

The Liberal Plan for a fairer WorkCover System

The Liberal Party supports a workers compensation scheme that is fair, efficient and affordable for the whole community.

Between 1992 and 1999, the rorts and rip-offs of the old WorkCare days were ended, the \$2.1 billion of unfunded liabilities was paid off, benefits to injured workers were increased and the scheme was on track to be fully funded by February 2001.

However, under Labor, Victorian employers have been hit with massive premium increases, while WorkCover's unfunded liabilities have soared due to Labor encouraging a flood of common law claims.

At the same time, injured workers have been ripped off through being offered outrageously small sums to give up their future legal rights, and genuine safety improvements have been put at risk due to ideological hostility to employers.

The Liberal Party will improve the WorkCover scheme, reducing costs to employers and providing better help for injured workers.

This improvement will be implemented through a five point plan:

- Assist and reward safety improvements
- Introduce a fairer premium system
- Allow employers to take greater responsibility for claims handling
- Provide better support for workers with ongoing injuries
- Tackle rorting and abuse.

Safe and healthy workplaces

Employees and their families have the right to expect that when employees go to work their employer has taken all reasonable steps to protect their health and safety and ensure they come home again.

Employers who deliberately take shortcuts on workplace health and safety and put people's lives or health at risk deserve severe punishment.

Employers who neglect proper attention and priority to health and safety issues and who thereby risk death or serious injury to their employees or others in their workplace also deserve to be subject to criminal sanctions.

The previous Liberal Government introduced Australia's highest penalties for occupational health and safety breaches, in order to send the message to everyone involved in running an organisation that people's lives and safety are a serious matter.

However, Labor's approach to workplace health and safety has been based on a narrow view of safety issues and has been driven by ideological hostility to employers. By indiscriminately threatening to impose penalties on employers regardless of whether they have been guilty of criminal failing, and by adopting the attitude that "the boss is always wrong", Labor risks undoing much of the success that has been achieved through a co-operative approach to safety issues.

As well, Labor's excessive focus on "shop floor" safety issues and "check list" safety audits has led to the neglect of the potential safety gains which can be achieved through a more systematic review of management and operational practices and procedures.

A Liberal Government will establish a more balanced approach to safety improvement, which recognises that safety can be improved at all levels in organisations, that no one person or approach has all the answers, but that everyone must play their part and accept responsibility for their actions and inactions.

The skill mix and administrative structure of WorkSafe will be reviewed to ensure that it is able to monitor, advise on and enforce the full range of safety measures and procedures available to employers in different industries. Employers will be able to seek advice from WorkSafe without having to fear that making an inquiry will result in a punitive safety inspection.

As well, a Liberal Government will ensure that the VWA effectively harnesses the massive volume of information in its data banks and the data banks of its agents to identify industries and employers where there are opportunities to improve safety.

We will establish a program under which employers are provided with a confidential report which ranks their own safety performance against industry benchmarks and provides information about ways in which employers can find out how to improve safety.

A Liberal Government will also strengthen the recognition and reward given to employers who do the right thing about safety.

We will establish a program under which employers who implement recognised safety initiatives with proven benefits will have those benefits reflected in reduced risk assessments and premiums from the start of the next premium year, rather than having to wait many years for the safety benefits to be fully reflected in lower premiums.

These safety initiatives may include both physical safety features, such as safety fittings or new types of equipment, and accredited safety policies, procedures or standards.

A Liberal government will also:

- ensure that the seriousness with which genuine safety issues are treated is not eroded by allowing the misuse of safety procedures and allegations as weapon in industrial disputes
- establish and make available to employers detailed generic guides on common safety issues faced by many employers, particularly small employers. These guides will go beyond the mere issue of brochures and provide detailed practical specifications and procedures which employers can implement. This will avoid the need for employers to “reinvent the wheel” in tackling such safety issues, and reduce the cost and delay in acting on them. Safety induction procedures for new employees will be one of the first topics covered by such guides
- use carefully researched and targeted advertising to convey safety messages to employees and employers alike

Reforming the Premium System

The WorkCover premium system is in disarray.

In its first year in office, Labor inflicted massive and unfair premium increases on employers, and then imposed a premium freeze on small and medium size employers which makes it impossible for employers to earn premium reductions through improving safety.

A Liberal Government will introduce a better and fairer premium system that allows employers to have safety improvements recognised and rewarded:

- premiums setting will start from the principle that an employer’s premium for each year should reflect an objectively estimated actuarial risk for that employer for that year, subject to protections against excessive year to year changes and to support for small business
- Labor’s inequitable “rounding up” of industry rates to the next highest premium band will be abolished
- employers’ premiums will provide true insurance cover so that employers can budget with certainty based on known premium rates – premium rates will not be retrospectively changed based on the current year’s claims experience
- employers will not be required to pay premiums based on “shop floor” or average risk rates for employees engaged exclusively in low risk clerical or administrative activities. A separate lower premium rate will apply for such employees.
- as detailed above, the VWA will introduce a program under which those employers who introduce safety initiatives with proven benefits will have those benefits reflected in reduced risk assessments and premiums from the start of the next premium year, rather than having to wait many years for the safety benefits to be fully reflected in lower premiums
- the VWA database will be examined to identify anomalies where classes of employers with good overall safety records are being significantly and unfairly penalised through being

aggregated with higher risk employer classes. Separate lower standard premium rates will be established for such employer classes to better reflect and reward their safety performance.

- the premium calculation process will be made clearer and more transparent. Each employer will receive a detailed statement of how his or her premium has been calculated based on claims experience, industry rates and safety initiatives. Details of how industry rates and premiums reconcile with the stated average premium rate will be published by the VWA on its web site as soon as the annual Premiums Order is made.
- fairer rules will be established for cases where a new business opens at premises previously occupied by another business in the same industry. Factors such as the number of employees in common between the two businesses will be taken into account in determining the extent to which the premium rate of the former business will apply to the new business.

As the reforms outlined in this policy, such as improved safety and rehabilitation and better and fairer claims management, take effect and reduce costs, savings will be used to pay off Labor's unfunded liabilities and return WorkCover to full funding and then to cut premium rates and improve benefits and support for injured workers.

Claims handling and self-management

Labor's adversarial approach to safety and compensation issues ignores the reality that employees and employers are often able to sort out issues better on a face to face basis than if forced to go through a remote and impersonal bureaucracy.

A Liberal Government will establish a program under which a wide range of employers will be permitted to assume responsibility for the management of claims in a similar way to self-insuring employers now.

Employers who elect this option will take on much more of the financial responsibility for their claims experience and the upsides and downsides of their safety performance, and thus have a direct incentive to improve their safety.

Employers will be able to elect to become self-managing employers if they can demonstrate that they have in place good safety standards and proper management arrangements and procedures for the handling of claims and return to work programs.

The VWA will remain ultimately responsible for the payment or provision of all benefits to which workers are entitled.

For employees, having a self-managing employer will mean that most claims issues can be sorted out directly, without having to go through a claims agent as a "middleman". This should reduce delays, buck-passing and complications over paperwork.

For workers in rural and regional Victoria, it will generally mean not having to contact a Melbourne based claims agent to make inquiries or chase payments or services.

The injury and claims management performance of self-managing employers will be carefully benchmarked, and self-managing employers will be given regular reports of their performance against those benchmarks.

Any self-managing employers who fail to provide proper claims and injury management or treat employees unfairly will risk losing their self-managing status, and all actions by self-managing employers will be subject to the same rights of conciliation and appeal as decisions by claims agents.

As well, a Liberal Government will free up the system to allow employers, employees and their representatives to work directly with each other to resolve issues as far as possible without being forced to go through claims agents.

Where it is necessary for claims agents to be involved, all parties will be given a greater opportunity to ensure that relevant facts are taken into account by the claims agent, including evidence in favour of or against a claim.

A Liberal government will also review the current administrative arrangements governing self-insurers, in order to eliminate unnecessary prescription, establish effective outcomes based benchmarks and measure the performance of self-insurers against those benchmarks.

Rehabilitation and return to work

Most injured workers obtain medical treatment for their injuries and return to work quickly. However more serious injuries can require treatment over months or years by a wide variety of medical specialists and other health professionals.

Often workers with these serious injuries become “the forgotten people” of the compensation system, being referred from professional to professional without anyone taking overall responsibility for treatment, rehabilitation and, wherever possible, return to work.

Injured workers and employers can also be left in the dark about the implications of the injury, such as treatment options, likely timing and completeness of recovery and what the injured worker can and can't do as they start to return to work.

A Liberal Government will ensure that workers who suffer significant injuries, and their employers, are provided with a wide range of clear and detailed information relevant to the type of injury the worker has suffered. Such information will help answer questions such as

- What is likely to happen with the injury over time?
- When am I likely to be able to return to work?
- What is the best form of treatment for this condition?
- What questions should I be asking my practitioner?
- What support services are available?
- What can I do to assist my recovery?

Practitioners, particularly GPs, often face heavy demands on their time in order to provide the best possible arrangements for the rehabilitation and return to work of their patient, and receive little or no support or assistance in doing so.

Under a Liberal Government, WorkCover will meet the costs of occupational health co-ordinators whom GPs and other treating practitioners can engage in suitable cases to assist in arranging and co-ordinating rehabilitation and return to work of injured workers, in accordance with the treating practitioner's specifications.

The costs of providing this professional assistance will be more than covered by the savings arising from improved rehabilitation and return to work outcomes.

Recovery from significant injuries is greatly improved by acting early to put treatment and rehabilitation arrangements in place. It is harder for WorkCover to help with this if injuries are not reported as soon as possible after they occur.

Early intervention of medical and paramedical services and commencement of return-to-work strategies will ensure better results for workers and employers.

A Liberal Government will encourage employers to notify significant injuries as soon as possible after they occur, and to recognise the benefits that will flow to the employer's bottom line, as well as to the injured worker, from early notification.

Facilities for the on-line lodgement and handling of notifications, claims and inquiries, as described later in this policy, will assist employers to notify injuries quickly.

Common law

Following the 1999 election Victoria has seen the reintroduction of so-called common law legal actions into WorkCover. The Liberal Party accepts that this reflects the outcome of the democratic process and that sufficient time needs to be allowed to see whether or not the common law system can be made to work.

Accordingly, a Liberal Government will continue the common law system.

A Liberal Government will also remove the prohibition on a worker suing a person who intentionally inflicts an injury on the worker.

Workers will be able to sue such persons regardless of the extent of the injury they suffer. Any such litigation will be completely outside the WorkCover system, save that, in accordance with normal principles, the court will take into account the extent of any WorkCover benefits received in determining the amount of compensation to be awarded.

The WorkCover Authority will also retain the right to seek to recover from those causing the injury the cost of any benefit payments it has made, subject to the workplace coverage mechanisms referred to later in this policy.

A general restriction on workers suing persons other than the employer was originally introduced to prevent such legal actions being used as a device to avoid the statutory arrangements for WorkCover benefits. The Labor Government has retained this restriction with only minor modification. However, it has become clear that applying the restriction in the very limited and unusual situations where there has been intentional infliction of an injury is both unnecessary and unfair.

Fraud and rorting

Labor has brought back the “compo culture” to WorkCover and triggered a resurgence of fraudulent claims and rorting. This has added millions of dollars to WorkCover's unfunded liabilities.

Fraudulent claims don't just hurt employers – they cost jobs and deter investment. They also mean that there is less money available to pay for benefits for genuinely injured workers. As well, genuinely injured workers get tarred with the same brush and viewed with suspicion by the community and by potential future employers.

WorkCover fraud must come to be regarded as socially, morally and legally unacceptable in the same way as drink-driving or welfare fraud.

A Liberal Government will ensure that the provisions of the legislation relating to fraud, perjury and dishonesty are fully enforced against all parties who attempt to obtain benefits, or avoid paying benefits, by dishonest means, or who knowingly assist in such attempts.

Benefit restructuring

Labor have introduced complex and costly rules for determining the extent to which overtime and shift work can be taken into account in the calculation of weekly benefits.

Workers, employers and claims agents can become tied up in debate over whether overtime and shift allowances being paid to a worker before the injury were “permanent and established” or not. This is a fruitless, costly and time-consuming debate.

A Liberal Government will amend the benefit setting rules so that all overtime, shift allowances and similar payments earned by a worker in the six months prior to an injury are taken into account in setting benefits, without requiring proof that such payments were “permanent and established”.

Rural and regional Victoria

Victorian workers injured outside the metropolitan area often incur considerable expense and have to travel long distances in order to see doctors and other medical specialists. Often the full cost of such travel is not reimbursed. This represents a hidden cost of WorkCover that is not recognised by the authorities when setting policies.

A Liberal Government will ensure that the VWA takes into account the costs to injured workers, as well as to the Authority, of obtaining medical treatment and examination, and examines the feasibility of arranging for medical practitioners to travel on circuit to country centres wherever practicable, rather than forcing injured workers to travel to Melbourne.

Where injured workers are forced to travel long distances for medical treatment or examination, a Liberal Government will ensure that workers, and any companion who needs to travel with the worker, are fully reimbursed for the reasonable travel, meal and accommodation expenses involved.

A Liberal Government will also require the VWA and claims agents to provide local call cost telephone access for calls to them by both workers and employers.

These initiatives will be fully funded by the VWA.

As well, a Liberal Government will require the VWA to provide as fully as possible for the on-line lodgement and issue of notifications, claims and other documentation, and the on-line handling of inquiries.

This will reduce delays in document transmission and the need for workers and employers to travel to VWA or agent offices.

Employers in rural and regional Victoria also find it more difficult than city based employers to obtain access to the advice and other expert services needed to implement safety improvements.

A Liberal Government will require the VWA to examine the feasibility of establishing a system to assist employers find relevant safety experts willing to travel to employers in country Victoria, and to co-ordinate visit schedules to such employers.

Farm safety

Farms continue to have a high accident rate. Labor have acknowledged this fact, but have failed to back that acknowledgment with effective action. Labor have given only minimal financial support to the Managing Farm Safety program and the Farm Safety Action Groups program developed by the Victorian Farmers' Federation after being initiated under the Kennett Government.

Furthermore, Labor have ignored the success of targeted safety improvement programs on farms, such as the provision of financial incentives for the fitting of tractor roll-over protective structures (ROPS). An evaluation of the fitting of ROPS under the scheme, carried out by Lesley Day and George Rechnitzer from the Monash University Accident Research Centre, estimated the scheme would prevent at least two deaths every year for at least the next 10 years.

Under a Liberal Government the VWA will provide financial incentives for new targeted farm safety initiatives similar to the tractor ROPS program, such as programs for

- protection against crushing from objects falling backwards out of front-loaders
- safety enclosures where hazards are caused by exposed motors, power take off shafts and belt pulleys.

as well as financial support to boost the Managing Farm Safety program and the work of Farm Safety Action Groups.

The final amount to be devoted to these initiatives will be decided in conjunction with the Board of the VWA, but is expected to be about \$2 million per annum.

A Liberal Government will also:

- ensure that farmers who undertake an accredited farm safety program or course, such as a course provided by the Victorian Farm Safety Training Centre, are amongst the first to receive immediate premium reductions to reflect the safety improvements which the program or course can be expected to provide.
- establish a dedicated Farm Safety Unit within the VWA.

WorkCover advertising

WorkCover advertising can have a powerful effect in improving safety, encouraging rehabilitation and achieving other important objectives. However, such advertising

- must be carefully researched and focussed on achieving results
- must avoid giving counter-productive messages, such as encouraging unjustified compensation claims or the use of occupational health and safety as an industrial relations tactic
- must not be used for simply for Government image building.

A Liberal Government will ensure that WorkCover advertising

- is used effectively for the proper purposes of WorkCover
- has objectives which are fully documented and benchmarked in advance, and
- is independently assessed after each campaign to determine the extent to which its objectives have been achieved and whether there have been any other positive or negative effects.

Major Hazard facilities

Following the Longford Royal Commission, the Kennett government established a separate Major Hazards Unit within the VWA to ensure that Victoria's major hazard facilities are as safe as possible.

A Liberal Government will continue to follow world's best practice in:

- identifying major hazards
- prevention of incidents
- emergency planning and response to any incidents which occur.

In particular, a Liberal Government will:

- expand the Major Hazards Unit to
 - advise and support VWA in scientific and technical areas of major hazards
 - co-ordinate emergency response plans for major hazards and ensure they are kept up to date
 - provide a “one-stop shop” so that operators of major hazard facilities can approach a single government entity on all issues relating to the safety of the facility
 - provide expert information for all involved in new major hazard facilities, or proposals for such facilities, at all stages from concept development through to commissioning, operation and maintenance.

The registration and licensing processes will be simplified in order to reduce the administrative burden so that employers and regulators alike can concentrate on safety rather than unnecessary paperwork.

There will be a regular review of safety cases to ensure they remain current and take into account the latest available information and best practice

Further, a Liberal Government will ensure that transport or temporary storage of chemicals or other products, which may constitute a major hazard while in transit, are adequately regulated and are properly provided for in community emergency plans.

Abuse of "third party" recovery actions

WorkCover legislation has always allowed the VWA to bring actions against "third parties" to recover costs caused to the WorkCover system by the fault of others.

For example, if defective machinery causes an accident, it is reasonable for the VWA to seek to recover the costs of the accident from the machinery manufacturer if that manufacturer is at fault. This helps keep down the costs of the scheme and the premiums of the employer.

However, under Labor, the VWA has allowed the use of recovery actions to become a head-on assault on the use of contractors. Any business that has work done for it other than by direct employment is now at risk of being sued by VWA if a person performing that work is injured. Builders can be sued for injury to a contractor's workers. Mine operators can be sued for injuries to a consultant's staff. A small business which agrees to take on an apprentice under a group training scheme can be sued if the apprentice is injured on the job.

In other words, a business only has WorkCover insurance cover for its direct employees. If anyone else is injured, that business is at risk of being sued by VWA.

This campaign by VWA is made worse by, and is further adding to, Victoria's public liability insurance crisis. Many insurers have ceased to offer public liability cover, and those that are offering cover are excluding liability for such claims by WorkCover, leaving businesses completely exposed.

A Liberal Government will amend the relevant legislation so that businesses taking on apprentices and trainees under group training and similar schemes may elect to have the apprentice or trainee treated as an employee of the host business, thereby gaining the benefit of WorkCover cover and removing the risk of being sued as a "third party".

A Liberal Government will also establish mechanisms under which businesses which regularly have other employers' workers at their workplace will be able to obtain cover against third party actions by the VWA.

Such mechanisms will be structured so that businesses taking up such cover still have strong incentives to provide safe places of work, but those businesses will be protected against the risk of being sent broke by a costly legal claim brought by the VWA.