COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Reference: Aspects of workers' compensation

WEDNESDAY, 18 SEPTEMBER 2002

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Wednesday, 18 September 2002

Members: Mrs De-Anne Kelly *(Chair)*, Mr Barresi, Mr Bevis, Mr Dutton, Ms Hall, Mr Hartsuyker, Ms Panopoulos, Mr Randall, Ms Vamvakinou and Mr Wilkie

Members in attendance: Mr Hartsuyker, Mrs De-Anne Kelly, Ms Vamvakinou and Mr Wilkie

Terms of reference for the inquiry:

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.

WITNESSES

Committee met at 11.10 a.m.

KING, Mr Gary Thomas, Manager, Investigation Management Unit, Comcare

LEAHY, Mr Barry Anthony, Chief Executive Officer, Comcare

MacDERMOTT, Dr Kathleen Ann, General Manager, Research and Strategy Group, Comcare

MOYSE, Ms Leone Gai, General Manager, Claims, Policy and Systems Improvement, Comcare

SWAILS, Mr Noel Arthur, Deputy Chief Executive Officer, Comcare

CHAIR—Mr Leahy and your staff, thank you for joining us this morning. It is one of those days in the House, as you can see, and other committee members have a lot of pressure on their time. But the three of us are very enthusiastic. We would like to hand over to you and your people. Thank you.

Mr Leahy—Thanks. We had not planned on making an opening statement. We have a couple of things that we would like to pass over to you. In particular, the minister just recently released a leadership and accountability strategy for our scheme. As you probably noted from our submission, one of the issues that we are now starting to focus on a lot more than we have in the past is ensuring that leaders in the Commonwealth are aware of their responsibilities in occupational health and safety and workers' compensation and, importantly, in rehabilitation. So Comcare has developed a leadership and accountability strategy that has now gone out to all CEOs in the jurisdiction and all senior executive service officers in the Public Service. The response that we have had to it has been quite extraordinary. We originally printed 2,000 copies of it and we are just about printing another 10,000, so the reaction has been quite extraordinary. We could leave that with the secretariat, if you like.

CHAIR—Perhaps we could distribute them to the committee members now.

Mr Leahy—There are a couple of other comments I could make. Firstly, we did a brief scan of the other submissions from your web site. There were some comments in the CPSU submission that we thought we would comment on. We can either do that now or when you want to. If you want to ask us questions about it, I am relaxed.

CHAIR—Perhaps if you address them now.

Mr Leahy—The particular issues the CPSU raised that we wanted to comment on related to the savings that we have indicated we make through our fraud investigations. Last year we made about $3.8 million with a possible extra couple of million, depending on the outcomes of some investigations that are still ongoing. In the previous year, we saved about $8 million. Those savings are, as you would have noted from our submission, actually savings against the liabilities in the scheme. Our scheme is one that is unlike many others; it is fully funded. The way we fund our scheme is by obtaining premiums from our employing agencies. So if we had not made savings through the process of the fraud investigations, we would have had to charge

agencies for the cost. In effect, it is a real saving of $8 million for a couple of years and up to $5.8 or $6 million last year. So that is the first point.

The second point was that there were some comments the CPSU made in relation to stress-related claims. We, of course, abide by the requirements of the courts in the law. We had a major case in 1995, I think it was, in the Federal Court where basically the Federal Court determined that a stress claim should not be awarded or liability granted except in circumstances where there is actually a mental illness. So if someone puts in a claim for stress, like most jurisdictions in Australia, and there is no other supporting evidence that there is a particular mental illness, then we will not accept that claim. That is consistent with judgments in the Federal Court. So the sorts of disorders that we accept that are commonly called stress are anxiety disorders or post-stress disorder problems and so forth. They are the sorts of illnesses that we accept.

The level of stress claims in the Commonwealth has remained reasonably stable in the last five years. At the moment, they represent about 15 or 16 per cent of the claims that we actually receive. But we only accept about three per cent of them. So the acceptance rate for stress claims in the Commonwealth at the moment is around 25 per cent. However, they are very expensive because people who do get accepted for these injuries or illnesses are people who tend to take a long time off work. So they are quite expensive. They represent about 17 per cent of our costs.

I think they are the two comments I wanted to make regarding the CPSU submission. The other submission was from the Rehabilitation Association. They made a comment about Comcare practices relating to rehabilitation. Basically, they were saying that, because we do not have capacity in our legislation to settle cases, that means we occasionally push rehabilitation too far. One of the great strengths of our legislation is that it has a very strong focus on rehabilitation and return to work. The whole culture of our jurisdiction is to attempt to get people back to work. That is one reason, for example, that we do not have common law claims. So we do put a great deal of emphasis on rehabilitation. That is reflected in the results we have achieved in the annual return to work survey. We are one of the better performing jurisdictions in Australia. So the comments of the Rehabilitation Association have to be put in the context of the design of the scheme and our performance overall.

One other issue is that obviously if we get to a circumstance where an individual is clearly incapable of getting back to work because of the nature of their injury or illness then we will not pursue rehabilitation. There are some deeper issues about whether or not we should have settlement provisions in our legislation. One argument against it is that if we were able to settle then it might be possible for some cost shifting from the workers' compensation arrangements to social security arrangements. Our scheme allows for ongoing fortnightly payments until age 65 and the payment of medical expenses. People are well and truly cared for for the sort of period until they retire. If they were not, if there were a lump sum payment, then there would be a possibility of some cost shifting to the broader social security system.

I think they are all the preliminary comments we wanted to make. If you have any questions or if there is any further information that would you like us to provide you with, then we would be delighted to do so.

CHAIR—Thank you, Mr Leahy. I will turn to my committee members. Ms Vamvakinou, do you have some questions you would like to ask?

Ms VAMVAKINOU—I am particularly interested in the stress claims and the idea that you only accept stress claims that indicate a previous propensity towards a mental illness. Can you give me an idea of those who actually do not have any history before they claim stress? What is the nature of the claim? What is the stress based on, if it is not a previous condition?

Mr Leahy—The main point I was making was that, as I said, the Federal Court determined in a case called Mooi v. Comcare that only in those cases where there is a diagnosed illness can we accept claims that are broadly described as stress. So anxiety disorders and so forth we would accept. But for a general claim that comes in that says, 'I am suffering from stress,' and the treating practitioner says, 'This person is suffering from stress', unless there is a diagnosed illness that goes beyond that or there is a specific illness, we cannot accept it. That is one reason that the number of claims that we accept is quite low. Another reasons is that we test all claims for their relationship to work and, if a claim for stress is claimed to be related to work but on investigation it is discovered that it is related to personal life or something like that, then obviously we will not accept a claim then. So we are operating in a manner that is entirely consistent with the sort of dicta that are around.

My understanding is that our arrangements are not that different from those that operate in other jurisdictions. We are not seeing a significant increase in the number of stress claims. We are not seeing much of a change in the last few years in the rate of acceptance. It is around about the 20 to 30 per cent mark. There was a big peak in the early to mid-1990s, but we have worked very actively on trying to rehabilitate people and get people back to work. So we are seeing some decline in those arrangements.

Ms VAMVAKINOU—Thank you.

Mr HARTSUYKER—Stress is quite an interesting issue. We hear on the news in the case of the New South Wales police that 15 per cent of all officers are on stress leave at any particular time, or whatever the figure is. What is the interface between actual stress leave and it then becoming a compensable claim for stress under Comcare? How does that interface actually work? Take someone in a senior executive position who is under a great deal of stress. Is there in the system an ability for that person to assume a role in a lower level of stress that may not cause his condition to flare up? How does the system work on those issues?

Mr Leahy—What might be acceptable for sick leave is entirely different from what might be acceptable as a compensable condition. Sick leave, of course, is a contingent condition of service that is available when someone becomes ill for whatever reason. If a doctor signs a medical certificate that someone has stress, that is it. In our circumstances, because we have got quite a tight piece of legislation regulating the way we implement the claims management processes and because we have got court guidance, the nature of what we can accept is quite different from what an employer might accept for sick leave.

Mr HARTSUYKER—Would the normal course of events be that that person would consume all their available sick leave under a doctors certificate and then it would become a claim?

Mr Leahy—No. If the person has the view that it is a condition that is derived from work, then they should put in a claim immediately. They are entitled to put in a claim immediately. In fact, if they take leave and put in a claim and that claim is accepted, then their sick leave will be reimbursed. In terms of the arrangements for moving people who are suffering from stress, when it does not come to us, it is a matter for the management of an organisation to determine. When it comes to us, when you enter into the claims management arrangements, the implementation of a return to work strategy is basically overseen by the employer. However, best practice would have ourselves, the employee, the treating practitioner and a rehabilitation adviser all involved in that process. A best practice employer would take the advice of all of those contributors. In some cases, they might, for example, reduce the number of hours and commence a graduated return to work process in the same job or they might find alternative suitable duties. So it would depend on the individual case and it would depend on the advice that the employer is getting from Comcare, the rehabilitation adviser and the employee in particular. It is very important that the employee be involved in that process.

CHAIR—Do you share your investigative approach, particularly to fraudulent claims, with other agencies? What procedures do you adopt to achieve best practice in that?

Mr Leahy—The general strategy that we adopt is to attempt to eliminate claims which may not be meritorious at the very start of the process. So, when someone puts in a claim, we are very rigorous in the way we examine the claim and the evidence that we require from not only the individual but witnesses. We require medical certification. So we try to eliminate what might be described as fraudulent claims through a process of very rigorous examination at the front end. Claims may get through that process and get through our regular checks. We have a regular checking process in our claims management arrangements. We have computer-guided decision making systems. So our claims managers are actually operating with prompts the whole time to decisions that they are taking, based on previous cases that have come through our system and medical advice.

CHAIR—So they are sort of flags.

Mr Leahy—Yes, absolutely. So, once we get through that process, for some reason either a claims manager will say, 'Something looks a bit suspicious about this claim', or we often get individuals from outside the Commonwealth saying, 'We know this person is on a Comcare benefit but they are doing things that are inconsistent with what their illness or injury is alleged to be', then in those cases we will undertake through our investigation unit an investigation. We will start that process of investigation on the papers that we have. Those papers, as you can imagine, are quite extensive by the time you get to this sort of process.

We will then on occasions undertake surveillance. For example, if someone is receiving compensation for an injured back and we undertake surveillance which shows them lifting heavy weights and moving about freely, then in most cases we would take it to the next step. I should say that we spend about $225,000 on surveillance. I think last year we undertook 23 episodes of surveillance. The previous year it was only 22. So out of 6,500 claims, it is not a significant number. Of new, active claims each year, we have about 18,000. That is probably a better comparison. For each episode of surveillance, we would probably look at someone for up to three weeks at a cost of roughly $3,000 per week.

If the surveillance then reveals that the individual is acting in a manner which is consistent with the injury, then in 99 per cent of the cases we would just cease the investigation. If, however, the surveillance reveals that the individual is acting in a manner which is inconsistent with the illness or injury, we would then take it to the next step. The next step could involve obtaining a subpoena to look at their records to see whether they are earning money, for example, from other sources. It could involve us going to the Australian Taxation Office to examine their tax records or going to Centrelink to see whether they are obtaining some sort of benefit from Centrelink. We would go through that whole investigation process in close consultation with the Australian Federal Police. If we think we have a case, we would then take it to the Director of Public Prosecutions for prosecution, if that is the case, or we would terminate the benefit that they are receiving. That could lead to the matter being tested in the AAT. That is generally the process.

CHAIR—Thank you for that. I notice that claims for Defence Force personnel are not included in your overall records. Does that apply to the Federal Police as well?

Mr Leahy—No.

CHAIR—Obviously, there are some activities of the Commonwealth which one would assume would be relatively risk free, if I can put it that way, and others that involve a fair element of risk of injury. Do you have profiles for the different departments or activities that Commonwealth employees undertake? Are there sections of Commonwealth activities that are more prone to compensation claims than others?

Mr Leahy—Yes. Probably the best way of looking at that is through our premium system. Our premium system is based on the injury experience of an organisation. So you would expect, for example, that the Australian Federal Police would pay a higher premium than Comcare, which has basically got a group of people who work in offices—and they do. From this year, we will be publishing in our annual report the premiums for all agencies with greater than 100 employees. That is part of the leadership and accountability strategy that I mentioned earlier. That is probably the best way of looking at the incidence of injury and the cost of workers' compensation in the various agencies that Comcare covers.

CHAIR—Is it fair, then, to compare the results and the performance records that Comcare has with other workers' compensation jurisdictions? Can you do that? For instance, I notice that contract workers are included. That is a separate question. Do you believe that there can be comparisons drawn? Are there any particular peculiarities to Commonwealth employees that would not enable a fair comparison?

Mr Leahy—This is a question you probably should take up with the department in due course. But obviously this document, which was produced for the Workplace Relations Ministers Council, attempts to do that very thing. They get actuaries to standardise rates and take into account the variety of occupations and so forth. So it is all done in a statistically valid manner. To that extent, this is a valid document. The caution I would offer, though, is that you cannot, to use a basketball term, cherry pick the elements in the report. You actually have to look at the performance of jurisdictions in total. For example, if you were to compare our premium with the premium of other jurisdictions standardised, then our premium is the second

lowest of all jurisdictions. The jurisdiction that is lower than ours is Queensland standardised. But that only tells you one part of the story.

Another part of the story is that we offer the highest level of benefits to injured employees of any of the jurisdictions. In fact, we offer benefits far higher than, for example, Queensland. Their benefits, I think, terminate after five years. Our benefits go on until age 65. So it is feasible for someone to be on our benefits from the age that they commence in the Public Service, if they were unfortunate enough to become seriously ill or injured, right up until the age of 65, which could be 40 or 50 years. In Queensland, their benefit would terminate after five years.

So if you are comparing jurisdictions, my view is that you have to look at the whole range of factors that bear upon the way that jurisdiction operates. Nevertheless, I think this is a very valid attempt to work out who is performing better in particular areas. It enables the various jurisdictions to see whether or not there are best practice arrangements operating in other jurisdictions that we can pinch. So it is a very useful document.

CHAIR—I notice you cover a lot of contracted workers as well. Do you think that changes the risk profile for the Commonwealth?

Mr Leahy—There is certainly evidence from academic studies which would suggest that that is the case. You can see why that would be the case. They are probably less likely to be as tightly supervised as employees would be. They probably are more likely to be given freer reign to undertake these services for which they are contracted. They should not be but they probably are. We do not have any data on this, and it is probably an area that we need to do more work on. On the face of it, you would think that contractors would be at greater risk than an employee undertaking the same sort of work.

CHAIR—Are you not sure whether that is the case?

Mr Leahy—We have not undertaken any analysis of that. As the outsourcing arrangements increase, it is probably something that we do need to look at. Perhaps one of my other colleagues wants to comment. I think I am right.

CHAIR—Thank you, Mr Leahy. I will hand over to my colleague Mr Wilkie, who may well have some questions he would like to ask.

Mr WILKIE—A lot of the surveillance investigations are outsourced?

Mr Leahy—Yes.

Mr WILKIE—What sorts of standards do you have to apply for the people you employ as contractors?

Mr Leahy—We go for tender on that. We have only three companies in most of the regions. We cover employees throughout Australia. The tender process is quite vigorous and rigorous. Perhaps I could ask one of my colleagues to help out on that. Gary King is the head of our investigations unit.

Mr King—In June last year we actually went to tender for surveillance companies all around Australia. As Mr Leahy said, we have got about 19 companies. Basically, there are about three companies in every state that we have brought on contract. So we have quite stringent contractual arrangements in place with those companies. The individualised contractual arrangements we have with those companies stipulate, for example, that they will abide by government legislation in relation to the Privacy Act. They will adopt the IPP—privacy principles—which obviously binds them in relation to how they go about collecting, utilising and storing that information in the security parameters et cetera. In addition to those contractual arrangements, we have adopted an investigation code of conduct to ensure that they operate a very professional service in relation to surveillance. So we are very careful about which companies we use, how we use them and how they go about collecting and storing that sort of information.

Mr WILKIE—You could probably sum this up. Do you have some form of accreditation requirement for the staff they employ to undertake the surveillance?

Mr King—The Commonwealth has fraud control guidelines, which we have adopted within our contractual arrangements with the surveillance companies. Those guidelines require that people conducting investigations on behalf of the Commonwealth are accredited in investigation techniques to a certificate 4 level fraud investigation. We have passed that on through our contractual arrangements to the operatives.

Mr WILKIE—So they have to be licensed by the local police authorities?

Mr King—They certainly have to be licensed private investigators, yes.

Mr Leahy—We can provide you, if you like, Mr Wilkie, with copies of appropriate documents, adapted to protect privacy. We could provide you with a copy of a contract.

Mr WILKIE—I would be interested to see that, if you could do that. It is always difficult when you do not have your own people out there on the ground knowing exactly what people are up to. It is interesting to see what sort of controls you have in place.

Mr Leahy—Our Investigation Management Unit also requires all of our people to undertake an investigations course. We have employed a former member of the police force, so they are very aware of the traps associated with, in particular, breaking the laws. We are very careful about that. As you can see—perhaps you were not here when I mentioned it—from the number of cases of surveillance, we only undertake about 20 a year out of 18,000 active claims. We are very careful about the circumstances under which we would undertake it. We would have to have virtually overwhelming evidence of possible fraud before we took such a step.

Mr WILKIE—So it is really just to confirm that you believe they have been fraudulent?

Mr Leahy—Yes.

Mr King—Whilst we are suggesting there that the surveillance is outsourced, it is outsourced under instruction and very close management from the Investigation Management Unit. So at the time of requesting a company to undertake surveillance on an individual, they are provided

with very strict instructions in accordance with the Privacy Commissioner's guidelines on optical surveillance—that is, what information we are looking for and things of that nature. So it is not just left up to them to go and surveil somebody over a period of three weeks. It is basically daily contact and updating with a member of the investigations unit. We keep a very tight control on how they are going about conducting that surveillance on any individual.

Mr WILKIE—That is excellent. Thanks for that. I have another question that relates to the cost not of investigations but generally. I see that some significant savings have been made here from the investigations. It is probably contained in some of the information elsewhere but what would be the total amount you would pay out in workers' compensation claims in a year?

Mr Leahy—About $185 million a year. That is what it is running at at the moment. About $110 million of that would be for premium-related claims. You are probably aware that we also administer claims that were incurred prior to the Safety, Rehabilitation and Compensation Act coming into force in 1989. We have claims that go back to the 1940s. Under the previous legislation, people could be on workers' compensation basically until they died. The SRC Act changed that. So, of that $185 million, I think about $110 million is premium related and about $75 million is related to pre-premiums. In terms of liabilities, total liabilities at the moment are running at about $1.2 billion. The $8 million, for example, that we saved the year before last and the potential $6 million that we save this year goes to reducing the liabilities figure, which also impacts, as an insurer, on the premium that we charge our agencies.

Mr WILKIE—That is fair enough. Obviously, the savings are significant. Would you say that fraud is a major problem?

Mr Leahy—In our organisation, I guess there are a number of points I would make. First, as I indicated earlier, we try to eliminate claims without merit at the front end of the process. If you compare us to other jurisdictions, we probably have a higher reject rate than other jurisdictions. We do have a higher reject rate than most other jurisdictions. So we try to get rid of the unmeritorious claims up front. We closely manage claims from there on so that as soon as someone, in our view, recovers, we have their case managed in such a way that we can close the case quite quickly.

In the totality of our scheme, fraud is not a very significant issue. But because we are dealing with taxpayers' money, any incidence of fraud is an important issue that we have to deal with. So we do treat the process very seriously. Because we pass on all our costs to our premiums, just like an insurer, there is a balance as to where you put the emphasis. We have chosen, and I think quite properly, to put the emphasis on the front end rather than the back end. So any case of fraud or potential fraud is treated very seriously.

Mr WILKIE—You mentioned in the submission that you may look at employers in relation to fraud. Do you ever investigate any employers?

Mr Leahy—No. We are in a very fortunate position compared with other jurisdictions.

Mr WILKIE—Yes.

Mr Leahy—The government is generally prone to obeying its own legislation.

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

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

Mr WILKIE—You have to watch the Commonwealth!

Mr Leahy—Yes, absolutely.

CHAIR—Mr Hartsuyker, have you had time to formulate any questions?

Mr HARTSUYKER—I might defer to you for the moment, Madam Chair.

CHAIR—With regard to the question of employer fraud—I take your previous answer on board—what about contracting, where there are a lot of contractor arrangements? Does that offer perhaps an opportunity for employer fraud? You have not encountered any?

Mr Leahy—No, not in our jurisdiction. The sorts of contractors that we cover are actually contractors who are, in effect, employees. There is a difference between contract of and contract for services. It is the contract of services that we cover. Premiums related to them are actually met by the agency that they are providing their services to. So if we have a contractor in Centrelink who is under that sort of an arrangement and becomes ill or gets injured at work, then they will be eligible, if the claim is meritorious, for compensation, but we will pass the cost on to Centrelink.

CHAIR—I gather that employees of the Commonwealth, regardless of where they work in other countries, are covered?

Mr Leahy—Yes.

CHAIR—I have no further questions, Mr Leahy, but my other colleagues may.

Mr WILKIE—With the advent of occupational health and safety measures being undertaken by various jurisdictions, have you found that that has had a significant impact on claims?

Mr Leahy—Comcare administers the occupational health and safety laws for employees in the Commonwealth. We have our own legislation, the Occupational Health and Safety (Commonwealth Employment) Act. One of the great strengths of Comcare—and this is a view that others do not agree with, I should say; it is my personal view—is that we administer both workers' compensation and occupational health and safety and we have a leading role in rehabilitation. That enables us to approach the whole process and deal with the whole process whereas in some other jurisdictions you have a separate OH&S regulator and a separate workers' compensation regulator or insurer.

One of the strategies that we have been adopting with some of our poorer performing agencies is that we will go in and work with them in partnership to look at their practices from

the occupational health and safety or prevention side through to case management, where someone does become injured and returns to work, and claims management processes. So we go through a whole process with them of trying to get all of their processes up to speed. That is proving to be pretty successful. In my view—it is not a view that is shared by all—one of our great strengths is that we actually regulate occupational health and safety and workers' compensation.

Mr WILKIE—Do you think in jurisdictions where people have that system in place—for example, in an organisation which has very good occupational health and safety regulations and practices and rehabilitation practices when people have been injured—it limits the amount of their claim?

Mr Leahy—Absolutely. Unfortunately you will always get something that defeats that argument. For example, we cover journey claims in our jurisdiction; that is, people driving to and from work. There is not a great deal that we as an occupational health and safety regulator can do to stop someone being run into by a semitrailer or something. Our experience, and what we are trying to impress on organisations that operate under our schemes, is that if you get the front end right—that is, the prevention stuff—we will not have to have anything on the back end with the premium. So you are absolutely right.

Mr WILKIE—Thanks very much

Mr HARTSUYKER—I have a question about Comcare being fully funded. What is the trend there? Are your premiums maintained relative to the liabilities, or are the liabilities growing greater than the assets? What is the status?

Mr Leahy—We will have a bit of tightening in this coming year. We have just increased our premiums from one per cent of wage and salary to 1.13 per cent. Part of that is that there has been an emerging trend, which has been emerging for a while but I guess we had not been taking it into account in previous premiums that we have set, where people are tending to take more time off work. That has an impact on our liabilities so we have, we hope, the one-off hit to our liabilities of about $50 million coming up in this financial year, which will reduce our ratio of assets to liabilities. But we will still be well and truly fully funding. So there is a timing matter occurring.

Mr HARTSUYKER—You say a one-off hit. Is that an estimate of the present value of the trend that you are seeing?

Mr Leahy—Yes, it is. The leadership and accountability strategy is part of that. We have implemented a range of strategies with key organisations to deal with that issue. One of the things that we are putting a great deal of emphasis on is improving rehabilitation strategies. In particular, we are working on some strategies to get early intervention operating more effectively in the Commonwealth, even before liability is determined, whether or not a case is compensable. So we are working pretty hard to try to contain that trend. Even in the short period that we have been operating on it, which is three or four months, we are starting to make some inroads. But it will be a couple of years before we see the outcomes.

Mr HARTSUYKER—You mentioned journey claims earlier. Let us say someone decides to ride to work on a motorcycle in shorts and thongs in the middle of winter, or whatever, obviously increasing the risk to themselves. Does Comcare just completely accept that liability?

Mr Leahy—Our scheme is a no-fault scheme. Basically, someone has to be wilful and negligent. It would be an extraordinary case which we would reject. If we did reject it, it would have been taken to court. Because of the nature of our scheme, it could possibly be accepted. In the case that you are talking about, you would probably describe that as an act of stupidity rather than wilful negligence.

Mr WILKIE—It is not like you are going to wear shorts and thongs if you can fall off a bike.

Mr Leahy—That is right, whereas if—

Mr HARTSUYKER—Should the employer pay for that stupidity? That is the second question.

Mr Leahy—I think there is a legitimate debate, and you can see it in the variety of ways that claims are treated in different jurisdictions, about whether or not journey claims should be covered for workers' compensation or whether they should be covered by normal insurance arrangements. In our case, certainly employees would argue that it is a strength of our scheme.

Mr WILKIE—I will comment further. If you as an employee had to go to a work environment where the employer's road was pretty lousy and you had an accident because the employer had not been maintaining the road, I suppose you could have the same sort of claim on the other foot.

Mr Leahy—I guess that case, though, is directly within the responsibility of the employer. The fact is that we cover journey claims. It is a strength of our scheme, I think, certainly from an employee perspective. As I said, in the vast majority of circumstances, accepting the claim would be the way we would go.

Mr WILKIE—I think it is a strength of the scheme, as you say. It is my personal view. Thank you.

CHAIR—I have two questions. One probably sounds rather self-serving, actually. Are members of parliament and senators covered by Comcare?

Mr Leahy—Not by our scheme, no.

CHAIR—We will walk very carefully when we leave here! You make reference in your submission to limited common law claims. Could you expand on that and on how Comcare sees that.

Mr Leahy—Our scheme is basically a statute-driven scheme. The benefits are spelt out in the law. So it is only in very exceptional circumstances that we accept common law claims. They

are basically in cases of non-economic loss and where dependants can pursue common law claims when someone dies as a result of work-related activity. The non-economic loss claims are capped, by the way—not the death claims—at $110,000. That is the maximum payout. That is in our legislation. To be able to pursue that, the individual pursuing the claim has to make a one-off and irrevocable choice of heading down that track rather than going down the statute-based benefit process. So we get very few common law claims.

CHAIR—Thank you, Mr Leahy, and your colleagues. That has been a most interesting and helpful overview. We are extremely appreciative of the time you have put into your submission.

Mr Leahy—Thank you. If there is any further information that you want, please do not hesitate to let us know.

CHAIR—Thank you.

Resolved (on motion by **Mr Wilkie**):

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 11.58 a.m.