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Conclusions

- 8.1 There is anecdotal evidence of fraud in workers' compensation schemes. However, each sector, including insurance companies, employers, employees, service providers and plaintiff lawyers, perceives this to be endemic in another sector. In most cases employee fraud was estimated to be at very low levels.¹ The Committee could not quantify the significance or otherwise of fraud within any sector without sound data, which is presently not available.
- 8.2 The perception of what constitutes fraud and fraudulent behaviour differs across the various sectors of the workers' compensation industry. Nonetheless, there was widespread evidence that at least one significant form of "fraud", if it could be called that, occurs against the Commonwealth in the form of cost shifting either covertly or overtly from State based workers' compensation schemes.
- 8.3 It is clear to the Committee that there are issues and opportunities for improvement in relation to the practices of all sectors: employees, employers, service providers and insurance companies, and in the design and operation of the workers' compensation schemes. Many of the issues raised in this inquiry reflect inadequate communication and alignment of expectations of the various participants. In all sectors there is

1 Media Entertainment and Arts Alliance, Submission No. 43, p. 1; Labor Council of NSW, Submission No. 52, p. 4; Dr Paul Pers and Ms Anita Grindlay, Submission No. 60, p. 2; Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 245; Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, p. 402; Queensland Government, Submission No. 30, p. 1; Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 320; Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14, p. 1; Mr Paul O'Halloran, Transcript of Evidence, 20 November 2002, p. 221 and Submission No. 62, p. 1; Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 442.

misinterpretation, misunderstanding and a lack of understanding of the process.

- 8.4 There are already processes for the detection of employee fraud in the workers' compensation schemes. There are also increasing efforts to identify non-compliance by employers, just as there is a move to monitor service providers and to require increased accountability. Regulatory bodies in jurisdictions monitor the activities of the various workers' compensation schemes.
- 8.5 The workers' compensation industry is faced with a number of challenges in relation to changing work arrangements, the ageing of the workforce and changing lifestyles. The need for the implementation of best practice is more important than previously. The Committee believes that in attempting to move towards greater national consistency, with the benefits of that approach, there are also opportunities for the various schemes to review their current activities in terms of best practice.

Need for national consistency

- 8.6 The need for greater national consistency in the operation of workers' compensation schemes was frequently raised in the evidence to this inquiry. There are currently ten different schemes operating in Australia for nine million employees.
- 8.7 The Department of Employment and Workplace Relations (DEWR) believes that the complexity and inconsistencies in the legislative framework can create confusion and opportunities that can generate avenues for fraud.² DEWR believes that this complexity places a burden on the community which is an unnecessary drain on the economy.³
- 8.8 The Department considers that a single national framework for workers' compensation coverage could remove the complexity, deal with cross border issues and lessen the potential for fraud and/or non-compliance.⁴ In relation to the separate jurisdictions, DEWR argued that:

2 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 14; Department of Employment and Workplace Relations, Submission No. 48, p. 19.

3 Mr Tom Kenna, DEWR, Paper presented at Workerscomp 2003, National Workers' Compensation Summit, Sydney, 17 February 2003, p. 2.

4 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, pp. 14, 17.

Each scheme has, since initially established, evolved in isolation from other schemes. The legislators responsible for each scheme have taken the position that perceived local conditions guide the structure and framework of all aspects of their individual scheme. The scheme designers have had little regard to the structure of other schemes that participants necessarily interact with and/or the changing nature of the environment in which they operate.⁵

- 8.9 The implementation of a national framework need not seek to have the States refer their powers to the Commonwealth.⁶ The Government considers that the primary responsibility should remain with the States and Territories and that a nationally consistent approach does not mean a national workers' compensation scheme.⁷ The Department made the point that there is, for example, already a national framework operating in respect to food standards, with an overarching system and the state systems operating under that.⁸

A key objective would be the development of a fair and consistent system that meets the need of a modern and productive society. This would encompass an effective continuum of assistance to injured workers and a streamlined approach to the provision of early intervention, rehabilitation and income support.⁹

- 8.10 The Council of Small Business Organisations of Australia pointed out that work is being done on the national level for public liability insurance and suggested that this approach be extended to workers' compensation:

The Council of Small Business Organisations of Australia would like to see a national approach to workers compensation, with uniform laws and guidelines. This should take into account funding, premium levels, with caps for small business, and a simpler method of arbitration because one of the biggest costs is the legal fees involved.¹⁰

- 8.11 Injuries Australia supports the introduction of a national system of workers' compensation. Injuries Australia also proposed a change from

5 Department of Employment and Workplace Relations, Submission No. 48, p. 19.

6 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 17.

7 Mr Tom Kenna, DEWR, Paper presented at Workerscomp 2003, National Workers' Compensation Summit, Sydney, 17 February 2003, p. 2.

8 Mr Rex Hoy, DEWR, Transcript of Evidence, 25 September 2002, p. 17.

9 Mr Tom Kenna, DEWR, Paper presented at Workerscomp 2003, National Workers' Compensation Summit, Sydney, 17 February 2003, p. 10.

10 Mr Michael Potter, Council of Small Business Organisations of Australia Ltd, Transcript of Evidence, 4 December 2002, p. 416.

workers' compensation to a mutual workplace injury indemnity as part of any review, and stated that the current schemes are incapable of conducting workers' compensation in an economically just and humane manner.¹¹ DEWR acknowledged that injured workers and their families are treated inconsistently and in some cases unfairly under the current arrangements.¹²

- 8.12 The Media Entertainment and Arts Alliance also suggested the establishment of an uninsured liability and indemnity scheme at the Commonwealth level to cover the circumstances where a worker may be left without workers' compensation cover. The Alliance pointed out that this may not reflect the employer's lack of intention, and that there are circumstances where there has been no way these workers could be insured. People without cover end up in the Commonwealth system on sickness benefits.¹³

Administrative complexity

- 8.13 Administrative costs for the existing schemes are currently about 16 per cent of the premiums collected and there are additional costs for employers and injured workers.¹⁴ The Committee believes that a large proportion of what is currently perceived as fraud or fraudulent behaviour reflects inefficiencies, incompetence, mismanagement, misinterpretation and a lack of understanding of the process. A simpler approach, clarification of a number of issues and greater communication between the participants may address many of these issues.
- 8.14 There are administrative complexities for those organisations that deal with different rules and regulations in the various jurisdictions.¹⁵ For example, DEWR commented on the variation in the application of penalties in the different Australian workers' compensation schemes.¹⁶
- 8.15 DEWR made the point that while all Australian workers' compensation schemes are based on a 'no-fault' principle, there are a number of essential differences between the schemes:
- varying levels of compensation payable to the injured employees;

11 Injuries Australia Ltd, Submission No. 27a, p. 2.

12 Mr Tom Kenna, DEWR, Paper presented at Workerscomp 2003, National Workers' Compensation Summit, Sydney, 17 February 2003, p. 2.

13 Ms Lynn Gailey, Media Entertainment and Arts Alliance, Transcript of Evidence, 18 October 2002, pp. 121-122.

14 Department of Employment and Workplace Relations, Submission No. 48, p. 19.

15 Association of Risk and Insurance Managers of Australasia, Submission No. 11, p. 2.

16 Department of Employment and Workplace Relations, Submission No. 48, p. 26.

- some have overlays of the ‘no-fault’ system with access to common law fault based remedies;
 - inconsistent legislative provisions for the same category of employee;
 - varying insurance arrangements with some having government controlled central or managed fund while some are privately underwritten by the insurance industry and Comcare is effectively a self insurance arrangement;
 - different approaches and legislative provisions relating to rehabilitation/return to work of the injured employee; and
 - different approaches to the management of claims.¹⁷
- 8.16 These differences involve significant costs for organisations operating in more than one State or Territory. The Association of Risk and Insurance Managers of Australasia stated that its members favour a national workers’ compensation scheme which incorporates the best aspects of the separate schemes and would significantly reduce costs.¹⁸ However, ARIMA has subsequently conducted a survey of its members, particularly those that operate in a number of jurisdictions, and found that 56.6 per cent opposed a national scheme. The Association was surprised by this result and commented that it has always been a truism that the members support a national scheme.¹⁹ This may indicate that the extent of support for a national scheme may require further substantiation or that the issue was the need for national consistency.
- 8.17 The Recruitment and Consulting Services Association believes that a national scheme could reduce the level of compliance burdens.²⁰ The Association argued that there would be greater efficiency if the various jurisdictions adopted consistent definitions, benefits and obligations.²¹
- 8.18 There are still inconsistencies in the deeming provisions and the interpretation of the definition of contractor in the jurisdictions.²² There is also complexity in establishing remuneration of employees in the various jurisdictions.²³
- 8.19 There are a number of workers not covered by the current definitions of employee. If these workers are not covered by workers’ compensation or a
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17 Department of Employment and Workplace Relations, Submission No. 48, pp. 5-6.

18 Association of Risk and Insurance Managers of Australasia, Submission No. 11, pp. 2, 4.

19 Mr Bruce Ferguson, Association of Risk and Insurance Managers of Australasia, Transcript of Evidence, 20 November 2002, p. 248.

20 Mr Charles Cameron, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 428.

21 Recruitment and Consulting Services Association, Submission No. 20, p. 11.

22 Department of Employment and Workplace Relations, Submission No. 48, p. 10.

23 Department of Employment and Workplace Relations, Submission No. 48, p. 11.

comparable form of private insurance, then in the case of an injury they may rely on the Commonwealth social security system of sickness or other benefits. The failure of the workers or their employers to meet their responsibilities in this area may result in substantial costs the community. The Committee is concerned that the assumption that these workers have private insurance arrangement has not been tested.

Recommendation 1

The Committee recommends that the Minister for Employment and Workplace Relations request that the Workplace Relations Ministers' Council conduct a study to identify the extent to which workers are currently not covered by any workers' compensation system, with a view to adopting a national standard that covers the widest possible number of workers.

- 8.20 DEWR also pointed out that what constitutes a compensable injury or illness varies under the different workers' compensation schemes.²⁴ For example, some schemes cover journey and recess injuries while some only cover injuries that occur while performing work.²⁵

Employees face a highly complex scheme of arrangements to determine whether or not they have suffered compensable injury or illness. This may be one of the reasons over 50 per cent of employees who reported having a workplace injury or illness did not lodge a claim for workers' compensation.²⁶

- 8.21 The National Meat Association of Australia supports the view that the increase in regulatory complexity of the workers' compensation schemes only compounds the problem. The NMAA has a number of members operating across borders, and the interaction between Commonwealth industrial awards and various state schemes can lead to confusion and to manoeuvres by vested interests.²⁷

24 Department of Employment and Workplace Relations, Submission No. 48, p. 15.

25 Department of Employment and Workplace Relations, Submission No. 48, p. 15.

26 Department of Employment and Workplace Relations, Submission No. 48, p. 15 citing Workplace relations ministers' Council, *Comparative Performance Monitoring Fourth Report*, August 2002, p. 121.

27 National Meat Association of Australia, Submission No. 41a, pp. 6, 8, 11-12. The NMAA pointed out that the Certified Agreements and Australian Workplace Agreements in section 170LZ(2) and 170VR(3) of the Commonwealth *Workplace Relations Act 1996* are subject to the provisions of state law dealing with workers compensation and occupational health and safety.

8.22 The NMAA believes that radical steps are needed to reform the workers' compensation schemes and that there should be a commitment to developing a national codified framework.²⁸

Fraud is a real problem. We agree that the various state-based schemes are complex and inconsistent. There are varying levels of compensation, overlays by a number of States with common law systems, different definitions of worker and injury, varying deeming provisions, varying insurance arrangements, different rehabilitation provisions, different management of claims.²⁹

8.23 The NMAA believes that there should be greater consistency:

There has to be consistency across the schemes operating in the states and the territories. This involves consistently defining employees/deemed employees, work related injury definitions, ordinary weekly earnings (excluding overtime and incentive rates), levels of compensation, no access or limited access to the common law courts, insurance arrangements, mandatory rehabilitation/return to work schemes and consistent regulation of management of claims.³⁰

8.24 The Australian Industry Group would also like to see greater consistency between the jurisdictions and simplification.³¹ If a national scheme were to be introduced, the Group believes the scheme would need to be benchmarked appropriately to meet appropriate standards in terms of premiums and benefit levels.³²

8.25 Mr Kim Mettam also cautioned that previously the solutions implemented in workers' compensation reform in Australia have lacked proper analysis of the underlying problems and their appropriateness to solve the problems.³³ He suggested that this approach can add complexity without major change or improvement.³⁴

8.26 The Committee supports the concept of reform with the goal of improvement, greater consistency and simplification. The Committee

The NMAA argued that every change to state law is taken up in these instruments whether or not the employees and employers agree with the change.

28 National Meat Association of Australia, Submission No. 41a, pp. 10-11.

29 National Meat Association of Australia, Submission No. 41a, p. 10.

30 National Meat Association of Australia, Submission No. 41a, p. 11; See also Mr Garry Johnston, NMAA, Transcript of Evidence, 13 November 2002, p. 148.

31 Australian Industry Group, Submission No. 53, p. 5.

32 Australian Industry Group, Submission No. 53, p. 5.

33 Mr Kim Mettam, Submission No. 54, p. 1.

34 Mr Kim Mettam, Submission No. 54, p. 1.

believes that if all jurisdictions work cooperatively, there is the potential to develop best practice initiatives and greater consistency in scheme design and administration. This would provide opportunities for benchmarking of scheme performance if appropriate and comparable data collection facilitated greater analysis.

- 8.27 The Master Cleaners Guild of Western Australia commented on the duplication in the system at both the Commonwealth and State levels:

We notice at a state level, even when industry initiatives are initiated for development of occupational health and safety and workers compensation systems and supportive procedures and manuals, there is gross duplication of expenditure, manpower and the rest of it ... This industry in Western Australia has developed an OHS management workers compensation risk management manual and procedure which has been uniformly implemented to members of the guild. Within a matter of months of that, South Australia effectively released an identical kit.³⁵

WorkCover Industry Code system

- 8.28 The Recruitment and Consulting Services Association suggested the creation of a national WorkCover Industry Code system.³⁶ Currently there are different WIC codes in the states, which regularly change, and it is difficult to make cross border comparisons.³⁷ The Master Cleaners Guild of Western Australia would also like uniform, tighter and specific industry classifications nationally.³⁸ The Guild commented that:

The fact that an industry such as the cleaning and asset maintenance industry cannot access data specific to its own area of employment, given that it is one of the largest employers in Australia, is in itself, we believe, evidence of a failure of the system. Therefore, when we make our effort to adopt best practice, to research performance, compare benchmarks and revise our overall health and safety management systems within the industry, we are to some extent—not totally because we believe that we are making very good headway—hamstrung by the fact that we cannot make reliable comparisons. We would advocate for a review of the current coding system. Having said that, we also accept, at the end of the day, that

35 Mr Kerry Jones, Master Cleaners Guild of Western Australia Inc, Transcript of Evidence, 20 November 2002, p. 216.

36 Recruitment and Consulting Services Association, Submission No. 20, p. 3.

37 Recruitment and Consulting Services Association, Submission No. 20, p. 6.

38 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 5.

the issues that you refer to under these terms of reference essentially centre on the issue of management performance.³⁹

- 8.29 WorkCover NSW hopes the use of the Australian and New Zealand Standard Industry Classification as the basis of their WorkCover industry codes will allow a closer link between an industry sector's occupational health and safety and injury management performance and its premium rate.⁴⁰

Recommendation 2

The Committee recommends that the Commonwealth Government, in collaboration with the State and Territory workers' compensation authorities, and with other stakeholders, look at the need to amend the Australian and New Zealand Standard Industrial Classification in relation to its applicability to workers' compensation systems and interjurisdictional consistency.

Inter-jurisdictional issues

- 8.30 Some states have Memoranda of Understanding to ensure that employees injured in another jurisdiction are not left without cover. For example, a cross border agreement between Queensland and New South Wales was introduced into the Parliaments in November 2002 and one between NSW and Victoria is awaiting introduction to the Victorian Parliament.⁴¹ A comprehensive web of agreements across all states could address most of the inter-jurisdictional issues.
- 8.31 The Department of Employment and Workplace Relations, however, believes that there is still the potential for an employee injured in another jurisdiction to fall between the two jurisdictions.⁴² Also, employers may have to pay premiums for the same worker in one or more jurisdiction.⁴³ DEWR added that while there is a commitment from the States on this

39 Mr Kerry Jones, Master Cleaners Guild of Western Australia Inc, Transcript of Evidence, 20 November 2002, p. 216.

40 Workplace Relations Ministers' Council, *Comparative Performance Monitoring*, August 2002, Comparison of Occupational Health and Safety in Australia and New Zealand, p. 2.

41 Mr Paul Goldsbrough, Queensland Department of Industrial Relations, Transcript of Evidence, 22 November 2002, p. 328.

42 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 20.

43 Department of Employment and Workplace Relations, Submission No. 48, p. 19.

simple but important issue, it has not been resolved because of the nature of Australia's Constitution and the various regulatory systems.⁴⁴

8.32 Workers' compensation schemes must resolve the issue of full protection for employees who are required to work in other jurisdictions. The National Farmers' Federation raised the issue of farmers whose properties straddle more than one jurisdiction, and farm employees who need to travel across borders to work.⁴⁵

8.33 The Media Entertainment and Arts Alliance found that the extraterritorial provisions are creating black holes which mean that employers are unable to provide employees with workers' compensation cover. This is of considerable concern to employees such as those touring with live theatre or concerts.⁴⁶

All persons working in Australia are entitled to protection in the event of work related illness or injury, regardless of where the work is undertaken, their usual residence and that of their employer.⁴⁷

8.34 The Alliance made the point that it is simply unjust that someone injured in another jurisdiction is left with no means of sustaining themselves other than through the public purse and sickness benefits.⁴⁸

8.35 The Superannuated Commonwealth Officers Association provided the example of 100 New South Wales firefighters who were transferred to the ACT on the basis that they would retain their workers' compensation and superannuation rights. The Association outlined a number of situations where these changes have led to the underpayment of significant amounts of money, and commented on the implications in terms of tax issues and interest foregone.⁴⁹

44 Mr Rex Hoy, DEWR, Transcript of Evidence, 25 September 2002, p. 20.

45 National Farmers' Federation, Submission No. 19, p. 6.

46 Media Entertainment and Arts Alliance, Submission No. 43, p. 5.

47 Media Entertainment and Arts Alliance, Submission No. 43, p. 5.

48 Media Entertainment and Arts Alliance, Submission No. 43, p. 5.

49 Superannuated Commonwealth Officers' Association Inc, Submission No. 73, pp. 1-4.

Recommendation 3

The Committee recommends that the Minister for Employment and Workplace Relations request that the Workplace Relations Ministers' Council continue to work towards the introduction of nationally consistent Memoranda of Understanding between the jurisdictions to ensure that employees have equivalent workers' compensation cover when working in other jurisdictions .

National database

Data collection

- 8.36 The need for better data collection was an important issue raised in a number of submissions.⁵⁰ Currently there is little consistency in the format or the data collected, some jurisdictions have poor databases and these differences in data recording and reporting make interstate comparisons difficult. Better data about actual claims experience would enable a proper analysis of the instances that give rise to claims. It is extremely difficult to establish meaningful national benchmarks, to identify performance standards or to monitor emerging trends on a national basis, although the National Data Set for Compensation-based Statistics is a positive step in this direction.⁵¹ Improved data recording would enable industry trends in terms of health and safety and workers' compensation management to be tracked.⁵²
- 8.37 The Media Entertainment and Arts Alliance believes that a single notification scheme may improve data collection as the data currently collected around the country is processed in different ways, and self-employed people often do not report their injuries and employees often do not lodge claims.⁵³

50 Labor Council of NSW, Submission No. 52, p. 4; Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 71; Insurance Australia Group, Submission No. 47, p. 8; Recruitment and Consulting Services Association, Submission No. 20, p. 3.

51 Insurance Australia Group, Submission No. 47, p. 9.

52 Mr Charles Cameron, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 428.

53 Ms Lynn Gailey, Media Entertainment and Arts Alliance, Transcript of Evidence, 18 October 2002, p. 123.

Repeat offenders

- 8.38 There was some support for a centralised database on fraud.⁵⁴ Concern was expressed that there is no way of identifying repeat offenders.⁵⁵ The ACT Government would be prepared to contribute to a database in relation to proven cases of fraud if other jurisdictions believed that the incidence of fraud warranted further investigation.⁵⁶ WorkCover Queensland believes that a national database would be helpful and that this should include New Zealand.⁵⁷
- 8.39 Another advantage of an effective reporting process would be to identify a claimant who has seen a large number of medical practitioners in a short time in an attempt to find one who would confirm the work-relatedness of an injury or illness. Mr Kim Mettam commented on the value of access to Health Insurance Commission records in looking at the work relatedness of an illness based condition.⁵⁸
- 8.40 The Committee has a number of concerns about the implementation of a national database on fraudulent activities. Although there are significant potential benefits in terms of the capacity to analyse trends and issues, there are a number of potential dangers. For example, the Committee received a number of allegations about inappropriate activities by service providers and investigators, which raises concerns about injured workers being unjustly included on the database.
- 8.41 The Committee is concerned that a national database would create a subclass of untouchable injured employees who would not be able to find employment again. The Recruitment and Consulting Services Association commented on the difficulty in convincing alternative clients that an injured employee would not pose a risk to their business.⁵⁹ Mr Graham Stewart commented in his attempts to gain employment after his compensation claim:

The crux of the matter – and the hard bit for me – is that when I go and apply for a job, even one that I can cope with, I have to fill out an application form that asks. "Have you had a WorkCover claim"

54 Mr Richard Gilley, The RiskNet Group, Transcript of Evidence, 18 October 2002, p. 131.

55 Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia, Transcript of Evidence, 20 November 2002, p. 205.

56 Australian Capital Territory Government, Submission No. 45, p. 2.

57 Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 319.

58 Mr Kim Mettam, Submission No. 54, p. 3.

59 Recruitment and Consulting Services Association, Submission No. 20, p. 5.

‘Yes.’ “We’ll ring you later.” That is the truth of the matter. People can deny that, but that is the bottom line.⁶⁰

- 8.42 In applying for jobs in Western Australia, applicants have to disclose whether they have had a workers’ compensation claim. The injured worker has to carry the stigma for the rest of their life.⁶¹ If you lie on the form to get a job, the injured worker knows that they will never be able to claim workers’ compensation if they are injured again.⁶²
- 8.43 The Recruitment and Consulting Services Association argued that while they do not want that person untouchable or disadvantaged, they would also not want to put them into a position where another level of problems occurs. A national database would enable this to be recognised and ensure that workers are placed in the best role for them, and would assist with the redeployment of injured workers to assist rehabilitation.⁶³
- 8.44 A database could also include information on non-compliant employers, service providers and insurance agents or companies who have been prosecuted or penalised for inappropriate activities or practices.

Data sharing

- 8.45 In some jurisdictions the workers’ compensation schemes have in place legislative powers to disclose information to other statutory bodies within that jurisdiction. A number of submissions commented on the benefits of being able to data match, particularly with the Australian Taxation Office. The Department of Employment and Workplace Relations commented that:

Data matching however raises considerable privacy issues which would need to be addressed, notwithstanding the capacity of using data matching resources to assist in detecting fraud and facilitating improved workers’ compensation compliance arrangements.⁶⁴

- 8.46 Comcare currently has the legal authority to obtain information from an employer or the Australian Taxation Office when fraudulent activity is suspected, and believes that data matching could be used to advantage by

60 Mr Graham Stewart, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 97.

61 Mr Arthur Heedes, Transcript of Evidence, 12 February 2003, p. 457.

62 Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 458.

63 Ms Julie Mills, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 439; Recruitment and Consulting Services Association, Submission No. 20, p. 3.

64 Department of Employment and Workplace Relations, Submission No. 48, p. 27.

State and Commonwealth organisations, although it must be subject to appropriate controls.⁶⁵

- 8.47 It was suggested that data on the cost and incidence of fraud is lacking because of the onerous privacy laws and the lack of a subclassification system which would separate out the fraud that related to workers' compensation.⁶⁶ Dr William Marchione suggested the implementation of a 'data acquisition tool' to identify fraud before it occurs. He stressed that the system does not label or judge patient behaviour, it merely documents features of behaviour consistent with undesirable behaviour patterns which can be used to qualify and quantify medical claims. He suggested that access to the register be restricted to magistrates and police investigators.⁶⁷

Recommendation 4

The Committee recommends that the Commonwealth Government:

- **examine the need to extend the National Data Set for Compensation-based Statistics, to provide nationally relevant workers' compensation data that assists meaningful interjurisdictional comparisons for policy analysis and contributes to the development of a national framework.**
- **further investigate the implications and appropriateness of a national database on workers' compensation claims which identifies injured workers, employers, service providers and insurance companies.**
- **further investigate the implications and appropriateness of additional data matching capacity between Commonwealth agencies and the State and Territory workers' compensation authorities.**

The Committee strongly believes that confidentiality should be exercised in relation to the use of these databases.

- 8.48 Currently the Commonwealth does not collect information on the compensation history of Centrelink clients unless it impacts on the

65 Comcare, Submission No. 32, p. 23.

66 Dr William Marchione, Transcript of Evidence, 18 October 2002, p. 125.

67 Dr William Marchione, Fair Go Mate, Submission No. 58, p. 7.

individual's income support entitlements.⁶⁸ The Committee believes that this information should form part of the national database to assist in the analysis of emerging trends and the identification of best practice initiatives in workers' compensation management.

- 8.49 The Committee is concerned that injured workers who have received a lump sum payment or who have not had access to appropriate rehabilitation and retraining, or who have experienced other significant difficulties as a result of a failure of a compensation system, may be left with no alternative other than to access the Commonwealth social security system.

Recommendation 5

The Committee recommends that the Commonwealth, with the States and Territories, conduct a qualitative study of injured workers who have received a lump sum or who have been in receipt of workers' compensation benefits for twelve or more continuous months, to identify if they have subsequently accessed income support entitlements and to determine the extent to which this system is subsidising the workers' compensation industry.

Commonwealth social security benefits

- 8.50 A number of submissions refer to the transfer of costs to the taxpayer in situations where employees are willing to work but denied the opportunity. These injured workers often become the responsibility of the Commonwealth's social security system, which is seen as a de facto workers' compensation system.
- 8.51 It was strongly argued that this is very stressful for people who find themselves in this situation, and is a very unsatisfactory outcome for people who wish to lead a meaningful life through their work.

It is a wearing down process. Along with that, they have the stigma and everything else attached with having a WorkCover claim.⁶⁹

68 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 2.

69 Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, p. 411.

- 8.52 In relation to the number of injured workers receiving social security payments from the Commonwealth, Injuries Australia made the point that social security was not established to subsidise insurance companies.⁷⁰

The compensation provisions of the Social Security Law reflect the view that the primary responsibility for assisting people suffering compensable injuries rests with compensation authorities, and not with taxpayer funded social security programs. Also, that the social security system provides a safety net for those with no adequate means of support. Social Security Law incorporates provisions that seek to limit recipients' of workers' compensation access to Commonwealth income support.⁷¹

- 8.53 Cutting services to injured workers means that the necessary services are funded by the Commonwealth Government through the social welfare system.⁷² Injuries Australia stated that the Commonwealth Government subsidised insurance companies and state governments when:

Tens of thousands of ill and injured N.S.W.'s workers were unceremoniously dumped onto the federal government's health and social security systems without one minute of vocational rehabilitation and with their medical treatments cut off mid-stream.⁷³

- 8.54 It would be a major concern to Centrelink to be picking up the shortfalls in the compensation systems but Mr Guthrie argued that it may not have been of the magnitude first thought.⁷⁴ The state compensation schemes retain information on injury types and industry breakdowns:

As the Commonwealth does not hold this information it is difficult to quantify the extent of cost shifting to the Commonwealth income support system from workers' compensation authorities. Centrelink only tracks the compensation history of a client to the extent that it is needed to determine any impact on an individual's income support entitlements.⁷⁵

70 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 95.

71 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 1.

72 Injuries Australia Ltd, Submission No. 27a, p. 1. See also Mr Richard Gilley, The RiskNet Group, Transcript of Evidence, 18 October 2002, p. 136; Mr Kazimir Kowalski, Transcript of Evidence, 21 November 2002, p. 305; Mr Markham Moore-McQuillan, Transcript of Evidence, 21 November 2002, p. 290.

73 Injuries Australia Ltd, Submission No. 27a, p. 1.

74 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 192.

75 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 2.

8.55 The Minister for Family and Community Services told the Committee that 45 000 Centrelink customers per year have their social security payments affected by compensation, of which 80 per cent are workers' compensation related.⁷⁶

Of the 2.9 million working age people on income support in 2001, 214,000 have, at some stage, indicated that they have claimed compensation. These include 83,000 Disability Support Pensioners (of which 27,000 had previously been on Newstart Allowance), 64,000 Newstart Allowees and 22,000 Parenting Payment Single customers. This indicator does not necessarily mean that these people received a compensation payment.⁷⁷

8.56 Mr Robert Guthrie from Curtin University stated that there are limits on the cost shifting. In claims that are settled with a lump sum there is a preclusion period which prevents people from accessing disability support sickness benefit for the lifetime of their lump sum.⁷⁸

8.57 The Minister for Family and Community Services explained that:

People who get lump sum compensation are subject to a social security preclusion period during which time they are unable to access income support. As a rule of thumb, currently each \$31,000 of assessable compensation⁷⁹ incurs a 12 month preclusion period.⁸⁰

8.58 In 2001-02 there were 33 025 people who completed their preclusion period. Income support payments commenced for 8058 people within four

76 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 1.

77 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 2.

78 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 192.

79 Compensation is defined in the Social Security Act as a payment that is made wholly or partly in respect of lost earnings or lost capacity to earn, resulting from personal injury, whether paid as a lump sum or periodic payments either within or outside Australia.

In cases where a person receives a lump sum payment of compensation that contains a component for lost earnings or lost capacity to earn, the Department uses a formula to calculate the 'preclusion period' during which the person is not entitled to social security income support payments. When a matter settles by consent, the formula takes half of the gross settlement amount in determining the length of the preclusion period. The remaining half of the settlement is ignored in this calculation in recognition that a compensation recipient has other costs resulting from their injury, such as medical and legal expenses.

In cases where compensation does not include any component for lost earnings or lost capacity to earn, they are not treated as "compensation", but more generally, as ordinary income.

80 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 1.

months of the preclusion period ending.⁸¹ Many more may have commenced income support after that four months.

Of the 8,058 people who accessed income support within four months of their preclusion period ending in 2001/02, a total of 1,596 commenced on Disability Support Pension while 3,937 commenced on Newstart Allowance. The remaining 2,525 were split among a range of payment types in much smaller numbers.⁸²

- 8.59 In some circumstances injured workers may be able to access assistance from the Commonwealth when they are awaiting the settlement of a claim, or who mismanage a settlement under common law or if the scheme caps the time and amount of compensation.⁸³ The claimants may be required to repay a large amount of settlement to Centrelink when the claim is settled.⁸⁴

The Compensation recovery provisions in Social Security Law which enable Centrelink to recover social security benefits paid to injured workers from any subsequent compensation payment are very effective. As at 31 December 2002, Centrelink had recovered 92.2% of the compensation debts raised in 2001-2002.⁸⁵

- 8.60 Centrelink clients seeking assistance are not required to declare whether the injury or disease is work related:⁸⁶

workers compensation systems over the last decade have cut down in terms of how long people are able to access workers compensation payments, ceasing payment in many cases at the end of two years, there are people who, despite the fact that they may not be able to work full time, actually go out of the workers compensation system and often go onto sickness benefit, so there is actually a cost transfer of people from the insurance system onto a Commonwealth benefits system.⁸⁷

81 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 1.

82 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 2.

83 Mr Tom Kenna, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 21.

84 Name not released, Submission No. 1, p. 1.

85 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 2.

86 Department of Employment and Workplace Relations, Submission No. 48, p. 25.

87 Dr Deborah Vallance, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 375.

- 8.61 The Insurance Australia Group believes that there needs to be national uniformity in relation to the interfaces between workers' compensation and health and social welfare, so that these are clearly known, understood and designed. The extent to which states rely on the social security and public health systems must be defined in the benefit structure of each of the States and Territories.⁸⁸
- 8.62 The Risknet Group suggested that one of the factors that should be considered in determining the cost of workers' compensation systems is the cost shifting to the Commonwealth Social Security scheme.⁸⁹
- These workers ultimately get thrown on the social security scrap heap, and the federal government foots the bill.⁹⁰
- 8.63 The Insurance Australia Group believes that there needs to be national uniformity in relation to the interfaces between workers' compensation and health and social welfare so that these are clearly understood and appropriately designed.⁹¹ One of the issues the Productivity Commission is expected to consider is the extent to which the Commonwealth social security system has become a de facto workers' compensation scheme.⁹²

Recommendation 6

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to develop a set of benchmarks and best practice for all aspects of workers' compensation, to ensure that the responsibility for assisting people suffering compensable injuries rests with the compensation authorities and not with taxpayer funded social security programs or the burden placed on the injured worker.

88 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, pp. 79-80.

89 The Risknet Group, Submission No. 10, p.4.

90 Mr Kazimir Kowalski, Transcript of Evidence, 21 November 2002, p. 305.

91 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 79.

92 Mr Tom Kenna, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 21.

Taxation legislation

- 8.64 There are issues that need to be resolved in relation to the relationship between Commonwealth and state systems. For example, Queensland has introduced structured settlements so that injured workers can take up an annuity by agreement when they receive a common law payout. However, the Committee was told that:

The difficulty at the moment is that, under the federal tax laws, there is no capacity for that to be treated in the same way as I understand other sorts of payouts are - in terms of public liability and so on. So people do have to pay tax in that instance.⁹³

- 8.65 The Heads of Workplace Safety and Compensation Authorities is currently examining the implications of the Commonwealth's taxation reforms on aspects of workers' compensation schemes. One particular aspect that the Committee believes requires urgent attention is the impact on structured settlements for injured workers.

Recommendation 7

The Committee recommends that the Commonwealth Government urgently investigate the extent to which current taxation legislation is inhibiting initiatives of workers' compensation schemes which may benefit the injured workers, such as structured settlements.

Health services

- 8.66 If there were a national system, the Council of Small Business Organisations of Australia would like to see minor injuries treated by the employee's doctor or local hospital, without processing this as a workers' compensation claim which would increase the cost. It was suggested that the insurer would be notified to protect the employee in case later complications of a more serious nature developed.⁹⁴
- 8.67 There is a widely held view that the majority of medical support is professional and appropriate. However, at the margins there is evidence that some doctors feel pressured into signing workers' compensation

93 Mr Paul Goldsbrough, Queensland Department of Industrial Relations, Transcript of Evidence, 22 November 2002, p. 322.

94 Council of Small Business Organisations of Australia Ltd, Submission No. 49, p. 3.

certificates while at the other extreme some medical panels can be unduly harsh and confusing for claimants, effectively delaying rehabilitation and return to work and contributing to “acquired disability”.

Recommendation 8

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers’ Council to develop a process for identification and national implementation of best practice to consider initiatives such as the Queensland Government’s approach of educating and maintaining a close relationship with doctors and requiring them to fill out a form declaring that the injury is work related.

- 8.68 Under the *Health and Other Services (Compensation) Act 1995* Medicare benefits and residential aged care subsidies are recoverable where the expenses are related to compensation arrangements. In settlements under \$5000, Medicare does not require notification as these are not cost efficient to recover.⁹⁵

The extent to which the Medicare system is utilised for workplace injuries by persons that do not enter the workers’ compensation system is unknown.⁹⁶

- 8.69 The establishment of a national database would facilitate the identification of those on workers’ compensation and enable the monitoring of Medicare for the treatment of workplace injuries.

95 Department of Employment and Workplace Relations, Submission No. 48, p. 25.

96 Department of Employment and Workplace Relations, Submission No. 48, p. 25.

Recommendation 9

The Committee recommends that the Commonwealth Government determine the extent to which the medical expenses of injured workers are being met by Medicare and the extent to which this system is subsidising the workers' compensation industry.

Plaintiff lawyers

8.70 The advice offered by lawyers may not always be in the best interests of the client in terms of the goal of achieving a timely return to work. It was alleged that lawyers allowed claims to drag on for years, and that there was systematic collusion.⁹⁷ The National Meat Association of Australia alleged that:

lawyers are the major reason for deficiencies in the operations of the spirit of the schemes, especially in escalating and inhibiting rehabilitation.⁹⁸

8.71 It was suggested that legal action is encouraged even if a claim is unlikely to succeed, on the presumption that the matter will be settled out of court.⁹⁹ It was also suggested that some solicitors encourage their clients to keep their options open by not returning to work and maintaining a level of disability.¹⁰⁰ The Australian Industry Group commented that there are inadequate checks and balances between those two conflicting principles.¹⁰¹

8.72 The APLA argued that lawyers filter claims and that in the no-win no-fee policy lawyers will not risk their fees if cases are not likely to win.¹⁰² The NMAA believes that lawyers know that WorkCover will settle out of court and that therefore a lawyer may be prepared to proceed with a fraudulent

97 Name not released, Submission No. 1, p. 1; Workers' Compensation Support Network, Submission No. 5, p. 1; Mr Markham Moore-McQuillan, Transcript of Evidence, 21 November 2002, p. 292; See also Mr Max Tomlinson, Submission Nos. 51 and 51a.

98 National Meat Association of Australia, Submission No. 41a, p. 8.

99 The Australian Plaintiff Lawyers Association stated that they settled about 98 per cent of cases out of court. See Mr Peter Burt, Australian Plaintiff Lawyers Association, Transcript of Evidence, 26 November 2002, pp. 406-407.

100 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 335; Mr Kerry Jones, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002, p. 214.

101 Australian Industry Group, Submission No. 53, p. 12.

102 Mr Simon Garnett, Australian Plaintiff Lawyers Association, Transcript of Evidence, 26 November 2002, p. 405.

claim.¹⁰³ Mr Robert Guthrie believes that a lawyer acting ethically would be able to detect employee fraud and would advise against proceeding and that fraud is usually detected at trial.¹⁰⁴

- 8.73 The Committee received arguments for and against access to common law for injured workers. It was suggested that one of the benefits of common law is that in its absence there is no incentive to provide a safe working environment if the employee cannot sue for negligence.¹⁰⁵
- 8.74 It was argued that common law has been the greatest barrier to successful injury management or return to work. When legal advice is sought there can be a change in the injury management program from a return to work to being unfit for work.¹⁰⁶ Workers may be encouraged to act in a manner which would maximise a possible lump sum payment because of access to common law but creates an atmosphere of poor employment relations.¹⁰⁷
- 8.75 The National Meat Association of Australia would like to see some limitation on the common law approach.¹⁰⁸ Another concern is that the insurer rather than the employer is the respondent in proceedings in the court system and the employer's wishes are often overridden.¹⁰⁹
- 8.76 The Committee is concerned that in some situations injured workers come to believe that there is no advantage in returning to work as they believe that the lump sum will set them up for the rest of their life. Injuries Australia pointed out that in some cases settlements may be the appropriate option, particularly in very severe cases where people need to be looked after.¹¹⁰
- 8.77 It was argued that money compensation is about compensating people for their loss and not about fixing the problem, while compensation schemes are moving towards early intervention and return to work and a normal

103 Mr Ross Wotherspoon, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 162.

104 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 189.

105 O'Halloran & Associates, Submission No. 62, p. 12.

106 Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia, Transcript of Evidence, 20 November 2002, p. 204.

107 Department of Employment and Workplace Relations, Submission No. 48, p. 21.

108 Mr Garry Johnston, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 148.

109 National Meat Association of Australia, Submission No. 41, p. 27.

110 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 98.

life.¹¹¹ Workers' compensation schemes are about looking after the health of people and the money is just another tool for getting the job done.¹¹²

- 8.78 The Committee is concerned that injured workers continue to focus on lump sum payments and do not appreciate that this may result in them being on the disability support pension, if they are eligible, for the rest of their life. Injured workers are motivated by the lump sum in the absence of an alternative as they cannot access other options until they get into the Commonwealth system.¹¹³ More longitudinal monitoring of return to work outcomes is needed.

Recommendation 10

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to implement a process whereby the relevant agencies or authorities in each jurisdiction forward educational material to the injured worker on the various options available and the possible associated pitfalls, and offer financial counselling and support through Centrelink with the view to ensuring a timely return to work where possible.

Cost shifting to others

- 8.79 Mr Guthrie stated that in relation to costshifting, employers are paying wages outside the compensation system because of agreements with unions, or they decide to continue paying full rates which are subsidising the compensation system.¹¹⁴

That suggests that, firstly, the compensation system is not doing it properly or, secondly, there is some other better employment practice that makes employers do it.¹¹⁵

- 8.80 Journey insurance cover, which used to be covered by the employer, has now been shifted to the individual worker in some situations.¹¹⁶

111 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 77.

112 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 90.

113 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 335.

114 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 192.

115 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 192.

Occupational health and safety

- 8.81 DEWR pointed out that the legislative provisions covering rehabilitation and return to work vary, and that there is a fragmented approach to the management of occupational health and safety in different jurisdictions.¹¹⁷ The Department has been seeking national consistency in workers' compensation and OHS, as they are linked.¹¹⁸
- 8.82 Employers find compliance with the range of OHS legislation confusing and costly. This issue is compounded for employers and employees who work in more than one jurisdiction.¹¹⁹ In 1995 the Industry Commission found over 150 statutes which regulate health and safety at work across Australia. Efforts have been made to reduce the complexity but there is still significant work to be completed.¹²⁰
- 8.83 The Master Cleaners Guild of Western Australia believes that the real issue in employer compliance is one of successful management systems, and has developed an industry wide approach to OHS:
- The Guild therefore advocates the broader adoption of this approach, that is, industry focused developments avoiding the duplication in resource allocation that is evident within and between States, that all too frequently appear to want to reinvent the wheel. It is apparent therefore that industry lead initiatives need to be facilitated through some central control point to produce generic system guidelines that can then be customised to individual user requirements.¹²¹
- 8.84 On a national level these concerns have been identified, and commitments by all jurisdictions have been made to reduce workplace injury and illness. As the National Occupational Health and Safety Strategy for 2002 – 2012 highlights, there is an unacceptable level of workplace injury and fatality. In response the Workplace Relations Ministers' Council has committed to five national priorities of:
- reducing high incidence/severity risks;

116 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 192.

117 Department of Employment and Workplace Relations, Submission No. 48, p. 6.

118 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, pp. 17-18.

119 Mr Rex Hoy, DEWR, Transcript of Evidence, 25 September 2002, pp. 14-15.

120 Industry Commission, *Work, Health and Safety*, 1995, p. xxiv; Mr Tom Kenna, Department of Employment and Workplace Relations, paper presented at Workerscomp 2003, National Workers' Compensation Summit, 17 February 2003, p. 12.

121 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 5.

- developing the capacity of business operators and workers to manage OHS effectively;
 - preventing occupational disease more effectively;
 - eliminating hazards at the design stage; and
 - strengthening the capacity of government to influence OHS outcomes.
- 8.85 In addition, there are nine areas of national action to reduce the incidence of workplace injury and fatalities. The nine areas are:
- comprehensive OHS data collection;
 - a coordinated research effort;
 - a nationally consistent regulatory framework;
 - strategic enforcement;
 - effective incentives;
 - compliance support;
 - practical guidance;
 - OHS awareness; and
 - development of OHS skill.¹²²
- 8.86 The Committee commends these initiatives and looks forward to seeing the results of this cooperative approach.

Rehabilitation and return to work

- 8.87 Similarly, there would be advantages to the implementation of nationally consistent rehabilitation and return to work practices. The decreasing return to work rate needs to be addressed and strategies to reverse this decline need to be identified.
- 8.88 The Victorian Council of Occupational Rehabilitation Providers advocated a nationally consistent measurement of occupational rehabilitation outcomes to identify where best practice is occurring. This would spread the learning across all schemes and provide a challenge to improve against benchmarks. In addition, a set of national occupational rehabilitation standards would ensure that quality occupational rehabilitation services are being delivered nationally. This would also assist in reducing barriers to state participation by successful companies adopting a consistent standard.¹²³ As one example, the National Meat Association of Australia

122 National Occupational Health & Safety Commission, *National OHS Strategy 2002 – 2012*, 2002, pp. 10-12.

123 Ms Jane Barnett, Victorian Council of Occupational Rehabilitation Providers, Transcript of Evidence, 26 November 2002, p. 393.

supports mandatory rehabilitation and return to work schemes that are consistent throughout Australia.¹²⁴

- 8.89 The NOHSC has developed guidance notes for best practice rehabilitation management of occupational injuries and disease.¹²⁵ However, no evidence was received by the Committee to determine the extent to which these have been adopted or their effectiveness in industry.
- 8.90 Similarly, the national approach that has been taken to address OHS concerns needs to drive change in rehabilitation and return to work as part of the overall workers' compensation system.

Recommendation 11

The Committee recommends that the Commonwealth Government, in collaboration with the States and Territories, develop a program to implement the National Occupational Health and Safety Commission *Guidance notes for best practice rehabilitation management of occupational injuries and disease* nationally.

- 8.91 Another issue of concern was the extent to which there is vertical integration in situations where insurance companies own and operate rehabilitation and return to work providers. MAXNetwork commented that some companies are committed to delivering the best services and reducing the costs of claims, and are concerned about retribution from WorkCover if their performance is inadequate.¹²⁶
- 8.92 Mr Stokes added that a close relationship needed to be developed between the stakeholders even if these services were not provided in house.¹²⁷
- 8.93 There is frequently a dilemma between expediently processing the worker's compensation claim in financial terms for the insurer and ensuring the best possible long-term outcome for the injured worker.¹²⁸ It was also suggested that claims staff at insurers are often inexperienced and have enormous case loads. In Victoria they are supposed to have about

124 Mr Garry Johnston, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 148.

125 National Occupational Health & Safety Commission, *Guidance notes for best practice rehabilitation management of occupational injuries and disease*, (NOHSC: 3021 (1995)).

126 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2003, p. 334.

127 Mr Paul Stokes, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2003, p. 334.

128 Dr Christine Roberts-Yates, *The dilemma of the case manager in workers' compensation*, *Exhibit No. 80*; See also Queensland Government, Submission No. 30, p. 9.

eighty cases but average about 120. They are lucky to get through the processing let alone manage the claim. The Australian Rehabilitation Providers Association suggested that insurers should be encouraged to increase their in-house occupational rehabilitation expertise to better manage claims.¹²⁹

- 8.94 The Committee is therefore concerned that in situations where insurance companies operate rehabilitation services that there is inadequate accountability.

Recommendation 12

The Committee recommends that the Minister for Employment and Workplace Relations work through the Workplace Relations Ministers' Council to eliminate vertical integration whereby insurance companies own and operate rehabilitation and return to work providers.

- 8.95 The Recruitment and Consulting Services Association suggested that returning injured people to work could be better managed through a larger plan, and that the Commonwealth has available the Job Network program and Jobsearch database.¹³⁰ The Australian Rehabilitation Providers Association advocates the development of a national scheme to assist redeployment of injured workers with limited premium protection for the new employer.¹³¹

129 Australia Rehabilitation Providers Association, Submission No. 17, p. 7.

130 Ms Julie Mills and Mr Charles Cameron, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 429.

131 Australian Rehabilitation Providers Association, Submission No. 17, p. 7. See also Ms Julie Mills, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 428.

Recommendation 13

The Committee recommends that the Commonwealth Government, in collaboration with the States and Territories, investigate the potential interface of Commonwealth employment schemes with State re-employment programs to develop more effective ways to assist injured workers to return to work, including communication of this information to providers who are responsible for return to work programs, without additional cost to the Commonwealth.

Concluding comments

- 8.96 There are a number of current and previous reviews which overlap the issues outlined in the terms of reference for this inquiry. The Industry Commission conducted major reviews in 1994 and 1995. Each of the jurisdictions has recently conducted or is currently undertaking reviews of various aspects of workers' compensation and/or occupational health and safety. The Insurance Australia Group referred to the thirty different reviews of the insurance industry or insurance schemes currently being undertaken in Australia.¹³² The Productivity Commission will be looking at streamlining various aspects of workers' compensation arrangements.
- 8.97 Accordingly, the Committee believes that it may be timely for the States, Territories and the Commonwealth to jointly consider the feasibility, benefits and disadvantages of greater national consistency in workers' compensation arrangements.
- 8.98 While the Committee believes that the primary responsibility for workers' compensation and occupational health and safety should stay within the respective Commonwealth, State and Territory jurisdictions, there is significant capacity for increased national consistency and cooperation.
- 8.99 There is a need to ensure that injured workers are not falling through the gaps when they are working in more than one jurisdiction or that the employer should not have to obtain cover for a particular worker in a number of jurisdictions. There would be considerable benefit in greater harmonisation and administrative and operational consistency for employers operating in more than one jurisdiction.
- 8.100 There is also a need to develop an agreed position on a number of definitions, particularly that of employee, as there are a number of

132 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 70.

'workers' not covered by a workers' compensation scheme, who may not have taken out an alternative forms of insurance. There is the potential for the cost relating to an injury to fall on the Commonwealth social security system or the state's secondary funds.

Recommendation 14

The Committee recommends that the Commonwealth Government support and facilitate where possible the development of a national framework to achieve greater national consistency in all aspects of the operation of workers' compensation schemes.

- 8.101 The Committee believes that streamlining the workers' compensation system has the potential to have a much greater financial impact than allocating significant additional resources to the detection of fraud. Much of the perceived fraud is related to incompetence and inefficiencies within the existing schemes and participants in the process. If the system operated more effectively and efficiently, with greater accountabilities, then this would also largely eliminate any fraudulent behaviour.
- 8.102 It is generally accepted that in most situations the level of employee fraud is minimal. The Committee believes that caution should be exercised and that the money spent attempting to detect and eliminate fraud must have some relevance to the level of fraud and the impact on premium levels for employers. With the current system in place, in many instances, resources would be better allocated to preventive activities.
- 8.103 An important aspect of workers' compensation is that culture and custom and practice can have a significant impact on the economic and non-economic costs of claims. While there needs to be greater consistency in legislative outcomes for the workers' compensation schemes nationally, many of the problems arise from the administration, practices and the attitudes of some employers, service providers, insurers and workers' compensation schemes. The accountability of each of the sectors of the workers' compensation system needs to be enhanced to address the inefficiencies and lack of appropriateness and effectiveness of the practices.
- 8.104 The qualitative aspects as well as the quantitative aspects must be appropriately dealt with in achieving an equitable balance.

- 8.105 The Committee is particularly concerned with the level of suicides among injured workers. This aspect is worthy of attention in all workers' compensation schemes.
- 8.106 In relation to injured workers, of particular concern are the return to meaningful employment, the support required for those who need major changes to their careers, and the need for explanation of the benefits of appropriate alternative options to a lump sum payment for those unable to return to work.
- 8.107 The need for early rehabilitation and for encouraging early return to work cannot be underestimated in terms of personal and financial costs. There are opportunities for greater accountability of service providers. A move to evidence based medicine and exception based reporting will address many of these issues. As the focus moves more to outcomes and a quicker return to work for the injured worker, these costs will be reduced.
- 8.108 The extent to which workers' compensation schemes are able to simplify their procedures and provide an adequate explanation of these to the injured employees and their employers will determine the extent to which the perceptions of fraud on their part can be reduced. Greater national consistency may also assist this process.
- 8.109 This in turn should ensure a significant reduction in the involvement of the legal profession. The extent to which this could have a significant impact on injured workers and employers would not come within the regulatory practices of the insurers and the workers' compensation schemes. It is therefore even more difficult to identify and eliminate.
- 8.110 Of concern to the Committee were the reports of inefficient, unethical and inappropriate actions by investigators who are engaged to monitor an injured worker's behaviour. This is one area that should be relatively easily addressed and the Committee urges all jurisdictions to look at activities in this area.

Recommendation 15

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to develop, in consultation with other relevant Ministers in each jurisdiction, a national code of practice for those engaged as investigators in pursuing potentially fraudulent claims.

- 8.111 Greater communication and cooperation between the participants is essential. A greater focus on partnerships involving all participants will result in a better alignment of expectations. Without this cooperation there is a significant cost to the community through injured workers not attaining their maximum potential rehabilitation and not receiving optimum management of their disability, and through employers paying higher levies, penalties and premiums, and coping with workplace disruptions.
- 8.112 What is also evident to the Committee is that there is a great deal of knowledge and expertise in relation to what is best practice in every aspect of the workers' compensation industry. The Committee believes that greater cooperation and liaison between the various partners would enable a number of improvements to workers' compensation, which could result in a simpler, more efficient and effective rehabilitation of injured workers, and at the same time reduce or eliminate fraudulent activities and the associated costs.

De-Anne Kelly
Committee Chair