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Australian Unions



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better life.**

**Senate Standing Committee on Environment, Communications and
the Arts**

Inquiry into Australia Post's treatment of injured and ill workers

SUBMISSION OF

AUSTRALIAN COUNCIL OF TRADE UNIONS

NOVEMBER 2009

Terms of Reference:

The practices and procedures of Australia Post over the past three years in relation to the treatment of injured and ill workers, including but not limited to:

1. allegations that injured staff have been forced back to work inappropriate duties before they have recovered from workplace injuries:
2. the desirability of salary bonus policies that reward managers based on Lost Time Injury management and the extent to which this policy may impact on return to work recommendations of managers to achieve bonus targets:
3. the commercial arrangements that exist between Australia Post and InjuryNet and the quality of the service provided by the organisation:
4. allegations of Compensation Delegates using fitness for duty assessments from Facility Nominated doctors to justify refusal of compensation claims and whether the practice is in breach of the Privacy Act and Comcare policies:
5. allegations that Australia Post has no legal authority to demand medical assessments for injured workers when they are clearly workers' compensation matters:
6. the frequency of referrals to InjuryNet Doctors and the policies and circumstances behind the practices:
7. the comparison of outcomes arising from circumstances when an injured worker attends a facility nominated doctor, their own doctor and when an employee attends both, the practices in place to manage conflicting medical recommendations in the workplace; and
8. any related matters.

Introduction and Executive Summary

The Australian Council of Trade Unions (ACTU) is the peak representative body for Australian trade unions. It represents forty-seven affiliated trade unions and represents some two million working Australians and their families.

The ACTU refers the Committee to the submission of the Communication, Electrical and Plumbing Union (CEPU) which comprehensively responds to the Inquiry's Terms of Reference.

Our submission will seek to give the Committee a brief account of some specific Comcare workers compensation issues and will respond to:

- Term of Reference 2: the desirability of salary bonus policies that reward managers based on Lost Time Injury management and the extent to which this policy may impact on return to work recommendations of managers to achieve bonus targets, and
- Term of Reference 4: allegations of Compensation Delegates using fitness for duty assessments from Facility Nominated doctors to justify refusal of compensation claims and whether the practice is in breach of the Privacy Act and Comcare policies.

Workplace Injury/Illness Toll

1. In Australia, in the financial year 1999-00, as a result of a fatality, a permanent incapacity or temporary incapacity with one week or more off work there were 149,810 accepted workers' compensation claims. In 2005-06 this figure had reduced to 136,575 accepted claims a 9% reduction.¹ The preliminary data for 2006-07 reveals that there were 132,055 serious workers' compensation claims.² Over the five-year period 1999-00 to 2005-06, the Australian workforce grew by 12%.
2. The Australian Bureau of Statistics (ABS) has reported that in the 12 months to September 2000, 477,800 Australians were injured at work. In the financial year 2005-06, that figure had risen to 689,500³. Again, while over that period the workforce grew by 12% and additional 200,000 workers' or 44% more were injured in their workplace.
3. The ABS also reported that only 216,000 workers' who experience a work-related injury or illness nationally in 2006 received workers' compensation. A further 176,700 injured workers' received some sort of financial assistance. Half of these did not apply for workers' compensation as the injury or illness was minor or not considered necessary, 17% (30,000) said they were not covered or not aware of workers' compensation or did not think they were eligible and 7% (12,000) said it would have a negative impact on current or future employment.
4. In 2004 the National Occupational Health and Safety Commission (NOHSC) estimated the economic costs of occupational injury and disease in Australia in the year 2000-1 at \$34.3 billion or 5% of GDP.⁴
5. In March 2009, the Australian Safety and Compensation Council (ASCC)(the replacement body for NOSHSC subsequently replaced by Safe work Australia) updated this information for the financial year

¹ <http://nosi.ascc.gov.au>

² <http://www.ascc.gov.au/ascc/AboutUs/Publications/StatReports/CompendiumofWorkersCompensationStatistics.htm>

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

⁴ National Occupational Health and Safety Commission (2004), *The cost of work-related injury and illness for employers, workers and the community*, Australian Government, Canberra, p2

2005-06. The ASCC detailed that the economic costs of occupational injury and disease in Australia in the year 2005-06 had grown to \$57.5 billion or 5.9% of GDP.⁵

6. The ASCC also detailed that:

- 3% of the total cost of workplace injury and illness is borne by employers;
- 49% is borne by workers and their families; and,
- 43% is borne by the community, mostly in social security and health subsidies.⁶

Today we have more workplace injury and disease instances than ever before, less and less workers' compensation claims, the overall human cost is immeasurable while the financial cost to the country for this is out of control.

7. Parliaments in each Australian jurisdiction have periodically narrowed what workers compensation claims can be made and tens of thousands of injured workers' each year do not make claims due to fear of losing their job, or they aren't made aware of their ability to claim.
8. Overwhelmingly the cost of workplace injury is borne by workers', their families and their communities.
9. In 2006, the Howard Government was warning that the Comcare scheme was coming ' . . . *under growing pressure in recent years from increasing numbers of claims, longer average claim duration and higher claim costs*⁷.
10. One way to combat this would be to inquire into what was the cause of these increased claims and why was it taking longer to restore workers' to good health. Rather than that the Government introduced legislation into the Parliament to restrict what claims could be made. The Labor Opposition Senators in the Senate Report on the Legislation concluded that the Bill was misguided in its focus. They said: *'It will save money for employers without reference to broader, and not necessarily financial issues, such as increasing the burden on taxpayers, injured employees and their families.'*⁸

⁵ Australian Safety and Compensation Council (2009) *The Costs of Work-related Injury and Illness for Australian Employers, Workers and the Community*, Australian Government Canberra, p.2

⁶ *ibid*

⁷ Second Reading, Safety, Rehabilitation And Compensation And Other Legislation Amendment Bill 2006, House of Representatives, Hansard - 30 November 2006

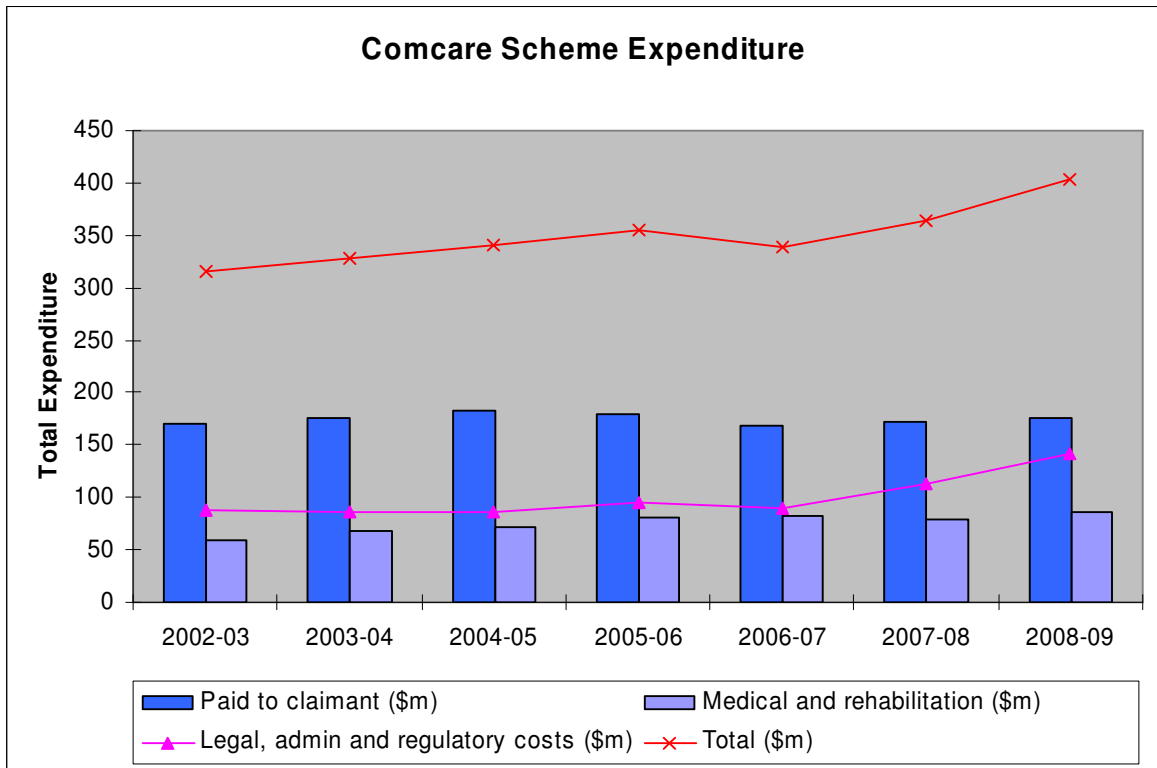
⁸ Senate Education, Employment and Workplace Relations Committee, Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 Inquiry Report, at 3.14

11. Each Safety Rehabilitation and Compensation Commission Annual Report from 2002-03 to 2008-09 details for both scheme contributing employers and self insurers total payments to claimants, total medical and rehabilitation payments and total amounts paid as legal, administrative and regulatory costs for the relevant reporting period.⁹ Those figures are reproduced below:

Year	Paid to claimant (\$m)	Medical and rehabilitation (\$m)	Legal, admin and regulatory costs (\$m)	Total (\$m)
2002-03	169.65	58.45	87.76	315.86
2003-04	174.91	67.6	85.4	327.91
2004-05	182.03	71.74	86.89	340.66
2005-06	179.30	81.30	94.20	354.80
2006-07	168.30	81.80	89.60	339.70
2007-08	171.40	79.20	113.00	363.60
2008-09	176.00	85.80	141.10	402.90

⁹ Safety, Rehabilitation and Compensation Commission Annual Report 2002-03, page 14
 Safety, Rehabilitation and Compensation Commission Annual Report 2003-04, page 17
 Safety, Rehabilitation and Compensation Commission Annual Report 2004-05, page 16
 Safety, Rehabilitation and Compensation Commission Annual Report 2000-06, page 21
 Safety, Rehabilitation and Compensation Commission Annual Report 2006-07, page 19
 For reasons unknown these figures were not published in 2007-08 but were made available on request.
 Safety, Rehabilitation and Compensation Commission Annual Report 2008-09, page 10

12. Plotting these figures on a graph it becomes apparent that the increase in total scheme expenditure is due to an increase in legal, administrative and regulatory costs:



Over the period 2002-03 to 2008-09 the increase in Comcare scheme expenditure has not been increased payments to claimants or increased medical and rehabilitation costs but rather legal administration and regulatory costs.

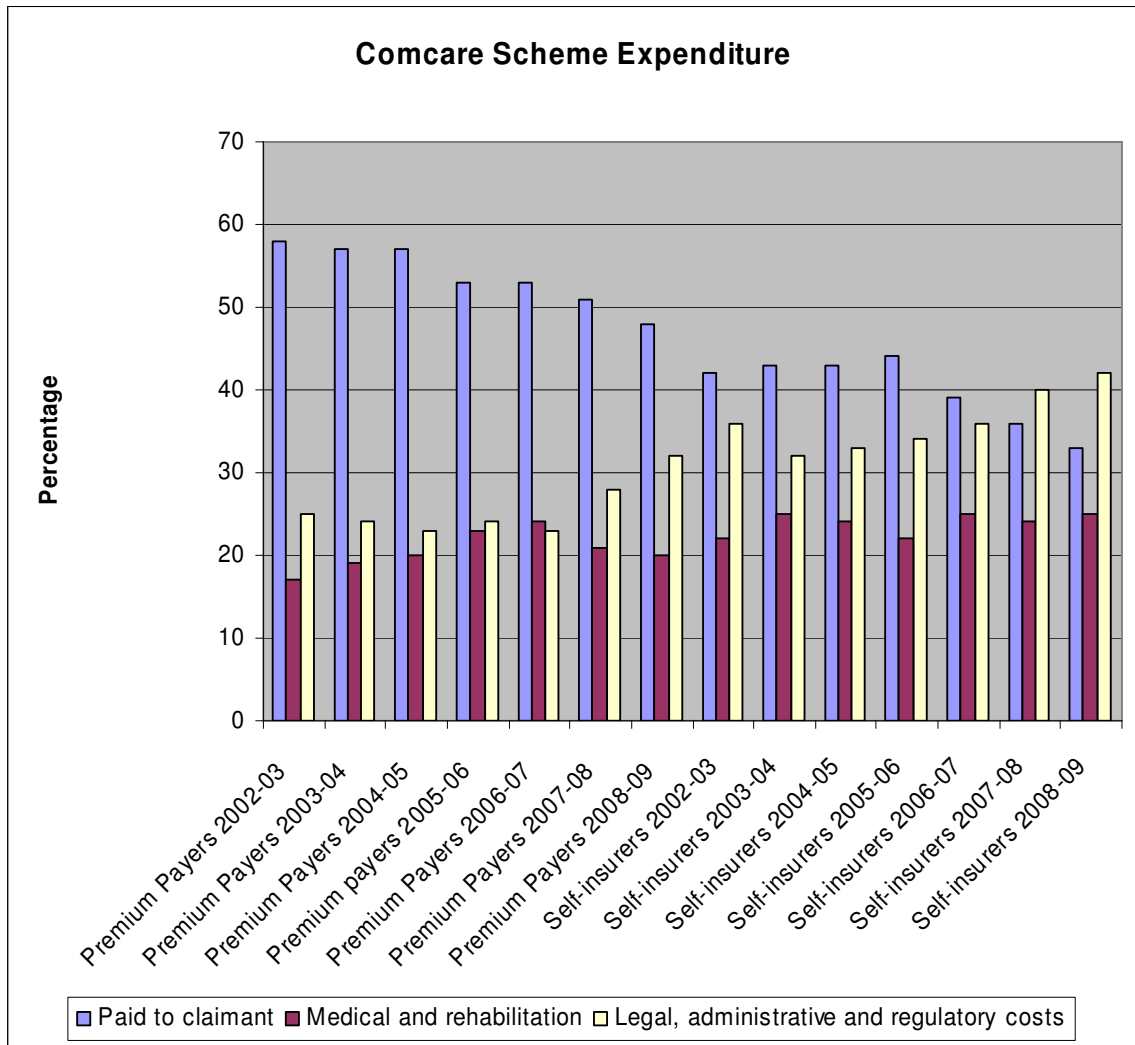
13. We can consider these figures another way, which is to consider the percentage of the total amount expended as payments to claimants, total medical and rehabilitation payments and total amounts paid as legal, administrative and regulatory costs for both scheme contributors and self insurers for the relevant reporting period:

	Total (\$m)	Paid to claimant	Medical and rehabilitation	Legal, administrative and regulatory costs
Comcare 2002-03	227.85	132.88 (58%)	38.95 (17%)	56.02 (25%)
Comcare 2003-04	236.05	135.39 (57%)	44.98 (19%)	55.68 (24%)
Comcare 2004-05	255.99	145.81 (57%)	51.50 (20%)	58.68 (23%)
Comcare 2005-06	268.80	141.30 (53%)	62.20 (23%)	65.30 (24%)
Comcare 2006-07	254.00	135.10 (53%)	60.50 (24%)	58.40 (23%)
Comcare 2007-08	271.00	137.60 (51%)	57.20 (21%)	76.20 (28%)
Comcare 2008-09	285.30	137.70 (48%)	56.20 (20%)	91.40 (32%)
Self-insurers 2002-03	88.01	36.77 (42%)	19.50 (22%)	31.74 (36%)
Self-insurers 2003-04	91.86	39.52 (43%)	22.62 (25%)	29.72 (32%)
Self-insurers 2004-05	84.67	36.22 (43%)	20.24 (24%)	28.21 (33%)
Self-insurers 2005-06	86.00	38.00 (44%)	19.10 (22%)	28.90 (34%)
Self-insurers 2006-07	85.70	33.20 (39%)	21.30 (25%)	31.20 (36%)
Self-insurers 2007-08	92.60	33.70 (36%)	22.10 (24%)	36.80 (40%)
Self-insurers 2008-09	117.60	38.30 (33%)	29.60 (25%)	49.70 (42%)

14. The Workplace Relations Ministers Council Comparative Performance Monitoring Report 10th Edition (CPM10) details that in 2007-08 compensation paid direct to workers' nationally accounted for just over half (53%) of all scheme expenditure.¹⁰ The evidence above shows that against the national historic trend the self-insured component of the Comcare Scheme pay's far less than half of their expenditure directly to workers'.

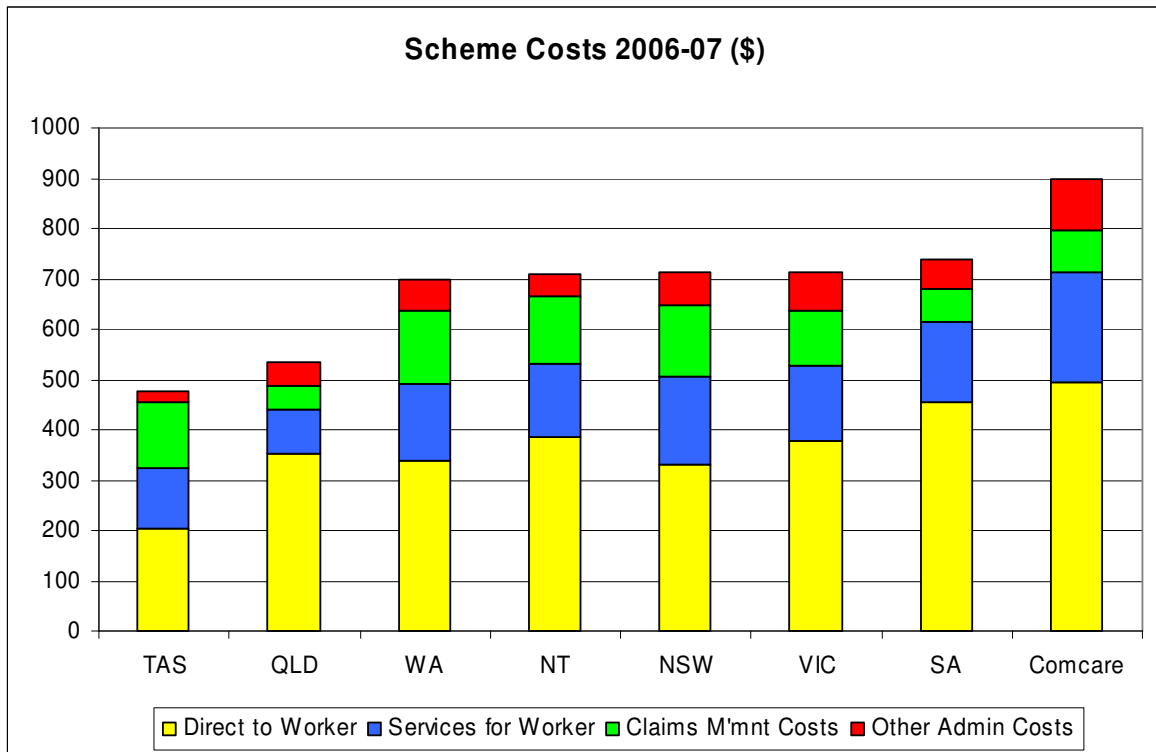
¹⁰ Workplace Relations Ministers Council, Comparative Performance Monitoring Report, Tenth Edition, August 2008, page 24

15. The following chart shows the ratio of these three payments as a percentage of the total payments made during each reporting year for both scheme contributors and self-insurers:



Over time it is clear the whole Comcare Scheme is paying less directly to injured workers and spending more on legal, administration and regulatory costs while paying generally similar expenditure on medical and rehabilitation costs. What is astonishing is the for the last two reporting years the self-insured part of the Comcare Scheme has paid far more on legal, administration and regulatory costs than has been directly to injured workers. It is also concerning that self-insurers have consistently paid less directly to injured workers than the scheme proper

16. If we use the information from CPM10 with on Total Scheme Expenditure with the information on the number of workers' covered by each scheme in the Australian Safety and Compensation Council Comparison of Workers' Compensation Arrangements in Australia and New Zealand¹¹, we can make an estimate of the workers' compensation cost expended by each Authority per worker they cover:



17. The most expensive scheme is Comcare, spending about \$900 per worker in 2006-07, the least expensive is Tasmania at \$475.

18. The reasons employers have previously sought self-insurance with Comcare were succinctly summarised by Mallesons Stephen Jaques. In a remarkably frank assessment in an online publication entitled OHS (e)ssentials¹², Partner Andrew Gray details *inter alia* that the benefits for employers becoming a Comcare licence self-insurer are: ‘ . . .

- *administration benefits that arise from being subject to single and uniform workers compensation and OHS system (as opposed to several separate state based systems),*
- *the potential for a reduction in premium costs,*
- *reduced statutory benefits and common law damages payable to injured employees.’*

We query how employer representatives advise employers to keep workers compensation costs down in the system that is per capita the most expensive in the nation.

¹¹ Safe Work Australia April 2009, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand, Table 2.2*

¹² <http://www.mallesons.com/publications/update-combine.cfm?id=977627>, accessed 5 February 2008

19. In 2003, the House of Representatives Standing Committee on Employment and Workplace Relations in its Report into aspects of Australian workers compensation schemes listed 18 different activities which may be perceived as fraudulent behaviour by employers with respect to workers compensation, including not obtaining insurance cover, underinsuring, incorrectly informing employees that they are not covered by the legislation, using duress to prevent workers' lodging claims, not processing claims, hindering attempts to make claims and not providing suitable duties.¹³
20. As submitted above, the ABS found that more than 30,000 injured workers' in Australia each year did not make a claim for workers' compensation as they said they were not covered by or not aware of workers' compensation or did not think they were eligible and more than 12,300 felt it would have a negative impact on current or future employment.
21. In evidence to the House of Representatives Committee, the Group Manager, Workplace Relations Policy and Legal Group, of the Federal Department said, ' . . . *the department considers that the incidence and cost of workers' compensation fraud and non-compliance is a problem confronting all Australian workers' compensation schemes. The full extent of fraud and non-compliance is difficult to measure. There is a considerable amount of anecdotal evidence, however, as well as some recent reports or studies which suggest that the problem is significant.*'¹⁴(our underlining)
22. Comcare Annual Reports detail that in 2005-06 Comcare completed 160 investigations into suspected fraud in 2006-07, 80 investigations and in 2007-08, 62 investigations. From 2001 to 2007 Comcare investigated 735 cases of suspected fraud. Comcare have confirmed with the ACTU that none of these cases were an investigation of suspected employer.
23. For reasons unknown to us the number of cases if alleged fraud investigated by Comcare in 2008-09 are not listed in the 2008-09 Comcare Annual Report.
24. Information that was previously published on the Comcare website but is no longer available (Appendix A) detailed that the Comcare Fraud Control and Investigation Team will only ' . . . *investigate cases where there is sufficient information to reasonably suspect that the claimant is:*
 - *Misrepresenting his/her disability*
 - *Claiming excessive disabilities*
 - *Malingering*
 - *Involved in the commission of a fraud and the investigation and expenditure of Comcare and Commonwealth agency resources is warranted.'* (our underlining).
25. We are unaware of any mechanisms Comcare has for organisations or individuals to specifically raise issues of suspected employer fraud, we are not aware of any mechanisms Comcare has in place to investigate allegations of suspected employer fraud.

¹³ Parliament of the Commonwealth of Australia, Back on the job: Report into aspects of Australian workers' compensation schemes, House of Representatives Standing Committee on Employment and Workplace Relations, Canberra, June 2003

¹⁴ House of Representatives Standing Committee on Employment and Workplace Relations Transcript 25 September 2002, p.14

26. When asked about employer fraud the Comcare CEO told the House of Representatives Committee:

Mr WILKIE (Member for Swan)—*You mentioned in the submission that you may look at employers in relation to fraud. Do you ever investigate any employers?*

Mr Leahy (CEO Comcare)—*No. We are in a very fortunate position compared with other jurisdictions . . . The government is generally prone to obeying its own legislation.*

Mr WILKIE—*I thought it was interesting that it was in there. I thought I would ask that question.*

Mr Leahy—*We thought we had better put it in, because it is an area of fraud activity in other jurisdictions. We need to make the point that it is not in this jurisdiction, fortunately.¹⁵*

27. In its submission to the House of Representatives Committee, Comcare pointed out that all Commonwealth agencies have significant parliamentary reporting obligations and are subject to on-going auditing by the National Audit Office – both of which mitigate against fraudulent activity.

Fraud in workers compensation the systems must be detectable and dealt with appropriately. 42,000 injured workers' each year do not make a workers' compensation claim because they do not think they are eligible or think it would have a detrimental effect of their employment prospects. The cost for these injuries is not borne by employers it is borne by the community.

Fraud costs us all and this lack of even handedness from Comcare in detecting and dealing with fraud is unacceptable.

¹⁵ House of Representatives Standing Committee on Employment and Workplace Relations Transcript 18 September 2002, pp 8-9