
The 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

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Canberra

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Foreword

Workers' compensation schemes should aim to provide workers with a meaningful and sustainable outcome following a workplace injury. The best long term prospects for an injured worker lie in a safe and timely return to work with reasonable compensation for medical costs, work time lost and for non-economic loss in the event of injury. Early intervention through rehabilitation and retraining as required is the best approach to achieve a return to work appropriate to the capability of the injured worker.

Workers' compensation schemes should foster a safer working environment with effective prevention strategies to reduce and, to the extent possible, eliminate injuries. When things do go wrong, there needs to be a total injury management approach to workers' compensation including prevention, compensation and rehabilitation.

Schemes should provide compensation at a reasonable cost through active claims management and should achieve a balance between the level of premiums paid by employers and the appropriate, adequate, fair and equitable benefits that are available to the injured workers. This should not need to be supplemented by the Australian taxpayers.

While there is currently an air of reform to workers' compensation and a genuine effort to improve processes, there is still a long way to go. This inquiry found that there is a tendency to attribute fraudulent activities to other sectors of the workers' compensation industry. In no area was there sufficient data to enable the accurate determination of the level of fraud. A strong message for all was that there are problems in each sector and everyone can contribute to the reduction and elimination of fraudulent behaviour in workers' compensation.

Of particular concern is the plight of those injured workers who were led to believe that a lump sum outcome would set them up for life. Injured workers should be supported and encouraged to return to work and compensated for their loss after this, or in those cases where the injury is of such severity that re-employment is not an option in their circumstances.

I would like to thank the many individuals and organisation who contributed to this inquiry and the resulting report. All contributions have assisted in painting the bigger picture.

I would like to acknowledge those who tirelessly work to improve the outcomes for the injured workers and their families who are faced with enormous changes to their lives. This includes the families and friends, those in injured worker support associations, employers who provide safer workplaces and deal well with existing claims, service providers and workers' compensation schemes who provide good service. This includes all those who attempt to eliminate fraud to ensure that those with genuine injuries receive the maximum benefits.

De-Anne Kelly MP
Chair



Membership of the Committee

Chair Mrs De-Anne Kelly MP

Deputy Chair Hon Arch Bevis MP

Members Mr Phillip Barresi MP (until 26/09/02)

Mr Peter Dutton MP

Ms Jill Hall MP

Mr Luke Hartsuyker MP

Mr Jim Lloyd MP (from 26/9/02)

Ms Sophie Panopoulos MP

Mr Don Randall MP (from 19/8/02)

Mr Alby Schultz MP (until 19/8/02)

Ms Maria Vamvakinou MP

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Terms of reference

On 20 June 2002 the Minister for Employment and Workplace Relations asked the Committee to inquire into and report on matters that are relevant and incidental to Australian workers' compensation schemes in respect of:

- the incidence and costs of fraudulent claims and fraudulent conduct by employees and employers and any structural factors that may encourage such behaviour;
- the methods used and costs incurred by workers' compensation schemes to detect and eliminate:
 - (a) fraudulent claims; and
 - (b) the failure of employers to pay the required workers' compensation premiums or otherwise fail to comply with their obligations; and
- factors that lead to different safety records and claims profiles from industry to industry, and the adequacy, appropriateness and practicability of rehabilitation programs and their benefits.



List of abbreviations

ABS	Australian Bureau of Statistics
AIG	Australian Industry Group
AMA	Australian Medical Association
AMWU	Australian Manufacturing Workers' Union
ANF	Australian Nursing Federation
ARIMA	Association of Risk and Insurance Managers of Australasia
ARPA	Australian Rehabilitation Providers Association
CCI	Chamber of Commerce and Industry Western Australia
CFMEU	Construction, Forestry, Mining and Energy Union
CPM	Comparative Performance Monitoring
CPSU	Community and Public Service Union
DEWR	Department of Employment and Workplace Relations
GP	General Practitioner
GST	Goods and Services Tax
HWCA	Heads of Workers Compensation Authorities
IAG	Insurance Australia Group
IPASA	Injured Persons Action and Support Association
MCGWA	Master Cleaners Guild of Western Australia Inc

NFF	National Farmers' Federation
NMAA	National Meat Association of Australia
NOHSC	National Occupational Health and Safety Commission
OHS	Occupational Health and Safety
OOS	Occupational Overuse Syndrome
OR	Occupational Rehabilitation
Q-COMP	The Workers' Compensation Regulatory Service of Queensland
RDO	Rostered day off
RCSA	Recruitment and Consulting Services Association
RSI	Repetitive Strain Injury
RTW	Return to work
VACC	Victorian Automobile Chamber of Commerce
VTHC	Victorian Trades Hall Council
VWA	Victorian WorkCover Authority
WIC	WorkCover Industry Classification
WMC	Workers' Medical Centre



List of recommendations

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. (Paragraph 8.19)

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. (Paragraph 8.29)

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. (Paragraph 8.35)

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. (Paragraph 8.47)

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. (Paragraph 8.49)

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. (Paragraph 8.63)

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. (Paragraph 8.65)

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. (Paragraph 8.67)

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. (Paragraph 8.69)

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. (Paragraph 8.78)

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. (Paragraph 8.90)

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. (Paragraph 8.94)

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. (Paragraph 8.95)

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. (Paragraph 8.100)

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. (Paragraph 8.110)



Executive summary

Introduction

Workers' compensation schemes should aim to provide workers with a meaningful and sustainable outcome following a workplace injury. This is best achieved by a return to work appropriate to the worker's capability and supported by rehabilitation and retraining as required.

While compensation has been and is the main intent of schemes, the best long term prospects for an injured worker lie in a safe and timely return to work with reasonable compensation for medical costs, work time lost and for non-economic loss in the event of injury.

Workers' compensation schemes should foster a safer working environment with effective prevention strategies to reduce and, to the extent possible, eliminate injuries. A total injury management approach to workers' compensation includes prevention, compensation and rehabilitation. The scheme should provide compensation at a reasonable cost through active claims management.

The Committee's inquiry

The Committee's inquiry was timely as there are substantial human and economic costs of work-related injuries, premiums for employers have increased notwithstanding a reported drop in injury rates, and there is a changing labour market. There are also suggestions that fraudulent activities within the industry may contribute to the cost. The Committee was also asked to inquire into the safety records and claims profiles of different industries and the adequacy and appropriateness of rehabilitation programs.

It is important that the coverage and benefits available to injured workers in Australia should not differ significantly depending on the State or Territory in which the injury occurs. Inconsistencies can result in an inability to make meaningful comparisons of data collected in the various jurisdictions, which hinders policy analysis and the identification of emerging trends and best practice.

Fraud

The assessment of what constitutes fraud and fraudulent behaviour is subjective, and differs across the various participants involved in workers' compensation. In a highly adversarial and litigious industry, incompetence, mismanagement and inefficiencies may be all perceived by other participants as deliberate fraud.

At a time when injured workers are at their most vulnerable they are suddenly confronted with a complex, often bureaucratic, system with delays that they do not understand. Better explanations of injured workers' rights and the compensation process would significantly assist workers in a stressful process. The claimants' perceptions of fraudulent behaviour may reflect their frustration and inability to negotiate their way through this complex, unfamiliar and bureaucratic process.

A number of jurisdictions now have significant strategies to identify and eliminate employer non-compliance in relation to the failure to pay the correct premiums. There is, however, a perception among injured workers that employer fraud is not frequently or adequately penalised.

In relation to service providers, as the various workers' compensation schemes move to implement evidence based medicine and exception based reporting, and other strategies to increase the accountability of service providers, the problems identified should become significantly less prevalent.

Cost of fraudulent claims

The incidence and cost of fraud or fraudulent behaviour by employees, employers, service providers, lawyers, insurance companies and workers' compensation schemes is difficult to quantify. While it was argued that there is some fraud in all of these sectors, perceptions of the frequency and quantity of fraud within the system can reflect an individual's experiences and roles within the industry rather than an analysis of data. The Committee could not quantify the significance or otherwise of fraud within any sector without sound data, which is presently not available. While fraud may not be common, when it does happen in workers' compensation schemes it does have costs and it is very expensive.

It is clear to the Committee that there are opportunities for improvement in relation to the practices of all sectors: employees, employers, service providers, lawyers 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 non-alignment of expectations of the various participants. In all sectors there is misinterpretation, misunderstanding and a lack of understanding of the process.

The workers' compensation industry over the next decade is faced with a number of challenges in relation to changing work arrangements, the aging 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.

Employee fraud

The level of employee fraud is generally considered to be low, although it is difficult to quantify. Fraud by exaggeration is more prevalent than deliberate initiation of a claim to commit fraud. Some participants in the inquiry argued that there are significant levels of employee fraud although very few figures are available. The inadequacy of available data is a significant issue. The Committee believes that the level of fraud cannot be estimated without accurate information on:

- the number of claims withdrawn or closed by the claimant or the insurer when evidence showed the claim to be fraudulent;
- instances when the matter was not pursued because of the small amount of money involved; or
- instances when another penalty such as a fine was imposed or the money repaid.

There are potentially greater savings from actions such as ceasing benefits, penalties and recovery of money, rather than from prosecutions.

The Committee noted a general perception that injured workers are automatically suspected of fraud. The adversarial system is damaging to claimants who have to endure attacks on their integrity and the reality of the injury, intimidation, pressure and a lack of control over many aspects of their lives. The adversarial system can mean that the injured worker is 'effectively doubly injured'.

It was suggested that individuals may undertake fraudulent activities in response to a lack of more appropriate support and direction. It may be more cost effective and efficient to provide these cases with greater support rather than engage in significant efforts in attempting to prove that the behaviour is fraudulent.

The majority of injured workers are committed to an early and successful return to work. 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 why over 50 per cent of employees who report having a workplace injury or illness do not lodge a claim for workers' compensation. Injured workers have to fight continually for their basic legislated rights, and may be faced with a life of misery through continued poor health, no rehabilitation and no money.

Employer fraud

While there are now significant compliance investigation strategies in place to detect employer non-compliance, there is a perception among some injured workers that employers are not penalised for non-compliance.

Service providers

The lack of checks and balances on rehabilitation providers means that there may be over-servicing by provider organisations. There are also insufficient financial incentives for employees to rehabilitate to the level where they can either reduce or cease treatment. There is a tendency to accept rehabilitation treatment as a substitute for a return to work, and some employees seem to perceive that rehabilitation is as an end in itself.

Workers' compensation schemes

The Committee heard a number of allegations about fraud in workers' compensation schemes. 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.

Need for change

It is clear to the Committee that there are 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.

There are already processes for the detection of employee fraud. 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.

Need for national consistency

The need for greater national consistency in the operation of workers' compensation schemes was frequently raised in the evidence to the inquiry. There are currently ten different schemes operating in Australia for nine million employees. This complexity places a burden on the community which is an unnecessary drain on the economy.

A 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. The implementation of a national framework need not seek to have the States refer their powers to the Commonwealth. The primary responsibility should remain with the States and Territories. A nationally consistent approach does not mean a national workers' compensation scheme.

Administrative costs for the existing schemes are currently more than sixteen per cent of the premiums collected, and there are additional costs for employers and injured workers. A simpler approach, greater consistency, clarification of a number of issues and greater communication between the participants may address many of the issues.

The failure of workers or employers to meet their responsibilities in this area may result in substantial costs to the community. The Committee is concerned that the assumption that workers under some contract arrangements have private insurance has not been tested. 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 (*Recommendation 1*).

The Committee 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. There is also duplication in the system at the Commonwealth and State levels in terms of developing initiatives, which could be addressed by greater cooperation and awareness of activities in other jurisdictions.

WorkCover Industry Code system

There were suggestions for improvements in the industry codes and greater interjurisdictional consistency. 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 (*Recommendation 2*).

Inter-jurisdictional issues

Some states have Memoranda of Understanding to ensure that employees injured in another jurisdiction are not left without cover. 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 (*Recommendation 3*).

National database

Currently there is little consistency in the format or the data collected, which makes 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. Improved data recording would also enable industry trends in terms of health and safety and workers' compensation management to be tracked.

Repeat offenders

There was also some support for a centralised database on fraud as there is no way of identifying repeat offenders. Further, it was suggested that an effective reporting process would also 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. Access to Health Insurance Commission records could assist in looking at the work relatedness of an illness.

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.

It was argued that a national database would ensure that injured workers are placed in the best role for them. Such a database would assist with the redeployment of injured workers to assist rehabilitation and would ensure that they were not put into a position where another level of problems occurs. The Committee is also concerned that a national database would create a subclass of untouchable injured employees who would not be able to find employment again.

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

In some jurisdictions the workers' compensation schemes have in place legislative powers to disclose information to other statutory bodies within that jurisdiction.

However, data matching raises considerable privacy issues which would need to be addressed. 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 (*Recommendation 4*).

Currently the Commonwealth does not collect information on the compensation history of Centrelink clients unless it impacts on the individual's income support entitlements. 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. 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 (*Recommendation 5*).

Commonwealth social security benefits

A number of submissions refer to the transfer of costs to the taxpayer in situations where employees are willing to work but are denied the opportunity. 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. Social security was not established to subsidise insurance companies.

It was suggested 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 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 (*Recommendation 6*).

Taxation legislation

There are issues that need to be resolved in relation to the crossover between Commonwealth and State legislative systems. The Heads of Workplace Safety and Compensation Authorities is currently examining the implications of the Federal Government's taxation reforms on aspects of workers' compensation schemes. 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 (*Recommendation 7*).

Health services

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.

It 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 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". 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 (*Recommendation 8*).

The extent to which the Medicare system is utilised for workplace injuries by those who do not enter the workers' compensation system is unknown. 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. 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 (*Recommendation 9*).

Plaintiff lawyers

The advice offered by lawyers may not always be in the best interests of the clients in terms of the goal of achieving a timely return to work. Some solicitors may encourage clients to keep their options open by not returning to work and maintaining a level of disability. It was alleged that some lawyers allowed claims to drag on for years, and that there was systematic collusion.

The Committee received arguments for and against access to common law for injured workers. It was suggested that legal action was encouraged even if a claim was unlikely to succeed, on the presumption that the matter would be settled out of court. However, it was argued 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.

On the other hand, it was argued that common law has been the greatest barrier to successful injury management or return to work. Workers may be encouraged to act in a manner which would maximise a possible lump sum payment because of access to common law. It was suggested that there be some limitation on the common law approach.

The Committee is concerned that while in some cases settlements may be the appropriate option, in other 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.

Monetary 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 life. Workers' compensation schemes are designed to look after the health of people and money is just another tool for getting the job done.

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 (*Recommendation 10*).

Occupational health and safety

The legislative provisions covering rehabilitation and return to work, and the approaches to the management of occupational health and safety, vary in different jurisdictions. 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 done.

The National Occupational Health and Safety Strategy for 2002 – 2012 highlights the unacceptable level of workplace injury and fatality. The Workplace Relations Ministers' Council has committed to five national priorities and nine areas for national action. The Committee commends these initiatives and looks forward to seeing the results of this cooperative approach.

Rehabilitation and return to work

Similarly, there would be advantages in the implementation of nationally consistent rehabilitation and return to work practices, and measurement of occupational rehabilitation outcomes to identify where best practice is occurring. A set of national occupational rehabilitation standards would ensure that quality occupational rehabilitation services are being delivered nationally. The NOHSC has developed guidance notes for best practice rehabilitation management of occupational injuries and disease. 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 (*Recommendation 11*).

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. There is frequently a dilemma between the financial incentive for the insurer to process the worker's compensation claim expediently and ensuring the best possible long-term outcome for the injured worker. There is currently inadequate accountability. 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 (*Recommendation 12*).

It was 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. 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 (*Recommendation 13*).

Concluding comments

There are a number of current and previous reviews which overlap the issues outlined in the terms of reference for this inquiry. Accordingly, the Committee believes that it may be timely for the States, Territories and the Commonwealth to consider jointly the feasibility, benefits and disadvantages of greater national consistency in workers' compensation arrangements. 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.

There is a need to ensure that injured workers are not falling through the gaps when they are working in more than one jurisdiction and that the employer should not have to obtain cover for a particular worker in a number of jurisdictions. There would also be considerable benefit in greater administrative and operational consistency for employers operating in more than one jurisdiction.

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 '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 of an injury to fall on the Commonwealth social security system or the state's secondary funds. 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 operations of workers' compensation schemes (*Recommendation 14*).

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, this would largely eliminate any fraudulent behaviour.

It is generally accepted that in most situations the level of employee fraud is minimal. The Committee believes that caution should be exercised in the allocation of money for the detection and elimination of fraud. This allocation must have some relevance to the level of fraud and the impact of fraud on premium levels for employers. With the current system in place, in many

instances, resources would be better allocated to preventive activities and improving efficiency.

An important aspect of workers' compensation is that culture, custom and practice can have a significant impact on the economic and non-economic costs of claims. Many of the problems arise from the administration, practices and 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 and the qualitative aspects as well as the quantitative aspects must be appropriately dealt with in achieving an equitable balance.

The Committee is particularly concerned with the level of suicides among injured workers. This aspect is worthy of attention in all workers' compensation schemes.

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.

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.

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.

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 their activities in this area. 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 (*Recommendation 15*).

Greater communication and cooperation between the participants are 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.

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.

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