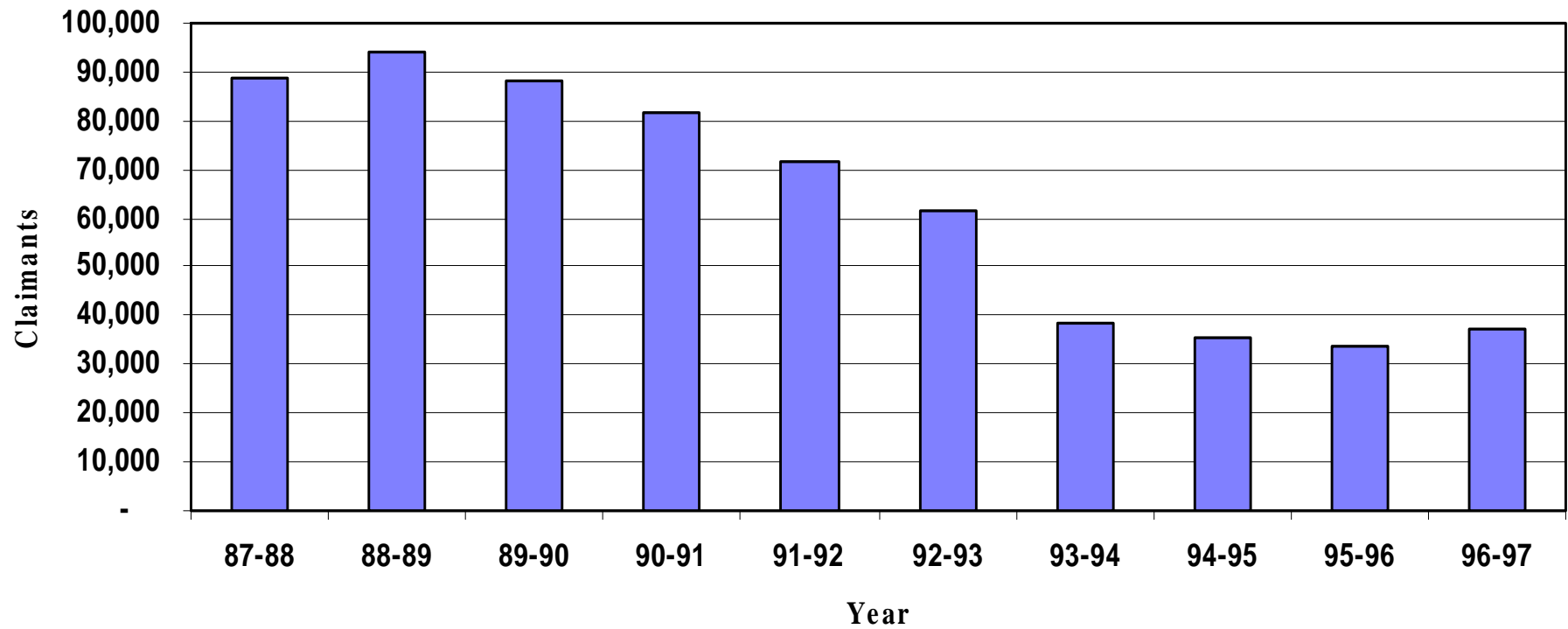


**Figure 3.8**  
**Number of Prosecutions**

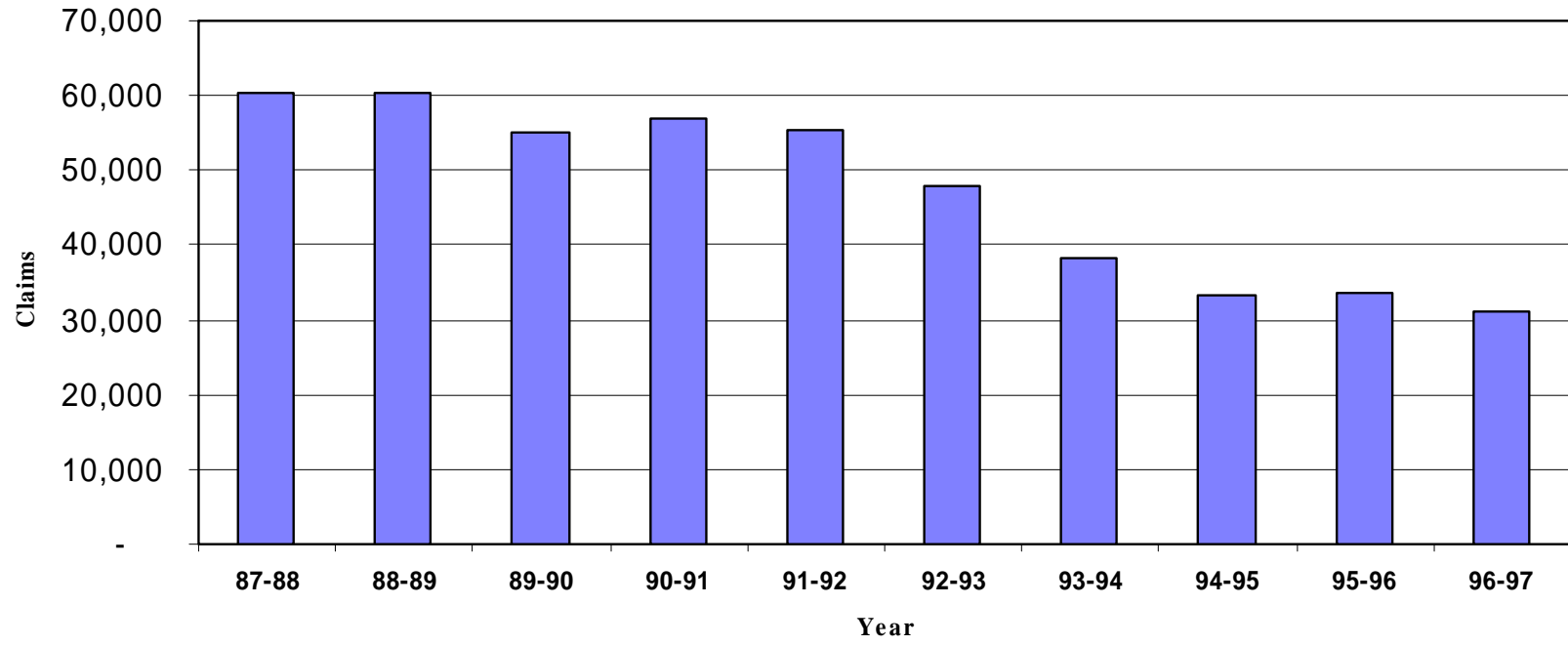




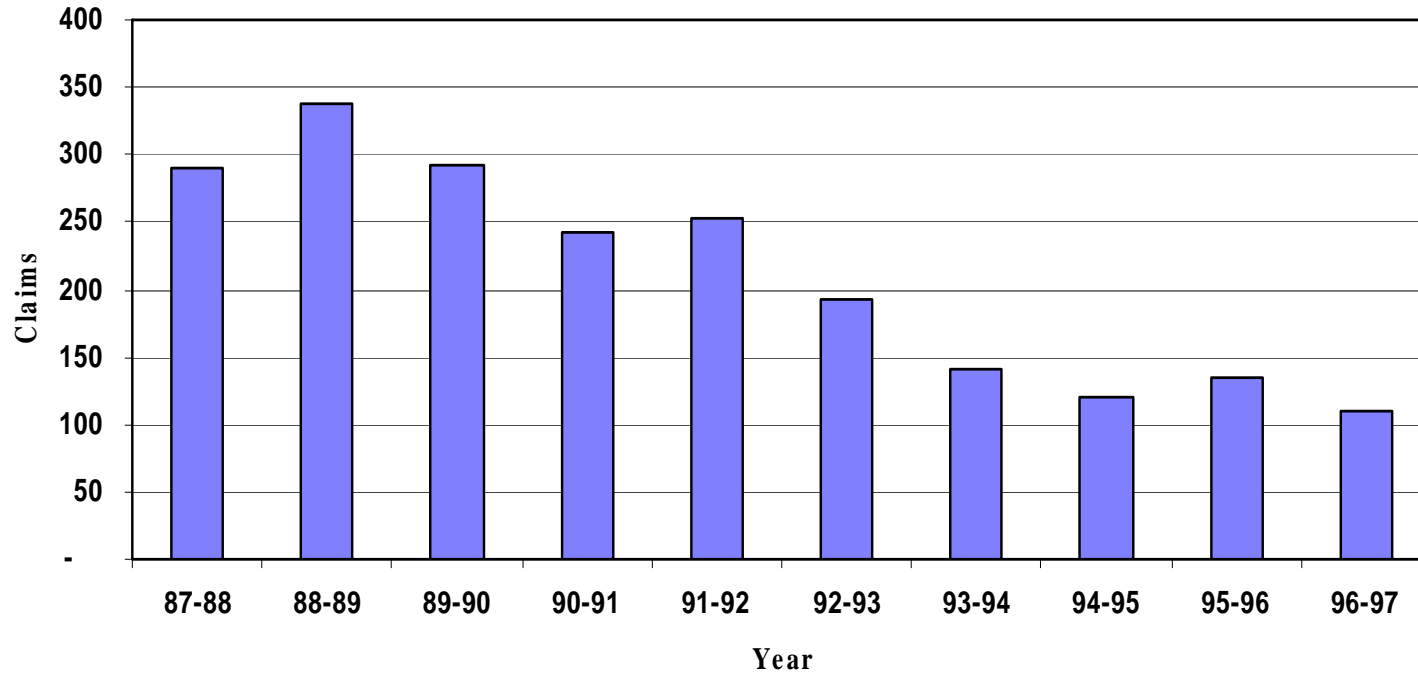
**Figure 3.9**  
**Claimants in Receipt of Weekly Benefits During Year**



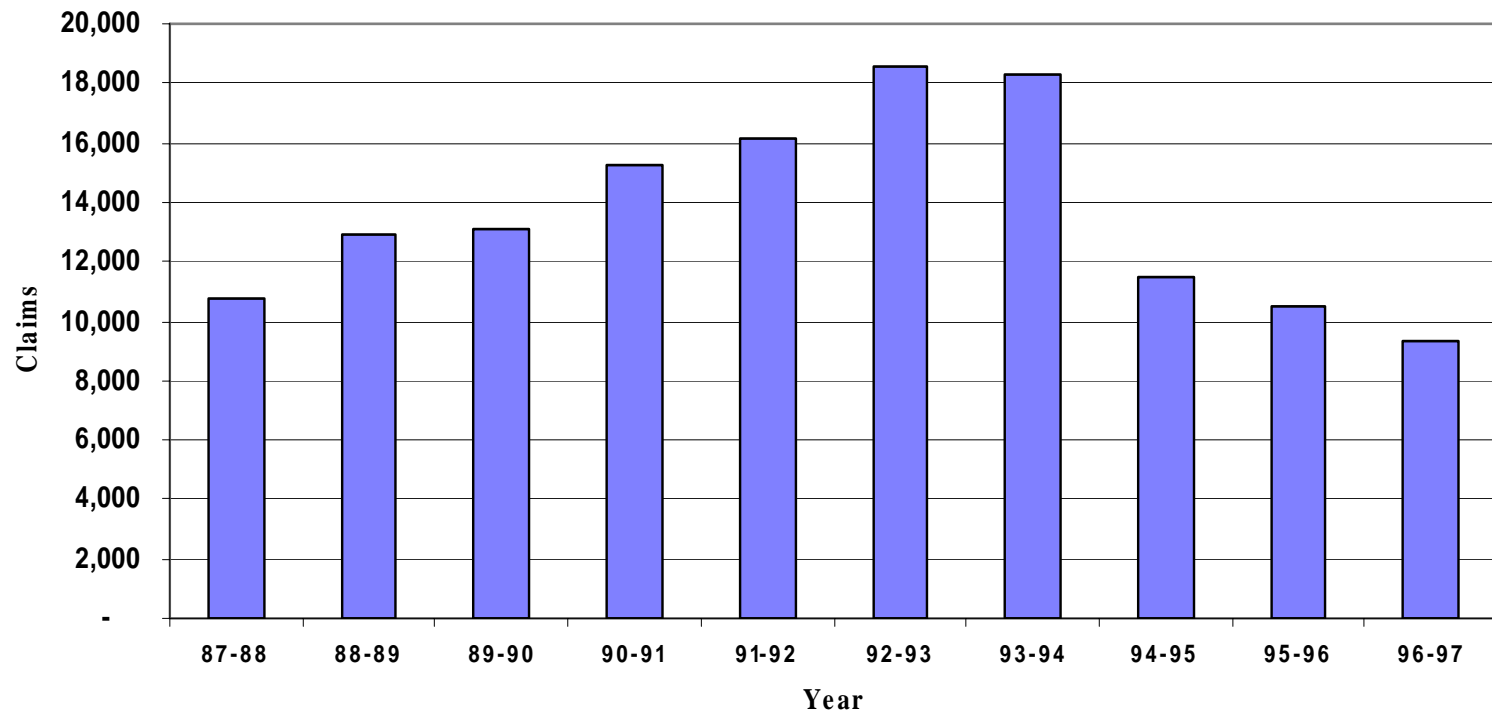
**Figure 3.10**  
**Standard Claims Reported**



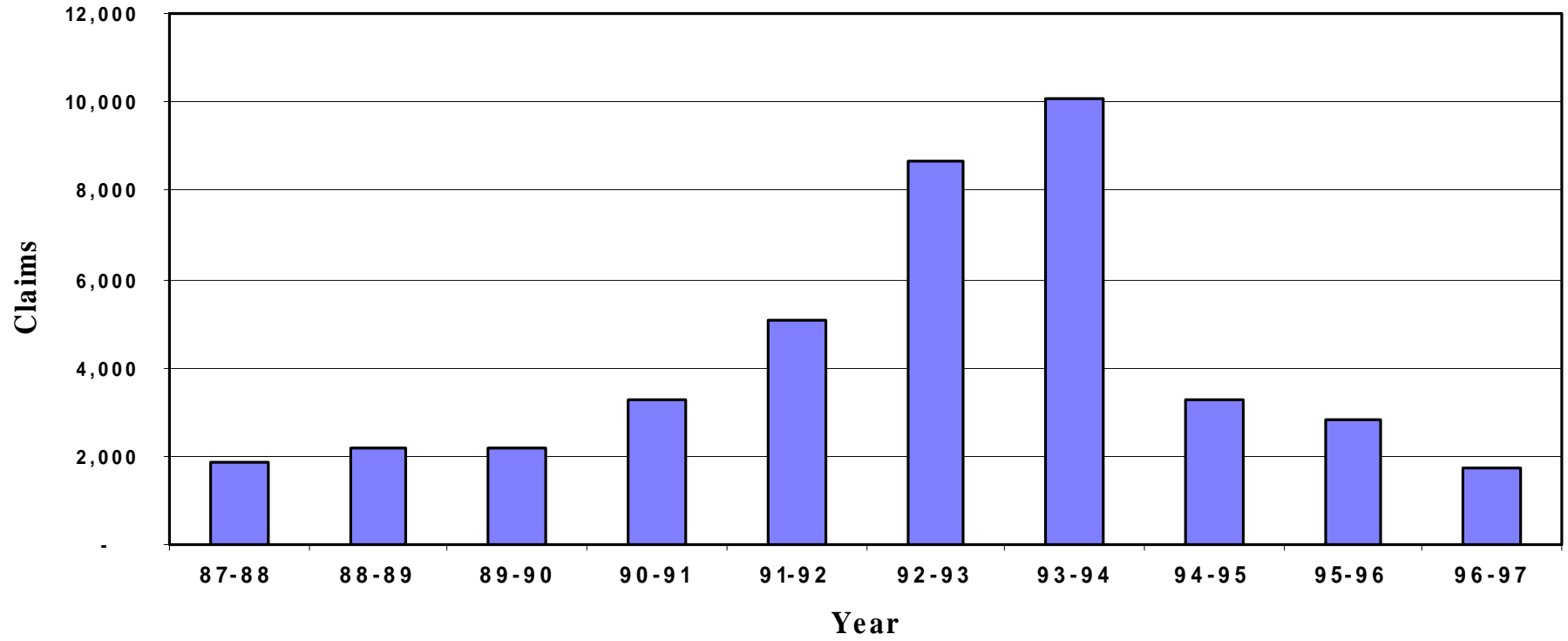
**Figure 3.11**  
**Fatal Only Claims**



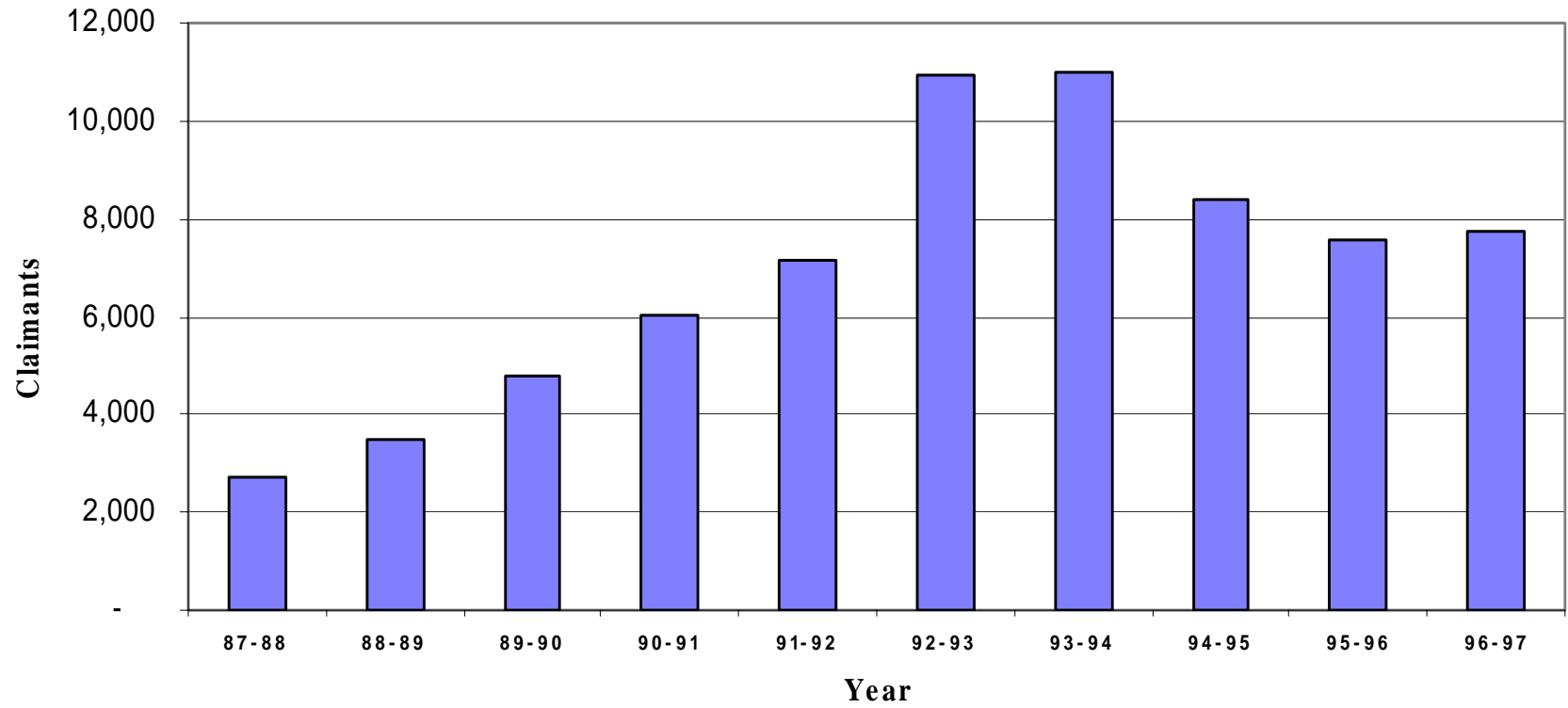
**Figure 3.12**  
**Medical Only Claims**



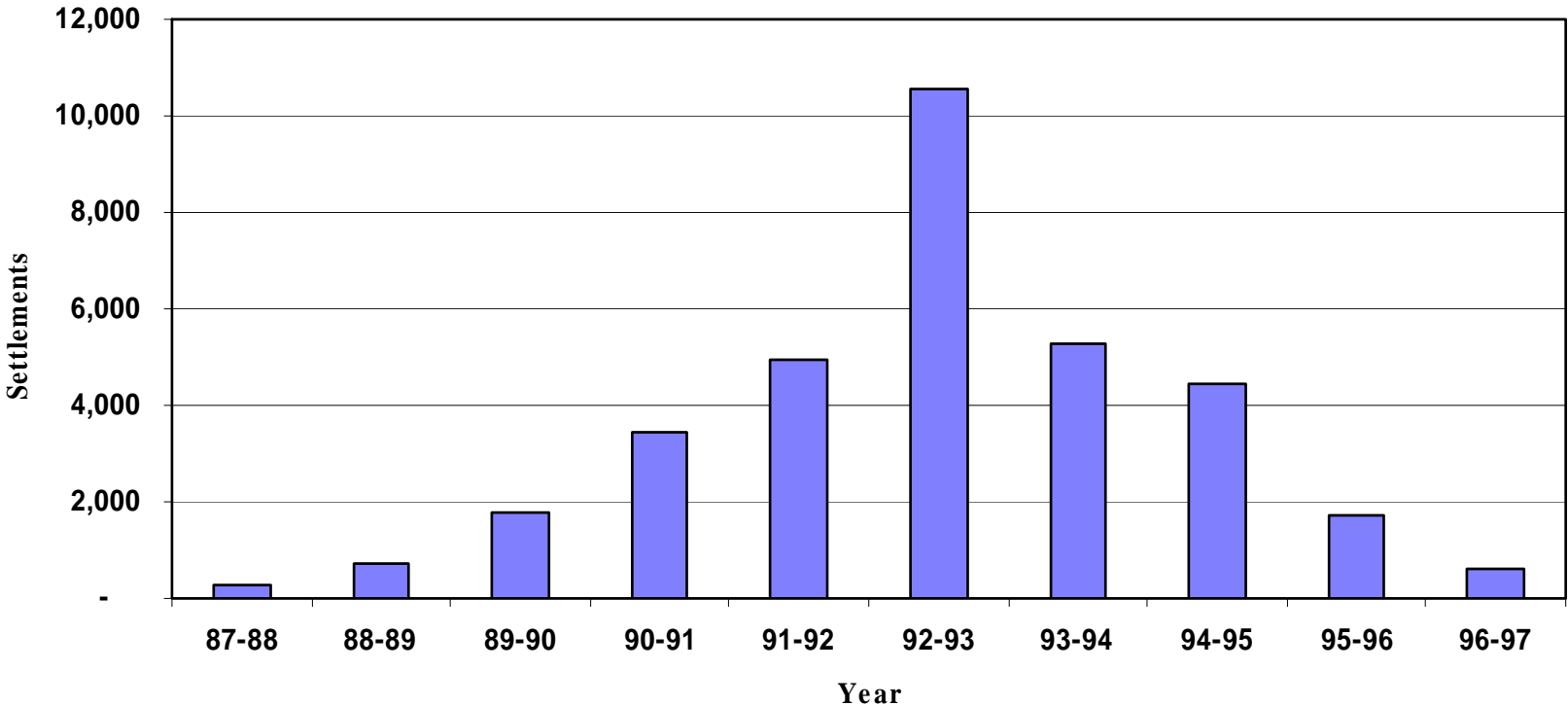
**Figure 3.13**  
**Hearing Loss Only Claims**



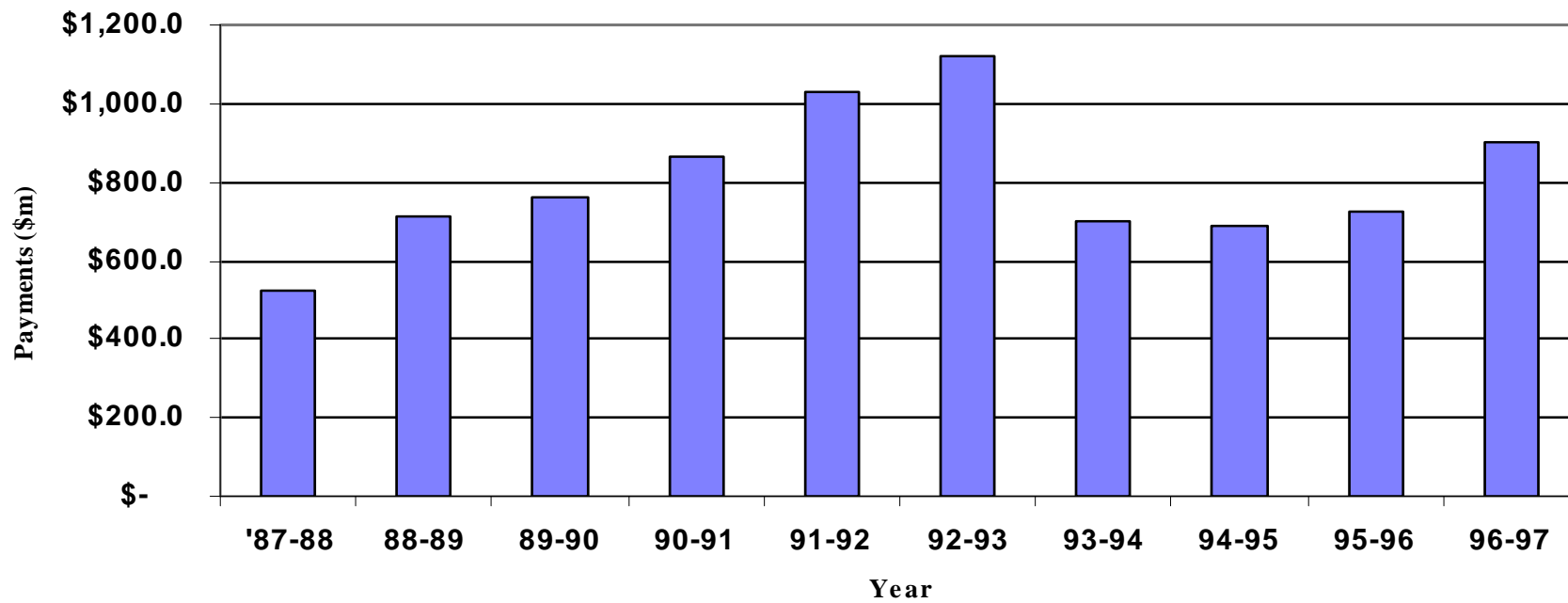
**Figure 3.14**  
**Claimants in Receipt of Table of Maim Payments**



**Figure 3.15**  
**Common Law Settlements - Total Loss**

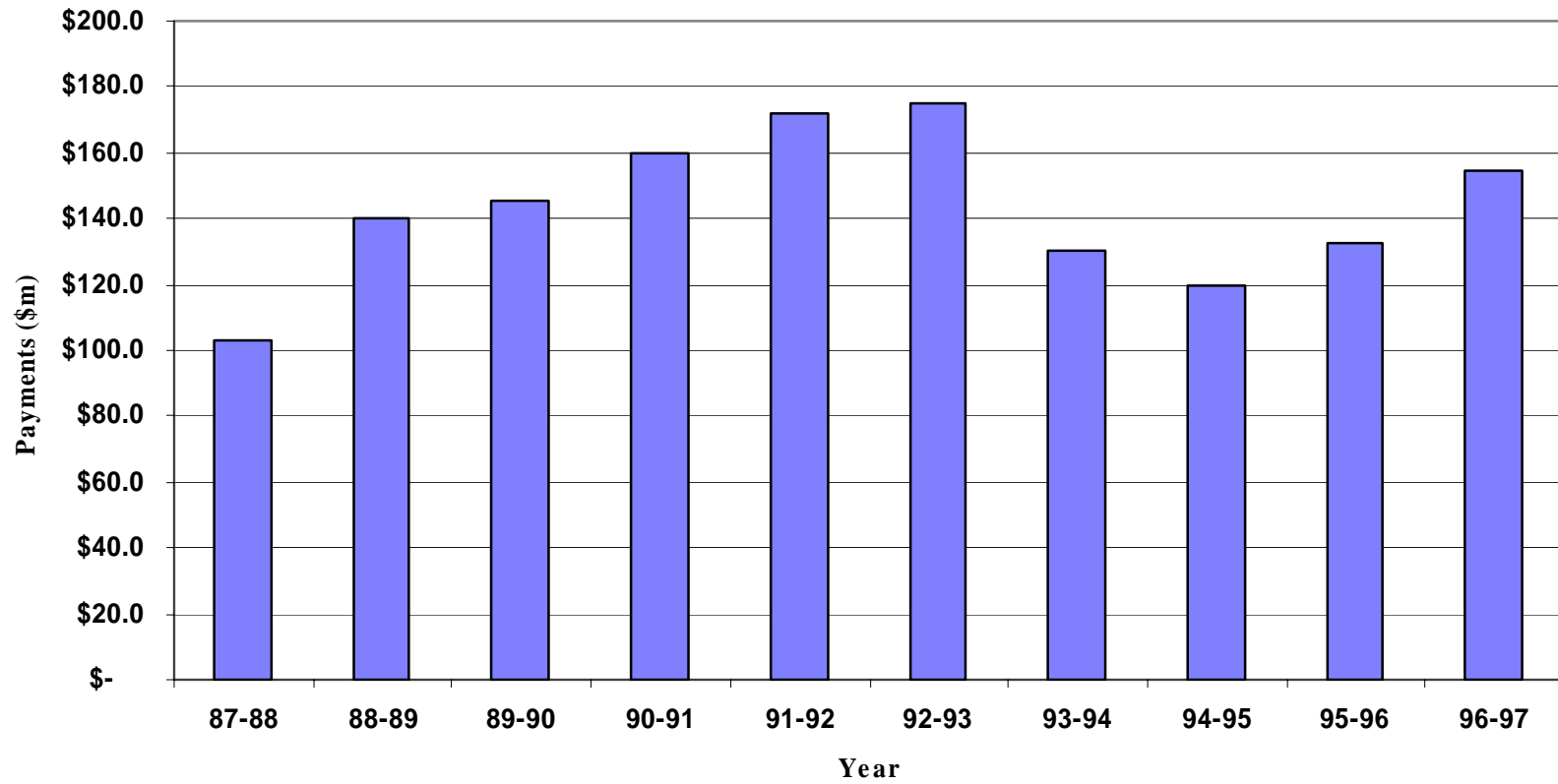


**Figure 3.16**  
**Total Claim Payments**

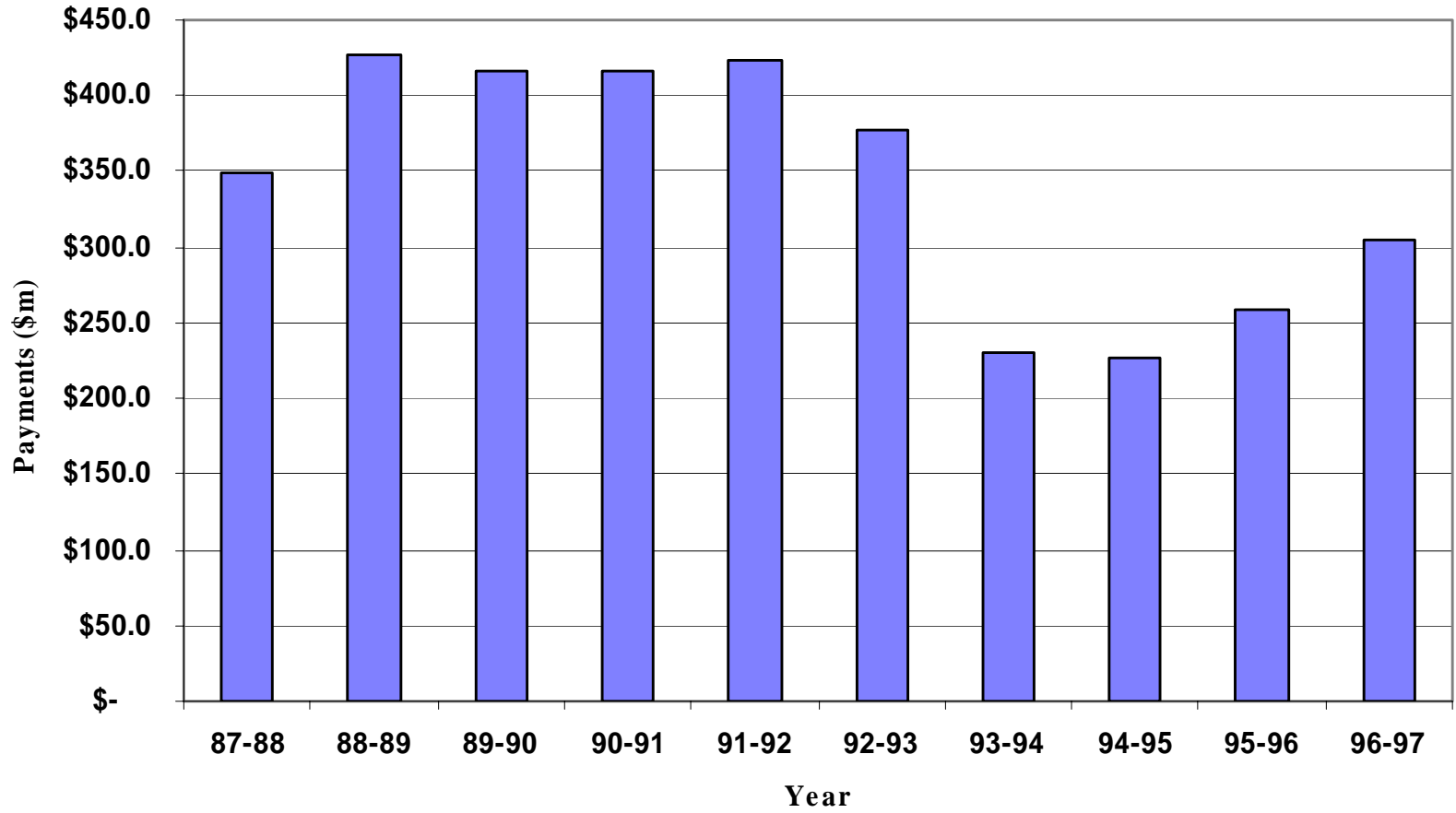




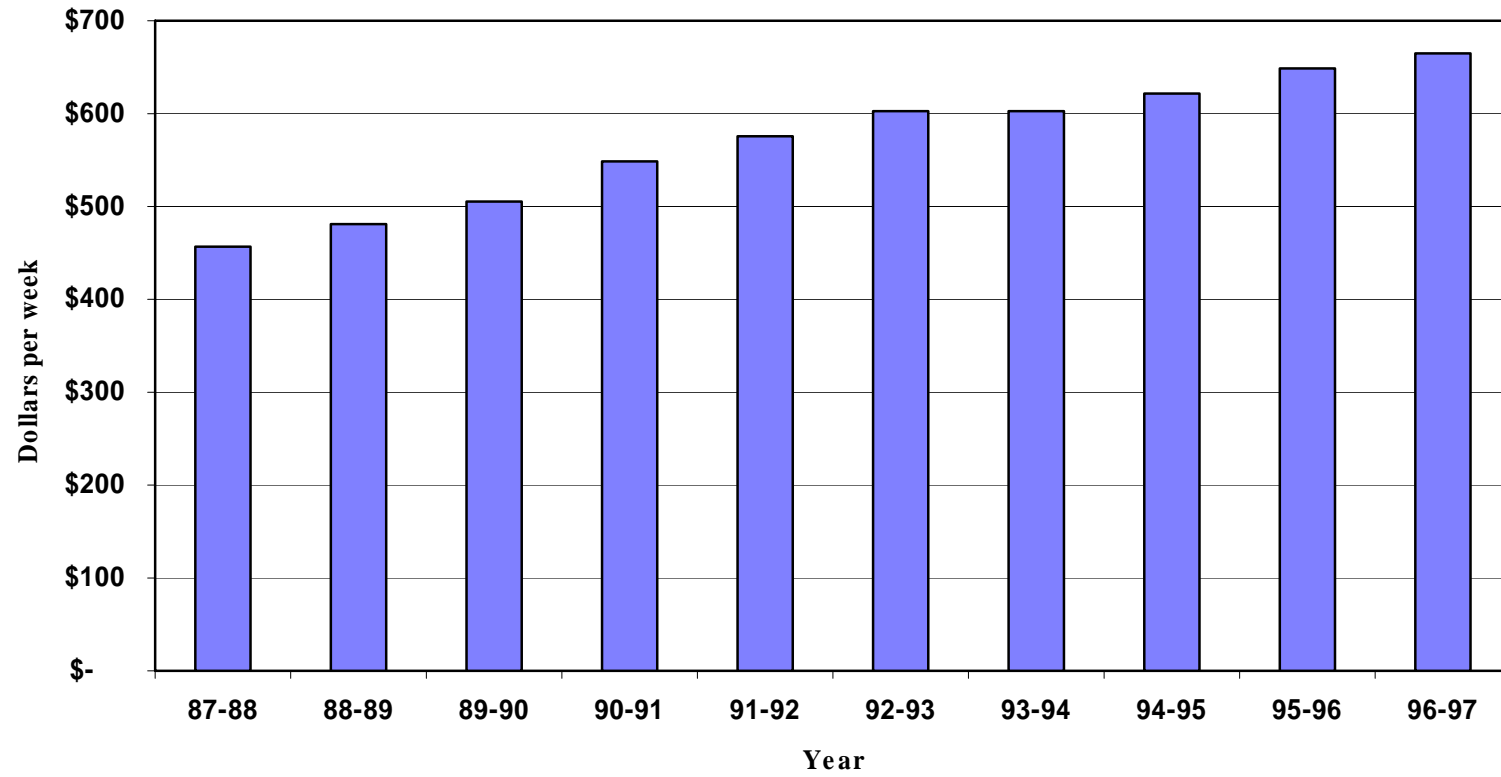
**Figure 3.17**  
**Medical and Like Payments**



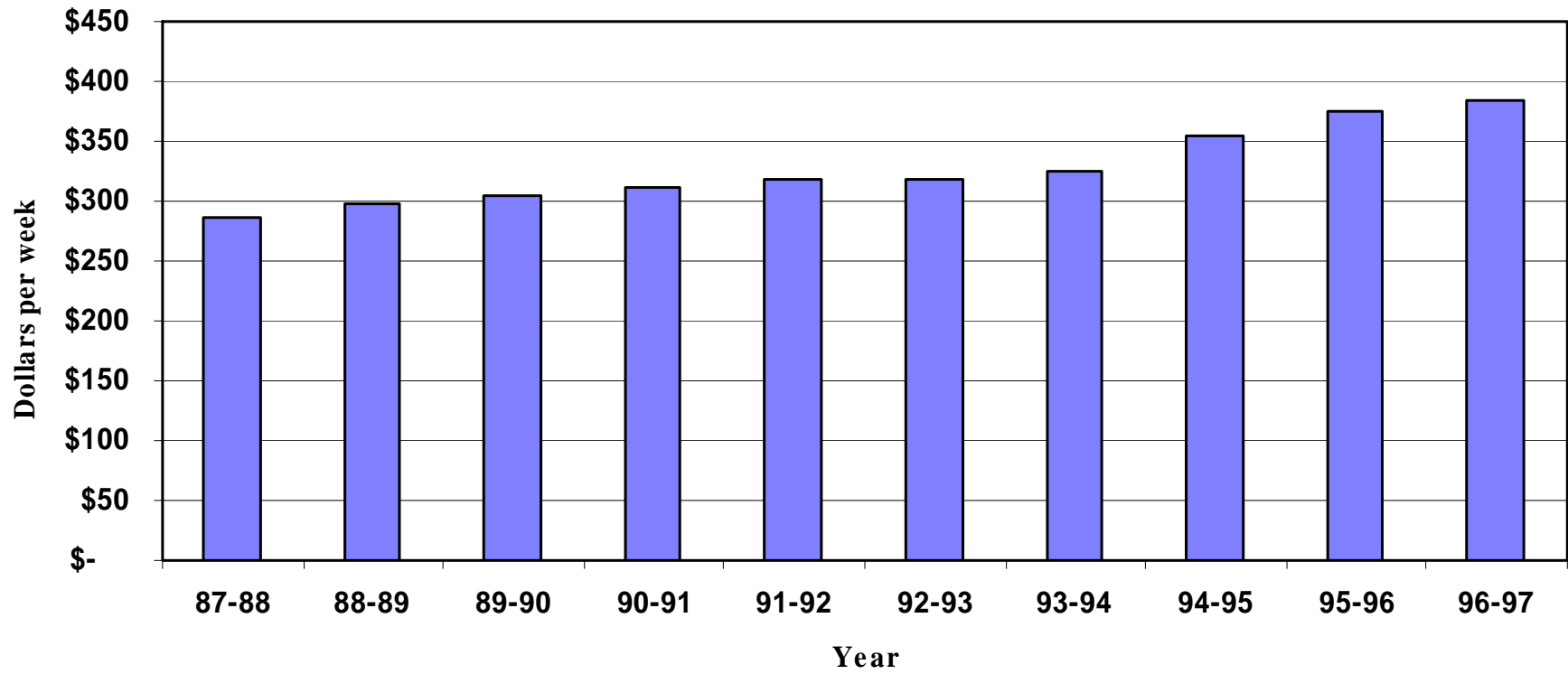
**Figure 3.18**  
**Weekly Benefit Payments**



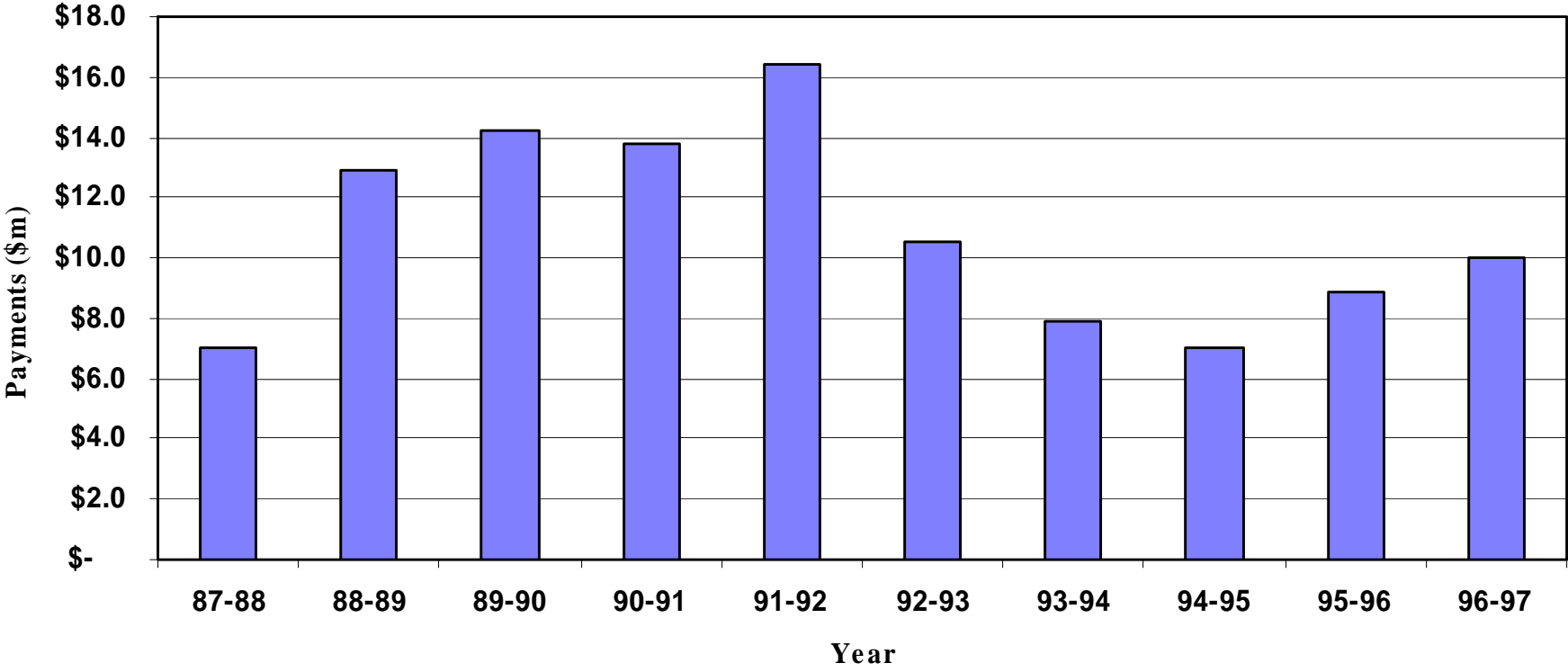
**Figure 3.19**  
**Statutory Maximum Weekly Benefits**



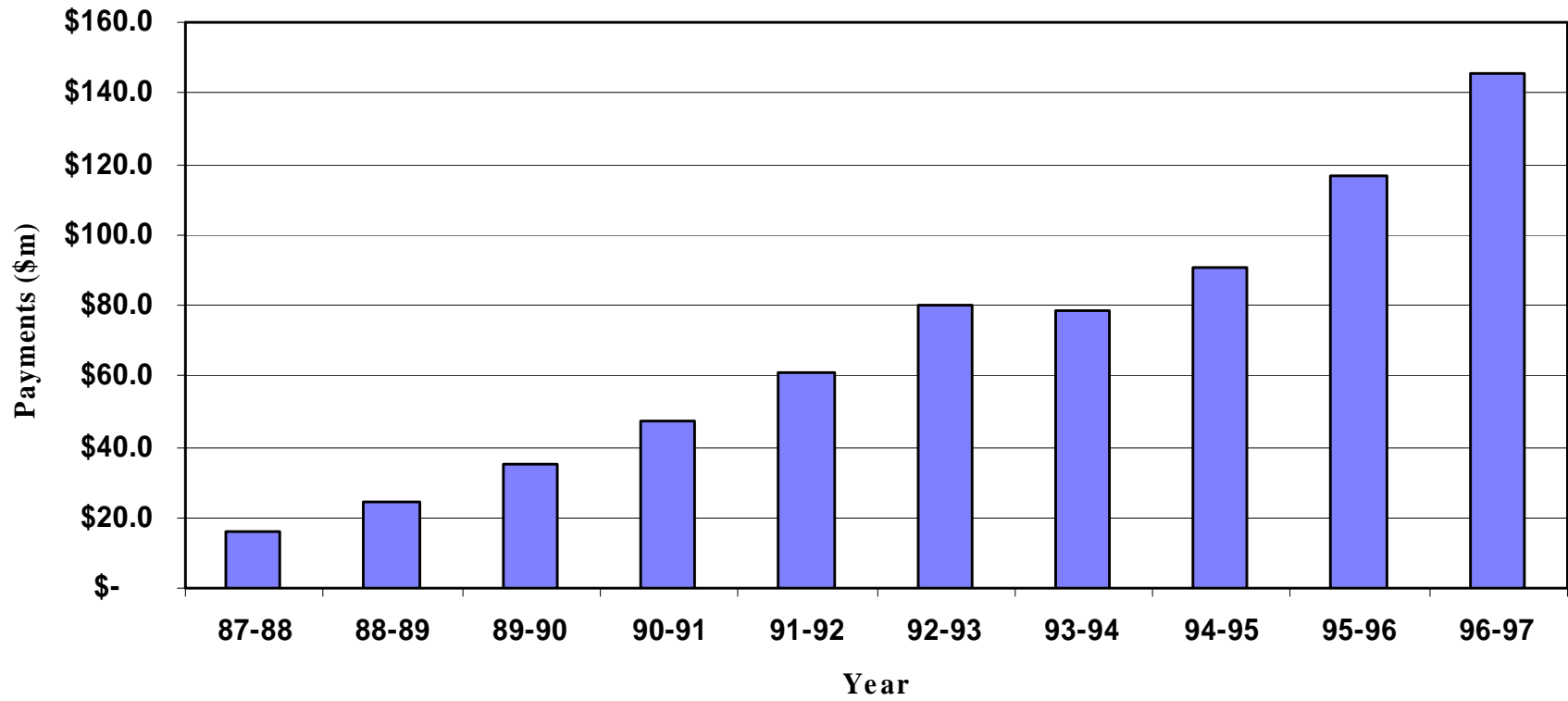
**Figure 3.20**  
**Average Weekly Benefits**



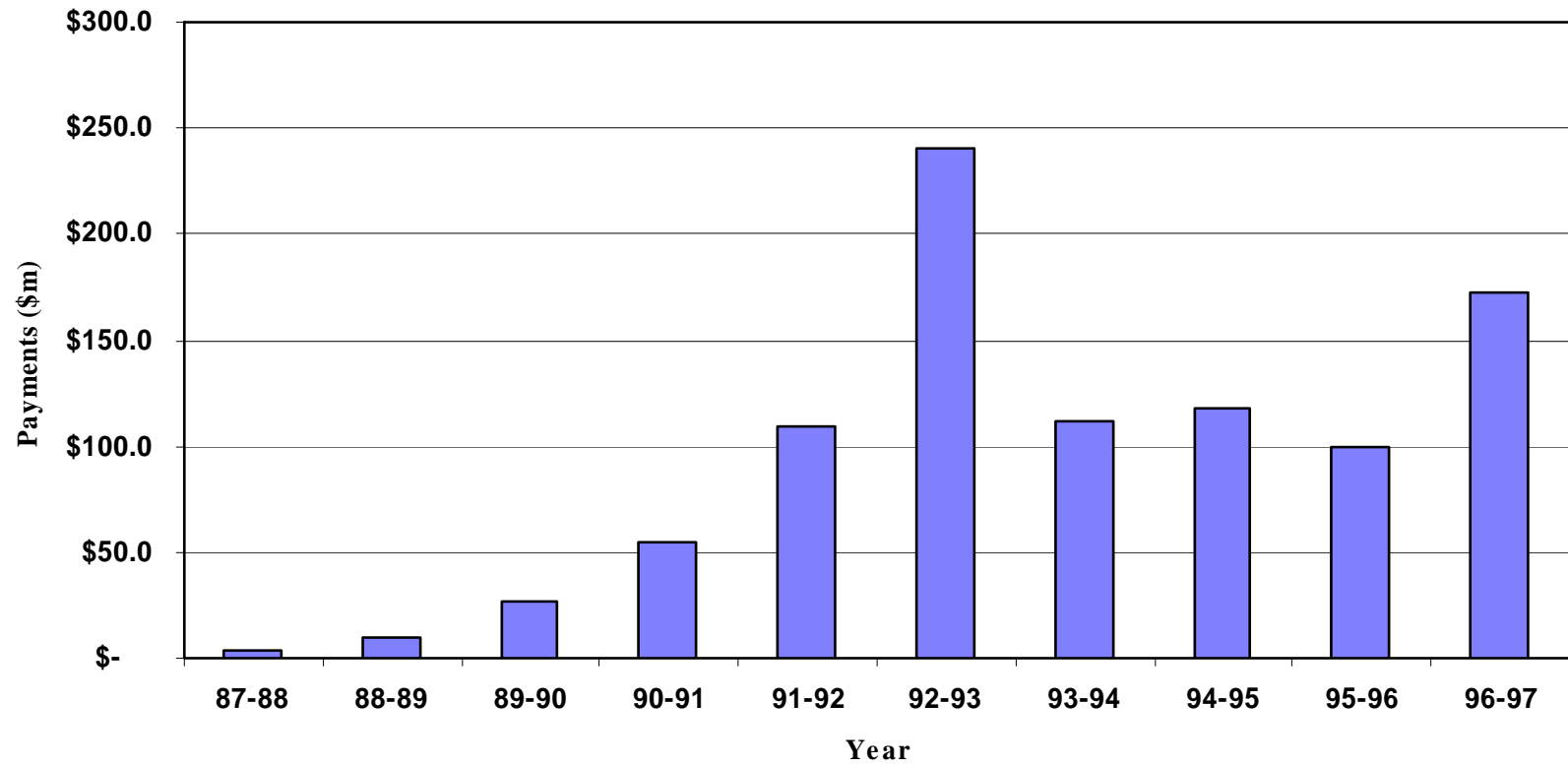
**Figure 3.21**  
**Death Claim Payments**



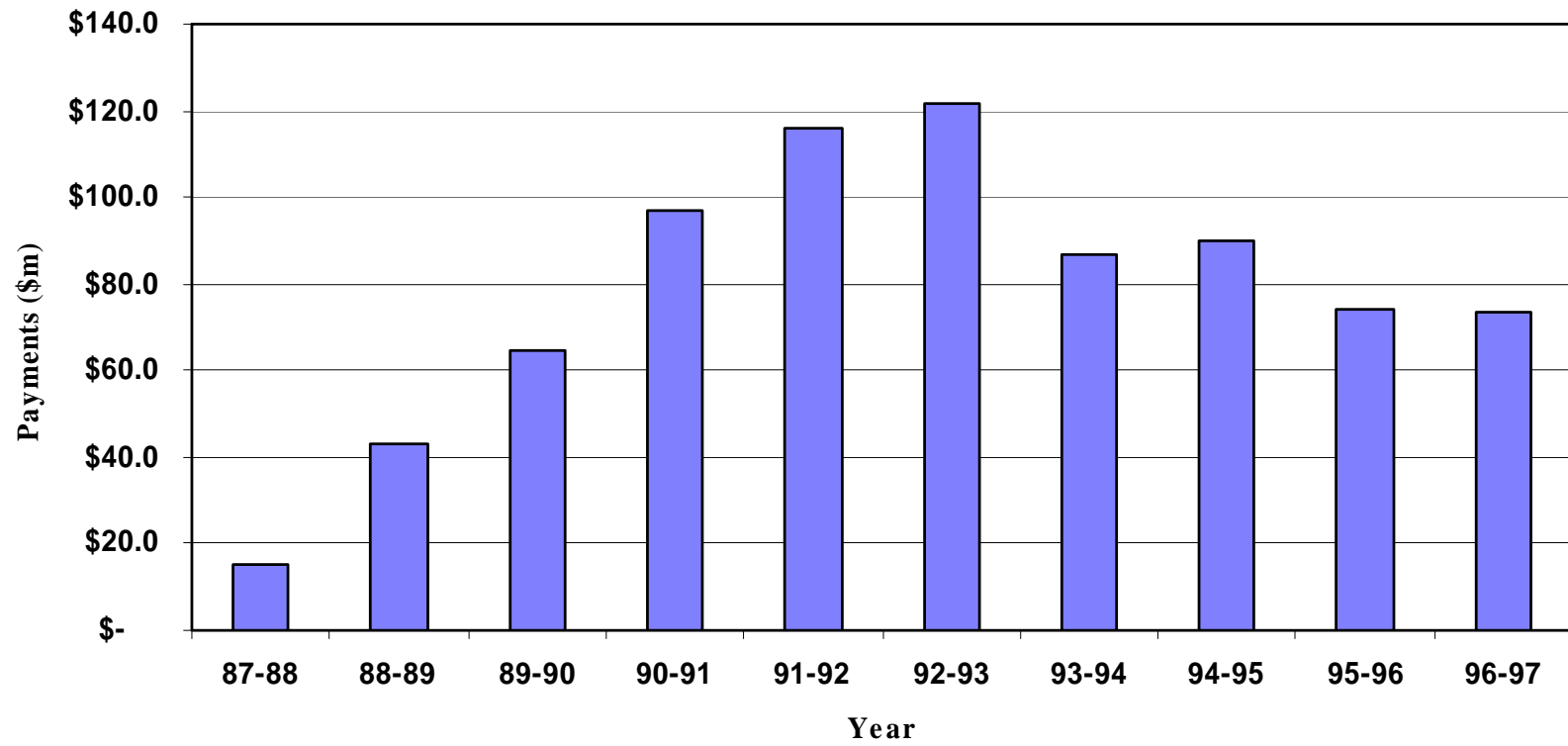
**Figure 3.22**  
**Permanent Impairment Payments**



**Figure 3.23**  
**Common Law Payments**

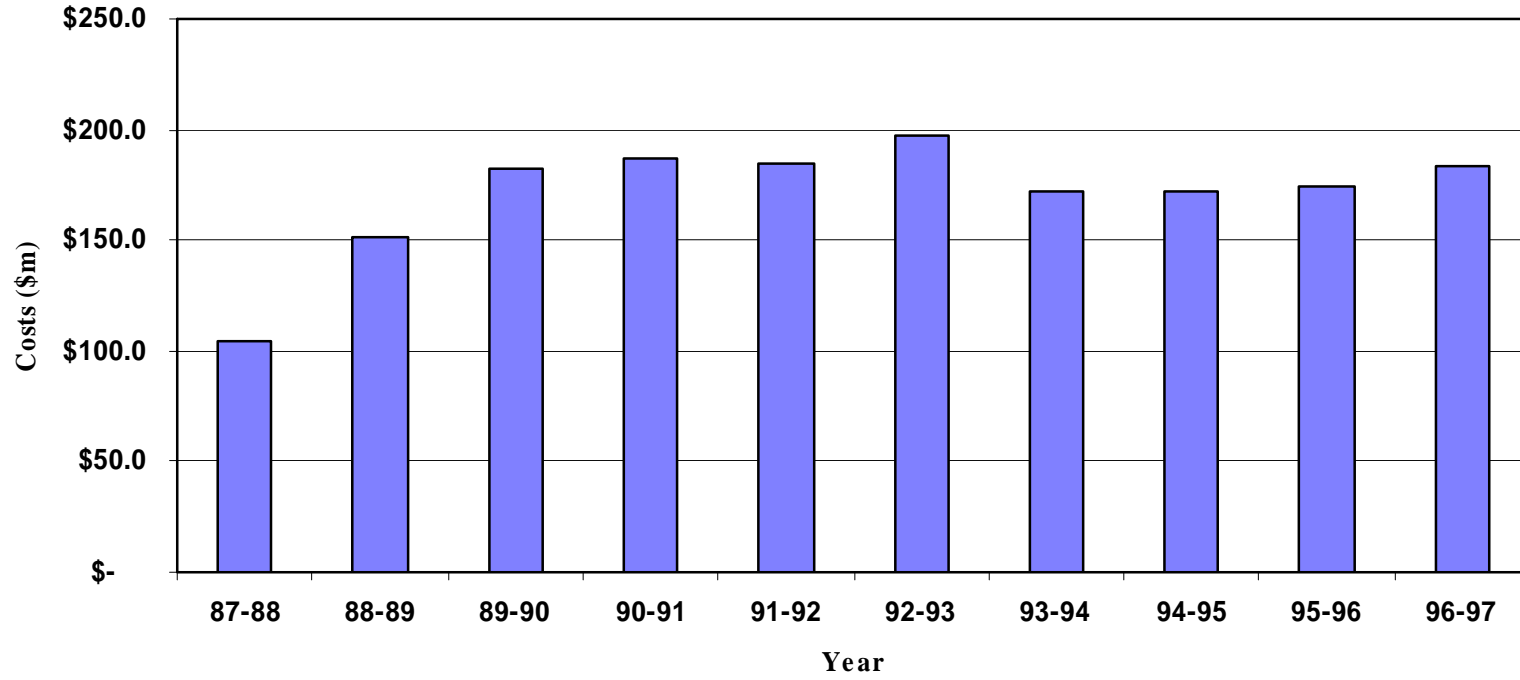


**Figure 3.24**  
**Legal Costs**

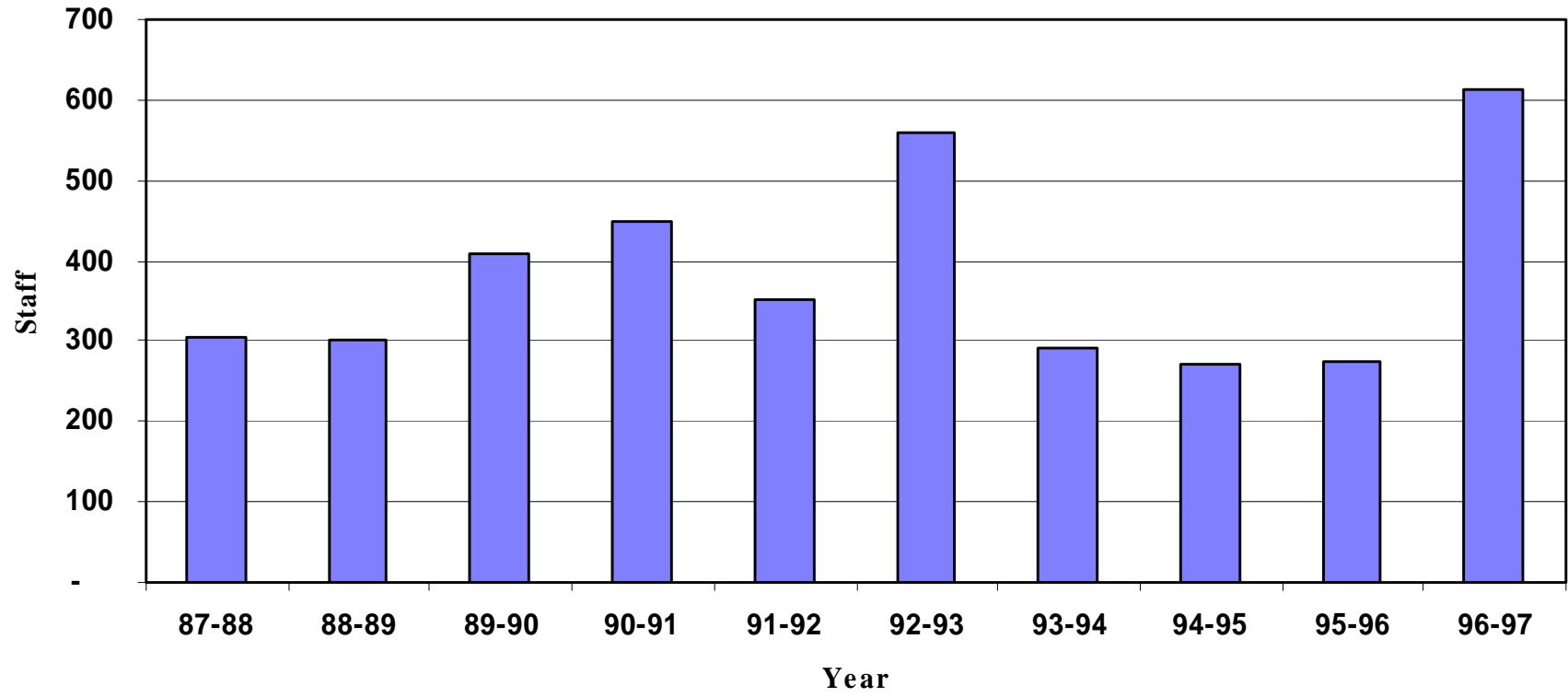




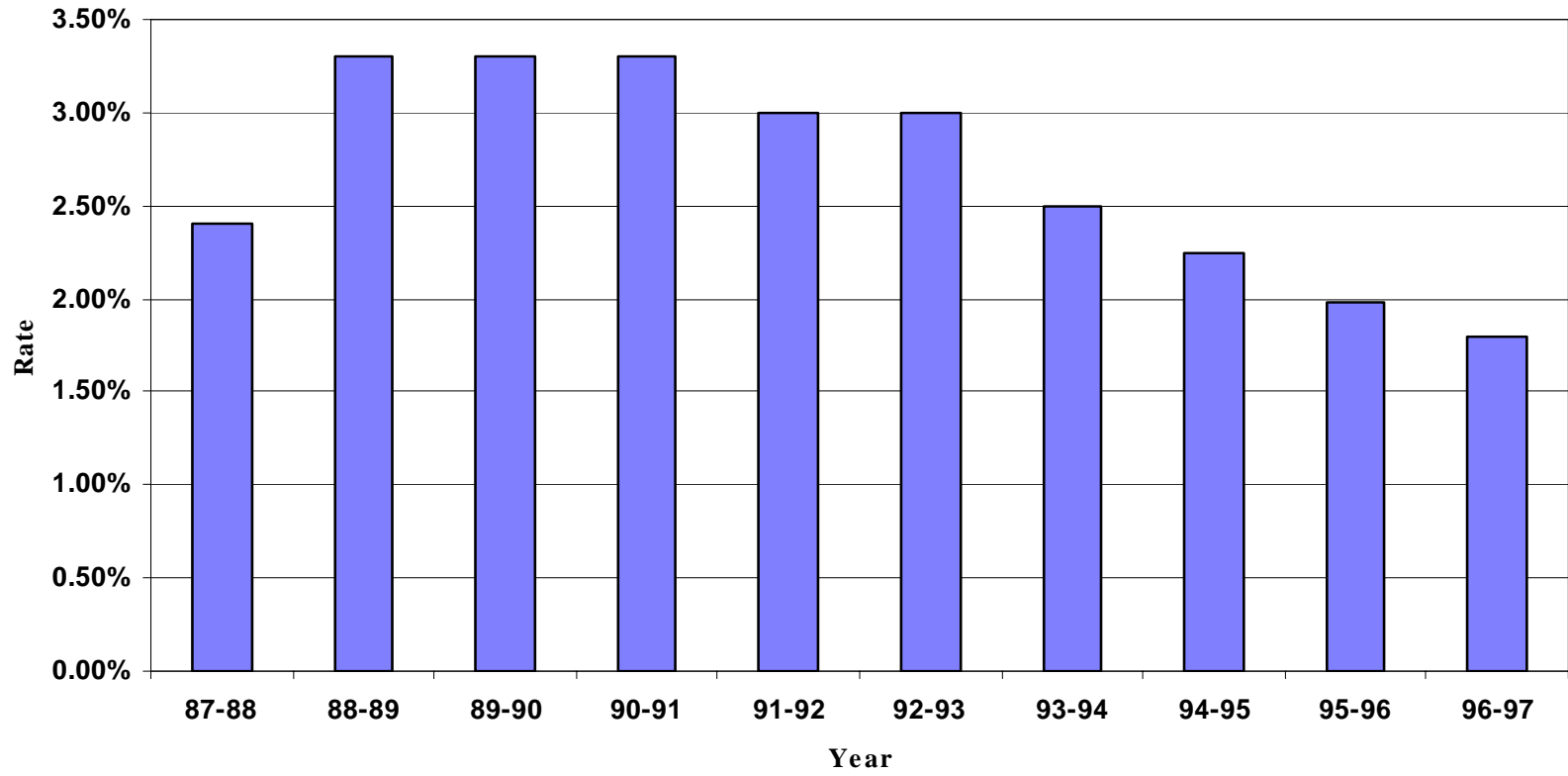
**Figure 3.25**  
**Total Scheme Administration Costs**



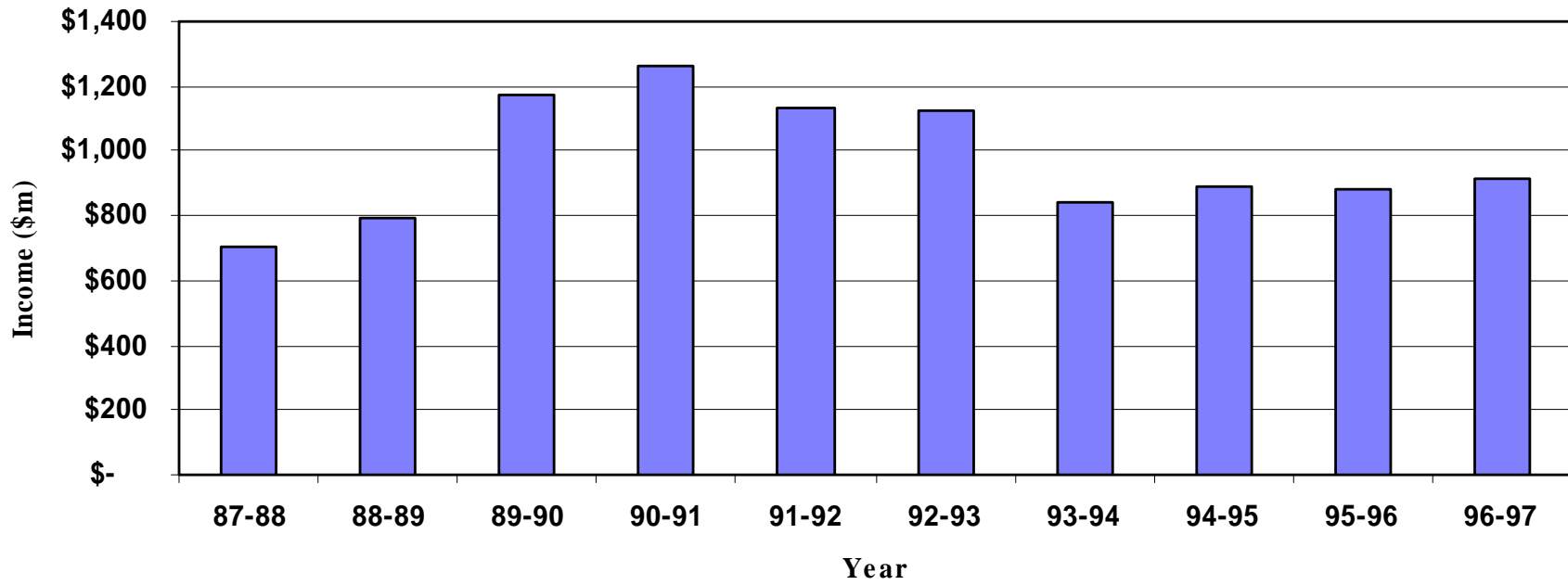
**Figure 3.26**  
**Permanent Commission/VWA Staff**



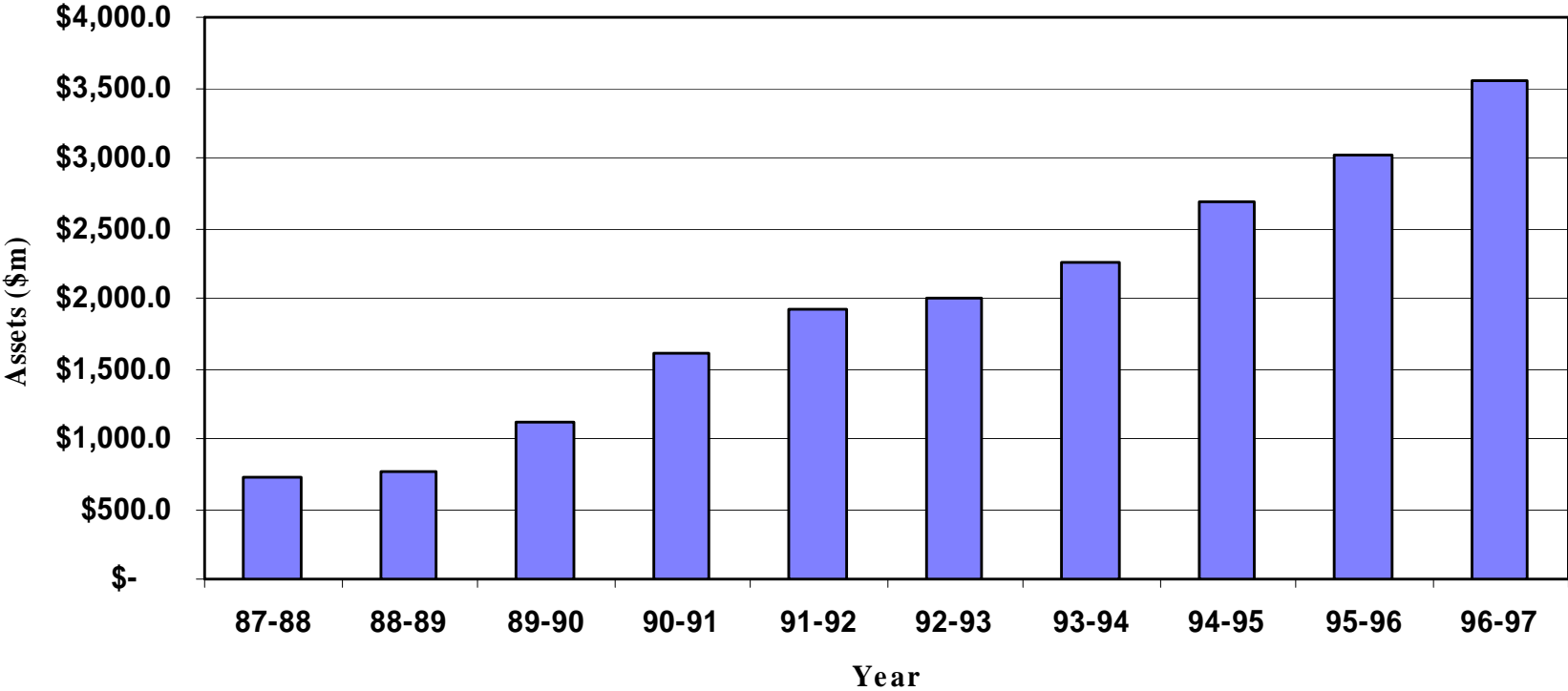
**Figure 3.27**  
**Average Premium Rate**



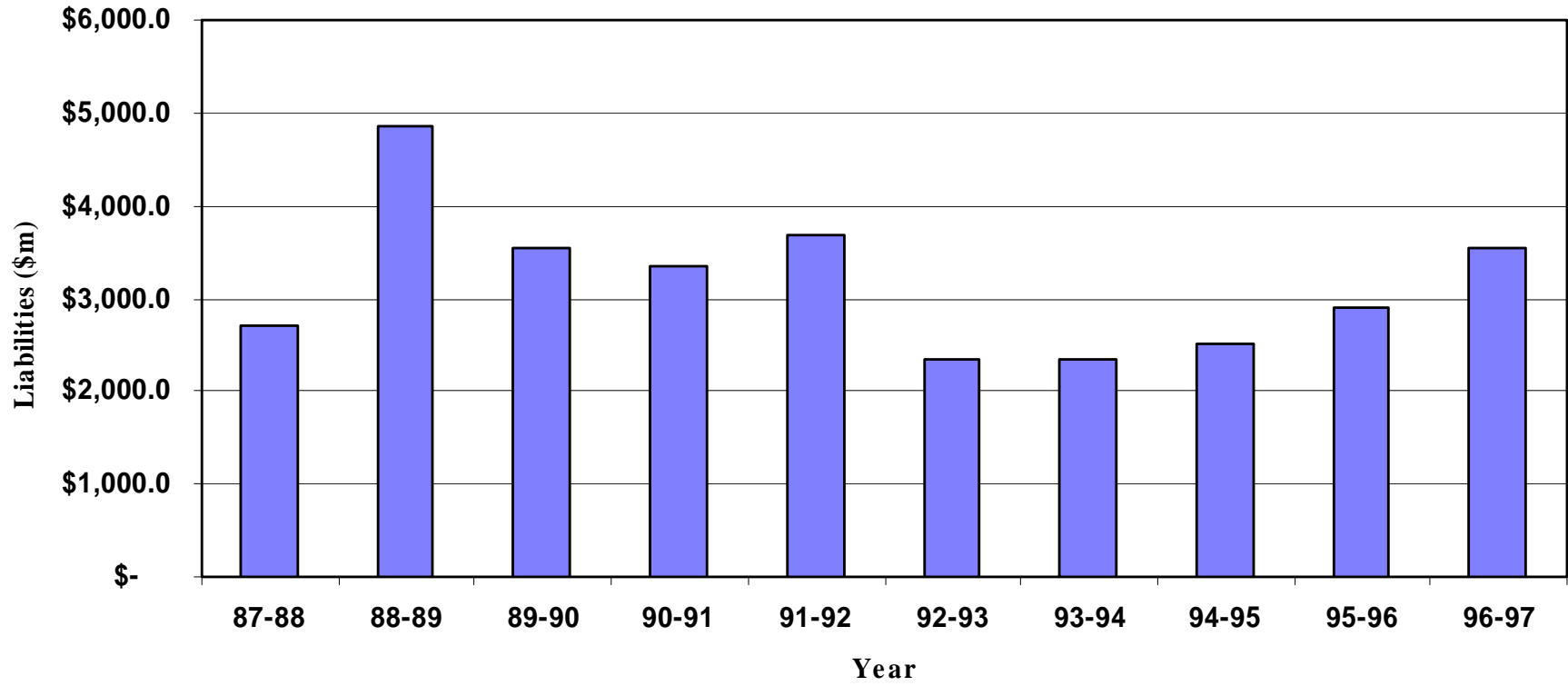
**Figure 3.28**  
**Premium/Levy Income**



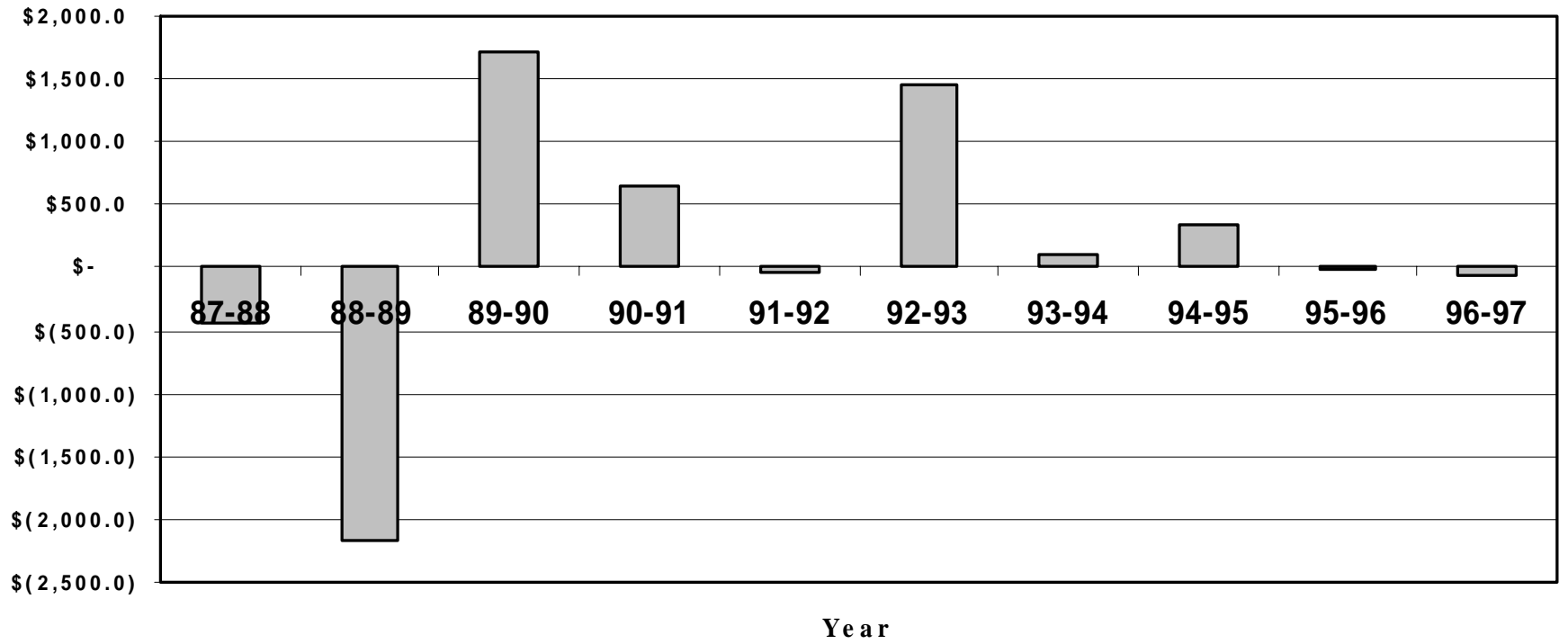
**Figure 3.29**  
**Fund (total assets)**



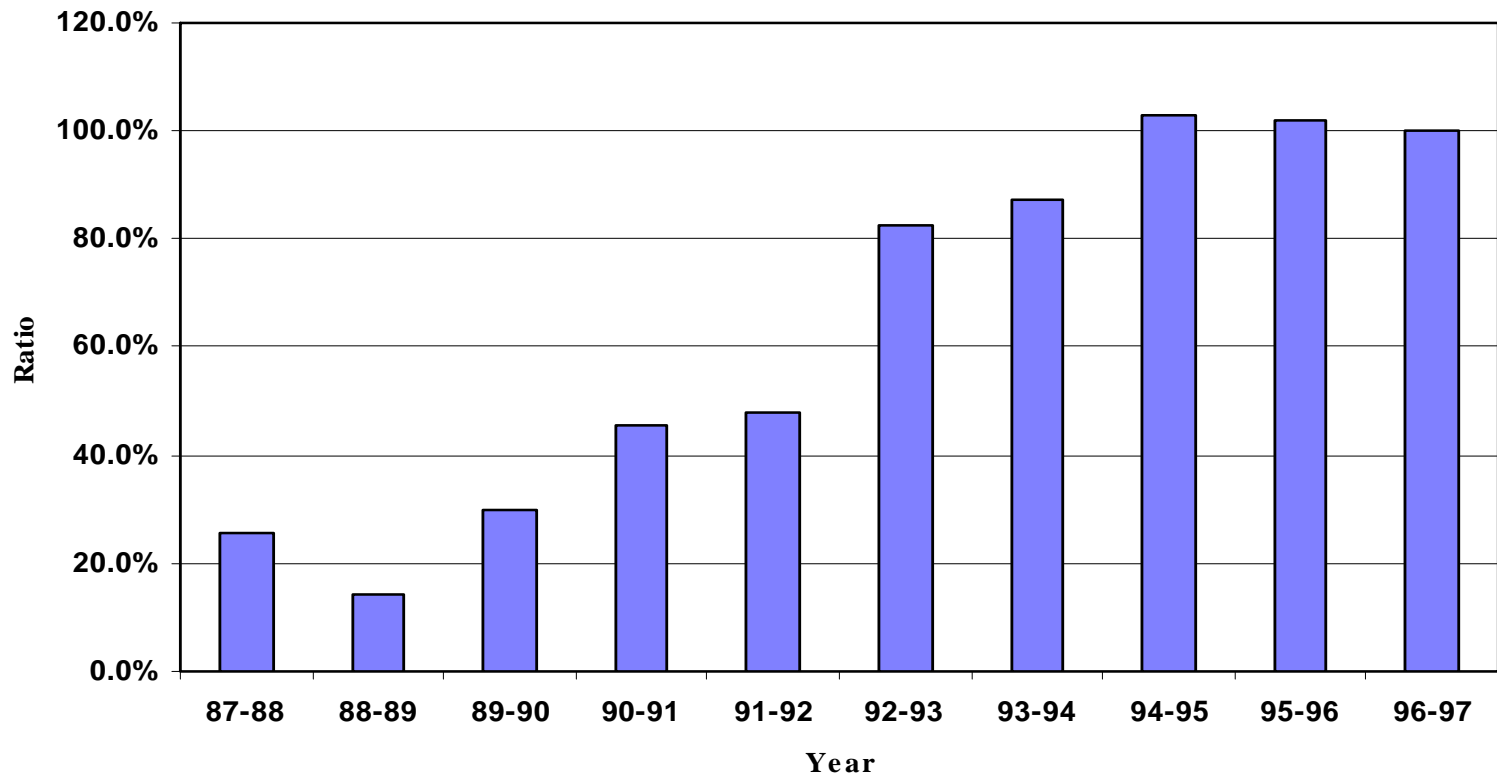
**Figure 3.30**  
**Gross Liabilities**



**Figure 3.31**  
**Net Profit/Loss for Year**



**Figure 3.32**  
**Funding Ratio**







## Chapter 4 PREVENTION

Our 1996 study of the Health and Safety Division of the VWA (HSD) established that the fundamentals (currency of legislation, regulation, codes of practice and policy) common to agencies with responsibility for safety and health were well established. (See volume I, chapter 8) Furthermore, the study found that HSD's management were highly qualified and energetic, demonstrating strong enthusiasm for their programme delivery and mandate. The Attention Points were targeted at improvements in the HSD strategies and utilisation of resources which could lead to maximising their effect in reducing workplace injury and disease.

The VWA moved quickly and decisively over the 2-year period to June, 1998 to develop and implement a strategic plan to transform the service delivery of the HSD. Significant change has already been achieved, aimed at defining a strong health and safety delivery identity for the Division as well as focussing on initiatives to improve the efficiency and effectiveness of service delivery. The changes since 1996 are discussed here in the context of why they were made and, as far as possible, the improvements that have flowed from the changes. The discussion includes the perceptions of VWA management and staff and employer and union representatives interviewed in June 1998 (see list in Appendix A-2).

### Developing Synergies with Other VWA Divisions

After absorbing the former HSO in July 1996, VWA carried out a major reorganisation and revitalisation of HSD in the fall of 1996, which included renaming it the Field Services Division (FSD) so as to more accurately reflect the mission. The restructuring achieved four objectives; first, the consolidation of overlapping service delivery areas within VWA and FSD; second, revitalisation of FSD's management team and reduction of the management/staff ratio; third, focussing FSD resources on the statutory mandate to inspect workplaces for compliance with health and safety legislation and standards, to investigate serious and fatal accidents and incidents, and take appropriate enforcement action; and fourth, to focus field officers on proactive performance-based activity consistent with the performance-based legislation adopted in 1985.

General observations by employer representatives reflect the perception of a strong initiative to get the field staff out of their offices so that their time is focussed on workplaces.

This is in marked contrast with organised labour's perception that the field staff have vanished and are of little assistance when there is interaction. The reality is that the amount of field time and activity has increased significantly since the 1996 review. The field officers are reported to be visiting the workplaces with the greatest safety and health challenges and thus may not be as visible to organised labour. Many employers indicated they valued the advice and assistance of FSD field officers. Other employer representatives fear that FSD has been "swallowed up" by the insurance side of VWA and as a result lost its profile as the champion for workplace health and safety in Victoria. This is in contrast to the significant investment being made by VWA to boost the prevention effort through a more highly trained and skilled staff that is field active a much greater percentage of their time.

Union representatives reported that they believed FSD had lost its independence and autonomy since the merger with VWA and that service has continually deteriorated over the last 2 years. They view the officers as not being proactive in enforcing the legislation. They report that when officers are investigating serious accidents, complaints and PINS they are not involving worker OHS representatives. Further, they allege that officers produce reports that are biased in favour of the employer, not factual and contain flawed conclusions. Union representatives believe there might be unwritten directives that result in officers only performing a consultative and advisory role and not enforcing legislative requirements. As a result some union representatives said they have lost confidence in FSD and have given up on seeking their assistance to resolve workplace issues. In 1996 our study found that many FSD field staff had not yet made the change to enforcing the performance-based legislative standards. It appears now that they have made the change. The significant concerns articulated by those interviewed may be more reflective of the union's reaction to recent legislative amendments than to a significant change in service delivery.

Further reorganisation has shifted the resources for investigations that might lead to prosecution from the FSD to the Operations Management Division. FSD field officers provide the initial response and investigation for serious and fatal accidents and are joined by investigators from the Evaluation and Compliance Unit. These investigators make a decision whether they will take an in-depth enforcement focussed approach or withdraw and leave the field officer alone to conclude an investigation focussed on what can be learned and how to prevent reoccurrence. Currently the number of prosecutions is about 120 per year. Since this is as many as has ever been achieved in recent years the perceptions of some organised labour

representatives that FSD has become less enforcement oriented is somewhat of a puzzle. A service goal of the division aims to reduce the time lag between investigation and laying charges to 8 weeks.

Although the focus is on stronger and swifter enforcement, this commitment is not apparent to the union representatives and this suggests a greater dialogue with the stakeholders is required to keep them apprised of the Division's strategies. Both employer association and union representatives suggested some form of advisory or consultative committee focussed on Prevention that meets on a monthly basis. Since a Standing Sub-Committee on Health and Safety already exists and could provide a forum for issues to be raised with VWA, the union and employer representatives interviewed are either unaware of the committee or perceive its purpose differently. The FSD provides updates of all of its activities and plans to the sub-committee.

Some of the former HSO resources were integrated into the VWA Corporate Affairs Division and the Legislation and Policy Development Division, while others were utilised to create a Programme Development Unit. In March of 1998 the Programme Development Unit was reorganised and a Field Operations Planning Unit established in FSD. This new Unit has a mandate to develop a workplace centred targeting system. Field officers will focus interventions on the 20,000 most challenged firms as follows:

- the top 5000 workplaces with materials handling claims;
- the top 5000 workplaces with other claims;
- the 5000 firms with the most claims in the building and construction industry; and
- the top 5000 firms with dangerous goods issues.

The target lists will be validated and supplemented by local officer knowledge.

The measures of success will be the workplace's achievement of compliance with OHS legislation and the level of improvement in safety, health, and injury management performance. This is known as the "case management" approach. The field officer is expected to be a change agent enhancing hazard awareness and facilitating changes in workplace culture, attitude, and behaviour. The officer will monitor the employer's progress or failure in developing programmes that achieve the expected outcomes. The Field Operations Planning Unit also has responsibility for developing standard intervention tools, operational standards and procedures and officer performance measurement systems.

Unions are concerned that the targeting system places too high an emphasis on claims experience, such that it may drive perverse claims behaviour and not focus in a preventive mode where hazards are high yet claims are low. However, FSD has created teams in each region that are dedicated to timely response to PINS, complaints from workers, and serious accidents. Thus, workplace safety representatives have the ability to request field officer attendance at high hazard/low injury claim workplaces whenever they have concerns about prevention.

VWA is currently in the process of developing a mobile office system for FSD officers. The plan for this laptop computer system incorporates the ability to download compensation, injury, disease, and disability management experience data, as well as previous officer inspections and interventions prior to a workplace visit. The system will also provide officer access to legislation, standards, codes of practice, and policy and procedures while in the field. Full implementation is planned for late 1998. These tools will provide FSD officers with state-of-the-art communication tools and the ability to produce readable, professional-looking reports, print excerpts of standards, or the workplace injury profile for the employer or worker representatives at the workplace. This is a significant financial investment by VWA. Once fully deployed, field staff should see at least 10 percent increase in efficiency.

A pilot programme that involves utilising field officers to ask employers questions about compensation issues, including the capacity of the employer to provide modified duties to facilitate return to work, will be expanded to all FSD officers. Although critics have said that this is a waste of field officer time, officers report they find the approach logical and that it does not take time away from their primary workplace duty. This feature demonstrates the further integration of FSD within the overall mandate of VWA.

Our 1996 study commended VWA on its extremely aggressive and successful outreach programmes which are validated by strong support from both labour and employer representatives. It is worth noting that this strategy is continuing to demonstrate a strong focus on prevention by encouraging employers to utilise the skills of field officers to assist them with strategies for managing hazards and risks. Further, a current major media campaign is targeting the importance of the combined efforts of workers, employers, and medical practitioners to combat back injuries and facilitate successful return to work. Employer representatives applauded the outreach campaigns focussed on health and safety and injury management for creating an extremely positive community profile for VWA.

These changes provide the framework for a fuller integration of FSD with the VWA, leveraging the organisation's resource potential and facilitating the development of synergistic strategies that lower workplace injuries and illnesses in Victoria.

### Management Structure

In our 1996 Attention Points it was suggested that any future reorganisation should seek opportunities to reduce the number of managers in the division. The FSD reorganisation focussed on a team service delivery model featuring far fewer managers. Including the addition of 14 new field officers, the ratio of managers to field staff has been reduced from 10 percent to 4.7 percent.

The flat management structure has 10 fewer regional managers and created 22 team leader positions. There are response teams and programme teams in each office. Team leaders are expected to spend at least 200 hours in the field each year conducting field officer work. However, the actual experience to date is that it has been very difficult to establish the team leaders as officers and get them out of the office.

Field officers traditionally relied heavily on their managers for advice and to direct and validate their proposed actions. The effect of swiftly removing this command and control management style and imposing a team-based, self-reliant approach on officers, without the benefit of supportive coaching, mentoring, training, and change management skills, is that team leaders continue to serve as supervisors. This at times creates tension for group managers, who are sandwiched between competing priorities. As a result, group managers are putting in extra hours until team leaders and field staff have fully accepted and integrated the changes required to achieve the Division's new strategies.

The reduction in managers was perhaps in hindsight too severe and too fast, resulting in insufficient support and assistance to implement and manage such a significant change. Although the goals set for the percentage of field time by field staff appear ambitious, group managers indicate satisfaction at how well FSD has done in the last year, and are optimistic that once field staff are fully equipped to spend almost all their working hours in the field more aggressive targets will be achieved.

## Human Resource Skill Adjustments

FSD has responded to the need to improve the level of human resource skills by establishing a Development Office. Initially the office will concentrate on the induction and training of the 14 new field officers. The training will focus on skills that match a performance based regulatory approach that promotes best practices and a systems approach to managing workplace health and safety. The Development Office will eventually conduct a skill development needs assessment of field staff and focus its energies on training and education required to align the human resources to the performance-based service delivery model outlined in legislation.

Given the drive for frequent and rapid change within the Division it seems apparent that this process must be more inclusive of group manager and team leader perspectives. Change needs to be sufficiently resourced to create conditions for successful implementation. Field staff and managers also highlighted the importance of developing succession plans and continuing the staff awareness surveys in order to monitor core competencies, awareness, and readiness to achieve strategic plans.

## Procedure Manuals

Our 1996 study noted extensive resource investment in very detailed quality procedure manuals. FSD has responded to this challenge by scaling down the effort applied in preparation and maintenance to one person, who only spends part-time on this project. The newly formed Operations Planning Unit is developing a Field Officers Handbook similar to that used in other jurisdictions that provides brief and 'to-the-point' guidance to staff.

## Community Collaboration

The Development Task Force, formerly a part of HSD, was integrated into the Programme Management Branch of the Operations Management Division during the major restructuring of HSD. An extensive evaluation of the WorkCover Leveraging Programme was carried out by Monash University in 1997. The evaluation found that the Leveraging Programme met many of its first stage objectives, particularly in the area of establishing partnerships with industry to improve workplace health and safety. The evaluators recommended the continuation of this innovative strategy for at least a further 2 to 3 years to allow time for the effectiveness of

the innovations to be fully tested and also to determine sustainability of gains. Specific recommendations were made to guide the evolution of this initiative.

VWA continues to support projects dealing with community safety and contractor occupational safety and health improvements. New initiatives include a strong focus on small business, including PLASCARE (plastics industry) and "TruckSafe" (trucking industry). VWA also plans to develop an employer "report card" that compares each individual employer's performance to the rest of the industry sector. This programme will be supported by strategies on how to self manage improvements in employer performance.

The Policy Division Research and Development Unit is also funding causality research initiatives. One large project will assist in defining the key causes of the most frequent and severe injuries in the construction industry. Another initiative involves combining and analysing the VWA, Victoria Coroner and National data base information on deceased persons. This research has the potential to discover workplace links to occupational diseases not previously recognised.

#### Service Quality Assurance

In November 1997 Ron Klein and Associates conducted an independent survey of employers and health and safety representatives who had been in contact with FSD over the previous 6 months. The sample involved 500 respondents and was designed to provide a cross-section of metropolitan and rural services as well as the range of reasons for a workplace visit (accident investigation, complaint, programme evaluation, dangerous goods audit, etc.).

Overall the survey indicated a very high level of satisfaction, with the service provided by FSD officers (87% favourable). The survey result is comparable although produced somewhat better satisfaction ratings than that seen in surveys of North American jurisdictions. Ongoing surveys of this type will assist FSD to determine the effectiveness of officer training initiatives and the workplace reception of new prevention strategies.

Our June 1998 interviews with employers validated these survey results. Employers indicated they often called in field staff as advisors and valued them as conduits of best practices. Several employers indicated a strong interest in participating in a more consultative way with FSD management. They would like the opportunity to make recommendations on policy and practice.



In contrast, union representatives interviewed were unanimous in their view that service quality, at least for worker/union interests, had seriously deteriorated. They expressed concern that FSD management is making a concerted effort to de-emphasize the role of unions and workplace worker representatives. They cited as key concerns the lack of communication and consultation on change, difficulty accessing information and data, a credibility gap between legislation and published policy and practice. They say they experienced either extreme delays or failure to respond to worker representatives workplace issues and, when response occurred, a perception that officers had been told not to take enforcement action.

Some union representatives stated they have “written off” FSD officers as the last resource they will call to assist in resolving workplace health and safety issues. Again, these views are in sharp conflict with the 1997 Klein survey of 243 workplace health and safety representatives who gave FSD officers a 91 percent satisfaction rating. Perhaps the political environment created by the changes to the WorkCover legislation may be somewhat responsible for the negative views expressed recently by organised labour.

#### Specialised Skill Development

Our 1996 study suggested a need to consider ways of deploying specialist resources (technologist staff) so that they could be more effective in delivering their skills directly to the workplace. FSD has appointed all of the hygienists, ergonomists, engineers and chemists as inspectors and provided them with specific training to enhance their inspection and investigation skills. A target has been set to ensure that 25 percent of their available time is spent in the field. It is reported that the target has already being achieved by the ergonomists and hygienists. Furthermore, some of these specialists have also taken on the added task of co-ordinating field projects in their area of expertise.

One employer association specifically supported and valued initiatives such as the carpet industry study carried out by the ergonomists. Union representatives complained about a lack of response or availability of hygienists for assistance on asbestos and noise exposure issues. It was not clear whether these were old or current issues however, given the active field status of the hygiene offices it is likely that these complaints predate their enhanced service delivery status.

#### Inspector Support

FSD reports it has provided each field officer with a dedicated vehicle and is in the process of equipping the officers with laptops and portable printers to create a mobile office

system. The provision of dedicated vehicles is one strategy that has helped to increase the amount of active field service time by a monthly average of 41 percent.

#### Other Resource Allocation Issues

Although FSD is still saddled with the monitoring and inspection requirements of very prescriptive Dangerous Goods regulations, efforts have been made to streamline activity required to achieve the mandate of the legislation. The dangerous goods approval process has been decentralised to the Regional offices and the number of staff required to perform these functions has been reduced to two. Many of the dangerous goods approval and monitoring functions have been integrated into the routine of existing field and regional administrative staff.

The National Occupational Health and Safety Commission (NOHSC) has produced a draft National Dangerous Goods standard that is out for public comment at this writing. The draft standard is performance based. Introduction of a revised Dangerous Goods Act in Victoria based on these principles would relieve field officers of additional routine monitoring and inspection activities.

The *Occupational Health and Safety Act, 1985* and the *Equipment (Public Safety) Act, 1994* were amended in 1997 to increase the maximum penalties for indictable offenses from \$40,000 to \$250,000 for an employer and from \$10,000 to \$50,000 for individuals. Amendments included the duty for VWA to issue general guidelines for, or with respect to, prosecution of offenses under these two Acts, as well as the *Dangerous Goods Act, 1985*.

VWA is currently developing a new set of prosecution guidelines to compliment the new penalty regime and are also reported to be studying a complementary administrative penalty system. Meanwhile, the level of prosecution activity is somewhat higher than in previous years. In 1996-1997 there were 76 prosecutions with an average fine of \$11,138 and for the first half of the 1997-1998 fiscal year there have been 40 prosecutions with an average fine of \$13,023.

Our 1996 inventory noted that a great deal of effort was involved in data entry to INSPIRE and the Job/correspondence Tracker system. The effort required to input or track field activity will be significantly reduced once field officers are equipped with laptop computers, and the new system is operational.

Field officers expressed an interest in being better informed about planned changes to the mission, strategy, and objectives and also given the opportunity to express their views. The

communication gap is perceived by them to drive inconsistency in service delivery. However, this is not an uncommon complaint from OHS professional field staff in every part of the world.

Remuneration levels also continue to be an issue with field officers. They see opportunities for advancement as limited in the flattened organisation structure. They also report a widening gap between their pay scales and those of OHS professionals and supervisor ranks in the private sector. They are concerned that the brightest and best officers will opt out of the organisation.

Two employer representatives expressed the view that resources in FSD were inadequate to deliver on the mandate. Unions and workplace representatives echoed this concern. VWA has adopted a strategy that has reduced the number of managers and increased the number of field officers and are also investing in equipment and tools that will maximise the field presence of the officers. Once this strategy has achieved its maximum effect, VWA will assess whether the staff complement is appropriate to the mandate.

#### Information Sources

VWA has centralised their 1-800 information call centre and expanded the scope to include OHS matters as well as compensation and return-to-work issues. Wide promotion of this integrated service has been achieved through inclusion in all WorkCover publications and outreach programmes. In addition, the regional office staff has been trained to provide this integrated response to inquiries.

Guidelines have been developed for small business that are designed to assist employers in the recognition of hazards and how to assess and control OHS risks in the workplace. Other publications help employers and OHS representatives to understand how FSD enforces laws that protect the health and safety of workers and the public. These booklets also outline what the employer or OHS representative can expect when a field officer visits a workplace. Risk management kits for manual handling are available to assist employers in this important OHS area.

#### Conclusion

VWA has made remarkable progress since the 1996 study in integrating the Field Services Division into the mainstream of WorkCover's service delivery. Workplace injury claims continue to decline in Victoria. Significant efficiencies have been achieved through

aggressive changes to the field service delivery strategy. The greatest remaining challenge is to embed the progressive changes into the operation. The record of progress on injury reduction will be increased through improvements to open communication and meaningful dialogue with field officers, unions, and worker representatives.



## Chapter 5 ATTENTION POINTS

### Introduction

We concluded our 1996 report (Volume I) by listing 41 “Attention Points,” that in our view either represented special strengths of the WorkCover system, or warranted additional attention by those who seek to improve the system. Our task was not to prescribe cures for any problems identified but simply to offer an informed, independent perspective on the programme. We do not reiterate those attention points here, but we will note below some that need updating given the events of the past 2 years.

It must be remarked that we continue to be struck by the pace of change in the WorkCover programme. Clearly, there are pluses and minuses attached to a scheme that seems constantly to be changing. Critics of the programme will likely describe WorkCover as lacking in stability. Supporters of WorkCover will perceive the same performance as evidence of flexibility, plus a capability to respond to early signs of trouble. There is no obvious right or wrong position on this matter, it is a matter of judgment. If elements of a system are not working as they should, then modification ought not to be delayed. On the other hand, if an approach has not been given adequate time for testing before it is scrapped and replaced, it becomes impossible to evaluate policy initiatives.

We have witnessed many workers' compensation programmes that have not had the data systems that allowed early warnings to be delivered, or that lacked the authority to propose needed changes, or who were locked into positions because the power of interest groups was sufficient to thwart needed changes. Clearly, this has not been the situation in Victoria since 1992. Our perception is that the system architects have known what they wanted and have been very consistent from the start. The system has been evolving, not just changing, and the performance has improved remarkably over the past 5 years.

This chapter continues with a review of some of our 1996 attention points that deserve restating or need updating, due either to legislative or environmental changes. Then we turn to a new set of attention points derived from our 1998 observations.

### Restated Attention Points from 1996

In the 2 years that have passed since the 1996 field work was conducted, a number of the attention points are in need of restatement since some changes have occurred that directly modify them. The following discussion is indexed directly to the attention points of volume I.

### G-1. Amazing Transformation

The “amazing transformation” described in this attention point in 1996 still represents a fair assessment of the change process that began in 1992. The consistency of purpose seems as resolute in 1998 as it was in 1996. The goals envisioned for the programme in 1992 largely have been met. It is not uncommon in workers’ compensation, or in other large social systems, to find that holding on to one’s achievements is at least as difficult as initially attaining them. We see no evidence of this in the system. Nor do we find a system that has attained equilibrium; the workers’ compensation system in Victoria is still evolving in very significant ways.

### G-3. Cultural Change through Media

In this attention point in 1996 we noted the effectiveness of the VWA media strategy to change the “compo” culture. Nothing in 1998 alters our perception on this. We also observed that “the merger with HSO creates the opportunity to carry the media message into new areas.” On that front we see a major initiative in prevention to persuade the public and the employer-employee community of the need for workplace safety. Together with the programme designed to encourage practices to protect workers from back injuries, VWA is aiming to derive some important synergies from its absorption of the HSO.

### I-4. Economic Incentives for Insurers

A number of attention points focussed on relations between the VWA and authorised insurers. The public-private workers’ compensation insurance arrangement in Victoria is unique to Australia and as such, warrants considerable attention. Can the authorised insurers be induced to provide the level and quality of services that employers and workers would like in a framework where they do not bear the insurance risk? What types of incentive schemes will cause the insurers to maximise the various goals that the VWA has set for the programme?

Until now the VWA found itself frequently modifying the rules and the arrangements with the authorised insurers in the attempt to “get it right.” Our attention points noted the challenge that these efforts posed both for authorised insurers and for the VWA. In 1998, the VWA is making what appear to be more fundamental changes in the incentive arrangements with the insurers. This follows the government decision that the Victorian system will not be privatised.

The changes proposed aim to realign the bases of insurer incentive payments so as to give more weight to desired outcomes, e.g., prevention and return-to-work results, and less weight to premiums collected. If insurer remuneration can be increased contingent on outcomes, important system change is bound to follow. For example, the insurers may be induced to employ more loss control staff than they currently believe they can justify. A key feature of the new programme is that it likely will be based on longer duration remuneration contracts. This will provide all parties with sufficient time to learn the programme and implement it, and to be able to evaluate its effectiveness. This is very important work for the future of the scheme that the VWA is carrying on with the support of the Boston Consulting Group.

### C-2. Erosion of the “Serious Injury” Threshold

In 1996 we pointed to the erosion of the “serious injury” threshold. Subsequently, the Government amended the law so as to plug the various gaps that had been created by certain court decisions and by the utilisation of psychiatric impairment as an “overlay” in cases of occupational injury (so-called “physical-mental” cases in the vernacular of workers’ compensation). But the measures taken to limit the access to “serious injury” were quickly rendered ineffective. In the 1997 amendments the concept of “serious injury” was dropped for claims arising from injuries that occurred on or after 12 November 1997. After multiple efforts to repair the concept so as to maintain its effectiveness as a screening device, it was decided that an alternative method should be employed.

### C-3. Consistency and Comprehensiveness of the Table of Maims

We observed in this attention point that the Table of Maims might need some modification. Three anomalies in the Table were noted. First, we observed that the rating of impairments of the back, neck, and pelvis was done differently than all other conditions listed in the Table. Second, the AMA Guides (Guides to the Evaluation of Permanent Impairments) were required to be used in rating certain impairments but not others. Third, certain conditions, and not simply obscure ones, were not listed in the Table of Maims. Thus, a worker with a compensable respiratory condition, for example, was ineligible to receive a maims benefit.

In the 1997 amendments, each of these issues was dealt with by requiring that any permanent impairment be rated according to the AMA Guides. This will provide a more consistent method of rating maims, and most impairments will be able to be rated since they are



found in the Guides. Additionally, this new approach will utilise the current edition of the Guides (Fourth Edition) and not one that has been superseded.

#### C-7. Problems in the Setting of Reasonable Medical and Like Fees

In this attention point we observed that a number of problems existed regarding the setting of reasonable fees for medical and like services. We are certain that the passage of 2 years has not eliminated all those problems. However, there appears to be a very substantial improvement in the relations between the health care providers and the VWA. This change will better enable the parties to work collaboratively to respond to future developments in the delivery of health care in Australia. As an example, at this time Victoria has not adopted a “managed care” approach in workers’ compensation, though this approach was authorised in the 1996 amendments. Were some movement to be made in that direction, it would be very helpful if the VWA and the provider groups could work together.

With the exception of these amendments, we feel comfortable with the attention points of 1996, as reported in volume I. The progress in addressing these issues also demonstrates the evolution of the system under the management of the VWA. However, after 2 years of further system evolution, there are new issues worthy of attention. We turn now to our 1998 impressions.

#### Additional Attention Points - 1998

We begin with a series of observations about the system design in Victoria. These overarching issues serve to shape the environment of workers’ compensation, and there has been a surprising amount of change in these areas in the past 2 years. We include here issues of overall system performance, return-to-work provisions, the abolition of common law, the restriction of lump sum settlements, and privatisation of the insurance mechanism.

Next we will turn to occupational health and safety issues. Here we will discuss some internal and external performance questions that have surfaced during our field work in 1998. Then we review some medical issues that have arisen. We will complete our attention points with some observations about the perceptions of the system and the durability of the WorkCover revolution.

## System Design Issues

In this section we record our observations relative to general system design issues. The unique design of the Victorian system demands our careful attention. There are a number of features worthy of note.

### WorkCover Goals Are Being Met

In 1996, we referred to the “amazing transformation” in the Victorian workers’ compensation scheme since 1992. The WorkCover scheme has succeeded in achieving the goals its architects set for it in 1992. It has improved the return-to-work performance, reduced the incidence of long-term cases, increased weekly benefits, improved the equity of benefit levels, reduced employer costs, and eliminated the unfunded liability. Further, it has accomplished these remarkable goals in the face of a lukewarm economic environment, with relatively high unemployment levels and stagnant real wages, without an increase in administrative costs or growth in staff. This is a remarkable achievement, and credit is due both to the system’s legislative architects and its administrators.

We believe that Victoria has blazed a new trail and created a “third way” for workers’ compensation systems. The blend of public underwriting and scheme regulation with private claims administration and service delivery is a model worthy of attention from other jurisdictions. The fact that the similar system in New South Wales is struggling with an unfunded liability problem and may be privatised suggests caution, but the Victorian system certainly bears watching.

### Common Law

No change has occurred since 1996 that looms so large and poses more uncertainties for the system than the removal of access to common law for occupational injuries and illnesses sustained after 11 November 1997. In response to the perception of a blowout of costs due to common law actions, the door was closed tightly by the government after a bitter struggle. In addition to the cost motivator, WorkCover system architects felt strongly that common law settlements created perverse incentives for injured workers to remain off work to justify their claim, rather than returning to work as soon as safe and practicable. Large common law settlements were also seen to create severe equity issues, as equally situated workers are not treated equally in such a tort liability system. The “lottery” aspect of common law settlements,

with one worker receiving a large settlement and another, seemingly just as deserving, receiving little or nothing, was particularly objectionable.

The abolition of common law remedies places Victoria in the main stream of state and provincial workers' compensation systems, as no system in North America allows common law access for workplace injuries and illnesses. However, there appears to have been a widely held view within Victoria that access to common law was the right of an injured worker. As such there are certain to be efforts made to circumvent the statutory change. Representatives of injured workers can be expected to explore every avenue for obtaining benefits and compensation beyond that which is provided for in the Accident Compensation Act at the present time.

Some stakeholders have also expressed concern that removal of access to Common Law settlements for workplace injury contained in the *Accident Compensation (Miscellaneous Amendment) Act 1997* will minimise or eliminate a key motivator for employers to provide healthy and safe workplaces. We believe prevention is driven by a combination of effective media campaigns, occupational health and safety education programmes for workers and employers, and provision of well resourced inspectorates to monitor workplace health and safety and investigate serious accidents. Financial incentives from effective experience rating programs for employers play a significant supporting role. Stringent enforcement of regulatory violations through prosecution and application of administrative or additional assessment penalty systems or a combination of these strategies also serve as a deterrent for inappropriate behaviours. Effective education and enforcement systems with stiff but credible penalties provide better motivators for employers than large, but infrequent common law settlements.

However, there is reason to be sceptical that the law change has brought about a new equilibrium in workers' compensation. Previously, the effort to limit access to the common law remedy only to those who sustained a severe impairment was unsuccessful, as were steps to repair the problems as they appeared. There will be a sizable population of claims to run off as the word gets around that access to common law has ended. Such proceedings must be commenced by 31 December 2000, and can be expected to take 2 years and more to resolve beyond that date. So it will be a while before these matters are finally settled. Meanwhile, numerous challenges to the statute can be expected in the courts.

## Lump Sum Settlements

Many practitioners in workers' compensation around the world have strongly held views regarding lump sum settlements. Proponents of their use argue that they are needed as a means to resolve those claims with issues that are in dispute. Employees generally appear to prefer receiving benefits in a lump sum, rather than in periodic payments that are spread over a long period of time. Workers' solicitors prefer schemes where they can use their skills to negotiate settlements on behalf of their clients, and where they can be paid all their fees in a lump sum. Insurers also seem to prefer to have the option of closing out a claim with a lump sum settlement, despite the suspicion that such payments can have the effect of soliciting "nuisance" claims. Other observers argue that lump sum settlements that close out claims permit workers to "get on with their lives," put their injury behind them, and extricate themselves from the workers' compensation system.

Some opponents of lump sum settlements also argue that there is a sorry history of persons who are unable to successfully manage lump sums or are irresponsible with large windfalls. These persons, it is argued, ultimately will become dependent upon social security or the largesse of government. Another source of opposition arises from the argument that lump sum settlements are the "bait" that draws dubious claims that might not otherwise be made. It is argued, further, that these lump sum settlements are the source of much of the litigation and delay that sometimes characterises these systems.

In Victoria, the social inequity of large lump-sum settlements was cited by the government early on in the debate as a rationale for restricting such payments. In addition, it was pointed out that seeking such a settlement was virtually certain to end the relationship with the injury employer and thus reduce the likelihood of return to work. It was also felt that the transactions costs of such settlements was unacceptably high in comparison with an administrative system like WorkCover.

The WorkCover scheme has consistently aimed to thwart the use of lump sum settlements, due to the reasons just cited. However, there were two significant sources of lump sum settlements that existed prior to the 1997 legislation (putting aside death claims and the lump sum payments made under section 115). Common law cases and payments for maims under sections 98 and 98A both provided insurers and workers with the opportunity to reach agreements and settle them with lump sums.

In volume I, we reported the rapid growth over time in lump sum payments under WorkCare. The elimination of access to the common law remedy removes one source of lump sum benefits, as such settlements overwhelmingly result from negotiations of the parties rather than from judgments made by the courts. This represents a very significant change in the manner of doing business for all the parties in the workers= compensation system of Victoria. It remains to be seen what the ultimate impact of this change will be.

### Long-Term Cases

A major goal of the 1992 law was to curtail the very long-term utilisation of workers' compensation as a source of income maintenance for those workers who were not seriously injured or totally and permanently incapacitated. The designers of WorkCover believed such individuals would be better off returning to work. The goal of shedding many of the cases inherited from WorkCare and limiting long-term claims arising under WorkCover was met successfully. However, a number of recent changes in the law may result in greater numbers of cases of persons entitled to weekly payments beyond 104 weeks. The elimination of the concept of "serious injury" removes one barrier (albeit not one that proved to be as effective as anticipated) to the extension of benefits beyond 104 weeks. Instead, most disputes over the continuation of weekly benefits beyond 104 weeks will involve a test over whether or not the worker has "no current work capacity and [is] likely to continue indefinitely to have no current capacity." The 1997 Act defines these as "medical question[s]" which therefore can be irrebuttably determined by a medical panel.

In 1996 we observed that the courts have resisted the idea that a medical panel's finding is binding upon them. There will be litigation in the future over the meaning of "[no] current work capacity" and "suitable employment" (which appears in the definitions of "[no] current work capacity." Questions will arise over whether the medical panel is willing and able to render binding opinions on what are essentially occupational rehabilitation and labour market questions, and whether they can do so in sufficient numbers. There will be disputes over long-term benefits in cases where a worker returns to work for at least 15 hours' work per week and has current weekly earnings of \$100. Heretofore, with access to common law, the parties could use that track as a way to forge settlements over disputes that were really rooted in other matters, such as the 104-week decision. In the absence of the settlement option, other things equal, more long-term

cases can be expected. The cost impact of the 1997 law will depend heavily on the VWA's ability to control the incidence of long-term cases. The previous record indicates that they will.

### Privatisation

Since 1992 the possibility of privatisation has been an issue of interest to all parties concerned with workers' compensation in Victoria. Privatisation is widely understood to mean that the underwriting risk is borne by the insurance carriers and not by an agency of state government. The original blueprint for WorkCover anticipated the full privatisation of the system once the unfunded liability was retired and system funding was stabilised. The Insurance Council of Australia (ICA) circulated a proposal for a privatised Victorian system in the fall of 1997. Further, the Victorian Department of Treasury and Finance released a report in January 1998 recommending privatisation of the scheme, prompted by the National Competition Policy agreements.

However, in May of 1998 the government announced that it would not move to privatise workers' compensation in Victoria. Not surprisingly, privatisation supporters do not regard the matter as entirely settled. If New South Wales moves to privatise its similar workers' compensation programme, as seems likely at this time, it could serve to revive the issue in Victoria. In particular, any significant improvements in workers' compensation in New South Wales that might follow privatisation would strengthen the position of its supporters in Victoria and elsewhere. In this regard the issue of privatisation in Victoria is still unresolved. However, the authorised insurers ought not postpone important decisions on investments in people and systems because of uncertainty regarding the future of workers' compensation insurance. Further, any effort by the VWA to attract businesses to act as authorised insurers or agents will be set back if uncertainty affects those decisions. We applaud the efforts to move to extended contracts that will improve the ability of insurers to plan for the future.

### Expansion of Self-Insurance

The desire to expand self-insurance derives from the generally favourable outcomes associated with its use, e.g., active and effective prevention programmes, positive return-to-work outcomes, and low costs. The very slow growth in the extent of self-insurance is a concern for some policy makers. The limited interest by eligible firms reflects several factors. First, some businesses simply wish to avoid the complicated process of applying for self-insurer status. Safety Map was cited as a significant barrier, for instance. Other firms have given low priority to

the subject, and to other risk management matters as well, based on cost levels. Undoubtedly, with workers' compensation costs low and very competitive by Australian standards, employers do not regard the possible savings to them from self insurance as worth the effort and the potential risks. Many employers are undoubtedly very satisfied with the services rendered to them by their authorised insurer. In this sense the VWA may be a victim of its own success. If system costs begin to grow significantly, if the scheme appears to be going out of control, or if insurers cease to provide acceptable service to their insureds, self insurance will grow accordingly.

#### Alternative Insurer Arrangements

The December 1996 legislation authorised "Agency Arrangements" whereby employers and insurers can vary the specific responsibilities between them. This permits experimentation with structure and performance arrangements in pursuit of the optimal insurance solution. The VWA also expects some alternative providers to develop in the market to meet specific needs. It is not yet clear exactly what this might mean. Such openness to innovation and experimentation is to be commended in a regulatory agency such as the VWA, however. We have every confidence that the VWA is capable of monitoring and evaluating such experiments.

#### Prevention Issues

There are a number of issues that have arisen since the merger of VWA and HSO in 1996. The potential synergy of the merger is still exciting and many gains have already been recorded. However, there are also a number of areas of concern.

#### Internal Communication and Consultation

Mechanisms to improve internal communication and consultation that effectively reach and involve the FSD field officers need to be improved. Delivery of a consistent message to the field staff level is a common problem in health and safety regulatory organisations and difficult to achieve. The efforts by FSD senior management and the VWA executive to regularly tour the regional offices and make field trips with officers demonstrates a strong commitment to consistently communicating the mission, values and vision and will over the longer term achieve the desired results. But in this difficult transition period, extraordinary efforts to communicate are justified.

### Stakeholder Input

Employers and especially unions are expressing a strong desire for more inclusion in an advisory/consultative role with FSD. A concerted effort should be made to understand the issues and perceived service delivery failures expressed by organised labour and their workplace representatives. FSD should consider meeting initially at monthly intervals with employer and union representatives to revitalise lines of communication and share the VWA vision, direction, and objectives with stakeholders.

### Adapting to Change

Group managers and field officers appear to be struggling with the pace of change. FSD should consider utilising the services of a change management consultant to assist Managers, team leaders and officers to understand the personal reaction to change, the behaviours that can be expected, and equipping them with coping mechanisms. Group managers appear to be most affected by the change at this point. The swift conversion to a flattened organisation structure may have left the group managers/team leaders with insufficient capacity to manage the implementation of the new strategic plan. Consideration should be given to adding some capacity to this management level, at least until the changes have become embedded.

### Safety Map

While we received positive reactions in 1996, employers are now suggesting a review of Safety Map. Some employers find the certification process requires a significant investment of resources in paper documentation exercises that do not add value by improving health and safety at the workplaces. This may be a typical reaction of enlightened employers whose records demonstrate a strong commitment to high standards for health and safety management. However, the VWA should consider whether it may be time for a general review of the Safety Map process.

### Systems, Data, Targets

It is still too early to assess the introduction of the new information management system, the deployment of lap top computers to field staff, and the development of focussed field activity on the most challenged workplaces and predominant injury types. However, the strategies are sound and should deliver enhanced service delivery, more effective resource utilisation, and further reductions in injury claims. It is also clear that each of these initiatives will require



thoughtful implementation plans and schedules that recognise the difficulties that some in the field will have adapting to the change.

### Performance Measurement

The targets for field activity are currently set to measure the on-site time. Consideration should be given to including travel time in the measure of workplace visits, or adjusting the targets for workplace visits in rural regions. Urban workplaces have a lesser component of travel. There is currently a lot of internal discussion about the ability to achieve the workplace targets. The emphasis should be placed on keeping the officers in the field for the full 7.5 hours each day for at least 9 out of 10 days. Once the field staff are fully equipped with laptop computers, the new information system is operating, and officers develop a higher level of self confidence in their ability and decision making, FSD should see significant gains in field active time. However, it would be advisable not to set targets that are too aggressive until these systems are in place and the field staff is adept at using them.

Field officer performance measurement systems are also being developed by the Operations Planning Unit. The staff is naturally suspicious of the way in which this system will be used in monitoring their activity. Consideration should be given to placing emphasis on this as an effectiveness and planning tool for the Division as opposed to a measurement tool for individual performance.

### Medical Issues

There are a number of significant issues raised in the medical area by the law changes since 1996.

### The AMA Guides

The 1997 law introduces several significant changes in the determination of benefits for permanent impairments. As a result, all impairments (excluding hearing loss) will be rated according to the AMA Guides. Further, the previously used Second Edition of the Guides is to be replaced by the most recent version, the Fourth Edition. It will be a challenge to provide suitable training in the use of the Guides to a sufficient number of persons in time for their application from 1 September 1998, but the VWA reports that they will have 200 doctors trained by the deadline. Obviously it will take much longer before all system participants become familiar with the new standards.

## Medical Panels

There are several well established principles regarding the effectiveness of medical panels, in Victoria or elsewhere. First, the acceptance of the decisions of medical panels by stakeholders of the system depends heavily on the perception of the professional calibre of the panellists and of their objectivity. Second, where medical panels contribute to delays in the resolution of disputes, they can create problems in other parts of the system. We observed in 1996 that the medical panels in Victoria had been heavily overburdened, resulting in serious delays. The number of medical practitioners who are well regarded and who will serve on medical panels is clearly limited in the aggregate and is especially so in certain specialties and regions.

We foresee that the medical panels will need to be limited in their number in order to avoid having to draw upon less than very highly qualified persons to serve on them. As their utilisation rises and delays increase, the likelihood of success of the medical panel system will fall. One informed Victorian source believes that about 80 panels per month with an average of about 2.5 doctors per panel is a realistic capacity maximum at the present time. Beyond that number the quality constraint will become a problem.

There is the potential for extremely high demand for medical panels in Victoria, both with regard to evaluating the degree of impairment and the test of [no] current work capacity. The VWA believes they can control access to the medical panels through the insurers. However, the success of the medical panel system is critical if the 1997 amendments are to achieve their goals. Careful monitoring and evaluation are needed here.

## Section 112 Examinations

Independent medical examinations have been an important ingredient in the claims process and are likely to remain so. Under the 1997 amendments for example, if the VWA or an insurer accepts liability for a non-economic loss claim (section 98C), or if a court determines that such a liability exists, the worker is to be rated by an independent medical examiner (section 104B). The quality of this examination will likely affect the worker's willingness to accept, or to dispute, the insurer's assessment. This decision, in turn, will affect the need for a medical panel to assess the impairment. The VWA must assure itself that these independent examinations are being done competently.

We continue to hear dissatisfaction expressed over the objectivity and professionalism of some examiners. We have no empirical basis to evaluate these criticisms, but note that some dissatisfaction does exist. Under section 104B, the importance of these examiners will grow. Indirectly, their work will also affect the ability of the medical panels to succeed (see above). That matter aside, the VWA should also review the very substantial costs that it currently incurs for these independent medical examinations.

#### Medical and Other (Treatment) Costs Are Growing Rapidly

Payments for medical and like (treatment) services have grown rapidly over the past few years. For example, over the past 3 years (1994-95 to 1997-98, estimated) total payments are up by nearly 40 percent. The largest component is the medical practitioner payments which account for almost 30 percent of these costs and which have grown almost 32 percent over the 3 years. Physiotherapy and private hospital payments, both sizable components of the aggregate, have each also grown by 30 percent or more in the past 3 years. Growth rates have been highest in some of the ancillary services such as chemists (up 86 percent) and psychologists (up almost 78 percent ) in the past 3 years. Health care costs are rising rapidly across the country and in other state workers' compensation programmes. The VWA needs to assure the stakeholder community that its cost controls in these areas are adequate and appropriate.

#### Coordinated Care

One technique of medical cost control that has become extremely popular in the U.S., though not in Canada, is "managed care." Nearly every U.S. jurisdiction has adopted some version of a managed care regime for workers' compensation medical costs. Victoria's endorsement of "coordinated care" in the December 1996 legislation was somewhat lukewarm, and it is not yet clear how much will be learned by the sunset date of 1 January 1999. However, it seems likely that there will be additional legislative or regulatory attention paid to this area in the next several months, particularly given recent trends in costs of medical and like services.

#### Some General Observations

There are a few additional issues that do not relate to specific aspects of the scheme. We conclude our review of the Victorian system with these general observations.

## On the Role of Lawyers

In its efforts to reduce the system's transaction costs the government has taken a number of steps that were designed to reduce the extent of solicitor involvement in workers' compensation claims. The 1997 amendments extended this and, with the new procedures for dealing with section 98 claims and the phasing out of common law, claimants' lawyers may indeed leave the workers' compensation arena. Were that to materialise an issue would arise regarding the need to provide qualified assistance to workers with claims. For example, it is understood that the processing of the needed materials for a future section 98 dispute will not be a simple matter for an inexperienced person. For this reason a WorkCover Advisory Service for employees and for smaller employers is being developed. Other jurisdictions have used such services with mixed results, and it is incumbent on the government to insure appropriate access to the system for all Victorians. Workers' compensation remains a difficult system for the injured worker to negotiate.

## How Benefits are Perceived in Victoria

The changes begun with the Accident Compensation (WorkCover) Act in 1992 have totally reconfigured Victoria's workers' compensation programme. How will history evaluate those changes? One obvious benchmark of programme success would be if the scheme's major features survive into the future, even if the Government should change. Certainly, subsequent governments would be ill advised, politically and otherwise, to revamp a successful programme. Similarly, history tells us that a failed workers' compensation programme will be high on the list of areas that would be substantially restructured by a new government.

It is not our task to predict when and how WorkCover will be evaluated in the political arena. We have here recognised the impressive accomplishments of the programme since its inception. However, we also sense one area that must be given more attention if the programme is to succeed in the long run, at least by the criterion of its staying power. The public at large must believe that the scheme is delivering benefits that are adequate and equitable, as well as affordable. With the revisions made in the 1997 amendments to weekly payments and to section 98 benefits, with the elimination of section 98A benefits (pain and suffering in maims cases), and with the ending of access to common law for injuries after 12 November 1997, the public's opinion of the programme's fairness may have shifted.

We are aware that the actuaries who assisted in the redesign of the weekly benefit scheme were told to aim for a cost neutral outcome, and that this may well have been obtained. It is clear, for example, that eliminating non-economic loss benefits for persons with impairments rated at less than 10 percent allows greater levels of benefits to be paid to those with higher levels of impairment. Still, the WorkCover programme's fairness was aggressively attacked in the debates that preceded the 1997 amendments.

If our assessment is correct, at least two things need to be considered over the near term. First, any future proposals for change in the WorkCover system should be scrutinised for the likely public response to them on the issue of "worker fairness." Second, the VWA needs to evaluate the actual consequences of the recent changes so as to demonstrate that they have not been too harsh on injured workers. Further, benefits can continue to be compared with those paid in other states to demonstrate that Victoria is no less generous than its peers.

There seems to be a current perception, certainly within organised labour, that the WorkCover scheme has been captured by employer interests, and that workers are forced to "hang on" and endure a system that is biased against their interests. Such a perception clearly undermines public confidence in a workers' compensation system and will ultimately lead to periodic policy fluctuations as one side and then the other gains the political majority. But the system that cares for injured workers and their families is too important to become a political football. The protection offered by workers' compensation and other social insurance schemes is fundamental to a democratic society. We applaud the spirit of Minister Hallam's statement, "The true test of our policies will be if they survive the next change of government." The workers and employers of Victoria deserve no less.

Table A-1 VWA Statistics, 1985-1997

|  | 1985-1986    | 1986-1987    | 1987-1988    | 1988-1989    | 1989-1990    | 1990-1991    | 1991-1992    | 1992-1993     | 1993-1994    | 1994-1995    | 1995-1996    | 1996-1997    |
|--|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|--------------|--------------|--------------|--------------|
| Average Employment (000 persons)   | 1,856        | 1,903        | 1,934        | 2,023        | 2,139        | 2,018        | 1,953        | 1,945         | 1,966        | 2,019        | 2,079        | 2,098        |
| Unemployment Rate <sup>2</sup>   | 6.4%         | 6.3%         | 9.6%         | 4.9%         | 4.9%         | 8.9%         | 11.0%        | 11.9%         | 11.5%        | 9.4%         | 8.4%         | 9.0%         |
| Total Wages excluding Commonwealth (\$ million)                          | N/A          | \$ 28,717    | \$ 32,727    | \$ 36,395    | \$ 40,256    | \$ 40,460    | \$ 41,384    | \$ 42,727     | \$ 42,321    | 46,358       | 48,742       | \$51,703     |
| Consumer Price Index   | 4.3%         | 9.8%         | 7.1%         | 7.6%         | 7.8%         | 6.9%         | 1.5%         | 0.3%          | 1.9%         | 2.5%         | 5.1%         | 1.5%         |
| Average Weekly Earnings (values)   | \$ 374.80    | \$ 394.20    | \$ 414.90    | \$ 442.20    | \$ 476.20    | \$ 485.90    | \$ 504.40    | \$ 519.80     | \$ 534.50    | \$ 558.50    | \$ 570.00    | 572.70       |
| -Yearly change   |              | 5.2%         | 5.3%         | 6.6%         | 7.7%         | 2.0%         | 3.8%         | 3.1%          | 2.8%         | 4.5%         | 2.1%         | 0.5%         |
| Statutory Maximum Weekly Benefits <sup>1</sup>                           | \$ 400.00    | \$ 430.00    | \$ 457.00    | \$ 481.00    | \$ 506.00    | \$ 550.00    | \$ 575.00    | \$ 603.00     | \$ 603.00    | \$ 621.00    | \$ 650.00    | \$664.00     |
| Average Weekly Benefits  | \$ 257.00    | \$ 270.00    | \$ 287.00    | \$ 297.00    | \$ 305.00    | \$ 311.00    | \$ 318.00    | \$ 318.00     | \$ 326.00    | \$ 354.00    | \$ 374.00    | \$383.00     |
| Claimants in receipt of weekly benefits during year                      | 31,244       | 80,778       | 88,784       | 93,823       | 88,388       | 81,836       | 71,817       | 61,773        | 38,704       | 35,768       | 33,535       | 37,279       |
| Statutory Maximum Table of Maim Payment <sup>1</sup>                     | \$ 61,750.00 | \$ 66,440.00 | \$ 70,620.00 | \$ 74,260.00 | \$ 78,100.00 | \$ 84,840.00 | \$ 88,750.00 | \$ 93,080.00  | \$ 93,080.00 | \$ 95,810.00 | \$100,300.00 | \$102,460.00 |
| Average Table Payment <sup>3</sup>                                       | \$ 6,089.00  | \$ 4,626.00  | \$ 5,856.00  | \$ 7,128.00  | \$ 7,268.00  | \$ 7,857.00  | \$ 8,523.00  | \$ 7,324.00   | \$ 7,111.00  | \$ 10,774.00 | \$ 15,465.00 | \$18,802.00  |
| Claimants in receipt of Table of Maims payment                           | 56           | 1,119        | 2,724        | 3,474        | 4,779        | 6,012        | 7,169        | 10,924        | 11,004       | 8,391        | 7,541        | 7,730        |
| Statutory Maximum WorkCover Common Law - Pecuniary Loss <sup>1,4</sup>   | N/A          | N/A          | N/A          | N/A          | N/A          | N/A          | N/A          | \$671,760.00* | \$671,960.00 | \$691,650.00 | \$724,070.00 | 739,690      |
| Statutory Maximum WorkCover Common Law - Non-Pecuniary Loss <sup>2</sup> | N/A          | N/A          | N/A          | N/A          | N/A          | N/A          | N/A          | \$298,640.00  | \$298,640.00 | \$311,770.00 | \$326,380.00 | \$333,420.00 |
| Average WorkCover Common Law Settlements                                 | N/A          | N/A          | N/A          | N/A          | N/A          | N/A          | N/A          | -             | -            | -            | \$158,705.00 | \$190,665.00 |
| Number of WorkCover Common Law Settlements                               | N/A          | N/A          | N/A          | N/A          | N/A          | N/A          | N/A          | -             | -            | -            | 113          | 733          |

<sup>1</sup>Source - Australian Bureau of Statistics - Employment Surveys<sup>2</sup>Maximum payment available as compensation for heads of damages as specified and indexed annually in the Accident Compensation Act<sup>3</sup>Total payments for head of compensation divided by number of claimants in receipt of compensation during whole or part of period<sup>4</sup>Pecuniary loss entitlement existed only after 1/12/92

|  | 1985-1986 | 1986-1987    | 1987-1988    | 1988-1989    | 1989-1990    | 1990-1991    | 1991-1992    | 1992-1993    | 1993-1994    | 1994-1995    | 1995-1996    | 1996-1997    |
|--|-----------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Statutory Maximum WorkCare<br>Common Law - Non-Pecuniary<br>Loss                         | N/A       | N/A          | \$140,000.00 | \$147,210.00 | \$154,810.00 | \$168,390.00 | \$176,150.00 | N/A          | N/A          | N/A          | N/A          | N/A          |
| Average Common Law<br>Settlement - Total Loss <sup>2</sup>                               | N/A       | \$7,796.00   | \$11,706.00  | \$13,738.00  | \$14,913.00  | \$15,935.00  | \$22,216.00  | \$22,832.00  | \$21,216.00  | \$26,484.00  | \$47,751.00  | \$52,070.00  |
| Number of Common Law<br>Settlements - Total Loss   | N/A       | 46           | 295          | 714          | 1,770        | 3,471        | 4,941        | 10,529       | 5,270        | 4,444        | 1,720        | 619          |
| Statutory Maximum<br>Settlement for Death <sup>1</sup>                                   | N/A       | N/A          | N/A          | N/A          | \$100,000.00 | \$108,640.00 | \$113,640.00 | \$119,180.00 | \$122,670.00 | \$128,420.00 | \$131,190.00 | \$134,430.00 |
| Average Settlement for Death <sup>3</sup>  | \$ 62,079 | \$ 55,374.00 | \$ 47,506.00 | \$ 52,204.00 | \$ 57,859.00 | \$ 62,366.00 | \$ 72,417.00 | \$ 73,006.00 | \$ 87,755.00 | \$ 97,509.00 | \$ 93,669.00 | \$85,806.00  |
| Number of Settlements for<br>Death   | 10        | 97           | 147          | 248          | 246          | 222          | 227          | 144          | 90           | 72           | 95           | 117          |
| <b>Claims</b>  |           |              |              |              |              |              |              |              |              |              |              |              |
| Claims Reported (all claims<br>lodged in period)   | 58,869    | 89,906       | 84,249       | 84,663       | 77,425       | 74,004       | 68,068       | 56,220       | 40,932       | 35,516       | 35,645       | 33,264       |
| Weekly Benefit Claims<br>(Claims lodged in period that<br>have received weekly benefits) | 48,092    | 62,900       | 53,325       | 56,380       | 51,322       | 48,572       | 43,469       | 30,658       | 15,515       | 15,720       | 16,552       | 13,488       |
| Hearing Loss Claims  | 1,287     | 2,790        | 1,889        | 2,211        | 2,162        | 3,304        | 5,049        | 8,636        | 10,099       | 3,279        | 2,835        | 1,719        |
| Journey Claims and Claims<10<br>days   | 14,876    | 25,129       | 23,999       | 24,211       | 22,292       | 17,065       | 12,797       | 8,222        | 2,548        | 2,334        | 2,166        | 2,027        |
| Standard Claims Reported   | 43,993    | 64,777       | 60,250       | 60,452       | 55,133       | 56,939       | 55,271       | 47,998       | 38,384       | 33,182       | 33,479       | 31,237       |
| Fatal Claims   | 134       | 248          | 288          | 334          | 293          | 239          | 249          | 183          | 134          | 120          | 127          |              |
| Claims Incurred (latest<br>estimate by Actuaries 30 June<br>1997)                        | 75,650    | 94,313       | 89,441       | 86,423       | 78,689       | 73,171       | 66,244       | 51,022       | 35,766       | 34,070       | 35,485       | 34,565       |
| <b>Claims Payments (\$M) made<br/>in period</b>  |           |              |              |              |              |              |              |              |              |              |              |              |
| Weekly Benefits  | \$ 48.1   | \$ 245.6     | \$ 349.2     | \$ 427.3     | \$ 416.5     | \$ 417.0     | \$ 423.4     | \$ 377.9     | \$ 229.6     | \$ 226.4     | \$ 258.0     | \$ 304.8     |
| Common Law   | \$ -      | \$ 0.4       | \$ 3.5       | \$ 9.8       | \$ 26.3      | \$ 55.2      | \$ 109.7     | \$ 240.3     | \$ 111.8     | \$ 117.7     | \$ 100.1     | \$ 172.0     |
| Permanent Impairment (Table<br>of Maims)   | \$ 0.3    | \$ 5.2       | \$ 15.9      | \$ 24.7      | \$ 34.7      | \$ 47.2      | \$ 61.1      | \$ 80.0      | \$ 78.2      | \$ 90.4      | \$ 116.6     | \$ 145.3     |

|  | 1985-1986 | 1986-1987 | 1987-1988 | 1988-1989 | 1989-1990  | 1990-1991  | 1991-1992  | 1992-1993  | 1993-1994  | 1994-1995  | 1995-1996  | 1996-1997  |
|--|-----------|-----------|-----------|-----------|------------|------------|------------|------------|------------|------------|------------|------------|
| Death  | \$ 0.6    | \$ 5.3    | \$ 7.0    | \$ 12.9   | \$ 14.2    | \$ 13.8    | \$ 16.4    | \$ 10.5    | \$ 7.9     | \$ 7.0     | \$ 8.9     | \$ 10.0    |
| Medical and Like   | \$ 10.0   | \$ 57.9   | \$ 103.4  | \$ 140.2  | \$ 145.5   | \$ 159.7   | \$ 172.1   | \$ 174.7   | \$ 130.5   | \$ 119.7   | \$ 132.7   | \$ 154.5   |
| Legal Costs  | \$ 3.1    | \$ 5.9    | \$ 15.5   | \$ 43.0   | \$ 64.9    | \$ 96.8    | \$ 116.0   | \$ 121.6   | \$ 86.8    | \$ 89.8    | \$ 74.1    | \$ 73.8    |
| Other Payments   | \$ 0.5    | \$ 12.9   | \$ 30.9   | \$ 52.4   | \$ 58.2    | \$ 73.9    | \$ 131.7   | \$ 114.7   | \$ 57.8    | \$ 35.0    | \$ 35.0    | \$ 40.0    |
| <b>Total Claim Payments</b>  | \$ 62.6   | \$ 333.2  | \$ 525.4  | \$ 710.3  | \$ 760.3   | \$ 863.6   | \$ 1,030.4 | \$ 1,119.7 | \$ 702.6   | \$ 686.0   | \$ 725.4   | \$ 900.4   |
| <b>WorkCover Administration Costs (\$M)</b>  | 15.1      | 17.5      | 35.0      | 55.4      | 60.3       | 63.8       | 55.2       | 70.4       | 73.0       | 67.1       | 73.7       | 100.5      |
| <b>Total Scheme Administration Costs (\$M)</b>   |           |           |           |           |            |            |            |            |            |            |            |            |
| Include Agent & Authorised insurer fees, certified payments & self-insurer settlements | \$ 53.5   | \$ 80.6   | \$ 104.2  | \$ 151.4  | \$ 182.3   | \$ 187.3   | \$ 184.8   | \$ 197.4   | \$ 171.4   | \$ 172.5   | \$ 173.9   | \$ 183.3   |
| <b>Total Payments</b>  | \$ 116.1  | \$ 413.8  | \$ 629.6  | \$ 861.7  | \$ 942.6   | \$ 1,050.9 | \$ 1,215.2 | \$ 1,317.1 | \$ 874.0   | \$ 858.5   | \$ 889.3   | \$ 1,083.7 |
| Permanent Staff - Only ACC prior to 1/12/92 (including maternity, leave without pay)   | 104       | 136       | 304       | 303       | 409        | 448        | 353        | 559        | 290        | 270        | 274        | 613        |
| Number of Registered Employers (excluding employers with <\$7,500 renum)               | 85,650    | 87,928    | 99,310    | 111,429   | 118,038    | 116,936    | 119,165    | 124,070    | 137,958    | 143,758    | 150,810    | 160,185    |
| Assessable Payroll (\$M)   | \$ 20,772 | \$ 27,015 | \$ 30,836 | \$ 34,785 | \$ 38,031  | \$ 37,919  | \$ 37,551  | \$ 37,962  | \$ 39,687  | \$ 42,701  | \$ 45,724  | \$ 48,720  |
| Average Premium Rate   | 2.40%     | 2.40%     | 2.40%     | 3.30%     | 3.30%      | 3.30%      | 3.00%      | 3.00%      | 2.50%      | 2.25%      | 1.98%      | 1.80%      |
| Premium/Levy income (\$M)  | \$ 457    | \$ 587    | \$ 706    | \$ 795    | \$ 1,171   | \$ 1,261   | \$ 1,129   | \$ 1,128   | \$ 839     | \$ 889     | \$ 883     | \$ 914     |
| Fund (Total Assets) (\$M)  | \$ 381.9  | \$ 734.6  | \$ 732.0  | \$ 761.2  | \$ 1,126.3 | \$ 1,607.0 | \$ 1,918.3 | \$ 1,990.6 | \$ 2,247.6 | \$ 2,683.9 | \$ 3,027.6 | \$ 3,542.7 |
| Rate of Return on Assets   | 27.0%     | 34.0%     | -11.2%    | 9.5%      | 11.6%      | 12.1%      | 12.5%      | 13.1%      | 5.38%      | 9.5%       | 10.17%     | 21.53%     |



|  | <b>1985-1986</b> | <b>1986-1987</b> | <b>1987-1988</b> | <b>1988-1989</b> | <b>1989-1990</b> | <b>1990-1991</b> | <b>1991-1992</b> | <b>1992-1993</b> | <b>1993-1994</b> | <b>1994-1995</b> | <b>1995-1996</b> | <b>1996-1997</b> |
|--|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Net Investment Income (\$M)                    | \$ 13.2          | \$ 145.4         | \$ (75.8)        | \$ 56.1          | \$ 79.9          | \$ 142.6         | \$ 187.4         | \$ 218.4         | \$ 96.6          | \$ 215.4         | \$ 286.6         | \$ 617.0         |
| Gross Outstanding Liabilities as per B/S (\$M) | \$ 534.7         | \$ 2,300.0       | \$ 2,720.0       | \$ 4,865.0       | \$ 3,532.0       | \$ 3,347.0       | \$ 3,680.0       | \$ 2,340.0       | \$ 2,340.0       | \$ 2,520.0       | \$ 2,901.0       | \$ 3,538.0       |
| Outcome for Year (Net profit/loss)(\$M)        | \$ (181.8)       | \$ (1,430.3)     | \$ (429.3)       | \$ (2,157.3)     | \$ 1,706.7       | \$ 656.7         | \$ (42.8)        | \$ 1,466.1       | \$ 114.7         | \$ 353.3         | \$ (17.0)        | \$ (51.4)        |
| Funding Position (Net assets)                  | \$ 369.2         | \$ 704.2         | \$ 694.9         | \$ 682.5         | \$ 1,056.2       | \$ 1,528.0       | \$ 1,721.2       | \$ 1,858.3       | \$ 1,971.1       | \$ 2,582.3       | \$ 2,931.4       | \$ 3,449.0       |
| Funding Ratio (WorkCover Fund)                 | 69.0%            | 30.6%            | 25.6%            | 14.0%            | 29.9%            | 45.7%            | 48.0%            | 82.4%            | 87.5%            | 102.9%           | 101.9%           | 100.1%           |

Table A-2

**Victorian WorkCover Authority**

Andrew Lindberg, Chief Executive  
Julianne Adams, Manager, Stakeholder Relations  
Ross Armstrong, Manager, Ergonomics  
Heather Baker-Goldsmith, Manager, Western Field  
Stephen Bourke, Manager, Personnel and Industrial Relations  
Tracey Brewer, Field Officer, Central  
Brian Cook, Director, Finance and Corporate Services  
Phil Court, Manager, Field Support  
Steve Cummins, Manager, Self Insurance  
Margaret Donnan, Manager, Technology  
Christy Fejer, Manager, Ergonomics  
Richard Fuller, Senior Executive Officer  
John Gillespie, Manager, Legislation  
Jill Gillingham, Director, Operations Management  
Derrick Harrison, Manager, Evaluation and Compliance  
John Hickey, Manager, Eastern Field  
Pat Hurley, Manager, Northern Field  
Lorraine Johnson, Director, Information Services  
Trevor McDevitt, Manager, Central Field  
Elizabeth McDowall, Manager, Policy  
Eileen McMahon, Director, Public Affairs  
Ken Neal, Field Officer, Central  
Bronwyn Richardson, Senior Manager, Research and Development  
Glenn Sargent, Director, Field Services  
Adrian Simonetta, Manager, Chemical Technology  
Jim Stewart, Director, Policy  
Teresa Testarotta, Program Manager, Injury Management  
Max Vickery, Manager, Service Management  
Con Vidinopoulos, Manager, Field Operations  
Bill Wedd, Team Leader, Central  
David Wong, Manager, Operations Planning Section  
Dick Wright, Manager, Litigation and Prosecution

## **Insurers**

Julieann Buchanan, Coles Myer Ltd.  
John Cullity, General Manager, MMI Insurance  
Barry Ellis, HIH  
Barry Leith, VACC Insurance WorkSafe Party Ltd  
Aaron McHarry, Mercantile Mutual WorkSure Ltd  
Ridge Meredith, Assistant Manager, Insurance Council of Australia, Ltd  
Shane O’Dea, Manager, VACC Insurance WorkSafe Party Ltd  
Colin Parker, General Manager, HIH  
Laura Stillet, Coles Myer Ltd.  
Seyram Tawia, National Risk Manager, QBE Workers Compensation (Vic) Limited  
Denis Trafford, Insurance Council of Australia, Ltd  
Peter Wagner, Manager, Coles Myer Ltd.  
Bronwyn Walkley, State Manager, Mercantile Mutual WorkSure Ltd  
Alan Whitehead, State Manager, Royal and Sun Alliance Workers Comp Ltd  
Michael Woger, OH & S, Guild Insurance

## **Employers and Representatives**

Rosemary Bavaresco, Armcor Ltd  
Lyn Burns, Denso  
Brian Donegan, Manager, Safety, Health and Environment VECCI  
Tony Graham, National Workers Comp Manager, Unilever  
Peter Greer, Greer Industries  
Sid Levett, Group Insurance and Risk Manager, Armcor Ltd  
John Smith, Australian Chamber of Manufactures  
Dr. Greg Stone, Manager, Health, Safety and Security, Ford Australia

## **VWA Conciliation Service**

Richard Green, Conciliation Service  
Peter Jackson, Director, Conciliation Service

## **Unions**

Maurice Blackburn, Workers’ Solicitor  
Cathy Butcher, Liquor, Hospitality and Misc. Workers Union  
Richard M. Calver, Director, Industrial and Legal, Victorian Farmers Federation  
Geoff Lewin, State Public Services Federation/Community and Public Sector Union  
Roy Prevost, Finance Sector Union

John Price, Workers' Solicitor  
Jeanette Sdrinis, Nursing Federation  
Mark Towler, Victorian Trades Hall Council  
Robyn Vale, Meat Workers Union  
Deborah Vallenge, Health and Safety Officer, Australia Manufacturing Workers Union  
Tim Wall, Education Union  
Teresa Weiss, Textile Clothing and Footwear Union of Australia

### **Other**

Peter Acton, The Boston Consulting Group  
Glenn Appleyard, Deputy Secretary, Department of Treasury and Finance  
Steve Bracks, MLA  
Robert Clarke, Parliamentary Secretary for Treasury  
Kevin Courtney, former Managing Partner of Ernst & Young, and VWA Board Member  
Elizabeth Eldridge, Director, Department of Treasury and Finance  
Martin Fry, Trowbridge Consulting  
Roger Hallam, MLC, Minister for Finance/WorkCover  
Andrew McDonald, The Boston Consulting Group  
Don Nardella, MLC  
Professor Robert R. Officer, University of Melbourne, and VWA Board Member  
Dr. Richard Russell, Managing Director SHE Pacific Pty Ltd, and VWA Board Member  
Anna O'Sullivan, Minister's Advisor  
Richard Tan, Department of Treasury and Finance

### **Lawyers**

Daryl Batrouney, Hall & Willcox  
Matthew Maher, Wisewoulds  
Paul Mulvaney, Slater and Gordon  
John J. Noonan  
Geoff Provis, Immediate Past President, Law Institute of Victoria  
Timothy Tobin  
Richard Tracey, QC  
David Tulloch, Purves, Clark, Richards

## **Doctors and Representatives**

Dr. Tony Buzzard

Dr. Robyn Horsley

Dr. Paul Nisselle, Convenor, Medical Panels

Dr. Clayton Thomas

Dr. Mary Wyatt

## **Rehabilitation Providers and Representatives**

John Elrington, State Manager, Commonwealth Rehabilitation Services

Anne Turner, Vocational Rehabilitation Service