Workers' Compensation Policy in Australia: Contention and Controversy 1970 - 1996

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A dissertation submitted in fulfilment of the requirements for the degree of Doctor of Philosophy in the School of Social Sciences, Adelaide University.

September 2003

To

Steph

With

Love and Appreciation

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Abstract

From the 1970s through to the mid 1990s, workers' compensation policy was a major source of contention and controversy between capital and organised labour in Australia. Inadequate compensation levels and anachronistic scheme design principles led to a growing demand from the labour movement for an overhaul of workers' compensation arrangements. During the mid 1980s the demand for reform reached a crescendo and resulted in a radical restructuring of workers' compensation arrangements in several Australian jurisdictions, most notably Victoria, South Australia and the Commonwealth.

The defining features of these reforms included the provision of long-term income support for injured workers unable to return to work, the introduction of vocational rehabilitation, a greater emphasis on workplace health and safety, the replacement of private underwriting arrangements with publicly managed schemes, and the adoption of less adversarial dispute resolution mechanisms for contested claims. These holistic reforms stood in stark contrast to traditional workers' compensation arrangements with their narrow focus on short-term income support and the use of lump sum payments to secure claims closure.

Though undertaken in a more muted manner, many of these reforms were subsequently adopted elsewhere in Australia. It was not long, however, before the reform agenda came under attack and by the end of the decade a process of counter-reform was well under way. This movement was orchestrated by major employer organisations and gained further impetus during the early 1990s. The overriding aim was legislative change designed to significantly reduce employer costs for workers' compensation insurance. Although the results varied from jurisdiction to jurisdiction, by the mid 1990s it was abundantly clear that this objective was being largely achieved through reductions in compensation for injured workers along with more stringent eligibility criteria designed to restrict access to the system.

This thesis seeks to explain the fundamental policy shifts underlying these dramatic changes in workers' compensation arrangements that took place in Australia between 1970 and 1996. The major explanatory focus is the contestation over the apportionment of costs for work related injury between employers and workers. In turn, this distributional struggle is located within a broader theoretical framework based on the concept of punctuated equilibrium. The use of punctuated equilibrium analysis contrasts sharply with the ahistorical approach found in neoclassical treatments of workers' compensation policy. Its emphasis on non-linear change enables a four-stage periodisation of Australian workers' compensation policy to be constructed. The nodal points within this schema, including the period from 1970 to 1996, are shown to correspond with periods of intensified contestation between capital and organised labour.

The thesis proceeds primarily through a series of peer reviewed publications that address several of the key issues involved. The analysis contained in these publications is complemented by a detailed examination of major changes in the

design of workers' compensations that took place over the course of this 26 year period, and their impact on compensation levels and average premium rates. It is demonstrated that both the increases in workers' entitlements that took place during the 1970s and 1980s, along with the subsequent reversals that occurred through to the mid 1990s, reflected changes in the distribution of work related injury costs brought about largely by shifts in the balance of power between employers and labour movement.

Declaration

This work contains no material which has been accepted for the award of any other degree or diploma in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published already by another person, except where due reference has been made in the text. I give consent to my dissertation being available for photocopying and loan.

SIGNED: _ _DATE: 30/09/03

Acknowledgements

Researching and writing a doctoral thesis is very much an individualistic undertaking. At times it can be a daunting exercise, where the light at the end of the tunnel seems very dim and a long way off. This is more than offset though by the tremendous support received from many people over an extended period.

I must, firstly, emphasise that much of the inspiration for this thesis arises from the collective experiences of the many workers and trade union representatives I have had the honour and privilege of working with over more than two decades.

I am also deeply indebted to my supervisors, Associate Professor Ray Broomhill and Mr Pat Wright, whose guidance and advice have at all times been relevant and constructive. Their suggestions concerning the structure of the thesis as well as their comments on its substance have been particularly valuable, as too has their assistance on navigating the ins and outs of the academic bureaucracy.

In addition, I am much obliged to Associate Professor Barb Pocock for her support in facilitating my initial enrolment.

For their helpful comments on earlier drafts of, one or more of, the various articles that form the body of this thesis, I would like to thank Andy Alcock, Les Birch, Chris Brown, Pat Conlon, Richard Cumpston, Andrew Hopkins, Virginia Hussin, James Juniper, Fran Kavanagh, Robert Knapp, Mike Orlovsky, Jay Weatherill and Nadia Zivkovic. My thanks also to the many people in the workers' compensation and the insurance industries who provided information and other assistance during the course of my research. Special thanks to Astrid, Carol, Cathy, Geoff, Lisa and Melissa for services above and beyond the call of duty; and Lois for her timely 11th hour intervention

I am also obliged to my fellow doctoral candidates in the School of Social Sciences whose comments and suggestions during post-graduate seminars were both stimulating and helpful. Thanks also to Kathryn Moyle who I have almost, but not quite, forgiven for finishing her thesis before me!

A particular debt of gratitude is owed to Jan McMahon for her gracious offers of employment with the Public Service Association particularly when, prior to securing a post-graduate scholarship, I had to occasionally take time out from my studies to earn a living.

Special thanks are owed to my parents, Lou and Mary Purse. Without their continued sacrifices over the years I would never have had the chance of going to university in the first place, let alone the opportunity of completing a doctorate.

My greatest debt, however, is to my partner, Stephanie Key. Despite an exceptionally demanding work schedule she generously read a number of the

articles in draft form and made many constructive suggestions. More especially, her encouragement and support during the gestation and completion of this thesis have been magnificent. Without her love and unconditional support it would not have happened.

It gives me the greatest pleasure to be able to dedicate this thesis to her.

Editorial Note

With the exception of the first two and last chapters, this thesis is comprised of articles published in academic journals. Details of where and when they were published are as follows:

Chapter 3 - Workplace Safety and Microeconomic Reform in Australia, **International Journal of Employment Studies**, Vol 5, No 2, October 1997, pp. 135-153.

Chapter 4 - Work Related Fatality Risks and Neoclassical Compensating Wage Differentials, **Cambridge Journal of Economics**, Vol. 28, No. 1, 2004, (Forthcoming).

Chapter 5 - Workers' Compensation Policy in Australia: Best Practice or Lowest Common Denominator?, **The Journal of Industrial Relations**, Vol. 40, No 2, June 1998, pp. 170-201.

Chapter 6 - Workers' Compensation and The Unfunded Liability Fetish, **Labour and Industry**, Vol. 7, No 1, June 1996, pp. 113-123.

Chapter 7 - Australian Workers' Compensation Policy: Conflict, Step-Downs and Weekly Payments, **International Employment Relations Review**, Vol. 9, No. 1, 2003, (Forthcoming).

Chapter 8 - Common Law and Workers' Compensation in Australia, **Australian Journal of Labour Law**, Vol. 13, No 3, December 2000, pp. 260-277.

Chapter 9 - The Dismissal of Injured Workers and Workers' Compensation Arrangements in Australia, **International Journal of Health Services**, Vol. 30, No 4, December 2000, pp. 849-871.

The spelling of particular words in some articles differs from that used in others. This is due to the differing preferences of journal editors for Australian or, alternatively, American English. No attempt has been made to rectify this arrangement. Similarly, the referencing and bibliographical systems used have not been altered.

The only changes which have been made concern pagination and sub-headings. The original pagination has been modified to facilitate the continuity of the thesis. The sub-headings remain largely unchanged, although all chapters are now numbered and have an introductory sub-heading.

To assist the reader, a consolidated bibliography has also been provided following the concluding chapter.

WORKERS' COMPENSATION POLICY IN AUSTRALIA - CONTENTION AND C0NTROVERSY: 1970-1996

CHAPTER 1 - Aims of the Thesis

This thesis will endeavour to explain the policy shifts underlying the dramatic changes in workers' compensation arrangements that took place in Australia during the period 1970-1996. The main focus will be on developments in Victoria, South Australia and New South Wales, since these are the jurisdictions in which policy volatility were most pronounced. This will be complemented by an examination of those jurisdictions where policy developments were more muted in order to highlight and contrast the major issues involved. The analysis will also take account of the national debates that surrounded the direction of workers' compensation policy during this 26-year period. Parallels with comparable developments in United States and Canada, the only other countries where workers' compensation policy is primarily the responsibility of state and territory (or provincial) governments, will also be drawn where appropriate.

In analysing the changes in workers' compensation arrangements that occurred during the period from 1970 to 1996, the thesis highlights changes in the distribution of costs for work related injury. This, in turn, is intimately linked to political and industrial contestation between employers and workers during this period concerning the shape of workers' compensation policy, as reflected in scheme design. In this sense, workers' compensation policy may be viewed as a subset of the broader distributional struggle between capital and labour. A key concept utilised and developed in the thesis is that of punctuated equilibrium. This concept is derived from Eldredge and Gould, whose work in the 1970s revolutionised the understanding of evolution. The essence of their argument was that evolution does not proceed in a linear fashion, but rather by a process of occasional bursts of intense and dramatic change followed by longer periods of gradual change. In its application to workers' compensation policy, the process of punctuated equilibrium is explored through fluctuations in the intensity of the contestation over the distribution of work related injury costs. It is also demonstrated that the process of punctuated equilibrium in Australia is mediated by the bifurcated nature of the state. Arising from this refraction of punctuated equilibrium by Australian federalism, the thesis makes it clear that the development of workers' compensation policy has followed a trajectory of uneven development.

The thesis is built around a series of peer reviewed articles by the author that were published between 1996 and 2004. These articles address several of the major issues that have been at the centre of workers' compensation policy during the last three decades of the 20th century. This body of published work is framed by two introductory chapters and a concluding chapter that contextualises the individual published articles. These chapters integrate the

published articles with an analysis that highlights the conflictual basis of workers' compensation policy and the concomitant swings in policy as they unfolded during the 1980s and early 1990s

Research for the thesis has drawn upon material from a wide range of international and Australian academic journals and other scholarly publications. Parliamentary debates, numerous government inquiries, annual reports and other publications prepared by government agencies with responsibility for workers' compensation and workplace safety, newspaper reports, and various publications on workers' compensation issues produced by trade unions, employer organisations and other interested parties have also been utilised.

The thesis is comprised of ten Chapters. In this first Chapter the main objectives of the thesis are outlined. In Chapter 2 the social significance and economic importance of workers' compensation is outlined. This is followed by an analysis of the emergence of the no-fault principle as the foundation upon which this unique form of social insurance is predicated. An overview of the extent and distribution of work related injury in Australia is also provided and the inherently conflictual nature of worker's compensation arrangements is emphasised and illustrated by reference to a number of specific examples.

Chapter 3 extends the focus on the significance of workplace health and safety. Its epidemic proportions are emphasised and the quite staggering social and economic costs involved are highlighted. It is also pointed out that within the discourse of microeconomic reform, which dominated much of the debate on Australian economic policy during the 1990s, the financial benefits to be gained from improvements in workplace health and safety were largely excluded from this policy agenda. This is despite the fact that the potential gains in this area far exceed those associated with supposedly iconic microeconomic reform issues such as 'waterfront reform' and national competition policy. In drawing attention to this contradictory state of affairs various reform proposals, including a number pertaining to workers' compensation arrangements, are considered and obstacles to their implementation identified.

The fourth Chapter deals with a number of important conceptual and policy issues that underpin 'market based' analyses of workers' compensation arrangements, as epitomised by the neoclassical theory of compensating wage differentials. This component of the thesis is undertaken by way of a literature review. According to neoclassical theory, wage differentials are paid to workers to compensate for the risks associated with work related injury and death. Taken to its logical conclusion, the theory of compensating wage differentials maintains that there is no need for governments to legislate for workers' compensation since the market, when functioning smoothly, already compensates workers, in the form of higher earnings, for the risks that arise from their employment. It is shown, however, that much of the

empirical evidence, based on econometric studies, presented in support of the theory is fundamentally flawed. Similar comments apply to the major assumptions upon which the theory is predicated. In view of these deficiencies, it is argued that the neoclassical approach hampers the development of a proper understanding of the production and distribution of work related health and safety risks.

In Chapter 5 some key issues in Australian workers' compensation policy are examined in the context of a critical review of two symbolically important reports produced by Australia's leading scheme of administrators, the Heads of Workers' Compensation Authorities (HWCA), in the mid 1990s. Among the issues addressed are the nexus between workplace health and safety and workers' compensation arrangements, the structure of employer premiums, worker entitlements and vocational rehabilitation. It is argued that the treatment of these issues by the HWCA constitutes an apologia, fashionably garbed in the neoliberal rhetoric of 'best practice', for perpetuating the shifting of work related injury costs from employers to injury workers and the taxpayer funded social security system.

Chapter 6 examines the use and misuse of the unfunded liability concept as the key performance indicator of publicly underwritten workers' compensation schemes in Australia from the mid 1980s onwards. The actuarial assumptions upon which this performance measure is based are shown to result in liability estimates that are inherently volatile and often wildly inaccurate. The political appropriation of unfunded liability estimates by employer groups and state governments is also addressed. More particularly, the invocation of unfunded liability estimates to create the impression of impending financial crisis within workers' compensation schemes in order to facilitate reductions in the entitlements of injured workers, and a concomitant decrease in the cost to employers of work related injury, is highlighted.

In Chapter 7 the evolution of weekly payments - the most widespread form of workers' compensation payment - is traced, from the beginning of workers' compensation laws in Australia at the turn of the 20th century through to the mid 1990s. Particular attention is focused on the improvements that occurred from the 1970s to the mid 1980s and the subsequent reductions which continued thereafter through to the mid 1990s. The role of 'step-downs', or phased reductions, in weekly payments during this latter period is then examined. Claims that step-downs offset the supposed 'moral hazard' effects of workers' compensation payments and provide the necessary 'incentives' to encourage the return to work of injured workers are critically reviewed and found wanting. It is argued that step-downs complement the more traditional employer view that workers' compensation premiums must be 'competitive', and serve the same purpose - the transfer of work related injury costs from employers to injured workers and taxpayers. It is also suggested that the struggle over the distribution of work related injury costs which lies at the

heart of workers' compensation policy in Australia can be conceptualised in terms of 'punctuated equilibrium', a theme which is developed further in Chapter 9.

The eighth Chapter shifts the focus of analysis from weekly payments to common law damages. From the 1970s onwards, the role of common law damages within Australian workers' compensation schemes became increasingly contentious. By the mid 1980s a wide range of legislative measures that curtailed access to common law had been introduced, a development which gained added momentum during the 1990s. In some jurisdictions, particularly those characterised by the provision of ongoing weekly payments for injured workers, the right of injured workers to sue their employers for negligence was abolished. In others, where the availability of weekly payments was more limited, the policy response involved the imposition of restrictions of one kind or another. As with weekly payments, the changing role of common law damages is examined within the broader context of increased contestation between capital and organised labour over the distribution of costs for work related injury. More particularly, the winding back of workers' access to common law is viewed as an integral component of a policy mix designed to reduce workers' compensation costs for Australian employers.

Chapter 9 deals with a critical feature of vocational rehabilitation and the return to work process - the provision of suitable employment for injured workers following recovery from injury. In doing so, the rationale for, and an outline of, the major legislative reforms dealing with this issue in Australia from the late 1980s onwards is provided. The widespread lack of enforcement in other Australian jurisdictions of employment security provisions is contrasted with the South Australian approach during the early 1990s, where pressure from the labour movement resulted in the adoption of an effective enforcement regime. At a time when the emphasis in public policy across Australia was on controlling workers' compensation costs, the value of employment security provisions as a critical liability management tool was studiously eschewed by both scheme administrators and policymakers. This was largely because of a reticence to interfere with managerial prerogatives and a traditional preference for controlling costs through reductions in workers' entitlements - a response which strikingly illustrates how cost containment measures associated with the administration of public policy can be refracted by dominant class interests.

The final Chapter develops the concept of punctuated equilibrium as it applies to workers' compensation arrangements in Australia. Punctuated equilibrium analysis is predicated on the notion that change is not linear. In a workers' compensation context, it implies that policy development can best be conceived in terms of occasional episodes of intense change interwoven with more protracted periods of gradual change. Punctuated equilibrium analysis, as developed here, emphasises the contested nature of workers'

compensation policy and locates the conflicting interests of capital and organised labour as the primary determinants of policy change. In doing so, it provides a new, non-linear, basis for the conceptualisation of workers' compensation policy, one that offers the promise of a more sophisticated and deeper understanding of the trajectory of workers' compensation arrangements in Australia and, arguably, elsewhere. Among other advantages, the adoption of punctuated equilibrium as an organising concept enables a four-stage periodisation of Australian workers' compensation policy to be constructed. In broad terms, these stages correspond with the period of white settlement to the end of the 19th century, the first two and a half decades of the 20th century, the years from the mid 1920s through to 1970 and the period from 1970 to the mid 1990s. This four-stage periodisation reflects fluctuations in the intensity of the struggle between capital and organised labour over the distribution of work related injury costs.

Within this context, the years from 1970 to 1996 are analsyed as a period of intensified conflict between the major classes occasioned by increased cost pressures associated with workers' compensation insurance. This period, it is argued, was comprised of two phases. The first, which can be categorised as a time of widespread reform, lasted from the early 1970s through to the mid 1980s. It was characterised by generalised improvements in compensation for injured workers as well as an institutional shake-up that sought to incorporate vocational rehabilitation and occupational health and safety into workers' compensation policy. It also witnessed a shift towards public underwriting, designed to restore public confidence in the insurance aspect of workers' compensation and to reduce the associated administrative costs. The second phase encompassed the years from the mid 1980s to the mid 1990s. This phase can best be categorised as one of counter-reform and resulted in the winding back of many of the reforms enacted during the preceding years. Led by major employer organisations, it gained impetus during the early 1990s and was designed to significantly reduce employer costs for workers' compensation insurance. Among the major changes ushered in were the universal adoption of step-downs, reduced compensation payments and more stringent eligibility criteria designed to restrict access to the system along with further restrictions on workers' access to common law damages.

In the concluding section of the Chapter, it is argued that the concept of punctuated equilibrium provides a promising analytical framework not only for the conceptualisation of workers' compensation arrangements in Australia but also for those in other capitalist societies, especially those in North America and Europe. It is also suggested that the application of the concept may well be capable of being extended beyond the confines of workers' compensation policy to include other aspects of industrial relations policy and the broader contours of political economy.

CHAPTER 2 - The Significance of Workers' Compensation

2.1 Introduction

In this Chapter, several preliminary issues that illustrate the historical and ongoing relevance of workers' compensation, as a form of social insurance, are examined. These include an overview of the origins, and the social and financial importance of workers' compensation insurance. Also considered are the inconsistencies in scheme design which abound in a workers' compensation system where legislative responsibility is devolved to individual states and territories. The policy implications of these inconsistencies are also canvassed.

This is followed by an analysis of the genesis of the no-fault liability principle, which lies at the heart of workers' compensation policy in Australia and elsewhere. It is shown that the no-fault liability approach was by no means a clear-cut policy solution to the enormous problems occasioned by work related injury. Rather, it emerged as a compromise solution that sought to, partially, accommodate the needs of workers within a framework deemed acceptable to employers.

Next, the magnitude of work related injury in Australia is outlined. This is important because of the nexus between workplace health and safety and workers' compensation - with the latter being required because of inadequacies in the former. With an annual 'body-count', during the early 1990s, of some 2,900 fatalities and 650,000 reported injuries, the epidemic dimension of work related injury in Australia is emphasised. The potential social and economic benefits from improvements in workplace health and safety, which far outweigh those available from many other avenues of microeconomic reform, are also stressed. In addition, a number of methodological difficulties associated with the reporting of work related injury and the use of workers' compensation statistics are outlined.

Finally, the conflictual basis of workers' compensation policy is highlighted. Several 'fault lines' along which contestation between capital and organised labour takes place are discussed. The most significant of these is the tension between the level of compensation payable to injured workers and the amount of premiums paid by employers. As elaborated elsewhere in the thesis, it is the struggle over the distribution of work related injury costs that is the primary driver of workers' compensation policy in Australia. The implications of this struggle - fought out mainly at the state and territory level - for the federal social security system are also considered.

2.2 Workers' Compensation

The passage of workers' compensation legislation in Australia at the turn of the 20th century ushered in a major system of social insurance, the

continuing relevance of which is still very much evident today. The provision of workers' compensation was designed to provide income replacement, medical cover and ancillary costs for workers and their dependents in the event of work related injury or death. These early workers' compensation statutes set out the limited range of payments that injured workers, or their dependents in the case of work related fatalities, were entitled to and the conditions under which they were available. Although initially confined to workers employed in 'dangerous' industries, these laws were subsequently extended to other categories of workers and now provide near universal coverage for Australian workers engaged under a contract of employment as well as many others who, for workers' compensation purposes, are deemed to be workers. Within a relatively short period of time the type of payments also increased, notably through the availability of compensation for the loss of specified body parts and a limited range of industrial diseases.

As in other countries the adoption of workers' compensation laws in Australia was a belated response to 19th century industrialisation. Throughout much of that century the capitalist development of industry surged ahead in Britain, North America and parts of Europe. In the case of Britain the ever-increasing scale and mechanisation of production, the expansion of world markets, the advent of the factory system and an industrial working-class provided a stimulus and blueprint for capitalist development in its Australian colonies. The transplantation of capitalist methods of organisation and production techniques, especially as regards the large scale use of machinery, often brought with it new and particularly dangerous forms of work. Combined with the widespread disregard and disposability of human life that was a characteristic feature of 19th century capitalist development it eventually resulted in demands for state intervention and legislative change in order to ameliorate the financial and social consequences of the staggering loss of life and limb which was seemingly the inexorable by-product of industrialisation. This intervention took essentially two forms. The first was the introduction of factory legislation, the purpose of which was to provide some semblance of safety regulation for certain categories of workers engaged in particularly dangerous industries. The second was the enactment of workers' compensation legislation designed to provide a modicum of recompense for the victims of this perennial epidemic of industrial injury and disease.

A characteristic feature of Australian legislation was the lack of any real nexus between compensation, the prevention of work related injury and the rehabilitation of injured workers. This exclusive preoccupation with the compensation function was to prevail for much of the 20th century. Such a fragmented approach was in contrast to the experience of a number of European countries, notably Germany, where compensation, vocational rehabilitation and occupational health and safety were dealt with in a much more integrated fashion. It was not until the 1980s that workers' compensation laws in Australia assumed a more holistic flavour, and began to address vocational rehabilitation and occupational health and safety

considerations as well as their linkages with compensation.

The federalist nature of the Australian constitution meant that workers' compensation legislation was, and continues to be, primarily the responsibility of state and territory governments. In this respect the Australian 'states rights' model resembles that of the United States and Canada. Collectively these countries are the only three in the world where workers' compensation arrangements are largely determined at the sub-national level. South Australia, in 1900, was the first Australian jurisdiction to introduce workers' compensation legislation (South Australian Parliament 1900: 63 & 64 Vic, No. 739). The other states, commencing with Western Australia in 1902 followed suit with Victoria bringing up the rear in 1914. At the Commonwealth level legislation for seafarers was introduced in 1911 and for some government workers in 1912.

As in the case of South Australia many of these statutes were specifically referred to as *workmen's* compensation legislation. This gendered approach exemplified the patriarchal prejudices of the times, where women were categorised as (actual or potential) wives and mothers largely to the exclusion of their role as female members of the paid workforce. In doing so it accurately reflected the parliamentary intent which was to provide monetary compensation for working men in, firstly, selected high risk industries and, subsequently, in other industries and callings. Effectively, as in many other realms of social policy, it relegated women workers to a position of invisibility. This was despite the fact that working class women were extensively engaged in paid, and often dangerous, employment (Commonwealth Statistician 1917,1: 350-352; Frances and Scates 1993: 10). The sexist slant of workers' compensation legislation and the associated discourses it engendered remained for much of the century. It was only in the 1970s, in the wake of the women's liberation movement of the 1960s, that sexist terminology in workers' compensation legislation, along with the underlying prejudices involved, were seriously challenged.

Originally, all the Australian statutes were modeled on the UK Acts of 1897 and 1906. However, in view of the constitutional requirements underpinning workers' compensation arrangements it is hardly surprising that a diversity in approach emerged between the states and territories in relation to scheme design. Over the decades this diversity has become more accentuated and has resulted in many inconsistencies in both the treatment of workers and employers as well as in the institutional mechanisms that have been put in place for the administration of workers' compensation arrangements.

In the case of workers this is most obvious in the types and amount of compensation available. Where a worker is killed, and work was a contributing factor, the compensation payable can vary dramatically, depending on the jurisdiction in which the fatality occurred. In 1995, for example, compensation for a work related fatality in New South Wales was

$225,300 (plus allowances for dependent children), an amount which was more than twice that payable had the death occurred in Tasmania (Heads of Workers' Compensation Authorities 1995: 5). Similar discrepancies occur with income maintenance payments. In South Australia, in 1995, an injured worker with a work related incapacity was entitled to weekly payments equal to 100% of his or her average weekly earnings, subject to maximum of $1,256 a week, for a period of 52 weeks and 80% thereafter, although in most cases they could be reduced further or terminated after 2 years. Across the border in Victoria the amount of weekly payments available to a worker with precisely the same injury was much less. For the first 26 weeks compensation was payable at a rate that was 95% of the worker's average weekly earnings, subject to a maximum of $621. After this period weekly payments decreased, depending upon how seriously the injury was classified. There were three categories - serious injury, total incapacity and partial incapacity. In the case of serious injury weekly payments dropped to 90% of average weekly earnings. The amount payable for total incapacity fell to 70% of average weekly earnings while for partial incapacity weekly payments were reduced even further (Ibid.: 2).

For employers major inconsistencies are apparent in workers' compensation premium rates and the classification basis by which they are determined. Premiums, in many cases, are as much a function of the geographical location of the business than the level of risk involved. Thus, in 1995, the industry premium rate applicable to a business engaged in housing construction in Victoria was 2.70% of payroll. In Western Australia, however, the corresponding premium was 8.11%, a difference of 300% (Ibid.: 10). Similarly, a bread manufacturing firm in South Australia would have attracted a premium of 5.10% while a comparable company in Queensland would have faced an industry premium rate of only 2.51%, slightly less than half the rate of its South Australian counterpart (Ibid.: 10). The related issue of premium classification is also largely a matter of geography. While, historically, premium rates have been determined according to an occupational based assessment of risk, most jurisdictions have now adopted an industry classification approach. Not surprisingly, however, none of the jurisdictions employ the same system of industry classification (Purse 1998: 186). Consequently a business with interstate operations may find that its industry classification, and with it the industry premium rate, varies markedly from one jurisdiction to another.

There are also differences in the institutional arrangements for the administration of workers' compensation in Australia. In view of the fact that, commercially, workers' compensation is big business, with premium income amounting to $4.4 billion in 1995 (Insurance and Superannuation Commission 1996: 10, 76), it hardly needs emphasising that the issue of whether schemes are operated privately or publicly is one of major contention. Initially, all schemes, other than the federal government's scheme for its own workers, were dominated by the private insurance industry. This

has since changed dramatically. Queensland, under the auspices of the Ryan Labor government, legislated to remove private insurers and establish a publicly owned and operated scheme in 1916, and notwithstanding the various changes in the political complexion of Queensland governments since then, the scheme remains in public ownership. During the mid 1980s Labor governments in Victoria and South Australia also adopted public ownership. In the early 1990s this trend was partially reversed following the re–election of conservative coalition governments in Victoria and South Australia. This development saw the continuation of public underwriting of both schemes but with private insurers brought back in as 'claims agents'. A similar arrangement exists in New South Wales. In the remaining jurisdictions private underwriting prevails. Thus at the end of the 20th century the administration of workers' compensation arrangements in Australia was characterised by a jurisdictional mix of public and private underwriting (Heads of Workers' Compensation Authorities 1999: 6-7).

There have been occasional attempts to overcome the inconsistencies associated with state and territory based workers' compensation arrangements. The most notable of these was that of the Whitlam Labor government which in 1974 sought to introduce a national scheme based on the Woodhouse Report (Woodhouse 1974). Under the Woodhouse proposals workers' compensation would have become part of a comprehensive compensation and rehabilitation scheme administered by the federal government to provide compensation for disabilities irrespective of how they were caused. Following the defeat of the federal Labor government in 1975, however, proposals for a national scheme effectively dropped off the political agenda. More recently in 1994 the Industry Commission proposed the establishment of a National WorkCover Authority to provide a nationally available scheme and to oversee the development of uniform workers' compensation standards that would be incorporated into legislation and subsequently applied to all Australian jurisdictions (Industry Commission 1994: 222-231). This proposal never got off the drawing board and was quickly sidelined by the activity of the, predominantly state and territory backed, Heads of Workers' Compensation Authorities (HWCA) which quickly dropped the notion of a national scheme. In the process any sense of national uniformity was also discarded, with the HWCA opting instead for the pursuit of 'national consistency' (Purse 1998: 180-181).

From these brief observations it should be apparent that any study of workers' compensation policy in Australia must take account not just of specific features of the various state and territory based schemes but also the dynamic nature of the interaction between the schemes. As in the United States and Canada, the existence of a multiplicity of, essentially, state based schemes gives rise to a range of pressures which do not occur in unitary systems. Developments in one jurisdiction often impinge upon those in contiguous jurisdictions (Burton 1989: 8-10), in what perhaps can best be described as a form of policy turbulence. Apart from universal opposition to a

national approach to workers' compensation arrangements, the most obvious example of this is when state governments maintain average premium rates at artificially low levels by 'competing' among each other to reduce compensation to injured workers. Once one state embarks upon such a course of action it immediately places pressure on other schemes to follow suit (Industry Commission 1994: xxxi). This is by no means the only way in which policy turbulence is manifested, but does highlight the fact, that unlike unitary systems, change, or the lack of it, under a decentralised regime of workers' compensation arrangements takes place in a much more complex and mediated manner. As will be illustrated in the course of the thesis, this is a recurring theme in Australian workers' compensation policy.

2.3 The Origins and Significance of No-Fault Liability

The major legal and philosophical principle that facilitated the adoption of workers' compensation legislation was, and continues to be, the no-fault principle. As the following synthesis of the main issues makes clear, the emergence of the no-fault approach to compensation was both tortuous and at odds with the original positions of the major protagonists.

Prior to the advent of no-fault liability, compensation for work related injury was available to workers only through civil actions in the courts and required fault by employers to be established. The many hurdles involved with the common law approach meant that attempts by workers or their families to obtain compensation by this route were severely circumscribed.

Firstly, the cost of litigation necessary to obtain compensation for work related injury was generally protracted and financially prohibitive (Dobbs, Keeton, Keeton and Owens 1994: 572-573). This was compounded by the evidentiary difficulties often involved in pursuing a successful action (Marx 1894: 90). Thirdly, and most importantly, were the various legal defences devised by the judiciary in the 19th-century which made the attribution of fault by employers for work related injury or death virtually impossible. The infamous 'unholy trinity' of defences was the exemplar of this judicial outlook.

The 'unholy trinity' was comprised of the doctrines of common employment, the voluntary assumption of risk and contributory negligence. The first of these, common employment, was outlined in a decision by Lord Abinger in the UK case of *Priestley v Fowler* in 1837 and held that an employer could not be held responsible for injuries caused by other members of the employer's workforce. *Priestley v Fowler* was the first recorded case in the English appellate courts in which a worker's claim for damages against an employer was heard. In overturning the finding of the lower court Lord Abinger, in the language of the times, opined that:

> there is no precedent for the present action by a servant against a master.... If the master be liable to the servant in this action, the

> principle of that liability will be found to carry us to an alarming extent (1837 3 M. & W. 5).

In his decision Abinger also articulated the voluntary assumption of risk doctrine, the notion that workers implicitly assume responsibility for the normal hazards of their employment by virtue of the employment contract and that this is exclusively a matter for the worker rather than the employer. As stated in the judge's decision:

> the mere relation of the master and the servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to of himself.... The servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself (Ibid.).

The third element of the 'unholy trinity', contributory negligence, had been established in 1809 in the case of *Butterfield v Forester* (1809 11 East 61) and was used extensively in compensation claims for industrial injury in the wake of *Priestley v Fowler.* It held that no compensation was payable in cases where the action of the worker contributed to the injury to any extent. In other words there was to be no apportionment of the costs whatsoever between employers and workers for injuries attributable to employment in cases involving contributory negligence. Even where the injury was almost entirely due to the lack of care by the employer the courts were able to deny compensation to the victims on the basis that workers themselves had contributed, however slightly, to the circumstances that resulted in their injuries.

The reasoning of the judiciary in both England and the United States which gave rise to these doctrines was based on the primacy of contract law and the convenient view that, as in other idealised forms of commodity exchange, workers were in an equal bargaining position with that of their employers. Underpinning this was a laissez faire economic theory, the genesis of which can be found in the works of Adam Smith and David Ricardo (Smith 1789: 73-97, Ricardo 1821: 52-63), that eulogised the supposedly beneficent effects of competitive labour market arrangements. This was particularly evident in the case of the voluntary assumption of risk doctrine where it was assumed that unfettered labour mobility, the ability to refuse employment unless adequately compensated for risk, and the equilibration of supply and demand were the order of the day. Any suggestion that economic compulsion left the worker "no choice except starvation, or equally dangerous employment elsewhere, was entirely disregarded" (Dobbs, Keeton, Keeton and Owens 1994: 568).

The political significance of these doctrines is also readily apparent. They reflected the class prejudices of the judiciary and the widespread attitude of the courts, throughout most of the 19th century, that the progress of industry

should not be hampered by claims for compensation made by, or on behalf of, the victims of industrial injuries and fatalities. This attitude, as one leading jurist has pointed out:

> coincided with, and was undoubtedly influenced by, the demands of the Industrial Revolution. It was felt to be in the better interest of an advancing economy to subordinate the security of individuals, who happened to become casualties of the new machine age, rather than fetter enterprise with the cost of "inevitable" accidents" (Fleming 1992: 7).

The ongoing consequence of this position was that workers and their families were left to bear virtually the entire cost for work related injuries and fatalities. Employers, on the other hand, were largely absolved of any legal responsibility for the development and maintenance of safe systems of work as far as their workers were concerned irrespective of whether they were negligent or not (Dobbs, Keeton, Keeton and Owens 1994: 569). Under 19th century common law the costs of work related injury, created through the process of capitalist development, were transferred from business to the victims and their families. As Gersuny argues, common law "enabled entrepreneurial interests to pass the base cost of machine-age hazards on to the workers at risk, transforming these private costs into social costs" (Gersuny 1986: 3).

The precedent created by the Abinger and subsequent decisions had the effect of stifling genuine reform for compensation in respect of work related injuries and fatalities for the next 60 years or so. This eventually had the effect in both United Kingdom and the United States of shifting demands for compensation from the judicial to the legislative arena. In doing so it also gave rise to workers' compensation insurance as a policy option and possible solution to the plight of injured workers and their families. This process gathered momentum following Bismarck's introduction in 1883 of workers' compensation legislation in Germany, which, firstly and foremost, was a response to increased working class radicalism and the parliamentary rise to prominence of the social democrats during the 1870s (Williams 1991: 123).

On both sides of the Atlantic, however, there was considerable debate within business circles and the labour movement as to whether this was the most appropriate response. The emergence of workers' compensation insurance as the preferred policy solution was by no means obvious or assured. There were many in the labour movement who thought that the most desirable remedy was to dismantle the unholy trinity of defences so that workers could more effectively take common law actions against negligent employers (Bartrip and Burman 1983: 206, Castrovinci 1976: 96-99). Consequently, this was sought by legislative reform that in Britain saw Gladstone's Liberal government pass the *Employer Liability Act* in 1880. This legislation restricted the common employment defence available to employers in a

limited number of circumstances for some categories of manual workers. Similar legislation was adopted by the Australian colonies between 1882 and 1895 (Brooks 1993: 18). As in Britain, however, the adoption of employer liability legislation in Australia failed to assist all but an infinitesimally small minority of injured workers (Ibid: 26).

There were also divisions among employers, ranging from outright rejection of any concessions to active campaigning for a limited form of workers' compensation. The issue facing employers as a class was whether they would be better off with limited liability under a regime of workers' compensation as opposed to the prospect of unlimited liability under a tort system which was becoming, slowly but surely, more favourable to workers. Increasingly a number of influential employer organisations came to favour the workers' compensation solution. In part, this was because of a slow but discernible change in judicial interpretations, towards the end of the 19th century, in favour of injured workers. This created a widespread concern that business would increasingly be subjected to an ever-increasing number of damages suits and much higher payouts. The partial erosion of the unholy trinity, and the likelihood of its further weakening through legislative reform, combined with increasing public revulsion at the enormous hardship and misery resulting from work related injury and death, highlighted by recurring mining and industrial disasters involving mass fatalities which often devastated entire communities, along with, in the United Kingdom, the extension of the franchise to working-class men created the political space within which workers' compensation legislation was able to emerge as a compromise solution (Bartrip 1987: 9-12, Castrovinci 1976: 86-91).

It was within this changing political and economic climate that workers' compensation legislation was enacted in Britain in 1897 by the Conservative government of Lord Salisbury. Similar developments took place in the United States with 43 states passing legislation in one form or another between 1911 and 1930 (Fishback and Kantor 1998: 120). Because of the long-standing colonial links, the British legislation was particularly important for the newly independent Australia and, as indicated earlier, served as a template for the Australian jurisdictions which were to follow the lead of the mother country in this area of social reform during the first two decades of the 20th century.

It must again be emphasised that the workers' compensation legislation adopted in all three countries was quite limited - limited in the type of workers covered, limited in the amount of compensation available and limited in the period of time for which compensation could be received. In the case of the United States it also meant that the right to initiate damages claims against employers by injured workers was forfeited. That this did not occur in either Britain or Australia was largely a reflection of the comparative strength of the labour movement in these countries.

The real significance of the early workers' compensation legislation was three

fold. It, firstly, highlighted the role, and flexibility, of state intervention in mediating the conflict of interests between capital and labour in a fundamentally important area of economic and social life, and did so in such a way as to reinforce the dominant position of the leading business interests through a policy of modest concessions. Compensation for work related injury underwent a metamorphosis and became a social responsibility to be presided over by the state, rather than simply a private responsibility to the dealt with in the courts. As one of the leading chroniclers of the British legislation in this area has put it, the advent of workers' compensation legislation constituted a recognition "that there should be public solutions to social problems" (Bartrip 1987: 11). In this respect, it foreshadowed the development of the welfare state that also had at its core the notion that social problems - provision for old age, unemployment, medical care etc. - should be dealt with through public intervention rather than by the vagaries of market forces.

This transformation, as intimated above, was not undertaken in a class neutral or balanced manner. On the contrary, it reflected a strategic response by the predominant fractions of the capitalist class in America, Europe and Australia to the growing political influence of the burgeoning labour and socialist movements. As exemplified by the case of the US, concessions were deemed necessary to dampen more fundamental challenges to the capitalist system, even though this strategy did not meet with universal acceptance or approval of from all sections of the propertied classes (Zinn 1995: 344-346). This policy of strategic flexibility was one of enlightened self-interest aimed at dealing with the demands of labour while maintaining the political and financial hegemony of the dominant business interests.

Secondly, through the provision of income replacement and related payments for work related incapacity the emergence of workers' compensation extended the rights of working class people. In Australia, as elsewhere, this was part and parcel of the broader labour agenda for industrial and political emancipation. In this sense, the advent of workers' compensation also corresponded with what has been described by one analyst as a 'positive' class compromise (Wright 2000: 958-960). This type of compromise occurs when contestation between capitalists and workers results in an improvement in the interests of both sets of protagonists, in a manner not dissimilar from a non-zero-sum game.

Thirdly, the new statutes resulted in the establishment of employer liability for work related injury as a new and important principle, one which also signalled a shift in responsibility for costs associated with work related injury from workers to business. This was in keeping with the view that such injuries were basically an inevitable by-product of economic development and that business itself should assume responsibility, at least in part, for the costs involved, with such costs ultimately being passed on to consumers in the form of higher product prices (Wambaugh 1911: 130, Larson 1952: 210, Fleming

1992: 9). The aphorism often attributed to Lloyd George that " the cost of the product should bear the blood of the workman" (Dobbs, Keeton, Keeton and Owens 1994: 573) became the catch-cry of the times.

The replacement of negligence by employer liability based on the no-fault principle as the main grounds for compensation during the 1880s and 1890s was thus a radical development and one which would be built on during the course of the next century. The effect of this would be to redirect attention from the issue of whether there was employer liability to the question of defining its limits.

Under the no-fault principle compensation is payable irrespective of who is responsible for the injury or fatality. The essential requirement is that it be work related. In this sense the no-fault principle may be regarded as a form of strict liability. When the first Australian statutes were introduced a worker's eligibility depended on the injury "arising out of *and* in the course of employment". In later decades this requirement was relaxed and the claim for compensation became dependent on the injury "arising out of *or* in the course of employment". The other major restriction that applied was that a claim for compensation could be denied where the injury had resulted exclusively from "serious and wilful misconduct" on behalf of the worker. In cases of industrial diseases, however, the eligibility test has always been more stringent. In large part, this is because of the frequently complex aetiology, and long gestation periods, involved. Other than in the case of 'scheduled' diseases, compensation arising from industrial diseases has required a causal connection with work rather than, as is the case with traumatic injurious, a temporal nexus. This in turn has placed the onus on an injured worker to establish a causal connection, an obligation that can often be very difficult to satisfy.

Despite these limitations, the benefits of no-fault liability as they pertain to workers' compensation arrangements are manifold. Access for claimants is much easier than is the case under common law, since entitlement is based on whether the injury is work related rather than proof of employer negligence. Under no-fault arrangements the emphasis is placed on the injury, not who is responsible for it. By virtue of this, the vast majority of workers who would otherwise be denied compensation are eligible to recoup, at least partially, the financial losses incurred in the event of work related injury. This has had the advantage of eliminating much of the 'lottery effect' associated with compensation based on the common law (Atiyah 1997: 143-154). Less restrictive access to compensation has also resulted in greater certainty of compensation. In contrast to common law, the payment of compensation under no-fault statutes is assured once the work relatedness test is met.

The adoption of the no-fault principle has also meant there are fewer and less protracted delays in the payment of compensation to injured workers. Under

common law the payment of damages for work related injury is invariably accompanied by lengthy delays. In Australia, as elsewhere, these delays tend to be in the order of years, not weeks or months (Purse 2001: 270, Palmer 1979: 24 , Atiyah 1997: 151-152). Delays of this nature add to the financial hardship often occasioned by work related injury. With no wages coming in and compensation for injury delayed for extended periods workers in such a situation are frequently reduced to a condition of abject poverty.

The delays that are such a marked featured of compensation based on the common law are attributable to its inherent litigiousness. The strengths and weaknesses of the common law system lay in its adversarial nature. However, one of the stated objectives underpinning the introduction of no-fault workers' compensation legislation was the minimisation of such adversarial disputation. This objective continues to be one of the major goals of workers' compensation arrangements in the 21st century. This is not to suggest that the no-fault system of workers' compensation does not have an adversarial dimension to it. Far from it. The conflicting interests of workers, employers and insurers not to mention the complexity of the legislation involved has ensured the continuation of adversarial contestation in many areas of claims administration, although it should be noted that in Australia, in recent decades, most jurisdictions have experimented with specialist tribunals and alternative dispute resolution procedures designed to reduce and streamline the handling of disputes. The essential point here, though, is that in comparative terms the no-fault approach is much less litigious that its common law counterpart

The lower level of litigation, easier access, greater certainty as well as lower administrative costs that are distinctive features of no-fault workers' compensation as a form of social insurance have all contributed to its widespread, and continued, acceptance throughout the 20th century. The overwhelming success of workers' compensation in this respect has also given rise to the extension of the no-fault principle to other areas of social insurance including third party motor vehicle and criminal injury compensation insurance.

2.4 The Extent and Distribution of Work Related Injury and Disease

The success of workers' compensation as a form of social insurance has not, unfortunately, resulted in the elimination or minimisation of work related injury. Work related injuries and fatalities continue to occur in Australia at unacceptably high levels. Compounding this is the fact that the full extent of work related injuries, diseases and fatalities is still not known.

Indeed, the magnitude and, hence, the 'visibility' of work related injury and disease has long been obscured by a lack of adequate data and by inconsistencies in the means of data collection. The lack of comprehensive, timely and accurate data on work related injuries has long been a major

concern to researchers and policy analysts (Wigglesworth 1970: 23-28). This is a widespread problem that is by no means confined to Australia. It is also a common problem in European countries such as Britain as well as in the United States (Tombs 1999: 38, Burton, Mont and Reno 1999: 21). In economically less developed parts of the world the problem is correspondingly more severe.

The value of good quality data in this area of industrial relations cannot be underestimated. Firstly, they can help provide a nationwide picture of the incidence, distribution, causes and economic cost of work related injury. Secondly, such data can be utilised to increase awareness among employers, workers and the general community of the social and financial costs associated with poor workplace health and safety management. Thirdly, they can provide the foundation for the development of regulatory standards designed to reduce the incidence and severity of injury associated with specific workplace hazards. Fourthly, they can assist employers in developing prevention strategies directed at eliminating all minimising workplace hazards. Fifthly, they can be used by government inspectorates in targeting high-risk employers, or specific hazards, for priority inspections and other compliance activities. Sixthly, the availability of reliable work related injury data enables trends in workplace health and safety to be measured more precisely, thereby providing a set of critical performance indicators that can be used to determine whether or not reductions in the incidence and severity of work related injuries have taken place. This in turn can be fed back into the policy loop. Finally, good quality data can facilitate more robust qualitative and qualitative research into the causes and prevention of work related injuries.

A large part of the problem in Australia in obtaining comprehensive and comparable work related injury data relates to the diverse jurisdictional responsibility for its collection. Historically, the state and territory governments have been largely responsible for discharging this responsibility. However, as the individual jurisdictions have tended to adopt different approaches to the definition and reporting of work related injuries inconsistencies have abounded. As the Woodhouse Committee complained in the 1970s:

> Examination of the published data reveals marked differences between he States in recorded accident experience. These differences reflect not only such factors as variations in the industrial patterns (the proportions of high-risk and low-risk industries and occupations), age and sex composition of the workforce, the availability of alternative benefits and differences in the legislative provisions, but also differences which may be due to the different reporting practices followed in the various States" (Woodhouse 1976: 25).

Following the establishment of the National Occupational Health and Safety

Commission in the mid 1980s a range of initiatives to remedy these deficiencies were developed. This took place under the Hawke Labor government in a climate in which the need for a comprehensive and consistent national injury database became more widely accepted and led in 1987 to the publication of the national data set to assist the state and territory authorities (Worksafe Australia 1987).

The national data set (NDS) was based on workers' compensation statistics and was arguably the first systematic, albeit limited, attempt to develop accurate Australia wide data on the level of work related injuries. Despite the efforts of the National Commission, major inconsistencies remain and have resulted in the NDS being described as "a lowest common denominator" data set (Foley 1997: 277). In 1999 the National Commission published a revised national data set to yet again address this issue (Worksafe Australia 1999), but to date the state and territory jurisdictions have not shown any signs of incorporating it into their injury reporting arrangements. Thus at the end of the 20th century there was still no common approach by Australia jurisdictions to the measurement and reporting of work related injuries.

There are, of course, several well-known complaints which can be made of workers' compensation based statistics. Among the more common criticisms are that workers' compensation statistics exclude injuries to most self-employed workers as well as the overwhelming majority of slowed onset injuries, such as those associated with exposure to toxic chemicals in the workplace. In addition, changes in eligibility for workers' compensation can vary significantly between, and within, jurisdictions as a result of legislative changes. This can significantly affect the number of work related injuries that are reported. Different reporting thresholds are also a major concern, as too is the fact that many work related injuries are simply not reported.

The self-employed accounted for more than 500,000 workers in 1994, approximately 7.5% of the non-farm workforce (Vandenheuvel and Wooden 1995: 272). Most self-employed workers are not covered by workers' compensation legislation. Some analysts argue that data on the incidence of work related injury among the self-employed would not have any major implications for workplace health and safety policy over and above that which can be derived from the injury data that is already available in relation to wage and salary earners (Foley 1997: 279). Other researchers believe that the intensification of work, the different payment systems involved and the increased hours worked by self-employed workers have adverse health and safety impacts, not faced by other workers, that require particular attention (Bennett, Mayhew and Quinlan 1996: 136-146). At the very least, the acquisition of reliable data on this not insignificant segment of the workforce would assist in clarifying these issues as well as providing a more comprehensive picture of the incidence of work related injury in Australia.

Of much greater concern is the issue of slow onset injuries. By definition the

effects of slow onset injuries, such as through exposure to excessive noise, vibration or chemicals, are gradual. As exemplified by the case of mesothelioma, their pernicious effects often take many years or decades before the symptoms become apparent. Slow onset injuries are an important cause of disability and the major cause of work related death in Australia, but they are notoriously under represented in workers' compensation statistics. This is especially evident with work related fatalities. In 1991-92, for example, only 21 work related fatalities arising from exposure to hazardous substances were recorded in workers' compensation statistics throughout Australia even though there were more than 2000 deaths during this time is a result of work related exposures (Purse 1998: 190). As can readily be appreciated the inability of workers' compensation statistics to capture such critically important data is a major limitation, one that has necessitated the development of alternative approaches.

Legislative changes can also affect the extent, or rather the recording, of work related injury. This is particularly evident when the incidence of work related injury through the 1990s is considered. Here it should be noted that, for workers' compensation purposes, only those injuries sanctioned by statute and required to be reported to the compensating authority appear in official workers' compensation statistics. Thus the tightening of the definition of 'work related injury' during the 1990s requiring work to have been 'a significant contributing factor' - the wording varies somewhat between the jurisdictions - for a worker to be eligible for compensation has had the obvious effect of reducing the number of work related injuries officially recorded. This has been compounded by other legislative changes during this period, notably through the exclusion in many jurisdictions of journey injuries - injuries which occur on the way to or from work - and the tightening of eligibility criteria for stress related injuries (Heads of Workers' Compensation Authorities 1997: 4-5).

Legislated changes to reporting requirements have also had a significant impact. Some Australian schemes have employer excess arrangements whereby employers pay directly for workers' claims up to a specified amount or for a stipulated period (Ibid.: 8-9). In South Australia, for example, changes to the legislation in 1995 meant, among other things, that employers were required to pay for the first ten days of workers' claim. Previously the reporting threshold had been five days. This change meant that employers were under no obligation to report injuries unless they involved more than 10 days off work. As journey injuries had also been excluded, in 1994, it was hardly surprising that the combined effect was a significant drop in claim numbers. In the two years following the introduction of these changes, from 1994-95 to 1996-97, reported claims from registered employers in South Australia fell from 39,630 to 34,100 (South Australian WorkCover Corporation 1997a: 2), a decrease of 14%.

Interpreting changes in claims numbers can be difficult at the best of times.

As in the case of claims comparisons between schemes comparisons over time are especially fraught with danger where there have been major changes in legislation. Notwithstanding this, scheme administrators frequently equate reductions in claim numbers with reductions in the incidence of work related injury. Superficially, as in the case of the figures just cited, it could be suggested that such reductions provided clear evidence of an encouraging, indeed impressive, improvement in workplace health and safety. This was certainly the view presented, for example, by the WorkCover scheme's management in South Australia (South Australian WorkCover Corporation 1997b: 7). In actual fact the reduction in claim numbers was attributable mainly, if not entirely, to the changes in eligibility and reporting requirements. The exclusion of journey injuries and the shift to the ten day excess period accounted, respectively, for 4.2% (South Australian WorkCover Corporation 1997a: 2) and 6.4% (South Australian WorkCover Corporation 1998: Personal Communication 19/8/1998) of the overall reduction. Other eligibility changes, such as those pertaining to stress related claims, would have contributed further to the reduction in claims numbers.

What this example demonstrates is the ease with which workers' compensation statistics can be misused. Regrettably, this type of erroneous comparison is quite common and is frequently replicated on a national basis where changes in workers' compensation legislation affecting claims eligibility or reporting arrangements are either ignored - or acknowledged and then ignored. Thus it is that the National Commission alludes to a "significant improvement" in workplace health and safety from 1993-94 to 1996-97 (Worksafe Australia 1998: 2), based on reported claims numbers, without taking cognisance of the legislative changes which had transpired during that period.

The non-reporting of work related injuries is also a major problem and is by no means a phenomenon which is confined to Australia (Biddle et. al. 2000) . Many workers who incur a work related injury do not claim compensation. A 1993 survey conducted in New South Wales found that of 231,300 people who indicated they had incurred a work related injury in the previous 12 months, only 47% had sought workers' compensation. This was despite the fact that, in many cases, the injuries were quite serious (Australian Bureau of Statistics 1994: 6-7). The reasons that were cited for not lodging claims were numerous. In some cases they were not aware of their right to claim compensation or that their particular injury was compensable. This is more likely to be so when the workers involved come from a non-English-speaking background. In other cases they did not lodge a claim because of concerns about what other people might think of them. This reflects the view that claiming for workers' compensation is somehow suggestive of malingering. Then too, there were many thousands of workers who did not claim because of the fear of having their employment terminated (Ibid.: 7). These findings confirm that the reporting of work related injury is not simply, as might first appear to be the case, a function of the injury itself, but rather the product of a

complex interaction of a range of social, economic and industrial factors.

More generally, the examples just cited illustrate the methodological point that workers' compensation claims numbers are often a poor proxy for workplace health and safety performance and that using them is beset with difficulties. Accordingly, if they are to be used for this purpose at all, it should be done with the utmost caution.

It should not be concluded from these criticisms, however, that workers' compensation statistics are without their uses. Quite the contrary, they provide a wealth of useful data in relation to the type of injuries suffered by workers, as well as much useful detail concerning other variables associated with work related injury including gender, age, occupation, industry sector and firm size. There are two critical points to be borne in mind however. The first is that workers' compensation statistics can only ever provide a partial picture of the incidence of work related injuries and, more particularly, industrial fatalities. This is especially so given the inability of workers' compensation schemes to capture industrial disease data. When complemented by data from other sources a more comprehensive picture is possible, although here again caution must be exercised since these alternative data sources are not without their own problems (Foley 1997: 280). The second point concerns the manner in which workers' compensation statistics are used. As pointed out earlier, such statistics are often an unreliable proxy for the measurement of occupational health and safety, particularly when there have been legislative changes that affect the eligibility and reporting of work related injury. Comparisons between jurisdictions where there are significant differences in eligibility or reporting arrangements are especially problematic as are trend comparisons over time within specific jurisdictions where there have been these sorts of changes. Provided these limitations are properly understood and that claims made for the data are kept within these bounds, workers' compensation statistics have an important role to play in improving our understanding of the nature and extent of many work related injuries. They also have an important, but by no means exclusive, function in the development of strategies to reduce the incidence and severity of work related injury.

For work related fatalities the most useful estimates have been obtained from a combination of data sources other than workers' compensation statistics. In the case of trauma related deaths an examination of coronial records for the period 1989-92 indicated that on average there were 597 fatalities a year (National Occupational Health and Safety Commission 1998: 19). For deaths due to industrial diseases associated with exposure to hazardous substances an analysis of mortality records, held by the Australian Institute of Health and Welfare, revealed that for the same period there were a further 2,290 fatalities a year (Corbett et. al. 1998: 638). In total it is estimated that 2,887 Australians died in 1992 from work related causes. More people are killed as a result of their work than from road crashes, suicide or AIDS (Ibid.: 639).

The inability to manage workplace health and safety represented by these gruesome statistics is a poor reflection on Australian employers. Nor does the performance of Australian business stand up well in terms of international comparisons. An Industry Commission inquiry conducted in 1994 concluded that the performance of Australian business when measured against that of other industrialised nations such as the United Kingdom, Sweden, Japan and the United States left a great deal to be desired. Using data made available to the International Labor Office, the Industry Commission found that the incidence in 1989 of work related trauma fatalities in Australia was more than twice that of these other countries (Industry Commission 1995, 1: 11). While international comparisons of this nature are subject to numerous qualifications (Frommer, Harrison and Stout 1990) there can be little doubt that the management of workplace health and safety in Australia leaves very considerable scope for improvement.

With work related traumatic fatalities, men account for more than 90% of the total. This reflects the broader range of occupational choice traditionally available to men and the higher level of risk often involved with many of these occupations (National Occupational Health and Safety Commission 1998: 23). Among the more common causes of traumatic death are vehicle crashes, falls, electrocution and being hit by moving objects. For women, vehicle crashes assaults and being hit by moving objects are the main causes of death (Ibid: 22). Migrant workers, not surprisingly, have higher fatality rates than the average for the workforce as a whole. In the case of migrant workers from non-English speaking backgrounds, the likelihood of a fatal work related trauma injury during their first year of work in Australia is almost 400% higher than for Australian born workers (Industry Commission 1995: 13).

As measured by the number of deaths per 100,000 persons per annum, the industries with the highest incidence of work related trauma fatalities involving men, were forestry (93) and fishing (86) followed by mining (36), transport and storage (23), agriculture, (20) and construction (10). By comparison, the fatality incidence for the workforce as a whole was 5.5 (Worksafe Australia 1998b: 25). In relation to women workers, community services, agriculture, recreation, and wholesale and retail trade were the industries which accounted for the majority of trauma related fatalities (Ibid.: 22). The incidence of work related trauma fatalities also varied significantly between occupations. Commercial pilots (197), fishermen (117), forestry workers (116), drilling plant operators (72), mining laborers (68), structural steel laborers (43) and excavation and earthmoving machine operators (39) were especially at risk (Ibid.: 28-29). These are all occupations in which men dominate employment. Farming, clerical, personal services and trucking were among the occupations in which trauma fatalities involving female workers were most prevalent (Ibid.: 22).

The information on deaths from industrial diseases is sketchier. As with traumatic fatalities the incidence of deaths arising from industrial disease is much more common among male workers. Approximately 78% of all such fatalities involved men (Corbett et. al. 1998: 637). Cancers of one sort or another caused the majority of deaths from industrial disease. In 1991-92, an estimated 1,297 people died from work related exposure to carcinogens. Lung cancer, mesothelioma, leukaemia and bladder cancer predominated for both men and women (Ibid.: 637-638). Industrial cancer is the most significant cause of work related death in Australia. Cardiovascular disease, asthma and neurological disorders resulting from exposure to toxic chemicals are other important causes of work related fatalities and, in 1991-92, accounted for approximately 911 deaths (Ibid.: 637).

The incidence of work related injury also reveals a bleak picture. Information presented by the Industry Commission as a result of its 1994 inquiry into workplace health and safety in Australia indicate that there were 370,000 successful claims for workers' compensation in 1991-92 (Industry Commission 1995, 2: 29). When work related injuries for which compensation was not sought were factored in, the Commission concluded that there were 650,000 work related injuries a year in Australia (Ibid.: 30). Strains and sprains are the most prevalent category of work related injury among both sexes and in 1991-92 accounted for approximately 46% of reported injuries involving five days or more off work on workers' compensation, followed by open wounds and fractures which accounted for 10% and 9% respectively. Industrial deafness claims accounted for a further 7% of reported injuries (Worksafe Australia 1994a: 10).

As in the case of fatalities, workers from a non-English speaking background are thought to constitute a disproportionate proportion of those injured through work. This is because of their concentration in low skilled and high-risk jobs. There are, however, no firm estimates regarding the national incidence of work related injury among this highly vulnerable category of workers.

In overall terms, male workers accounted for 76% of reported injuries which resulted in five days or more off work (Ibid: viii). The average time lost per injury, however, was higher for women workers than for their male counterparts - 43 days compared with 36 days (Ibid.: 58). Whether this difference is due to women 'carrying' their injuries longer before applying for workers' compensation is not clear. What it does suggest though is that while women workers are generally less likely to suffer a work related injury, the injuries they do incur may be more severe thereby requiring more time off work.

Industry sectors with the worst records, as measured by frequency of injury per million hours worked, were mining (36.7), construction (32.3), transport and storage (28.4), and manufacturing (25.6). The finance, property and

business services sector had the lowest (6.2). The national average was 17.8 (Industry Commission 1995, 2: 35). Large disparities between different occupational groupings are also conspicuous. Labourers and related workers have the highest incidence of reported injury, followed by plant machine operators and trades people. By comparison, workers categorised as professionals are 15 times less likely to incur an injury than a labourer (Ibid.: 35).

The incidence and distribution of work related injury is neither random nor 'accidental', but rather the "predictable outcome" of specific production processes (James 1987: 48). The term 'accident' obscures the social relations of production involved and serves to legitimise work related injury as an inherent and unavoidable feature of working life, even though most injuries are preventable. A more accurate assessment regards work related injury as largely a function of unsafe systems of work. According to the Victorian Institute of Occupational Safety and Health 85% or more of all work related injuries are attributable to 'system failure' (Industry Commission 1994: 102). These systems of work are controlled by those at the apex of the managerial decision-making process - employers, directors and senior executives - while those most at risk of injury or death tend to be on the lower rungs of the work hierarchy. In this respect work related injury is, pre-eminently, an issue of class. The overwhelming number of work related injuries are suffered by blue-collar workers. In 1991-92 such workers accounted for 54% of all reported injuries which resulted in five days or more time off on workers' compensation leave (Industry Commission 1995, 2: 35). Managers and administrators, by contrast, accounted for less than 2% of the total (Ibid.: 35). More importantly, employers, through their control and management of the production process are largely responsible for creation of work related hazards. This is explicitly recognised in occupational health and safety laws which place the primary responsibility for the establishment and maintenance of safe systems of work on employers who are required to take all 'reasonably practicable' measures to ensure the workplace health and safety of their workers (Mathews 1993: 23-44).

The social and economic costs of work related injury are enormous. Although many social costs do not readily lend themselves to quantitative assessment it is clear from research both in Australia and overseas (Industry Commission 1994: 100-102, Christensen et. al. 1984: 27-29) that the costs involved can be extremely high. In the case of injured workers this may involve ongoing pain and suffering, psychological impairment, loss of employment and employment prospects as well as difficulties in carrying out the normal functions of daily living. Almost invariably there is a clearly discernible decrease in living standards and the quality of life where workers incur serious work related injuries. Families are also adversely affected. This is most profoundly so in the case of industrial fatalities. As one commentator, with direct personal experience of such tragedies, points out:

> The emotional and physical toll of industrial death on families is incredible. Some turn to alcohol and others turn to drugs: many experience nightmares, insomnia, agoraphobia, chronic depression, rage, suicidal thoughts, lethargy, chest pains, stress disorders, eating disorders, weight loss, weight gain, and erratic behavior. Family and social relationships are often unable to bear the strain of grief and loss, and are damaged or broken beyond repair (Mobayad 2000: xiii-xiv).

In terms of the economic cost involved the National Commission has estimated that in 1992-93 the cost associated with the inability to manage workplace health and safety in Australia was as high as $37 billion, an amount equivalent to a staggering 9.2% of GDP (Worksafe Australia 1994b: ix). By comparison the current account deficit for the year was only $14.8 billion, or 3.6% of GDP (Australian Bureau of Statistics 1996: 19). With an overall level of profit in Australia for 1992-93, as measured by the non-farm gross operating surplus, of $146 billion (Australian Bureau of Statistics 1995: 102) the total loss to the national economy attributable to poor workplace health and safety was as much as 25% of profits. It is also worth noting that work related injury results in up to 23 million lost working days a year. In 1993-94 this compared with less than half a million days lost through industrial action (Industry Commission 1995, 1: 17).

The National Commission estimate of the economic cost involved is based on direct costs, such as workers' compensation insurance costs, and indirect costs including those attributable to lost production, damage to equipment and machinery, other property damage, the hiring and training of new workers and injury investigation. These latter costs are not covered by workers' compensation insurance, and are considered to be very much higher than the direct cost of work related injury. In the National Commission study a ratio of indirect to direct costs of 4:1 was employed (Worksafe Australia 1994b: ix). While some studies use higher ratios of indirect to direct costs (Ibid.: 22) the National Commission estimate is put forward as a central, or 'compromise', estimate (Ibid.: ix). However, in view of the difficulties involved in determining indirect costs, and hence in determining an accurate assessment of the ratio of indirect to direct costs, the overall estimate of $37 billion should be treated as indicative rather than definitive. Even with this qualification, however, it is abundantly clear that the financial toll of work related injury in Australia imposes a very significant drain on the national economy.

Work related injury is, therefore, not only a major public health issue but also one which may justifiably be regarded as a first order priority as far as microeconomic reform is concerned (Purse 1997: 148-150). The advantages of tackling the workplace epidemic which year in and year out results in the death of many thousands of Australians and injuries to hundreds of thousands of others are myriad. The most obvious is a widespread reduction in the incidence of human suffering. This is especially so given that up to 97% of work related fatalities and injuries may be avoidable where good

occupational health and safety management systems are in place (Worksafe Australia 1996a: 14). Moreover, the hazards associated with many work related injuries and diseases as well as the means of preventing them have been known for centuries (Ramazzini 1713). It is also evident that major productivity gains can be achieved through improved workplace health and safety and that these potential benefits far outweigh those obtainable from much heralded icons of microeconomic reform such as national competition policy and waterfront reform (Purse 1997: 141, Harcourt 1998: 228-234).

2.5 Conflict and Contention

As in other areas of industrial relations, workers' compensation has long been a source of conflict and contention between capital and labour in Australia. During the 1970s and, more particularly, the 1980s and 1990s the intensity of this conflict escalated dramatically. Workers' compensation, which for decades had remained a policy backwater re-emerged on the public policy scene as an increasingly important agenda item. This was not just from an industrial relations perspective. Workers' compensation began to be viewed as a critical aspect of the broader economic and social picture.

The conflictual nature of workers' compensation arises from the broader struggle over workplace health and safety which, in turn, is largely a function and reflection of the more fundamental divide between capital and labour. As Alcorso points out:

> Workers' compensation systems have, historically, both *reflected* and *reproduced* the conflicts inherent in the capital-labour relationship as it is structured in capitalist societies. Because conflicts of interest over the cost of labour power and the supply and control of the workforce are endemic to capitalist economic systems, the issue of workers' compensation, like that of occupational health and safety in general, has inevitably been a source of debate, dissension and conflict (Alcorso 1989: 47).

More specifically, in a capitalist society there is no guarantee that the operation of market forces will result in safe and healthy workplaces. Quite the contrary. In a society geared towards the maximisation of profit, workers' health and safety are inevitably sacrificed in the interests of capitalist profitability. As Marx once put it, "Capital is reckless of the health or length of life of the labourer, unless under compulsion from society" (Marx 1867: 257). Indeed in Marx's time, even where society provided the 'compulsion', in the form of Factory Acts, the failure to enforce the meagre provisions they contained meant that the protection afforded working people was largely illusory (Ibid.: 264-281). The brutal consequences of this lack of, even the most rudimentary, safety measures were painstakingly depicted by Engels in his classic account of the atrocious working conditions characteristic of the English factory system (Engels 1845: 158-189). Since then, of course,

working conditions in the industrialised world, including workplace health and safety, have improved tremendously. It is still very much the case though that workers have to contend with the appropriation of their health as a result of the social relations embedded in the capitalist production process. With the growth of multinational capital and the increasing internationalisation of production and exchange the appropriation of workers' health is now a world-wide phenomenon, with conservative estimates placing the global burden of work related injury and disease at a staggering 110 million cases a year, including 800,000 deaths (Kuosma et. al. 1999: 626-629).

In a capitalist society, therefore, workers' compensation may be regarded as the commodification of work related injury - the price that employers pay for the appropriation of workers' health. As Bale observes, workers' compensation entitlements are a means by which, "some of the lost labour power" brought about by work related injury might be restored (Bale 1989: 1118). However, while the price of work related injury is, "bargained over like other commodities in the marketplace" (James 1987: 62-63) its price is not determined directly in the marketplace but through the auspices of the state. The state decides which categories of workers are entitled to compensation, the conditions of eligibility, the duration of entitlements as well as the types and amounts of compensation available. In practice, the price of work related injury is keenly contested by the organised representatives of capital and labour, with the class interests involved mediated by the state in a sometimes straightforward but often complex, and not infrequently contradictory, manner.

In Australia, as elsewhere, there are numerous 'fault lines' along which this contestation occurs. The most obvious source of conflict is where cuts in compensation entitlements for workers or premium hikes for employers are proposed. Thus, in what was described as the biggest demonstration in South Australia since the Vietnam War, thousands of workers rallied in February 1995 to protest the Brown Liberal government's proposed cuts to workers' compensation entitlements. In doing so they voted unanimously to support a 'top-up' campaign aimed at making employers pay for any shortfalls in compensation attributable to changes in the legislation (The Advertiser 15/2/95). Earlier in the campaign employer organisations, not surprisingly, expressed full support for the government's proposals and claimed that the proposed cuts, "would be the clearest signal to industry and potential investors that this State is serious about doing business" (The Advertiser 7/4/95). This was subsequently accompanied by warnings from a number of large employers that unless the government's proposals were adopted without amendment there could be an exodus of capital from South Australia (The Advertiser 19/4/95).

The South Australian situation was by no means unique. Similar conflicts occurred in other jurisdictions, with those in New South Wales and Victoria being the most conspicuous over the course of the late 1980s and early 1990s. In New South Wales during 1987, in response to demands from

employer groups, the Unsworth Labor government pushed through legislation that reduced key entitlements for injured workers. Described by one Labor MP as "disgraceful and a complete rejection of everything a Labor Government is meant to stand for" (Sydney Morning Herald 28/5/87), the Unsworth cuts resulted in trade unions embarking on a series of top-up campaigns (Sydney Morning Herald 20/5/87). In the aftermath of the Victorian election in October 1992, the Australian Chamber of Manufacturers called on the Kennett government to take immediate steps to bring the average premium rate for the state's employers into "line with the New South Wales situation as soon as possible" (The Age 19/10/92), a demand the government was not slow to act on. For its part, the Victorian Trades Hall Council vowed to launch top-up campaigns to counter any reduction in workers' statutory entitlements (Ibid.).

Claims disputation is another major fault line found in workers' compensation arrangements. The early British legislation, on which Australian statutes were based, was intended to, if not eliminate, at least reduce significantly the adversarial nature of claims for compensation. However, given the conflicting interests of employers, workers and insurers, disputation continued as a central feature of the system and was often intensified by the imprecision of key principles underpinning the legislation. It was also exacerbated by the increasing medico-legalisation of the workers' compensation process, a development in which:

> Class conflict over the value of work injuries was medicalized as it became played out in individual cases within a determinate legal context creating the terms of the medical inquiry, regulating the role of physicians, and setting the parameters of the process of turning medical judgments into money and medical care (Bale 1989: 1119).

Disputes over claims assume many forms but can be categorised into two broad areas, those that involve liability and those concerning quantum. In the decade preceding the major workers' compensation reforms of the 1980s complaints over delays occasioned by disputes, and the concomitant financial hardship imposed on workers, gathered momentum. In Victoria disputed claims increased dramatically between 1974 and 1981, with the result that 20% of all claims involving serious injury were contested (Friend 1983, 110). In South Australia, the Byrne Committee found that disputed claims rose by 300% between 1972 and 1979 (Byrne 1980: 22). Since delays from the commencement of disputes to hearings before the compensation tribunals were often protracted, workers could be placed under tremendous financial pressure to discontinue their claims or, where lump sum payments were involved, to settle for much lesser amounts. Needless to say, the deleterious effects of protracted claims disputation on the health, and social legitimacy of, injured workers can often be quite profound (Lippel 1999: 523-531).

The role of insurance companies in using delaying tactics also attracted much

criticism. As expressed by one commentator:

> The advantages to insurance companies of disputing claims are obvious. Firstly, no money need be paid out until the hearing, usually a period of least two years. Secondly, the large number of disputed claims clog the workers' compensation system, resulting in ever lengthening delays before a hearing is given. Finally, after a year or two without payments, the worker, who is usually in a desperate financial position, is more likely to accept a lower settlement (Friend 1983, 110).

Disputed claims and the attendant delays in payment of compensation to injured workers were by no means confined to Australia. They were also endemic, for example, in United States workers' compensation schemes and figured prominently in the Burton report which, commissioned in 1970, presented its findings to the President and Congress in 1972 (National Commission on State Workmen's Compensation Laws 1972: 107). It is also worth noting that disputation over compensation claims was one of the major factors behind the British decision in 1946 to incorporate workers' compensation into its social security system (Beveridge 1942: 36).

In Australia, the mounting concern with claims disputation generated increased demands during the 1970s and early 1980s for an overhaul of dispute resolution systems. Major changes were introduced in the mid 1980s initially in Victoria and South Australia, and subsequently during the course of the following decade in most other parts of Australia. However, despite the improvements which have occurred in many jurisdictions, the opposing interests of employers, workers and insurers have meant that disputation remains as an integral part of workers' compensation systems and continues to attract criticism from trade unions, women's organisations and regulatory agencies (Australian Council of Trade Unions 1993a: 24-25, Working Women's Centre 1994: 6, Office of the Employee Ombudsman 1997: 14).

The interface between workers' compensation schemes and the social security system is a further focal point of contestation between capital and labour, with the major issues at stake being whether the social security system, and hence taxpayers, should assume some responsibility for costs associated with work related injury and, if so, to what extent. The policy differences associated with these boundary issues takes on an even greater significance by virtue of the fact that social security payments are generally lower than compensation payments, and in some jurisdictions substantially so.

Historically, compensation paid by Australian schemes, in the form of weekly payments, has been restricted either by monetary, or time, limits. Schemes that operate in this way may be described as having a 'closed liability' structure. Although this began to change in some jurisdictions from the mid

compensation (Purse 1996: 114-115), it remains the case that there are quite definite, indeed arbitrary, limits on the amount of compensation available to injured workers. For most workers this does not matter, of course, because they are back at work within a few weeks or months of their injury, but for those with more serious injuries involving extended periods off work, however, it is a different matter. Once the payment limits have been reached injured workers have had to transfer, if eligible, to the social security system or fend for themselves. Although the number of workers directly affected is relatively small they account for the bulk of scheme costs - in insurance industry parlance these workers constitute the 'long tail'. The practical effect of this arrangement has been that much of the cost for work related injury has been transferred from employers to injured workers and the social security system. This is of significant financial advantage to employer interests and consequently has been a policy position very strongly endorsed by employer organisations (Victorian Employers' Chamber of Commerce Industry 1991: 33, Metal Trades Industry Association of Australia 1993: 16). Trade unions, by contrast, frequently argue that, "The major objective of workers compensation should be to protect workers from loss of income associated with work related injury or disease" (Australian Council of Trade Unions 1993a: 41) and that weekly payments, "should continue while ever the person is unable to return to work (Ibid.: 42).

Since workers' compensation is mainly the responsibility of state and territory governments while social security is primarily the preserve of the federal government, contestation between labour and capital in this area is it also affected by conflicting intergovernmental interests as well. This has meant that there has been, a near irresistible, temptation for state and territory governments to structure there compensation schemes in a manner that facilitates the transfer of work related injury costs to the federal government. In its 1993 submission to the Industry Commission inquiry this was highlighted by the ACTU, where the peak union body maintained that:

> State Governments have viewed workers compensation as a tool for levering the economy rather than a system for dealing with workplace injury. As a result we have seen a cynical manipulation of premiums to "attract industry" often to the detriment of workers, who have suffered reduced benefits, and the Australian taxpayers who have picked up the costs via the Social Security system (Australian Council of Trade Unions 1993b: 2).

Not surprisingly, given that this inquiry had been established by the then federal Labor government in response, in part, to cost shifting by the states and territories the Commission condemned the various cost shifting practices employed as 'invidious' competition (Industry Commission 1994:xxxi). Moreover, in an unprecedented move, it recommended that, in the absence of genuine reform, the federal government, "should estimate the net extent of cost shifting to the social security system and explore mechanisms to pass

the costs back to the States/Territories" (Ibid.: 173). The failure by successive federal governments to act on this recommendation, however, has meant that the social security system has retained its status as a de facto workers' compensation scheme where state and territory governments are able to off load injured workers and, to a significant degree, the attendant costs associated with their injuries.

Worker entitlements, employer premiums, claims contestation and the appropriate boundaries between workers' compensation schemes and the social security system are by no means the only fault lines upon which contestation between the representatives of capital and labour take place. There are many others. Eligibility criteria for compensation, scheme governance, the role of the private sector versus that of the public sector in the underwriting of workers' compensation arrangements, rehabilitation and the return to work process are among the multiplicity of issues which are the subject of class struggle between employers and workers. Having said this, it is also important to recognise that there are issues, and occasions, where negotiated settlements can be, and are, reached between the two sides. This is always more likely when the issues involved are perceived as not being central to their material interests. It also needs to be appreciated that policy differences often exist within the ranks of employers and workers over particular issues as well as between them. In dealing with questions of policy formation and the articulation of class interests it is, therefore, necessary to accord particular attention to the concrete circumstances involved.

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CHAPTER 10 – WORKERS' COMPENSATION POLICY: CLASS STRUGGLE AND PUNCTUATED EQUILIBRIUM

10.1 Introduction

This thesis has provided an analysis of a number of the fault lines that have been at the centre of workers' compensation policy in Australia during the last three decades. It has highlighted the inherently conflictual nature of workers' compensation policy and mapped the contours along which the swings in these policy fault lines have taken place.

In this final Chapter a broader analytical framework is developed which contextualises these swings in the policy pendulum. More particularly, a four-stage periodisation of Australian workers' compensation policy, based on the concept of punctuated equilibrium, is presented. In the process, it is also shown that the application of punctuated equilibrium analysis is mediated by the federalist nature of the Australian state. Within this framework, it is emphasised that the nodal points of policy development in the workers' compensation arena correspond with heightened levels of contestation between employers and organised labour.

The period from 1970 to 1996 is one such nodal point. During these years, workers' compensation policy in Australia was the subject of unprecedented conflict and change. The principal focus of this increased contestation concerned the distribution of costs for work related injury. This source of conflict is explored through an examination of major changes in the design of workers' compensation schemes that occurred during this tumultuous period. It is demonstrated that while the policy pendulum began to favour workers during the 1970s and much of the 1980s, it swung decisively in favour of employers from the latter part of the 1980s through to the mid 1990s and resulted in a substantial degree of cost shifting for work related injury from employers to injured workers and the federal social security system.

In the concluding section of the Chapter, it is suggested that a punctuated equilibrium based analysis is likely to prove fruitful in discerning the trajectory of workers' compensation policy elsewhere, including North America and Europe. It is further argued that punctuated equilibrium may also be able to be applied to other aspects of industrial relations as well as other policy domains, further afield, characterised by non-linear development.

10.2 The Periodisation of Workers' Compensation in Australia

Due to its historically episodic nature, public policy on compensation for work related injury in Australia can be conceptualised in terms of punctuated equilibrium. As pointed out in Chapter 7, the theory of punctuated equilibrium presented a radically new theory of evolution. In doing so, it challenged the

then prevailing of "phyletic gradualism" (Eldredge and Gould 1972: 97) which viewed speciation as an incremental and essentially linear process. By contrast, punctuated equilibrium emphasised the, now widely accepted, view that speciation is a relatively rapid but infrequent phenomenon (Ibid.: 84). As applied to workers' compensation, the theory implies that workers' compensation policy and its legislative enactment can be characterised as a process in which sporadic bursts of intense activity resulting in dramatic ruptures with the status quo are interspersed with longer periods of incremental change. Arising from this, it is possible to sketch a four-stage periodisation of workers' compensation policy in Australia.

During the first stage, which covered the period of white settlement to 1900, access to compensation for work related injury was confined essentially to common law remedies. Due to the pernicious influence of the 'unholy trinity' defences available to employers though, workers found themselves trapped in a Catch 22 dilemma. At common law a worker could obtain compensation if negligence was proven, but the law was judicially constructed so as to prevent this. The advent of employer liability laws during the 1880s did not materially change this predicament.

By contrast the years from 1900 through to the mid 1920s were a period of profound, and comparatively rapid, change. It was during this second stage of development that state and federal governments introduced workers' compensation laws across the nation. No-fault liability replaced tort liability as Australian society's preferred means of dealing with the socio-economic consequences of work related injury. This epochal shift to no-fault liability remained as the centrepiece of workers' compensation arrangements throughout the rest of the 20th century and beyond.

By the mid 1920s the basic architecture of scheme design that would dominate workers' compensation arrangements for much of the century had been put in place. Throughout this third stage, which persisted to the 1970s, and longer in some jurisdictions, change in the workers' compensation arena was incremental, often imperceptibly so. Important changes occurred but did so only slowly. Eligibility for compensation is a prime example of this incrementalist approach to policy development. For more than four decades access to compensation had been contingent on the injury 'arising out of *and* during the course of employment'. In 1946 a new and less onerous approach was adopted, initially in Victoria. Under the new definition eligibility became subject to the injury 'arising out of *or* during the course of employment' (Victorian Parliament 1946: No. 5128, s.3). This replacement of the conjunctive by the disjunctive subsequently spread from Victoria to all other Australian jurisdictions except Tasmania.

The fourth stage in the trajectory of workers' compensation arrangements in Australia covered the years from about 1970 through to the mid 1990s. The most distinctive feature during this period was the pervasiveness of change.

Although subject to substantial variation between the ten jurisdictions, both in relation to its extent and pace, the process of change itself was unprecedented. The type and level of compensation payments, underwriting arrangements and the role of the private insurance industry, the resolution of disputed claims, the purpose and structure of premiums, vocational rehabilitation and return to work strategies, scheme governance, and the function of workplace health and safety within the workers' compensation context were all major policy issues that underwent fundamental review and, often dramatic, metamorphosis during the course of this 26 year period. Increasingly during this period, the central issue was the rising cost of workers' compensation insurance and the concomitant struggles between employers and organised labour over who should pay.

The only comparable period of change to that of the decades between 1970 and 1996 was that centred on the early years of the 20th century. These two stages constitute the nodal points of workers' compensation policy development in Australia. There were, however, at least two aspects that differentiated the changes which occurred towards the end of the century from those at its outset.

The first was the sheer scope of change. While the new workers' compensation laws introduced around the turn of the 20th century were obviously fundamental in nature they were still quite limited in their application. This was reflected, for instance, in the initially restricted coverage and the low level of compensation provided, not to mention the absence of any linkages with workplace health and safety and vocational rehabilitation. The real significance of the early statutes was their emphasis on no-fault liability which ushered in a new paradigm of compensation for work related injury. In doing so, the skeletal outlines of a system that facilitated later developments was firmly established. By contrast, the changes which occurred from the 1970s onwards had a much more holistic flavour and included many innovations intended to overcome scheme design rigidities that had accumulated as a result of structural stagnation over many decades.

The other clear difference was the direction of change. Following the adoption of workers' compensation legislation in the early decades of the century subsequent developments were generally geared towards improvements, albeit modest, for injured workers. This was facilitated by the emergence of an increasingly organised labour movement and the ascension to office of Labor governments. The extension of coverage and the introduction of new categories of compensation, such as lump some payments for loss of body parts, were examples of this upward trend.

In the period from 1970 to 1996, however, the barometer of change seesawed first one way then the other. Again, there were significant differences between the jurisdictions but from 1970 through to the latter part

of the 1980s the underlying trend was towards improvements in payments and associated conditions for injured workers. It was during this period that a number of schemes increased the level of weekly compensation to 100% of average weekly earnings, and subsequently introduced 'pensions' - in the form of ongoing weekly payments - for seriously injured workers. It was also during these years that reforms concerning vocational rehabilitation and claims dispute resolution mechanisms first came into operation.

It is worth stressing though, that these latter reforms contained measures specifically designed to benefit employers. This was especially evident in Victoria and South Australia. As a result, the upward cost spiral was brought to a halt, at least temporarily.

However, as the 1980s drew to a close, there was, in many jurisdictions, an escalation in attacks by employers on workers' entitlements as renewed cost pressures led to increased premiums. This development heralded a winding back of many of the gains made by the labour movement. This was most evident in New South Wales and Victoria but spread to schemes in other states during the course of the 1990s. Reductions in weekly payments along with the widespread adoption of step-down provisions, the abolition or restriction of access to common law by injured workers for employer negligence and the tightening of eligibility for compensation were among the legislative measures adopted by state and territory governments. Needless to say, these cuts delivered lower premium rates for employers.

10.3 Capital, Labour and Workers' Compensation Costs

The four-stage periodisation of workers' compensation arrangements in Australia corresponds with fluctuations in the intensity of the struggles between employers and the labour movement concerning the distribution of costs for work rated injury, as reflected by the extent to which these costs were covered by workers' compensation statutes.

In the pre 1900 period the costs of work related injury were borne overwhelmingly, if not exclusively, by workers and their families. For much of this period the industrial working class was in a nascent stage of development, was inadequately organised and without an independent political voice. Consequently, it was unable to successfully challenge the power and hegemony of the propertied classes in relation to compensation for work related injury. However, during the 1880s and the 1890s this began to change. The growth of industry began to swell the ranks of the industrial and rural proletariat. In doing so it gave rise to increased demands not only for industrial reforms but also for parliamentary representation and a program of legislative reforms. The emergence of the Australian Labor Party during the 1890s was a direct expression of these demands (Patmore 1991: 74-82). And even though the initial Australian workers' compensation laws were, as was the case in the UK, enacted by non-Labor governments it was against

the background of a burgeoning working class and the growth of the Labor Party that this epochal development took place.

The advent of workers' compensation legislation during the following 25 years or so constituted a recognition, even if begrudgingly bestowed, that the capitalist class should bear responsibility for a portion of the costs associated with work related injury. Although the initial statutes confined eligibility to workers engaged in 'dangerous' employment, coverage was subsequently extended and additional types of compensation, such as lump sum payments for loss of body parts, were introduced by incoming Labor governments. As can be appreciated, these developments had the effect of increasing the cost of workers' compensation insurance for employers. Nevertheless, the premiums required to be paid by employers were, on average, quite low.

During the succeeding period, from the latter half of the 1920s through to the 1970s, the distribution of costs for work related injury continued to favour employers. The onset of the Great Depression in 1929 and the mass unemployment that was such a salient feature of the 1930s had a devastating effect on organised labour and its capacity to bargain on behalf of working people. Following World War II, the adoption of Keynesian demand management techniques restored prosperity and ushered in a period of near full employment. However, despite these otherwise favourable circumstances, the prevalence of conservative governments both at a federal and, more particularly, state level acted as a brake on workers' compensation reform. In Victoria, South Australia and Queensland, for example, reform was stifled by conservative governments that held office for extended periods ranging from a quarter to a third of a century. Even in traditional Labor states, like New South Wales and Western Australia, conservative governments held sway for more than a decade during the boom times of this period. The overall effect of these political and economic factors meant that reforms which did occur during these decades where essentially piecemeal. It was hardly surprising, therefore, that although workers' compensation premiums increased somewhat their impact was still of limited economic significance. As late as 1970, the amount paid by employers in premiums accounted for less than 1% of Australia's total wage and salary bill (Advisory Committee on Prices and Incomes 1986: 49).

By contrast, the period from 1970 to the mid 1990s was one of increased cost pressures accompanied by an intensification in the struggle between employers and organised labour over the apportionment of costs for work related injury. Initially the focus was on improving compensation for workers, but subsequently shifted to a preoccupation with the level of premiums paid by employers. This period can be viewed as being comprised of two waves, with the first, roughly, encompassing the years from 1970 through to the mid 1980s, while the second covered the latter part of the 1980s through to the mid 1990s. Since workers' compensation laws have traditionally been viewed as 'remedial' in nature; that is legislation intended to be of benefit to injured

workers, it makes sense to describe the first wave as one of ongoing reform and the latter wave as one of counter-reform.

10.4 The Reform Years

At this point, it should be emphasised that differences in the intensity of cost pressures meant that the trajectory and timing of these waves varied considerably from one jurisdiction to the next. At the same time as the lot of injured workers improved in some states, that of their counterparts in other parts of the country stagnated. Thus, the boundaries between these successive waves were not hard and fast, but rather the product of the struggle between capital and labour as refracted by the prism of Australian federalism. Notwithstanding this, the overall national trend was quite clear - an initial wave in which the costs of work related injury were, certainly in the first instance, increasingly borne by employers, followed by one in which costs were shifted back on to workers. In this context, the situation in the states and territories may best be viewed as a series of variations around the mean trend of development.

During the first wave, the increase in workers' workers compensation payments corresponded initially with the increase in working-class militancy during the late 1960s and 1970s. Fuelled by changing social attitudes and a tight labour market, this militancy was reflected in the dramatic Australia-wide increase in the number of working days lost due to industrial action. It was also mirrored in the wages share of national income that surged from 56% in 1968 to 64% by 1974 (Bell 1997: 90-93). The push by organised labour for more adequate compensation payments for injured workers was given added impetus by the election of Labor governments in South Australia, Western Australia and Tasmania. But even in states, most notably Victoria, where conservative governments held sway more militant unions were able to obtain improved compensation. This was achieved through 'top-up' campaigns that augmented compensation payments available by statute through direct negotiations with employers. In the metal trades and vehicle industries, for example, workers, under their industrial awards, could be paid the equivalent of their average weekly earnings for 52 weeks in the event of injury (Advisory Committee on Prices and Incomes 1986: 10).

Whereas in 1970 total compensation payments were a paltry 0.8% of the national wages and salary bill, by 1984 the figure had escalated dramatically to 2.3% (Ibid.: 49). The increase in payments to injured workers were an important, but not the only, factor that gave rise to this cost spiral. Major structural problems associated with scheme design also contributed to increased costs. Among these were the absence of linkages between workers' compensation arrangements, occupational health and safety and vocational rehabilitation, widespread premium evasion and serious market failure problems arising from the private underwriting of workers' compensation insurance. Subsequent reforms aimed at tackling these cost

pressures, during the 1980s, gave rise to the modernisation of workers' compensation arrangements Australia. In the process further opportunities for improving the position of injured workers emerged. Before outlining these improvements, further consideration of the structural problems involved is warranted.

The failure of workers' compensation schemes to target improvements in occupational health and safety was an obvious impediment to reform and lower costs. Indeed, Australian schemes generally did not even perceive occupational health and safety as part of their core business. Thus, during the early 1980s it was still possible for Committees of Inquiry appointed by state governments to highlight rudimentary shortcomings such as the inadequate level of data on the incidence of work related injury. As the Cooney Committee complained in its report to the Victorian government, "The Victorian workers' compensation system itself is unable to produce statistically credible data concerning the extent and nature of industrial injuries" (Cooney 1984: 3.2.3). The issue of inadequate occupational health and safety was, of course, not confined to the failure of workers' compensation authorities to capture the relevant data. The level of sanctions for breaches of health and safety legislation was also a serious problem. This was, once again, illustrated by the Victorian situation, where as late as 1982 the average fine upon conviction was a miniscule $285 (Ibid.: 3.3.3). The lack of focus concerning the prevention of work related injuries inevitably meant that opportunities for reducing front end workers' compensation costs simply slipped beneath the radar of both policy-makers and administrators.

Similar remarks apply to vocational rehabilitation, although in this case the costs to be saved were to be found at the back, rather than the front, end of the system. The lack of interest evinced by governments and workers' compensation schemes in Australia was epitomised by a prominent judge in his 1970 report for the New South Wales government, in which he noted that, "There have been 33 amendments to the Act since 1926 but none contained any reference to the matter of the rehabilitation, as distinct from monetary compensation, of workers" (Conybeare 1970: 2). As pointed out in Chapter 9, the financial import of effective vocational rehabilitation is that it enables significant reductions in the average duration of workers' claims and, hence, lower scheme costs. The failure to adopt rehabilitation measures to assist workers return to work can be seen as a major structural fault that cut across all Australian workers' compensation schemes.

Premium evasion by employers was another source of pressure on workers' compensation costs. The inexorable result of widespread premium evasion was that employers who paid their premiums in full were disadvantaged, both in terms of scheme financing equity as well as in the broader competitive sense. There were various means by which employers evaded premiums. The failure to insure their workers was one key mechanism by which this occurred. Understating the level of earnings actually paid to workers was

another. The full extent to which premium evasion occurred during the 1970s and early 1980s is not known. However, on the basis of New South Wales and Victorian data it appears to have been pervasive with the result that average premium rates were considerably higher than what would otherwise have been the case. In Victoria, the Cooney Inquiry found in 1981/82 that the level of workers' earnings declared by employers, for workers' compensation purposes, was "up to 100% below estimated total earnings" (Cooney 1984: 13.3). Across the border, in two New South Wales industries investigated during the early 1980s - abattoirs and sawmills - it was found that premium rates were, respectively, 79% and 42% higher than they should have been as a consequence of evasion strategies adopted by employers in these industries (NSW Premier's Department 1986: 49).

Administrative charges and premium setting practices adopted by private insurers were also a source of cost increases. A high level of administrative costs had long been a feature of the private underwriting of workers' compensation insurance in Australia. In the late 1920s, for instance, the federal Treasurer reported that these costs amounted to 34.5% of every premium dollar (Commonwealth Parliamentary Debates 22/8/1929: 230). By the 1970s, it was apparent that not much had changed. The Woodhouse Committee, referring to New South Wales position, found that administrative costs were in the order of 30% of premiums, a situation it described as "unacceptable extravagance" (Woodhouse 1974: 11).

The high level of transaction costs associated with private underwriting also attracted considerable attention from subsequent state government based Committees of Inquiries. In the Harris Report, presented to the Victorian government in 1977, the high administration costs of workers' compensation was an important reason underpinning the Report's recommendation, duly ignored by the conservative Bolte government, that private insurers be replaced by a centralised government fund (Harris 1977: 42). The Byrne Committee in South Australia, having noted that centralised government schemes, such as Queensland's, were much cheaper to administer than those operated by the private insurance industry, reached the same conclusion as Judge Harris (Byrne 1980: 41). High administrative costs were also evident in the other states where workers' compensation arrangements were managed by private insurers (Advisory Committee on Prices and Incomes 1986: 51, 58). High administrative costs highlighted the inefficiency of private underwriting arrangements. While this had been tolerated when overall scheme costs were low, it was a different matter altogether when costs were escalating rapidly, as was the case during the 1970s and the early 1980s.

A related issue was the manner in which premium rates were set by the private insurance industry. Competitive pressures among insurers for increased market share during this period generated a cyclical pattern of discounted premiums subsequently followed by unnecessarily excessive

increases. Premium discounting averaging 20% was not uncommon (Sackville 1984: 133). In New South Wales the impact of discounting in the early 1980s was summarised as follows:

> Substantial and unrealistic discounting by insurers vying for market dominance created a volatile commercial environment. This not only threatened the ability of the insurance industry to meet the cost of claims, but also discriminated between employers in similar industries, whose premiums varied and took no account of work injury experience (NSW Premier's Department 1986: 71).

As with the high level of administrative costs, the workers' compensation price wars waged by private insurers were the source of much criticism (Byrne 1980: 96, Cooney 1984: 6.10). Discounting by insurers gave rise not only to a separation of the nexus between risk and premiums but also to an under–provisioning of reserves (Cooney 1984: 6.12). In the case of 'long tail' forms of insurance, such as workers' compensation, any failure by private insurers to adequately provide for reserves to pay outstanding claims liabilities as they become due can be financially disastrous. The net result of this largely unconstrained competition between insurance companies was a shakeout in the industry which inevitably resulted in a number of insurers being forced into liquidation.

Excessive administrative costs and the volatility created by discounting created a crisis of confidence in the public perception of private insurers. As a result, private sector underwriting emerged as a key issue in the reform process that took place during the mid 1980s. In Victoria and South Australia incoming Labor governments took the opportunity of dispensing with private underwriting arrangements, although in Victoria some insurers were retained as claims agents. Following the example of Queensland, which had adopted public underwriting of workers' compensation as early as 1916, the Victorian and South Australian governments in 1985 and 1986, respectively, enacted legislation to establish publicly owned and managed monopoly schemes. This was followed in 1989 at the federal level with the establishment of the publicly underwritten Comcare scheme.

In New South Wales, the Labor government also felt compelled to adopt public underwriting and did so, as part of the major overhaul of the state's workers' compensation legislation in 1987. Being of a more conservative bent, however, it took measures to ensure that private insurers continued to play a crucial and well remunerated, albeit more regulated, role in the administration of claims and the collection of premiums. Somewhat ironically, this gave rise to accusations by the Liberal leader of the Opposition to the effect that the insurance companies had "been well looked after" by Labor (New South Wales Parliamentary Debates 26/5/1987: 12458).

The replacement of private with public underwriting arrangements in Victoria

and South Australia was presented as a pivotal component of the workers' compensation packages introduced by their reform minded Labor governments. The catch-cry was that the reform packages would enable employers to enjoy lower premiums and greater stability while workers, particularly the more seriously injured, would benefit through better entitlement regimes. The rationale for the these win-win scenarios was twofold. Firstly, the shift to public underwriting of workers' compensation insurance would bring about an immediate reduction in schemes costs as a result of lower transaction costs. Secondly it would facilitate subsequent structural cost reductions through the integration of workers' compensation arrangements with long overdue reforms involving vocational rehabilitation and workplace health and safety.

In Victoria and South Australia, the shift from private to public underwriting of workers' compensation insurance also illustrated how the conflict between employers and organised labour could be partially displaced by that between private insurers and the other two parties. The triangular nature of the conflicting interests involved meant that a political space emerged which enabled astute reformist Labor governments to redefine the workers' compensation policy agenda. While the scope for reformist Labor governments to take advantage of this triangulation of competing interests should not be overstated, their ability to play off the interests of employers and workers against those of private insurers made it possible to push through reforms that would not otherwise have occurred. This was largely achieved through appealing to the material interests of employers and organised labour and by drawing attention to the high-cost, increasingly sclerotic, inefficient and unjust nature of the workers' compensation systems they had inherited. Within this discourse, the role of private insurers, which hitherto had largely been regarded as part of the natural order of things, was increasingly seen as an obstacle to workers' compensation reform. The level of dissatisfaction within both the business community and organised labour towards the private insurance industry facilitated the development of an alliance, albeit quite fragile, that enabled their interests to be advanced at the expense of the insurers.

In the case of employers, there was very considerable animosity, particularly among small employers who lacked the bargaining clout of big business, towards private insurers as a result of steep premium hikes during the 1970s and 1980s. This animosity was sufficiently widespread to enable the Labor governments to make considerable inroads into the ideological opposition within the business community concerning any extension of the public sector into what was considered a traditional bastion of free enterprise. This development was also facilitated by the collapse of several insurers, notably Palmdale Insurance and Northumberland Insurance, during the late 1970s and early 1980s which further undermined the standing of the private insurance industry.

For workers and trade unions, private insurers were often perceived as the main antagonists and beneficiaries of the adversarial system which had come to dominate disputes over contested workers' compensation claims. The escalation of disputed claims in the 1970s and early 1980s was viewed as a classic example of how workers' entitlements could be subordinated to the economic needs of insurers (Byrne 1980: 22, Cooney 1984: 8.11). In its report, the Cooney Committee noted that "Some insurers prefer to deny liability and stay settlement in order to gain extended use of funds for investment" (Ibid.: 1.5). In South Australia a similar view was expressed by the Byrne Committee (Byrne 1980: 24). Inevitably, increased levels of disputation were accompanied by increased delays in the payment of compensation and a concomitant growth in scheme transaction costs. The extent of delays in the payment of claims to injured workers was very substantial. In Victoria the average delay associated with a contested claim was 24 months in 1982 (Cooney 1984: 8.11). Needless to say, delays of this magnitude often imposed severe financial burdens on injured workers and their families, reducing many to a hand-to-mouth existence. While it would be wrong to conclude that all delays with contested claims were due to private insurers there is little doubt that commercial imperatives frequently played a paramount role in the assessment of workers' claims for compensation. It was hardly surprising, therefore, that the adoption of public underwriting arrangements was strongly supported by the labour movement as a matter of principle.

The state Labor governments in both Victoria and South Australia were, of course, careful to ensure that the reforms, which were introduced, were couched in business friendly terms. More particularly, workers' compensation reform was presented by both governments as an important contribution to the economic development of their respective states. In Victoria the Cain government maintained that its WorkCare reforms would "result in a significant improvement in the competitive position of Victorian firms in a national and international context and should lead to a substantial increase in business investment in this State" (Victorian Government 1984: 1). The official discourse in South Australia was virtually identical. In the course of the parliamentary debates concerning workers' compensation reform, the Minister responsible for carriage of the reform legislation emphasised that the government's package would substantially "improve the competitive position of South Australian industry" (South Australian Parliamentary Debates 12/2/1986: 87).

The major financial benefit to the labour movement arising from these reforms was the adoption of an open liability model in relation to weekly payments. This meant that workers unable to resume employment following serious injury were no longer subjected to the arbitrary termination of their payments once a prescribed monetary level of compensation was reached. In effect, this heralded the provision of a pension-based system for the more seriously injured, and did so on the basis of a relatively high level of weekly

payments. Other significant benefits included the greater emphasis on workplace health and safety, the introduction of vocational rehabilitation and the advent of fairer and more effective mechanisms for dealing with disputed claims.

For business, the immediate impact of the Victorian and South Australian reforms was a significant reduction in premiums. In Victoria employers paid premiums of $760.8 million in 1983/84 (Victorian Accident Compensation Commission 1986: 62). By the end of June 1986 the amount of premiums paid under the ambitious new WorkCare scheme had fallen to $478.2 million, a decline of 37% (Ibid.: 48). Though not as spectacular, premiums also tumbled in South Australia by, on average, a respectable 17% following the introduction of the new scheme in 1987 (South Australian WorkCover Corporation 1988: 20). In the case of Victoria though, the fall in premiums was accentuated by a commitment from the Cain government that the average premium rate would be maintained at 2.4% for the first five years of the new scheme (Victorian Accident Compensation Commission 1986: 33). This capping of average premium rates in Victoria contrasted with the South Australian developments where a more realistic approach was adopted to premium setting. In the first year of that scheme's operation the average premium rate was set at 3.0% (South Australian WorkCover Corporation 1988: 20).

In other jurisdictions changes in workers' compensation arrangements were nowhere near as comprehensive as those which occurred in Victoria and South Australia. Reform, where it occurred, was far more piecemeal. This, however, should not obscure the fact that improvements in compensation payments were a primary determinant of workers' compensation policy during the 1970s and 1980s.

Weekly payments, as discussed in Chapter 7, were increased to the level of average weekly earnings in Tasmania and award rates in Western Australia at the start of the 1970s. The maximum amount of weekly payments payable also increased, a development which was of distinct benefit to more seriously injured workers since it extended the period for which they remained eligible for compensation. The increase in the maximum amount of weekly payments was particularly evident during the 1970s. In Western Australia the maximum rose from $11,777 in 1971 to $48,027 by 1980 (Department of Labour and National Service 1971: 15-16, Department of Social Security 1981: 37-38). In Tasmania it increased to $36,153 from $13,348, while in Queensland it increased from $12,250 to $29,080 over the same period (Ibid.). Although not as high as those that occurred in Western Australia, other jurisdictions also experienced substantial increases in the maximum amount of weekly payments during this period (Ibid.). Even allowing for the inflationary flavour of the times, these increases constituted a significant improvement for working people in Australia unfortunate enough to have suffered serious work related injuries.

Growth in other categories of compensation payments also contributed to a shifting of the cost burden from injured workers to employers. Following its election in 1976, for example, the Wran Labor government proceeded to introduce legislation into the New South Wales parliament which sought to increase payments for work related fatalities and lump sum payments for scheduled injuries. This was in addition to increases in weekly payments (New South Wales Parliamentary Debates 1/12/77: 10775). Earlier in the same year it had moved to make it easier for workers to sue employers at common law (New South Wales Parliamentary Debates 2/3/77: 4687). Further increases in weekly payments, lump sum payments for scheduled injuries and fatality payments were set in train during 1980 (New South Wales Parliamentary Debates 25/11/80: 3421).

The upward trend in workers' compensation payments continued through to the mid 1980s. Indeed, in some jurisdictions, notably Queensland, increases in workers' entitlements continued into the new decade. In an overhaul of the state's legislation in 1990, the Goss Labor government increased death payments, increased lump sum payments for some scheduled injuries and lifted the maximum amount of compensation available by 20% to $67,000 (Queensland Parliamentary Debates 8/11/90: 4733). At the same time, the period in which weekly payments were payable at the award rate was raised from 26 to 39 weeks (Ibid.). Though significant, these increases were essentially an exercise in catch-up with other states. Under successive conservative governments, compensation payments in Queensland, as a percentage of payroll, were the lowest in the country. When the Goss government came into office in 1989, the average premium rate for the financial year was a mere 1.4% (Workers' Compensation Board of Queensland 1990: 2). By contrast, the corresponding rates in New South Wales and Victoria were 2.24% and 3.3% (New South Wales WorkCover Authority 1991: 22, Victorian Accident Compensation Commission 1990: 2). Against this background, the increased payments available for injured workers were viewed as affordable since they did not encroach, in any significant way, upon the 'competitive' position of the state's average premium level.

10.5 From Reform to Counter-Reform

The commencement of the counter-reform process can be dated to the enactment of sweeping changes to the New South Wales scheme initiated by the Unsworth Labor government in 1987. The new legislation was presented as the most significant and far-reaching set of changes to the New South Wales scheme since the pioneering reforms introduced by the Lang government in 1926 (New South Wales Parliamentary Debates 14/5/87: 12205) . In contrast to the Lang legislation, the new Act brought in by Unsworth was unequivocally intended for the benefit of the state's employers. This was achieved by major reductions in workers' entitlements. As

discussed in Chapter 7, the cutbacks involved a drastic reduction in the duration of weekly payments for partially incapacitated workers, to no more than 34 weeks, and the abolition of the common law right of injured workers to initiate negligence claims against their employers.

The government decided to take this course of action in response to escalating premium costs which between 1980 and 1985 increased by 140%, and by 1987 had resulted in an average premium rate of 3.8%. In adopting this legislative strategy, it subscribed to the view expressed by employer groups, such as the Metal Trades Industry Association, that workers' compensation costs were having the effect of "driving investment away from New South Wales to other States" (Ibid.), though it did not produce any evidence to support this claim. For its part, the Liberal opposition argued that the cuts did not go far enough (New South Wales Parliamentary Debates 26/5/87: 12463).

As a sop to the trade union movement, the government doubled the penalties for breaches of the state's *Occupational Health and Safety Act* and introduced amendments to allow unions to initiate prosecutions against employers for breaches of the Act (New South Wales Parliamentary Debates 14/5/87: 12207.). This was complemented by increases in lump sum payments for scheduled injuries, and marginal increases in weekly payments for some workers (Ibid. : 12209-12210)

These increases were, of course, far outweighed by the abolition of workers' common law rights and the curtailment in weekly payments available to partially incapacitated workers. As a result of the changes introduced by the Unsworth government, premiums for New South Wales employers fell sharply and quickly. Within two years of the cutbacks, the average premium rate fell to 2.6% and by June 1991 had declined to 1.8% (New South Wales WorkCover Authority 1992: 7). This constituted a very substantial reduction of 53% over the four-year period.

The consequences of these cuts were by no means confined to New South Wales. They set the scene for demands by employers in other states for premium reductions through cuts to workers' entitlements. The average premium rate of 1.8% in New South Wales soon became the de facto national 'benchmark'. The subsequent scramble for 'competitive' premiums brought in to stark relief the destructive impact of a federalist system, in which bidding wars between the states to lower employer premiums through reduced payments to injured workers had become the predominant objective of Australian workers' compensation policy.

The spillover effects from New South Wales were most pronounced in Victoria. In large part, this was because the much-vaunted reduction in premiums ushered in by the Victorian reforms was short-lived. The setting of an average premium rate of 2.4% in 1985 was patently unrealistic, especially

in view of Victoria's reliance on manufacturing and other high risk industries. This was compounded by the government's commitment to employers to guarantee this rate for a five-year period (Victorian Accident Compensation Commission 1986: 68), a decision which had the effect of severely curtailing the financial flexibility of the WorkCare scheme. With the average premium rate locked in at an artificially low level, it did not take long for unfunded liabilities to emerge. This was particularly so in view of the greater demands involved in managing an open liability scheme and WorkCare's management inexperience in this regard. By midway through 1987, the unfunded liability was estimated at $1.8 billion (Victorian Accident Compensation Commission 1987: 34). The following year the actuarial estimate had increased to $2.2 billion (Victorian Accident Compensation Commission 1988: 1), and by June 1989 had reached $4.2 billion (Victorian Accident Compensation Commission 1989: 8).

The data on which these actuarial estimates were based were quite limited and, therefore, highly speculative. Nevertheless, it was apparent that the WorkCare scheme was not performing as anticipated, an assessment that was reinforced by an Auditor General's report which concluded that a major hike in premiums would be needed if the scheme's full funding objective was to be met (Victorian Auditor General 1989: 272-273).

The scheme's lacklustre performance was most clearly illustrated by the growth in the number of long-term claimants. Actuarially, as outlined in Chapter 6, open liability schemes are especially sensitive to movements in the tail of long-term claimants, particularly when linked with a 'full funding' model of scheme financing. Also, as highlighted in Chapter 9, any failure to manage this long tail, particularly in relation to the provision of suitable employment, invariably leads to increased claims duration and a corresponding escalation in scheme costs. By 1989, the number of injured workers who had been on the scheme for 12 months or more was about 19,000 (Robinson 1994: 216). Among the reasons put forward for the growth in long-term claimants was the failure of claims agents to properly administer the return to work process and the lack of a "co-ordinated approach to safety and rehabilitation" (Victorian Accident Compensation Commission 1989: 3-4). In addition, it was argued that the entitlement structure for injured workers was too 'generous', particularly as regards weekly payments for partially incapacitated workers (Robinson 1994: 214-216).

Although the Cain government had introduced a number of changes to the WorkCare legislation in 1987, further amendments adopted in 1989 (Victorian Parliament 1989: No. 64) were more far-reaching in their effects. Both employers and injured workers were targeted by the 1989 changes to WorkCare. Premiums were raised, with the average premium rate increased to 3.3%, and weekly payments reduced from 80% to 60% of average weekly earnings for long-term claimants with an impairment level of less than 15% (Victorian Accident Compensation Commission 1989: 13). While the

reduction in weekly payments was less than that originally proposed, it was nevertheless the occasion of great contention between the Victorian labour movement and the government as well as the source of bitter in-fighting within the Australian Labor Party (Cain 1995: 101-102). The government's legislative package also resulted in a chorus of condemnation from employer organisations (Industries Assistance Commission 1989: 43-46).

As a result of the 1989 amendments, the official funding position of WorkCare improved significantly over the next three years. By June 1992 the unfunded liability had fallen to $1.8 billion (Victorian Accident Compensation Commission 1992: 2) and premiums to 3.0% (Ibid.: 7). However, by then the rules of the game had changed as a result of the 1987 changes in New South Wales. The New South Wales average premium rate of 1.8% was now the 'benchmark' for the Victorian scheme. By this standard, the changes pushed through by the Victorian government fell well short of the mark. Against this background, the new managing director of WorkCare, among others, lost no time in championing the view that a 1.2% difference in the average premium rate clearly placed Victorian business at a "competitive" disadvantage (Victorian Accident Compensation Commission 1992: 7). In the context of this discourse, the situation could only be reversed by "further substantial legislative reform" (Ibid.: 6).

This prescription was duly acted upon in the wake of the election of the Kennett government in October 1992. The new government, the most radically conservative Victorian government in more than 50 years, lost no time in setting about the dismantling of WorkCare. By the end of the month it had introduced legislation specifically designed to ensure that the "WorkCare scheme created by the previous government will no longer exist" (Victorian Parliamentary Debates 30/10/1992: 306). Journey injuries were effectively abolished, and eligibility was tightened by the requirement that employment had to be a 'significant' contributing as far as injury was concerned before compensation was payable. In addition, the structure and amount of weekly payments available to injured workers were subjected to sweeping changes, the WorkCare Appeals Board was abolished and the new Victorian WorkCover Authority Board was established without any trade union nominated members. As revealed in the Minister's second reading speech, the basic aim of the legislation was "to ensure that costs are contained so as to minimise the economic burden on Victorian businesses" (Ibid.). The net result of the changes pushed through by the Kennett government was a fall in the average premium rate from 3.0% to 2.25% by July 1994 (Heads of Workers' Compensation Authorities 1994: 3).

Difficulties in the management of an open liability model of weekly payments were also a feature of the South Australian WorkCover scheme. Although the average premium rate had initially been set at 3.0 % in 1987, by July 1990 it had increased to 3.8% (South Australian WorkCover Corporation 1990: 8). This escalation in premiums was "bitterly opposed by employers"

(Chamber of Commerce Industry SA Inc. 1993: 3) who would have preferred a reduction in weekly payments to injured workers (Ibid.: 10). Not surprisingly, a recurrent theme in pronouncements from the state's main employer association on the scheme was that it placed "South Australian industry and commerce at an economic disadvantage in comparison with its interstate competitors" (Ibid.: 14). This refrain was, subsequently, echoed by South Australia's Labor Premier. In a major statement on industrial development during 1991, he gave an unequivocal commitment to reduce premiums "to a level where they are nationally competitive" (Department of Industry, Trade and Technology 1991: 10).

This commitment was followed up in 1992 when the Labor government pushed through legislation that included the abolition of workers' remaining rights to seek common law damages against negligent employers (South Australian WorkCover Corporation 1993: 3). As was the case elsewhere, this was accompanied by great acrimony between the industrial and political wings of the labour movement. Following the defeat of Labor at the 1993 state elections, the incoming Liberal coalition government made clear its intention to more vigorously pursue reductions in workers' entitlements (South Australian Parliamentary Debates 18/10/94: 651). The legislation subsequently drafted was described by the United Trades and Labor Council as "the most vicious attack on injured workers this century" (The Advertiser 2/12/1994).

However, because of its lack of a majority in the state's upper house of parliament and intense lobbying by the trade union movement, much of its workers' compensation agenda was defeated by the combined votes of Labor and the Australian Democrats. The scheme's weekly payments structure emerged largely unscathed, with workers, in the event of injury, continuing to receive 100% of their average weekly earnings for the first 12 months, and 80% thereafter. However, the Australian Democrats did join with the government to insert deeming provisions into the amended WorkCover legislation. These provisions, which applied after two years of incapacity, enabled reductions to be made to workers' weekly payments on the basis of 'notional earnings' associated with 'suitable employment', irrespective of whether any such employment was actually available. Other amendments the government was able to push through included a tightening of eligibility for stress related injuries and the abolition of most journey and recess injuries (South Australian WorkCover Corporation 1994a: 45).

The return to government of conservative parties in both Victoria and South Australia also brought the issue of public versus private underwriting back onto the political agenda. On ideological grounds, the Liberals and their coalition partners had an obvious predisposition towards the reintroduction of private underwriting arrangements. This was made clear, in the Victorian case, during the course of the second reading speech that accompanied the introduction of the *Accident Compensation (WorkCover) Bill*. The Minister

responsible for the Bill specifically foreshadowed the full privatisation of the new WorkCover scheme once financial stability had been achieved (Victorian Parliamentary Debates 30/10/1992: 307). However, the Kennett government, subsequently, had second thoughts on privatising the scheme. This was largely because of employer concerns that it would lead to an action replay of the premium volatility that characterised the 1970s and early 1980s. As explained by one large employer organisation, there was a "lack of confidence in the private insurance industry to manage the scheme .... based on past experience of insurers under the pre WorkCare scheme" (Australian Chamber of Manufacturers 1993: 19). The result was that, although, private insurers were permitted to play an increasing role in the claims administration functions of the new scheme, the government stepped back from its earlier commitment to full privatisation .

In South Australia, the Liberals, while in Opposition, had also foreshadowed the privatisation of that state's WorkCover scheme. In a speech to the far-right H. R. Nichols Society, the party's Industrial Affairs spokesperson announced that it was Liberal "policy to re-introduce the private sector insurance companies back into workers compensation administration" (Ingerson 1991: 7). This matter was pursued further following the 1993 state election with the release of a discussion paper that canvassed the various privatisation options (South Australian WorkCover Corporation 1994b: 26). As in Victoria, however, many South Australia employers had reservations about returning to a privately underwritten scheme. Consequently, while claims management was outsourced to private insurers, the Liberal coalition government opted not to fully privatise the scheme. Like their Victorian counterparts, South Australian employers were not prepared to sacrifice their material interests for the sake of ideological purity.

From the latter part of the 1980s through to the mid 1990s, it became increasingly obvious that workers' compensation policy in Australia was being constructed primarily within a discourse of 'competitive' premiums. In the aftermath of the 1991 recession, the most serious economic downturn since the Great Depression, attacks on workers' entitlements intensified as corporate business interests and peak employer bodies led the charge to slash costs and government imposts in order to reverse falling profit rates. In the workers' compensation arena this gave rise, in effect, to an ongoing Dutch auction in which state and territory governments competed against each other to see who could reduce compensation payments to injured workers the most. In this 'race to the bottom' workers' compensation was relegated to an arm of industry policy, with lower premiums supposedly acting as the lure with which to attract new industry.

This, not surprisingly, attracted widespread criticism from the trade union movement and was central to the Australian Council of Trade Union's submission to the Industry Commission inquiry on workers' compensation in 1993. In an accompanying media release, the peak union body argued that

"Average premiums are now between 1.5% and 3% of wages - substantially less than they were 10 years ago but this is not the result of a great leap forward in health and safety but of false competition to reduce costs to employers" (Australian Council of Trade Union 1993: 1). The Commission shared this assessment. In its report to the federal Labor government, the Commission denounced the practice of reducing compensation payments in order to lower premiums as a form of "invidious" competition (Industry Commission 1994: xxxi). The Commission, in reaching this conclusion, also maintained that the artificially low premiums created by invidious competition had the effect of blunting the impetus for employers to improve occupational health and safety and return to work outcomes (Ibid.: xxx-xxxii). More specifically, on the issue of workplace health and safety, the Commission found that:

> *too many of the costs of work-related injury and illness are being borne by affected individuals and taxpayers*, and that redressing some of this imbalance will create the sorts of incentives which will, over the longer term, lead to *fewer (and less serious) workplace injuries/illnesses (and therefore workers' compensation premiums*) (Ibid.: xxxiv).

The nexus between the push for competitive premiums and cost shifting had become increasingly obvious. As the ACTU succinctly put it "Competition between States to provide the lowest premiums to employers has only transferred the costs to workers both individually and as taxpayers" (Australian Council of Trade Union 1993: 1). In contrast to the unions, employer organisations had typically argued that responsibility for injured workers should continue to be transferred to the social security system after a specified period (Engineering Employers Association, South Australia 1993: 13). Essentially, their position was that a significant proportion of the costs for work related injury should be borne by the public purse. This plea, on behalf of employers, for a substantial socialisation of the costs for work related injury was, however, categorically rejected by the Industry Commission (Industry Commission 1994: 169-173).

This assessment was not especially surprising given that the Commission's terms of reference, as determined by the federal government, specifically required it to address the issue of cost shifting by the states and territories on to federal government programs (Ibid.:xxvi). It was against this background that the Commission concluded "the best way of preventing cost-shifting to the social security system is to provide workers with a comprehensive and adequate compensation package" (Ibid.: 172). This conclusion was reinforced by its recommendation that the federal government "explore mechanisms to pass the costs back to the States/Territories" (Ibid.: 173) in the event that cost shifting was not tackled on a collaborative basis.

The position on cost shifting adopted by the Industry Commission was,

however, rejected by the states and territories under the umbrella of the Heads of Workers' Compensation Authorities. This new organisation, as pointed out in Chapter 5, immediately made strenuous efforts to shift the focus of workers' compensation policy away from cost shifting and other aspects of the Commission's federal agenda towards the safer states rights issue of 'national consistency'. This development was facilitated by the fact that all state and territory governments were, at that time, run by conservative parties, whereas Labor held office only at the federal level. This double-barrelled antagonism - Labor versus conservative and state versus federal governments - loomed as a formidable obstacle to reform.

For their parts, the ACTU and the federal Labor government attempted to follow up on the cost shifting issue as part of the Prices and Income Accord - the corporatist incomes policy and social contract that underpinned relations between the trade union movement and federal Labor following the latter's election to office in 1983 - when it came up for renegotiation in 1995. Accord VIII was the first occasion where workers' compensation arrangements figured as a significant issue in the Accord process.

In the document signed off on by the Keating government and the peak union body, cost shifting by state governments was denounced and portrayed as giving rise to injustices that were borne overwhelmingly "by those least able to afford to carry this burden, namely those who have had their earning capacity impaired or destroyed" (Australian Labor Party and the Australian Council of Trade Unions 1995: 11.7). This was accompanied by a commitment to seek improvements in entitlements for injured workers to a level "at least equal" to those provided by the federal Comcare scheme (Ibid.: 11.9). Whether this objective would have subsequently been achieved is open to question. If it had, then the extent of cost shifting by workers' compensation schemes in Australia would have been significantly reduced in view of the Comcare scheme's open liability design and its generally higher level of weekly payments. With the fall of the Keating government early in the new year though, any prospect of reducing cost shifting by the federal government rapidly evaporated.

With the Industry Commission's proposals to reverse invidious competition effectively sidelined, the Dutch auction approach remained as a key feature of workers' compensation policy during the first half of the 1990s. In the latter part of the 1980s, cost pressures had been experienced most keenly in jurisdictions where an open liability model of weekly payments prevailed - New South Wales, Victoria and South Australia. Consequently, it was in these states where the struggles over entitlements and premiums were most intense. During the 1990s, however, the focus shifted increasingly towards schemes in which there was a closed liability model of weekly payments in operation. The reasons for this were twofold. Firstly, since the cost pressures in the open liability schemes emerged earlier, the increased contestation between capital and labour over who should pay was fought out

in these jurisdictions earlier as well. Secondly, and more fundamentally, there was a different dynamic at work in the closed liability schemes.

The limits placed on the amount of weekly payments that could be received by injured workers meant that although closed liability schemes were not immune from cost pressures associated with weekly payments, they were much better placed than their open liability counterparts to control schemes costs. This combination of limited weekly payments, and a less demanding set of management skills required to administer such schemes, assisted in keeping employer costs at relatively low levels. This was particularly evident in the case of the Queensland, Tasmanian and Australian Capital Territory schemes, where average premium rates ranged from 1.4% to no more than 1.98% in 1991 (Heads of Workers' Compensation Authorities 1995: 3). The Achilles heel of these schemes, however, was the greater access to common law damages they provided for injured workers in cases involving negligence by employers. In contrast to the open liability schemes, where access to common law had been abolished or restricted, closed liability schemes at the start of the 1990s continued to provide unlimited access to common law damages.

While in earlier decades there had been unlimited access to common law damages, it was only during the 1980s and 1990s that there was an increased utililisation of this means of compensation. This increase in utililisation, along with the increase in the average awards obtained, resulted in a dramatic escalation in common law damages as a proportion of claims costs. Thus, although closed liability schemes were able to control weekly payments much more effectively than open liability schemes, they encountered increasing difficulties in controlling common law payments. Ironically, the very success these schemes had in controlling statutory payments - through large step-downs and tight limits on the total amount of weekly payments available - served to encourage injured workers, particularly the more seriously injured, to pursue common law damages in order to supplement the limited compensation available through statutory payments.

This process can perhaps best be illustrated by reference to the Queensland scheme. Following the wholesale reforms passed by the Ryan Labor government in 1915 and 1916, workers' compensation arrangements in Queensland were arguably the most progressive in Australia. Weekly payments were among the highest in the country and, because of the shift to public ownership and management, the scheme was able to significantly reduce the high transaction costs associated with scheme administration that were such a conspicuous feature of privately underwritten schemes. Queensland was also the first scheme to introduce lump sum payments for the loss of body parts (Queensland Parliament 1916: 7 Geo V No. 26, s. 5). However, by the 1960s weekly payments and the total amount of statutory compensation available to Queensland's injured workers were among the lowest in the country (Department of Works 1966: 12, 26-27), a situation

which was to continue over the next three decades (Heads of Workers' Compensation Authorities 1996: 3). This, in no small part, was attributable to the extended period in office of right-wing coalition and National governments, from 1957 through to the election of the Goss Labor government in 1989.

Here, it is worth noting that the total limit placed on the statutory amount of compensation available to injured workers, under the Queensland scheme, applied not only to weekly payments but also to any lump sum payments for loss of body parts or permanent impairment. This meant that where a greater amount was paid out in weekly payments there was a corresponding diminution in the amount available in respect of lump sum payments for loss of body parts or permanent impairment. The combined upper limit on compensation for weekly payments and lump sum payments was also a feature of other closed liability schemes, in Western Australia and Tasmania. Whereas in some jurisdictions, such as South Australia, this combined upper limit on statutory payments had been abolished in the 1950s (South Australian Parliament 1954: No. 68, s. 7), it continued to be maintained in Queensland, Western Australia and Tasmania. What distinguished the Queensland scheme, however, was that the overall amount of statutory payments available to injured workers was the lowest in Australia, a situation which has continued into the 21st century (Heads of Workers' Compensation Authorities 2000: 18-19, 26-27).

Queensland's entitlement regime for statutory payments also explains why employer premiums were, and remained, the lowest of all Australian states and territories. Throughout the 1990s, average premium rates in Queensland were rarely more than 2% and often as low as 1.4%, while in other states and territories they ranged as high as 3.8% and were generally above 2% (Ibid.: 8-9, Heads of Workers' Compensation Authorities 1996: 4). The tight legislative control over statutory payments, however, began to be offset by a burgeoning growth in common law costs. The low level of weekly payments available to workers, whose injuries were of a more serious and protracted nature, had the effect of stimulating a greater utilisation of the common law remedy.

In 1990 the cost of common law claims in Queensland was $56.46 million, while that of weekly payments was $90.63 million (Workers' Compensation Board of Queensland 1990: 27-28). By 1995 the number of common law claims had virtually doubled (Workers' Compensation Board of Queensland 1995: 24) and the cost had risen to $141.34 million (Ibid.: 21). By contrast, costs for weekly payments had only increased to $131.59 million (Ibid). The escalation in common law costs was quite dramatic. In the five-year period they had grown by 150%, compared with a relatively modest 45% for weekly payments. Over the period, total claims payments grew from $200.93 million (Workers' Compensation Board of Queensland 1990: 27) to $368.87 million (Workers' Compensation Board of Queensland 1995: 21), an increase of

84%. During this five-year period, average premium rates ranged from 1.4% to 1.7%. At these low rates, the rapid escalation in common law and overall scheme costs inevitably resulted in an increase in scheme liabilities. Whereas in 1990 the scheme was in surplus, by 1995 it had an unfunded liability of $114 million (Ibid: 48), although this still meant that the scheme was 90% funded.

There were two important responses to this development. The first was an increase in the average premium rate to 2.15%, from January 1996 (Heads of Workers' Compensation Authorities 1998: 7). The second was the passage in November 1995, of legislation introduced by the Labor government that tightened access to common law damages. The new legislation included a requirement that injured workers with an impairment of less than 20% had to make an irrevocable decision to pursue damages (Heads of Workers' Compensation Authorities 1996: 16). This meant that weekly payments ceased once the decision to pursue common law damages had been taken, a measure designed to discourage workers from this course of action.

The restrictions on common law access, however, did not go far enough in reducing scheme costs, as far as the National and Liberal Parties were concerned. Following the Queensland state election, the incoming National-Liberal coalition government established a far-reaching review of the state's workers' compensation arrangements in March 1996. Headed by a prominent local businessman, the Kennedy Report was finalised in June 1996 and tabled in parliament the following month. Legislation was subsequently introduced in November 1996 that resulted in the most comprehensive series of changes to the Queensland scheme since the adoption of the 1916 Act. In line with the views expressed by Kennedy, the Borbidge-Sheldon government's catch-cry was that the scheme's funding was "out of control" (Queensland Parliamentary Debates 27/11/96: 4457), even though the scheme was 80% funded (Workers' Compensation Board of Queensland 1996: 62).

Among the changes introduced were a new and restrictive definition of who constituted a worker, the requirement that eligibility for compensation be confined to injuries where employment was 'the major contributing factor' and restrictions on journey injuries (Queensland Parliamentary Debates 27/11/96: 4459-4460). Kennedy had also recommended that the organisation be reconstituted as WorkCover Queensland and that a new Board be appointed (Kennedy 1996: xxiii). This assisted the government in dispensing with the traditional tripartite Board structure in favour of one that was focused on 'commercial' performance, to the exclusion of trade union representation (Queensland Parliamentary Debates 27/11/96: 4461).

Ironically, although some procedural changes were adopted, there was no attempt to cap common law damages or tighten the threshold for access. This was due chiefly to the amendments initiated by Labor the previous year.

But as the cost reductions generated by Labor's restrictions on common law would take time to materialise, the focus of the legislation introduced in November 1996 was on reducing employer costs more quickly. Hence the emphasis placed on redefining eligibility and restricting coverage for journey injuries. These changes were complemented, as mentioned in Chapter 7, by the introduction of a new step-down arrangement. Politically though, these cuts were rationalised by reference to the increase in common law costs (Ibid.: 4457).

In Western Australia, the pressure placed on scheme costs by increased access to common law was even more evident. In 1981/82, common law costs accounted for only 8% of the scheme's total claims costs. A decade later, they had risen to 30% (Pearson 2000: 54). In the wake of the February 1993 election, the incoming conservative Court government made workers' compensation policy one of its priorities. This led to the introduction of amending legislation in September of that year. The cuts involved were broadly based, covering eligibility conditions and weekly payments as well as common law arrangements (Western Australia Parliamentary Debates 21/9/93: 4233). Eligibility was redefined to make compensation available only where employment was 'a significant contributing factor', weekly payment step-downs were introduced and journey injuries to and from work eliminated (Ibid.). There were also major changes that affected workers' access to common law. As pointed out in Chapter 8, these included the introduction of a 30% impairment threshold, moderated somewhat by the availability of a 'second gateway', and the imposition of a cap on damages available for non-economic loss. These changes were bitterly opposed by Labor, particularly the retrospective application of the common law restrictions (Ibid.: 4974).

It did not take long for the cuts implemented by the Court government to take effect. By July 1995, employer costs had been significantly reduced. The average premium rate paid fell to 2.61% (Heads of Workers' Compensation Authorities 2000: 9), a reduction of 13% over the preceding two years. During the following two years, the average premium rate fell further, to 2.40% (Ibid.). Although this 8% reduction was slightly less than the 10% envisaged by the scheme's administrators (WorkCover Western Australia 1995: 3), it was enough to ensure an overall reduction of 20% in average premium rates over the four-year period to July 1997.

While the Tasmanian experience was similar to that of Queensland and Western Australia, the political response was somewhat different. Looking at the experience first, common law costs accounted for less than 1% of total claims costs in 1990 but by 1995 had mushroomed to 21.2%. By contrast weekly payments, which in 1990 accounted for 40.8% of total claims costs, had declined to 32.3% by 1995 (Workplace Safety Board of Tasmania 1996: 63). Although the increase in common law payments far out stripped the increase in weekly payments, weekly payments over this period increased

more than three fold and were still considerably higher than common law payments. It must also be remembered that the spectacular growth in common law costs was from a very low base (Ibid.). For these reasons, the political response of the Groom Liberal government focused on cutbacks in eligibility for compensation and weekly payments, rather than common law entitlements, in order to "to reduce the cost of insurance premiums" for employers (Tasmanian Parliamentary Debates 23/6/1995: 1687). This was in contrast to the policy responses in Queensland and Western Australia where eligibility criteria, weekly payments and common law entitlements were all targeted.

When the Tasmanian government introduced amending legislation in June 1995, the average premium rate for the state's employers was 2.85% (Heads of Workers' Compensation Authorities 2000: 9). The changes enacted included the introduction, as discussed in Chapter 7, of a three tiered step-down arrangement for weekly payments, the elimination of journey injuries to and from work and the tightening of eligibility for stress related injuries (Tasmanian Parliamentary Debates 23/6/1995: 1688-1693). Eligibility for compensation in relation to industrial diseases was also tightened (Ibid.: 1691). The combined impact of these cutbacks, however, was quite modest. Premiums remained relatively high and it was not until 1998 that the average premium rate declined. Whether the Groom government's reluctance to cut workers' common law entitlements was influenced by electoral considerations is not entirely clear. With an election due within a few months of the legislation's introduction into parliament, discretion may have been the order of the day. The Premier, during his second reading speech, certainly went to considerable pains to emphasise his government's continuing commitment to workers' rights to sue for damages, arguing that it would be "discriminatory" to abolish or restrict workers' rights in this area (Ibid.: 1686).

In contrast to their larger counterparts, four of the smaller Australian schemes - Comcare, Seacare and those of the Northern Territory and the Australian Capital Territory - were able to avoid, or minimise, the cyclical fluctuations in the distribution of costs for work related injury that occurred from the latter part of the 1980s through to the mid 1990s. This was not due to an absence of contestation between employers and workers, but rather because of the special circumstances that governed the operation of these schemes. Interestingly, all four of these schemes had open liability models of weekly payments and in the case of the ACT this was complemented by unlimited access to common law damages.

The two federal schemes - Comcare and Seacare - were introduced by the Hawke Labor government in, respectively, 1988 and 1992. The former provided coverage for federal (and ACT) public sector workers, while the latter provided coverage for Australian seafarers. Apart from underwriting arrangements - Comcare being publicly, and Seacare, privately underwritten - the basic structure of the two schemes was very similar. Both provided a

relatively high level of weekly payments to injured workers, 100% of average weekly earnings for the first 45 weeks of incapacity and 75% thereafter, and both contained restrictions on compensability for stress related injuries and industrial diseases (Heads of Workers' Compensation Authorities 1998: 8, 14, 20). They also, as pointed out in Chapter 8, stringently circumscribed access to common law damages. In the case of Comcare this combination, of scheme design features and the relatively low risk profile associated with most categories of federal public sector employment, meant that premiums on average were able to be kept at relatively low levels. Indeed throughout the 1990s, the trend in average premium rates was downwards and in 1995 was only 1.6% (Ibid.: 6).

For Seacare the forces at work were rather different. Seafaring work has traditionally been recognised as being comprised of high risk employment activities and, consequently, has required higher employer premiums. Understandably, average premium rates under the Seacare scheme have been higher than those of Comcare. They have also tended to be above the national average (Seafarers Safety, Rehabilitation and Compensation Authority 2000: 39). However, as Seacare is an industry scheme, it is more appropriate to compare average premium rates in the maritime industry with those of other high risk industries. On this basis, it is reasonably clear that the average maritime premium rate has been considerably lower than that applying in many states to industries such as non-residential construction, basic iron and steel products, steel casting and meat products (Heads of Workers' Compensation Authorities 1998: 30). The maritime industry workforce has also, traditionally, been highly unionised and among the most militant in Australia. This has enabled organised labour to much more effectively challenge the power of capital and to defend basic working conditions, including workers' compensation rights. Along with the scheme's design, these two considerations - the industry's risk profile and the relatively favourable industrial balance of power - provide much of the explanation for the policy stability that has characterised the operation of the Seacare scheme.

The Northern Territory scheme has also exhibited considerable stability, though once again for different reasons. The present scheme was introduced by a conservative government in 1987, following the passage in 1986 of the *Work Health Act*. This Act encompassed occupational health and safety regulation as well as workers' compensation and rehabilitation arrangements. The genesis of the Act was the Doody Inquiry, which had been set up by the government largely in response to the "problem of escalating costs" for employers (Northern Territory Parliamentary Record 19/6/86: 208). Doody's report was tabled by the government in February 1985 (Ibid.: 205) and formed the basis of the new Act. One of the distinguishing features of this legislation was that it was the first in Australia to abolish the right of injured workers to sue their employers for negligence. The new Act also imposed a 15% threshold on workers' access to lump sum

payments for permanent impairment. Both these measure were designed to reduce costs to employers. They were, however, offset, to some extent, by the adoption of a weekly payments regime which provided injured workers with 100% of the normal weekly earnings for the first 26 weeks of incapacity and up to 70% thereafter (Northern Territory Work Health Authority 1992a: 23).

There were no major changes involving eligibility or workers' payments compensation until 1991. At that time, the average premium rate was 2% (Heads of Workers' Compensation Authorities 1996: 4). The 1991 amendments reflected the 'give and take', or rather 'take and give' approach that had characterised the introduction of the Act. On the one hand, eligibility for compensation was restricted by redefining who constituted a 'worker', and through limitations placed on the compensability of journey injuries. On the other hand, post 26 week weekly payments were increased to up to 75% of normal weekly earnings and the 15% threshold for permanent impairment compensation was reduced to 5% (Ibid.: 23-24). There were no further changes of significance in these areas for the remainder of the decade. Throughout this period average premium rates remained quite low, rarely rising above 1.7% (Heads of Workers' Compensation Authorities 2000: 9). That the availability of statutory payments to injured workers remained relatively high in the Northern Territory, compared with other jurisdictions, was attributable to their 'affordability' to employers. This in turn was shaped by the Territory's industrial structure. Although it had its share of high risk industries, such as mining, the Territory's industrial stricture was, on balance, relatively low risk when compared with most other parts of Australia. This was reflected in the scheme's claims costs, where the largest industry contribution came not from manufacturing, mining or construction but from community services (Northern Territory Work Health Authority 1992b: 28).

The Australian Capital Territory also had a relatively low risk profile as far as work related injury was concerned. However, premiums tended to be considerably higher. This, in no small part, was because of the unlimited access to common law damages. During the late 1980s and throughout the 1990s, the ACT scheme was the only one in Australia where an open liability model of weekly payments was complemented with unlimited access to common law damages. In the ACT, by the mid 1990s, a greater proportion of claims costs, as pointed out in Chapter 8, was apportioned to common law than any other scheme in the country with the exception of Queensland.

The most remarkable feature about the ACT scheme though has been its lack of change. The legislative architecture governing its workers' compensation arrangements has remained virtually unchanged since its enactment in 1951. Compared with other Australian jurisdictions the ACT has been virtually a policy free zone. This has been due not only to its relatively low risk profile but also the evenly balanced distribution of industrial power within the ACT. In turn, this has resulted in a stand-off situation, which

in effect has meant that the only legislation which has got through the ACT legislative assembly has been legislation agreed to by the trade union movement and the leading employer organisations. In recent times, the only major legislative package that met this test occurred in 1994, with the adoption of a series of measures concerning vocational rehabilitation (Australian Capital Territory Legislative Assembly 1994: No. 68, ss. 15A-15H). While the de facto veto arrangement over legislative change to the ACT scheme has been of considerable benefit to the Territory's workforce, it is equally important to note that it has been achieved within a context in which average premium rates during the 1990s have been fairly stable, ranging from 2.0% to 2.5% (Heads of Workers' Compensation Authorities 2000: 9, Heads of Workers' Compensation Authorities 1999: 9).

Nationally, by the mid 1990s, pressures to reduce the cost of workers' compensation for employers began to ease. Workers' compensation costs as a percentage of payroll had, as indicated in Chapter 7, fallen to 2.0% by 1996, down from 2.5% in 1987. This and the shift in the exclusively conservative complexion of state and territory governments from 1995 onwards, initially in New South Wales and then elsewhere, contributed to a less antagonistic policy environment. This is not to deny that further attacks on workers' entitlements subsequently occurred, most notably in Victoria in 1997, but rather to suggest that from about 1995 the pace and direction of workers' compensation policy had, once again, begun to change.

10.6 Summary Observations

In the workers' compensation arena class struggle is manifested at both the micro and the macro level. At the micro level it is reflected in the disputation that arises in relation to individual claims by injured workers, and frequently encompasses such issues as entitlement to, the quantum of and continuing access to compensation payments. At the macro level it can be observed in the contestation over scheme design. This latter struggle, of course, is waged primarily at the political level and often includes matters such as the categories of workers who are covered, the type and level of compensation payments available, the pattern of underwriting and scheme management arrangements, the nature of return to work responsibilities and obligations placed on employers and workers, the dispute resolution systems used, and the linkages between compensation arrangements and the prevention of work related injury. It is the outcome of these struggles that determines the price paid for the appropriation of workers' health by employers.

During the 26 years from 1970 to 1996 the struggle between capital and organised labour constituted a watershed period in the evolution of workers' compensation policy in Australia. What distinguished this period from preceding eras was the depth and breadth of the contestation involved. The epicentre of the struggle was, firstly and foremost, the distribution of costs associated with work related injury as reflected by workers' compensation

premiums. As has already been shown, the struggle swung in favour of organised labour during the 1970s until the mid 1980s and was subsequently reversed, to varying degrees, through to the mid 1990s. Throughout the entire period, the struggle surrounding the direction and tempo of workers' compensation policy was mediated by the bifurcated nature of state power in Australia. This federalist division of labour was largely responsible for the uneven development of policy throughout the country. This meant that, even though the overall direction of the national trendline was clear, there were substantial differences in workers' compensation arrangements at the level of individual states and territories.

The struggle over policy during this period, however, was not confined to the distribution of costs for work related injury. For the first time substantial measures were taken by governments and scheme administrators to reduce costs by tackling them at their source. The most profound reflection of this development was the emergence of vocational rehabilitation and occupational health and safety as key issues for workers' compensation policy. This shift in focus was also accompanied by an overhaul of dispute resolution processes and the switch to public underwriting in a number of schemes. Although the interpretation placed on all of these issues by employers and workers may have differed in crucial respects, there is no doubt that the increased importance attached to these issues and their, albeit uneven, integration into the various schemes from the mid 1980s onwards heralded the modernisation of workers' compensation arrangements in Australia.

Again, it must be emphasised that the modernisation of workers' compensation arrangements in Australia was the product of intensified contestation between capital and organised labour and may be regarded as a concrete example of the "tendency for class struggle to rationalize capitalism" (Block 1977: 23). Here, it should be recalled that between 1970 and 1984 workers' compensation costs as a percentage of the wages and salary bill almost trebled. This unprecedented trend threw into sharp relief the fact that employers were losing the ability to shift work related injury costs onto injured workers and the broader community. In turn, this decreased capacity to shift costs provided the stimulus to actively consider measures to reduce them. It was within this context that vocational rehabilitation and better workplace health and safety assumed greater prominence on the public policy agenda. Much the same can be said about measures designed to lower workers' compensation transaction costs, most notably those associated with dispute resolution processes and scheme underwriting arrangements. In the absence of the cost pressures generated during the 1970s and early 1980s it is questionable whether these reforms would have occurred at all, and exceedingly doubtful that they would have taken place when they did.

The modernisation of workers' compensation arrangements that took place over the course of the 1980s coincided with a profound restructuring of the

Australian economy. During this period the Australian economy became increasingly exposed, though not for the first time, to the winds of globalisation, a process which would accelerate its integration into the world economy. The main contours of this round of globalisation included the floating of the currency, the lowering of tariff barriers, the deregulation of the financial sector, the 'opening' up of the wages system and the privatisation of public assets. While these structural changes were predicated on curtailing the scope of government intervention in favour of market forces, the situation with workers' compensation arrangements, ironically, was exactly the opposite. Restructuring in this area of the economy was associated with greater government intervention, not less. As the Industry Commission observed "Workers' compensation reform went against the deregulatory flow of the times" (Industry Commission 1994: F5). In part, this was due to the lack of confidence by employers and state governments in the operation of the private insurance markets during the late 1970s and early 1980s. It was also complemented by the ability of the trade union movement in mobilising opposition against deregulation.

The modernisation process also had a significant impact on cost shifting, at least initially. Prior to the 1980s, mainstream thinking emphasised the limited liability of employers for work related injury costs and was reflected in the closed liability models of weekly payments that dominated workers' compensation arrangements in Australia, where payments were terminated once a prescribed amount was reached. This had the effect of externalising much of the cost associated with work related injury. The move, however, to an open liability approach in a number of jurisdictions, foreshadowed by the Woodhouse Committee in the mid 1970s, challenged this notion of limited liability by providing for ongoing weekly payments for more seriously injured workers where they were unable to return to work. Where open liability models of weekly payments were adopted cost shifting from state and territory based workers' compensation schemes to injured workers and the federal social security system was correspondingly reduced. Though less significant, it is also worth noting that where the duration of weekly payments was extended within closed liability schemes, this too contributed to a lower incidence of cost shifting.

However, from the latter part of the 1980s through to the mid 1990s the emphasis again swung towards cost shifting as the dominant means of reducing employer premiums, first in New South Wales and then other jurisdictions. Thus, although various Australian schemes continued to promote occupational health safety and vocational rehabilitation, to varying degrees, average premium rates were lowered primarily through legislative changes that involved cutbacks in compensation payments and tighter eligibility criteria. As pointed out previously, the introduction of 'significance' tests, the exclusion of journey injuries, the more stringent treatment of stress claims, the adoption of 'notional earnings' criteria and the universal application of step-down provisions all contributed to this outcome.

In political terms the cutbacks in payments and restrictions in eligibility for compensation that constituted the dominant themes of workers' compensation policy from 1987 to approximately 1996 were not simply a monopoly of traditional conservative governments. This is not to deny that state and territory Liberal and National party governments, whether independently or in coalition, played the leading roles in bringing about the cuts that occurred during the period - the exemplar being the Kennett government, as reflected by the comprehensive raft of changes made to the Victorian scheme in the immediate aftermath of its election in October 1992. As the traditional political representatives of business interests the attacks by conservative governments on the entitlements of injured workers were to be expected once premiums went beyond a level considered unacceptable to employer organisations. With Labor the situation was somewhat more complex. Over the course of the 1970s and 1980s Labor governments had led the way in improving compensation payments and other entitlements for injured workers. It was also reform minded Labor governments that had been responsible for kick-starting the modernisation process during the 1980s. However, as was the case with their more conservative counterparts, Labor governments in various jurisdictions did not demur from implementing measures to cut workers' entitlements in order to relieve the pressure on employer premiums where it was perceived as necessary to the maintenance of business confidence. This was particularly evident in New South Wales in 1987, where the common law right of workers to pursue damages against their employers was abolished by the Unsworth government and weekly payments to partially incapacitated workers were severely curtailed. Though less draconian, cost cutting measures were also taken by Labor governments to reduce employer premiums in Victoria in 1989 South Australia during 1992 and Queensland in 1995.

The threat to workers' entitlements was most pronounced whenever average premium rates exceeded 3% of payroll. In effect, what can be described as a 3% Rule came into operation. It provided the trigger for the various programs of legislative change that were to once again shift the burden of work related injury costs from employers to injured workers and the broader community. This was manifestly the case in New South Wales in 1987 where the average premium rate reached 3.8% of payroll (New South Wales Parliamentary Debates 14/5/87: 12206), in Victoria where it was 3.0% in 1992, in South Australia where it was 3.2% in 1993, 3.0% in Western Australia in 1993 and in Tasmania in 1995 (Heads of Workers' Compensation Authorities July 1997: 8-9). This 3% Rule was underpinned by the hegemonic position assumed by the ideology of 'competitive' premiums, which had reduced workers' compensation policy to an offshoot of industry policy as far as state governments were concerned. It was also reinforced, as indicated in Chapter 6, by the increased emphasis attached to full funding during the 1990s and the concomitant financial and political strictures regarding unfunded liabilities.

By the early 1990s, cost shifting occasioned by the rollback of workers' entitlements had become so rampant that the federal Labor government felt compelled to do something about it. The Industry Commission inquiry instigated by the federal Treasurer in late 1992 was the initial move in this exercise, and was the first time ever that a government inquiry had sought to quantify the extent of cost shifting by state and territory workers' compensation schemes to injured workers and the federal social security system. However, the electoral defeat of federal Labor in March 1996 meant that any chance of implementing a reform agenda to curtail the estimated $1 billion a year in cost shifting by the states and territories was lost. Ironically, by this time, however, the imperative to shift costs had moderated. This was due, as already mentioned, to a general, though not universal, decline in premiums paid by Australian employers. Within the new policy climate which began to emerge, cost shifting assumed somewhat less prominence than had been the case earlier in the decade. This was not because state and territory governments, or employers, had necessarily had a fundamental change in the way they viewed workers' compensation policy, but rather because premiums had, for the time being at least, been brought under control. Accordingly, the role of workers' compensation schemes as conduits for the externalisation of work related injury costs remained unchallenged.

On the broader theoretical plane, it is worth reiterating that, the adoption of punctuated equilibrium as a central explanatory concept in this thesis has been utilised to emphasise the non-linear development of workers' compensation policy in Australia. This non-linear development has been characterised by periods of accelerated change followed by periods of relative inactivity or gradual change. One of the advantages of this approach is that it endeavours to locate workers' compensation policy within an historical context. This is important for the obvious reason that, without an understanding of the past it is much more difficult to comprehend the present let alone the future. An analysis based on punctuated equilibrium stands in marked contrast to the sterile treatment of workers' compensation policy provided by neoclassical economics.

The emphasis on class as the primary determinant of policy is also a major strength of punctuated equilibrium theory. Once again, this contrasts sharply with neoclassical theory. As pointed out in Chapter 4, workers' compensation may be viewed within the neoclassical paradigm as an addendum to the theory of compensating wage differentials. Among the other limitations involved with this approach is that relations between employers and workers are conceived almost exclusively in individualistic and consensual terms. In conceptualising workers' compensation policy as, quintessentially, the product of contending class interests, the punctuated equilibrium approach developed here seeks to anchor the understanding of workers' compensation policy within a materialist framework which reflects the underlying, essentially antagonistic, relationship between capital and labour. If punctuated equilibrium analytically encapsulates the process by which workers'

compensation policy has emerged and developed, it is the interaction between the conflicting interests of employers and workers that has driven the process.

In line with this, it is important to recognise the class is not a static concept. As with society itself, class is dynamic in nature. Changes in technology and the organisation of work are part and parcel of the accumulation process in a capitalist society. Moreover, in recent decades, this has been accompanied by profound changes in the labour market. Thus, whereas, in 1970 the workforce was comprised of predominantly male, blue-collar unionised workers in full-time, predominantly, permanent jobs (Commonwealth Bureau of Census and Statistics 1970: 279, 693, 698-700), by the mid 1990s it was increasingly female and white-collar in composition, with part-time and contingent employment reaching unprecedented levels against a background of falling union density (Australian Bureau of Statistics 1997: 108-110, 140-141).

The effects of these changes are already being felt in the workers' compensation arena. This is, perhaps, most conspicuously so with respect to the burgeoning growth of contingent forms of employment, the consequences of which have included a reduction in the coverage for workers' compensation entitlements, an increase in the under-reporting of work related injuries and the undermining of employment security provisions for injured workers (Mayhew and Quinlan 1999: 501-510). In combination with the weakening political bonds that link the trade union movement and social democratic parties (Howell 2001: 12-17), these changes mean that contestation over workers' compensation policy in the 21st century will take place on substantially different terrain from that which prevailed throughout most of the post World War II period of the 20th century.

10.7 Suggestions for Future Research

In terms of future research, punctuated equilibrium, as a key organising concept, has the potential to expand the boundaries of understanding as far as workers' compensation policy is concerned. It may also find further applications in the broader public policy arena.

In relation to Australian workers' compensation policy, there is certainly scope for further research and debate in relation to the periodisation of policy development that has been outlined here. This is particularly so for policy trajectory at the state and territory level, not just in relation to the period which has been the subject of this thesis but also for the preceding periods whose contours were outlined earlier.

There is also a need for further research regarding the extent of cost shifting from state and territory workers' compensation schemes to injured workers and the federal social security system. Although it is readily apparent from

the design of many schemes that cost shifting is extensive, there has, as indicated earlier, been a dearth of studies that have attempted to quantify the amounts involved. In part, this is due to the many obstacles involved in obtaining the necessary data with which to carry out this type of research. The value of such research though is that it could provide more precise and up-to-date estimates of the extent to which cost shifting occurs. Following on from this, and assuming there was the political will to do so, the availability of sound estimates would provide a much firmer foundation for negotiations between, on the one hand, a future federal government and, on the other, the states and territories concerning scheme reforms to eliminate or minimise cost shifting. Alternatively, in the event of a failure to resolve scheme design issues that have given rise to cost shifting, these estimates could provide the basis that for a federal government to transfer these costs back to the states and territories by other means. The quantification of cost shifting also has the potential to assist in more clearly delineating the boundaries associated with the punctuated equilibrium based periodisation of workers' compensation policy in Australia.

In relation to other countries, punctuated equilibrium analysis can readily be applied to the development of workers' compensation policy in the United States and Canada. This is all the more likely due to the structuring of workers' compensation arrangements in these countries largely, as is the case in Australia, at the sub-national level of government. Having said that, there are, of course, important differences that would need to be taken into account. These include differences in eligibility criteria for compensation, the range and the amount of payments available to injured workers, and, most importantly, the balance of power between capital and organised labour. These differences mean that the four-stage periodisation developed for the trajectory of workers' compensation policy in Australia may not necessarily apply to the United States and Canada, or, if it does, that the timelines associated with the various stages may differ from those identified for Australia.

There is also no reason why punctuated equilibrium analysis cannot be extended to workers' compensation policy in Europe. The differences, though, between European arrangements and those that prevail in Australia, the United States and Canada are more substantial. In the first place, workers' compensation arrangements are nationally based and tend to be much more closely integrated into the social security system in European nations (Williams 1991: 110-115). Secondly, and perhaps more importantly, the financing of workers' compensation insurance in a number of European countries differs markedly from that in Australia. In Australia, scheme financing is provided exclusively through insurance premiums levied on employers. A similar approach applies in some European countries, such as Sweden and, with minor exceptions, Germany (Ibid.: 181, 122). In others, however, such as the Netherlands (Ibid.: 142), finance is obtained from general taxation revenue as well as employer premiums, while in yet others,

such as the United Kingdom and Austria (Ibid.: 132, 161), workers contribute to the funding as well. Where the responsibility for financing workers' compensation arrangements is diffused, especially when there is significant government support involved, it may be that the level of contention between employers and workers over the distribution of work related injury costs is correspondingly reduced. To the extent that this is the case, it would suggest that the genealogy of workers' compensation policy could be quite different from the Australian experience. The examination of this conjecture warrants further investigation and would assist in the development of a comparative research literature on punctuated equilibrium and workers' compensation policy.

It may also be the case that punctuated equilibrium analysis is capable of extension beyond the confines of workers' compensation policy. Workplace health and safety policy is one area that immediately comes to mind. This is hardly surprising given the obvious linkages between the two. As with workers' compensation, there does not appear to have been a great deal of research in Australia that has sought to conceptualise the major developments in workplace health and safety policy within a broader historical framework. Relatively recent work by Emmett, however, has provided one attempt to fill this gap through a three stage periodisation of policy development (Emmett 1997: 325). Although his analysis was not underpinned by any concept of punctuated equilibrium, it should not be overly difficult to explore whether or not punctuated equilibrium theory provides a fruitful conceptualisation in this area. If it does, then in view of the historically high degree of policy transfer between the United Kingdom and Australia on this subject, it is quite conceivable that punctuated equilibrium analysis can also be applied to the trajectory of workplace health and safety policy in the United Kingdom. If this is so, then it is more than likely, given the seminal role played by British policy prescriptions in the development of workplace health and safety legislation elsewhere, that punctuated equilibrium analysis can be applied on a wider international scale.

Workers' compensation and workplace health and safety policy are but two, albeit important, aspects of industrial relations policy. While it cannot be assumed that an explanatory framework that applies in one or two areas of a broader policy domain can be readily or necessarily applied to the entire gamut of policy issues contained within that domain, it does seem pertinent to suggest that punctuated equilibrium analysis may well find further applications in the industrial relations field.

The application of punctuated equilibrium analysis may also be extended to policy areas further afield. An example of this broader application involves the reconceptualisation of capitalist development in Australia since white settlement. In research recently published, it has been argued that the regulation of capitalist development in this country can be depicted as being comprised of four distinct stages "broken by three major pulses of institutional

innovation" (Lloyd 2002: 254). In contrast to Emmett's schematisation of workplace health and safety policy, Lloyd's analysis of changes in the regulatory regimes that have accompanied economic development in Australia has been explicitly cast in terms of punctuated equilibrium (Ibid.: 238-240). If this analysis is confirmed by further work, it is simply a matter of time before punctuated equilibrium analysis is used in the elucidation of capitalist economic development elsewhere.

To date, punctuated equilibrium has had a major impact in the biological sciences, especially in relation to the scientific understanding of evolution. With its analytical versatility and explanatory power, it may now be well-placed to make important contributions within the social sciences as well.

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