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Official Committee Hansard

**HOUSE OF  
REPRESENTATIVES**

STANDING COMMITTEE ON EMPLOYMENT AND  
WORKPLACE RELATIONS

**Reference: Aspects of workers' compensation**

WEDNESDAY, 25 SEPTEMBER 2002

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**HOUSE OF REPRESENTATIVES**  
**STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS**  
**Wednesday, 25 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 Bevis, Mr Dutton, Ms Hall, Mr Hartsuyker, Mrs De-Anne Kelly and Ms Vamvakinou

**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**

**HOY, Mr Rex Jeffrey, Group Manager, Workplace Relations Policy and Legal Group,  
Department of Employment and Workplace Relations .....13**

**KENNA, Mr Tom, Team Leader, Safety and Compensation Policy Branch, Workplace Relations  
Policy and Legal Group, Department of Employment and Workplace Relations .....13**

**ROWLING, Mr John, Assistant Secretary, Safety and Compensation Policy Branch, Workplace  
Relations Policy and Legal Group, Department of Employment and Workplace Relations .....13**



**Committee met at 11.11 a.m.**

**HOY, Mr Rex Jeffrey, Group Manager, Workplace Relations Policy and Legal Group, Department of Employment and Workplace Relations**

**KENNA, Mr Tom, Team Leader, Safety and Compensation Policy Branch, Workplace Relations Policy and Legal Group, Department of Employment and Workplace Relations**

**ROWLING, Mr John, Assistant Secretary, Safety and Compensation Policy Branch, Workplace Relations Policy and Legal Group, Department of Employment and Workplace Relations**

**CHAIR**—I would like to welcome Mr Hoy, Mr Rowling and Mr Kenna from the Department of Employment and Workplace Relations. The proceedings here today, as you are no doubt aware, are formal proceedings of the parliament and warrant the same respect as proceedings of the House. If at any time you wish to give evidence in private, please ask to do so and the committee will give consideration to your request. I invite you to make some preliminary comments about the issues.

**Mr Hoy**—Thank you, Chair, and I thank the committee for the opportunity to appear before it in support of the department's written submission. At the outset, I thought it would be helpful if I outlined to the committee our role in this area. I will table a document which will assist the committee in this regard. I would like to point out that it is the same document I provided when we briefed the committee some little time ago when you first got this reference. I do not want to dwell on it other than to say it will help you understand how we fit into the system and explain the aspects that we want to cover in the submission.

The department considers that workers' compensation arrangements have a crucial role to play in helping to prevent work-related injury and illness by compensating those employees and others who are unfortunate enough to be injured in the workplace or who contract a work-related illness, by encouraging rehabilitation and by promoting a return to work. A workplace injury can have a significant impact on injured workers and their families, the employer and the community in general. As we have highlighted in our submission to the committee, the overall cost of work-related injury and illness in Australia is substantial. Fraud or dishonest conduct by employers, employees and others adds to these costs. Ultimately, the costs of fraud and non-compliance are borne by all employers and employees as well as the community at large. Significantly, fraud can also act to inhibit the efficiency and effectiveness of workers' compensation in reducing work-related injury and illness and restrict efforts to promote rehabilitation and return to work. To the extent that fraud adds to the costs borne by employers, it can impact adversely on the creation of job opportunities for all Australian workers.

The inquiry by the committee into aspects of Australian workers' compensation schemes is timely and the committee's findings will help to inform the debate on how best to reduce the extent of fraud and improve workers' compensation arrangements. As to the definition of fraud, in our submission, we have adopted a broad definition to include some acts or omissions by employees, employers or service providers which may be unintentional but which could be considered to be a fraudulent act by scheme regulators or insurers.

I would like now to make some brief comments on each of the committee's terms of reference. The first paragraph of the terms of reference under consideration by the committee covers the incidence and costs of fraud and any structural factors that may encourage such behaviour. With regard to the extent of fraud, the department considers that the incidence and cost of workers' compensation fraud and non-compliance is a problem confronting all Australian workers' compensation schemes. The full extent of fraud and non-compliance is difficult to measure. There is a considerable amount of anecdotal evidence, however, as well as some recent reports or studies which suggest that the problem is significant.

With respect to complex and inconsistent workers' compensation arrangements, the department's submission outlines how the complexities within the different workers' compensation schemes in Australia and the inconsistencies across those schemes give rise to situations that are or may be considered to be fraudulent; that is, the structural arrangements of the various state and territory schemes can and often do contribute to the incidence of fraud and the level of non-compliance.

The legislative framework of the 10 different schemes is complex and inconsistent. This creates opportunities and possible confusion that could generate avenues for fraud and/or non-compliance by employers, employees and others. A further contributing factor to the level of fraud and non-compliance is the inflexibility of the workers' compensation schemes to respond to changing working arrangements. For example, the various schemes have not adapted to the emergence of different forms of employment that reflect the modern Australian economy and the personal choices that Australians want to make about work, lifestyle, family and security.

Increasingly, employers and employees are entering into non-traditional working arrangements which best suit their individual circumstances. Often these arrangements fall outside the scope of the traditional coverage under the various workers' compensation schemes. The response by the states to these changes in the labour market has been to increase the regulatory complexity regarding coverage. This has tended to compound the problems whereby each state seeks its own solution. Each state scheme operates as if workers and employers are rigid and unchanging. There is abundant evidence, however, to show that the Australian work force is highly mobile and that more and more employers are choosing to operate in more than one jurisdiction. The failure of the workers' compensation schemes to properly respond to these changes in working arrangements has meant that more and more workers, including persons who are genuine employees, are being excluded from workers' compensation coverage.

The complexities of the various workers' compensation arrangements, particularly in relation to the matter of coverage, have encouraged and assisted some employers to avoid their workers' compensation obligations because of the lack of a clear-cut process for identifying workers and employees. It has also led to some employers inadvertently avoiding their obligations through a lack of understanding of the complex legislative requirements. The department considers that the implementation of a single national framework for workers' compensation coverage has the potential to remove the complexity that exists under the plethora of existing legislation and lessen the potential for fraud and/or non-compliance.

Another issue is occupational health and safety. These complexities and inconsistencies are not limited to workers' compensation. Problems can also be found in the OH&S regulatory framework. Employers find compliance with these arrangements costly, and both employers and

employees find them confusing. This confusion contributes to poor OH&S outcomes. The problem is compounded for employers and employees who work in more than one jurisdiction.

The next paragraph of the terms of reference involves the methods employed and costs incurred in detecting and eliminating fraud. We have only touched very briefly on this part of the terms of reference in our written submission as the department is not a regulator in terms of this issue and we think that Comcare has adequately covered it in its submission. As such, I do not want to add any further comments at this time on that part of the terms of reference.

The third paragraph of the terms of reference concerns factors leading to different safety records and claims profiles across industries and the adequacy, appropriateness and practicability of rehabilitation programs and the benefits of workplace safety. The department has outlined the incidence of injuries and fatalities and the trends in relation to workplace safety in relation to the different industries and across each of the states and territories and New Zealand. The fourth comparative performance monitoring report, a copy of which has been provided to the committee, provides further information on these trends. This is the document that we previously gave you. While the incidence of injuries across Australia has been falling, it is important to highlight that some caution needs to be exercised in drawing conclusions from this data, as demonstrated in our submission on pages 29 and 30.

Another issue is rehabilitation and return to work. Rehabilitation and return to work arrangements are important elements of any workers' compensation scheme. The department has set out in its submission at attachment E the different requirements employers face across the states in relation to these arrangements. The different arrangements that apply across the various Australian workers' compensation jurisdictions add to the costs borne by employers. This is likely to have consequences also for the outcomes achieved for their injured employees. It can also mean that employees who move to a different state after becoming injured can have difficulties in receiving the full range of assistance that is normally available to help them achieve a return to work.

For example, WorkCover New South Wales makes available to New South Wales employers a range of financial and other benefits to encourage them to employ a worker who has been injured while working for another employer in that state. While this is a good initiative, not all of these incentives are made available to an interstate employer who takes on a worker injured in New South Wales.

In conclusion, the committee is inquiring into matters that are important to employees, their families, employers and government as well as the community in general. Your findings will assist all governments to address the current problems facing workers' compensation and safety at work. We have identified what we see as the need for a single national framework for both workers' compensation and OH&S to overcome the current problems and to provide a sound basis for the future. Thank you.

**CHAIR**—Thank you, Mr Hoy. Would your colleagues like to make any preliminary statements this morning? If not, we will move to questions.

**Mr BEVIS**—You mentioned that differences between the various jurisdictions produces fraud. Can you provide details of what fraud is produced by which specific differences between jurisdictions?

**Mr Hoy**—I could not provide you with specific answers to that question. What we are essentially saying is that that occurs because of the multitude of regulatory frameworks across the different states and the fact that we have a mobile work force. If you are a national employer working across the system, there is the potential for this to happen. In the submission—and I note some other submissions acknowledge this—we say that it is very difficult to quantify the amount of fraud. There are some estimates made, which we refer to in our submission, as to what the size of it might be. I assume one thing this committee will do by seeking evidence from others is to attempt to quantify that and to attempt to understand whether those differences across the various systems lead to this.

**Mr BEVIS**—In the task you have just described the committee possibly performing, we do that on the basis of the evidence presented to us. You presented evidence which includes a conclusion, a finding, a view, and I am asking you for the details of the facts that support that conclusion. What are the specifics that lead you to that conclusion?

**Mr Hoy**—I said we are relying on various research reports to provide that information.

**Mr BEVIS**—Can you give us the details of that in a subsequent submission or take the question on notice? It seems to be a key part of the department's submission. You are now unable to provide any evidence that would in fact support that conclusion.

**Mr Hoy**—No. You are asking for detailed evidence.

**Mr BEVIS**—I am asking for the evidence that supports the conclusion; that is right.

**Mr Kenna**—We have provided examples of the different types of structural arrangements that exist across the schemes. As Mr Hoy said, different employers operate in more than one jurisdiction and employees move around between the jurisdictions. As we point out in our submission, something that constitutes fraud may arise due to misunderstanding by employers and employees of their obligations. It may also be due to the uncertainties that arise about what constitutes employment arrangements in one jurisdiction as against another jurisdiction.

**Mr BEVIS**—If we are being urged to make a recommendation that all the states and territories should either hand over their powers to the Commonwealth or agree on a national framework through some COAG type process, then I would want something a little more compelling, detailed and specific than what you have so far presented.

**Mr Kenna**—I do not think our proposal is that the states and territories hand over their powers to the Commonwealth. That is not in the framework that we have alluded to in here.

**Mr Hoy**—In actual fact, while the department talks about the desirability of having a national framework, we also pointed out that the government has decided to ask the Productivity Commission to look at this and to give some advice to government as to how such a national framework might work. The government is still considering the terms of reference. The formal



reference has not yet been made. As part of the normal process in doing that, the government consults with the states and territories. In our submission—I do not think it was necessarily a matter that the terms of reference were specifically covering—we raised the issue of a national framework without necessarily saying, ‘This is what it is and this is how it might actually happen.’

In terms of national frameworks, as you probably know, there is certainly a national framework operating in respect of food standards. There is an overarching system. Systems then operate underneath that. There have been some attempts in recent years to have a national framework in terms of road transport so that there is broad consistency at the national level while leaving specific regulation to the particular states. While the government actually has not determined a policy on this at the moment, if you are looking at a national framework, it would not necessarily be to seek to take away or seek to have the states refer their powers to the Commonwealth; rather, it would be to attempt to remove some of the inconsistencies and to deal with cross-border issues and the like.

**Mr BEVIS**—You might recall that I actually suggested there were two ways. One was the COAG process, which is effectively what you have described, and the other was assuming the powers or having the powers ceded. I think you in fact referred to a single regulatory regime being department policy, which leaves open either option. But I am glad you have clarified that.

**Mr Hoy**—Actually, the department does not have a policy. It is a matter for the government as to what the policy is.

**Mr BEVIS**—That was going to be one of my questions. Your words were that it was department policy. I assumed you meant it was government policy.

**Mr Hoy**—If I did, that was an inadvertent slip.

**Mr BEVIS**—I have some other questions, but other people may want to ask theirs. I will return to my first question. There are many differences in the operation of the schemes in the different jurisdictions. I would like you to take on notice how a range of those differences have a direct linkage to produce the problem of fraud.

**Mr Hoy**—I will do that, Senator.

**CHAIR**—Ms Vamvakinou, do you have some questions?

**Ms VAMVAKINO**—Mr Bevis has actually covered that one area that seemed glaringly obvious to me that required some clarification. I guess the next question I have is a pretty up-front one. In your view, is a national scheme the best way to perhaps resolve some of the issues that you are clearly concerned about in relation to state based workers’ compensation irregularities?

**Mr Hoy**—I think our comments go broader to the particular issues this committee is looking at in that for some years at the Commonwealth level we have been seeking to achieve more national consistency. So it is a broader policy issue than just the one confronting you. I also

mentioned that we think the two issues of workers' compensation and OH&S are linked together and there is a need to look at those two issues.

**Mr HARTSUYKER**—Comcare in Queensland is the only fund, apparently, that is fully funded at this point in time. Why should it be the only one, apart from claims management, to be fully funded?

**Mr Kenna**—Sorry, what is the reason—

**Mr HARTSUYKER**—What is the reason the others are not fully funded? That is another way of asking the question.

**Mr Kenna**—It can be due to a lot of factors that may influence it. One of them may be due to the government policy of the day as to how they will operate their particular workers' compensation schemes. The level of premiums that may be determined or may be required to keep a scheme fully funded may be subject to different factors that the government wants to take into account in its overall policy. The rate of claims that come into a scheme and how well the scheme actually manages those claims—

**Mr HARTSUYKER**—That is claims management?

**Mr Kenna**—It is, but I am talking in terms of the long-term run-off of the scheme and how long the scheme is running. The types of benefits and entitlements that are available under a scheme can impact upon the overall financial viability of it. The general economic conditions that may prevail in a particular jurisdiction can impact on its financial viability.

As you may be aware, a lot of actuarial work goes into establishing how a scheme should be funded. Trying to measure the cost of claims is a very difficult exercise. It may be due to the level of servicing that goes on with particular claims and how the cost of those claims ends up in the long run.

In all, the level of funding and viability of the schemes has remained fairly static over the last few years, we have noticed, through our workers' compensation scheme. Structural factors—the government deciding on whether it has common law available under its scheme—can have an impact upon the viability of a scheme to some degree. For example, the Victorian scheme estimated that they would need to increase premiums by 17 per cent to cover the cost of the reintroduction of common law. Now that is a purely actuarial assumption. Whether it turns out to be factual or on the line remains to be seen as the Victorian scheme has common law claims develop under the Victorian scheme in future years.

**Mr HARTSUYKER**—How much have the premiums gone up in Victoria as a result of that?

**Mr Kenna**—I think—it is in the CPM report—they increased their premiums by 17 per cent to allow for the reintroduction of common law in that state. The same thing applies in other common law schemes. Queensland is another example. Queensland allows ready access to common law. However, the availability of long-term benefits in the Queensland scheme is very limited, so a person under the Queensland scheme may be pushed off the scheme. The common law scheme in Queensland has found that, under their methods, they are able to reduce their

premiums and increase their viability. But, by the same token, work that is currently going on under the CPM exercise is measuring the comparison of the benefits that are available across the schemes. The final outcome is not known as yet. How the states will compare on that and how Queensland's access to common law will measure up against the other schemes remains to be seen.

**Mr Hoy**—Chair, pages 54 and 55 of this document actually show the changes in the average premium rates. The 17 per cent is covered on page 55.

**CHAIR**—Mr Hartsuyker, did you have further questions?

**Mr HARTSUYKER**—No, thank you, Madam Chair.

**CHAIR**—I would like to put some questions to you, if I may. Firstly, you talk about the limitations on the state schemes with regard to their flexibility in dealing with the changing nature of work, with more casual workers and part-time workers. What recommendations would you make to alter the current schemes so that they can take account of this changing nature of work and reduce the likelihood of fraud?

**Mr Kenna**—The issue is continuing to grow. I think in our submission we estimate that about 40 per cent of the work force may no longer be covered by the traditional workers' compensation arrangements in the scheme. There is every likelihood that that figure will increase as time goes on. The way that the states have attempted to address it to date is to seek to use deeming provisions that they all have under their individual schemes to bring workers in. In a lot of cases, that can interfere with an existing commercial arrangement that the person who is affected by it may have between their so-called employer and the contractor.

Our main point is that a lot of states have attempted to look at this issue. Some good work has been done in New South Wales through various steps to look at addressing this growing problem. We will find—there is evidence already there—that the different states will adopt a different approach to try to provide coverage on these types of arrangements. We consider that there is a need to have a single solution or some type of agreed solution across the states and territories rather than each state going off and doing it in isolation. These types of workers will probably move between jurisdictions more rapidly as time goes on. You will find that they will be confronting different solutions under each jurisdiction.

The issue is not, as we say, whether there is fraud actually taking place by these workers or employers. The issue is really the confusion that is created by having these different types of solutions. It can give rise to inadvertent fraud by an employer or the subcontractor because the arrangement they enter into may not meet their obligations under workers' compensation.

**Mr Rowling**—I will add a couple of comments on that. One of the concerns is that there tends to be a knee-jerk response to the issue about whether, in particular, in new forms of employment people are covered or not covered by workers' compensation. There are actually alternative insurance markets other than workers' compensation. With the increasingly large numbers of people outside workers' compensation, one of the issues that needs to be considered is whether the take-up of alternative insurance arrangements or the assumption of individual risk by some of the contractors and subcontractors is appropriate and adequate. Basically, there

are income support and disability insurance arrangements available to contractors, subcontractors and related people. The question is whether or not they are being adequately accessed and used as alternatives to workers' compensation insurance. So it is not simply a question of coverage and the arrangements for coverage; it is also the question of whether there are adequate insurance arrangements and the competition between workers' compensation and alternatives forms of insurance and their availability.

**CHAIR**—Thank you, Mr Rowling. There are some quite disturbing examples in your submission of employers who have not been able to obtain workers' compensation in each jurisdiction, or perhaps workers have been in different states and so on and have been disadvantaged. What are the options for an employee who is injured in another jurisdiction? Where do they go?

**Mr Hoy**—One of the issues the states, with some assistance from the Commonwealth, have been attempting to achieve for many years is mutual recognition across the various states. It is disappointing to find that after many years the states have been unable to resolve this issue. Most of them actually do have, as I understand it, MOUs in place to recognise this. But at the end of the day, a person covered in one state and injured in another state could fall between the two different systems. That issue has been thrown back to the states to resolve. There is a commitment from each of the states to resolve this issue. It has been attempted to be facilitated through the various workplace relations ministers through the Workplace Relations Ministers Council. But, as I said, it is disappointing after so many years that an issue like that, which is important to employers and employees, just has not been resolved.

**Ms VAMVAKINO**—What are some of the reasons why they cannot get a resolution?

**Mr Hoy**—Because of the different regulatory frameworks in the different states.

**Ms VAMVAKINO**—Is there a will or desire for a resolution?

**Mr Hoy**—I think there is a desire. All ministers have committed to this a number of times. They all need to pass legislation in their respective jurisdictions. Nobody could agree with respect to a lot of the legislation. It was remitted to the various parliamentary draftspeople to actually come up with a bill that each of them could put in the system. We thought they had a resolution of the issue. At the last minute, some of the states said, 'Oh, well, that won't work for us.' As far as I can see, this is a fairly important issue. It seems to me to be a fairly simple issue to resolve. However, because of the nature of Australia's Constitution and the various regulatory systems, we have not been able to sort out that issue.

That is just one issue. As I was saying earlier, this covers all these issues. When they have different state regulatory arrangements and when they face an issue in one state, naturally they want to attempt to address it in that state. That is the way they do it. But it does not necessarily mean you have a national approach which will solve some of these problems.

**CHAIR**—I have one last question before I pass on to other committee members. In your submission, you state that the Commonwealth social security system has become a de facto workers' compensation system where there are injured workers—this goes back to the original question—and they either have no coverage or do not have access to a scheme because of these

difficulties with jurisdictions. Have you been able to quantify by the number of injured workers or by the cost this de facto workers' compensation scheme the federal government is running in any way?

**Mr Kenna**—It is very difficult to quantify. A lot of that material would have to be accessed through the Family and Community Services portfolio and the health portfolio. The Industry Commission in 1994 attempted to arrive at an estimate and came up with the figure of about \$200 million per annum. We consider that since that time there have been significant changes across the various schemes in entitlement to benefits, the level of benefits, the period of benefits and how long a worker can stay in a workers' compensation scheme and the reintroduction of common law in a couple of jurisdictions, so that figure may have increased significantly. Again, we expect that the Productivity Commission, in its terms of reference when they finally release them, will be asked to relook at the figure and to arrive at an estimate of the extent of it.

It can happen in many forms. There are many ways in which a worker interacts with the social security system. A person can be waiting for a settlement of a workers' compensation claim and they may approach Family and Community Services to seek relief. A person who receives a lump sum through a common law settlement may mismanage that settlement and may then move on to the social security system. There are persons who are allowed under some schemes only to stay on workers' compensation benefits for a period of up to two years, or the amounts may be capped. They may have no form of employment, so they will then move off the workers' compensation scheme straight on to, and need some form of assistance through, Centrelink. But with respect to the actual amount in terms of the dollars, we do not know that at this stage. We do not know, for example, the number of people who access Medicare if they have a workplace injury rather than put in a workers' compensation claim. So it is very difficult.

**CHAIR**—Would the number of people on the disability support pension as a result of workplace injuries be an indication of the quantum of the problem?

**Mr Kenna**—That is something on which I would have to defer to the Department of Family and Community Services. They have given us an estimate, which we have used in our submission here, which is that about 45,000 people per annum have their social security affected by workers' compensation in a given year. I do not know the amount that Family and Community Services recovers from compensation beneficiaries, but that is something you may wish to pursue further with that portfolio.

**CHAIR**—Is this an unintended form of cost shifting by the states?

**Mr Kenna**—I do not know whether it is unintended.

**Mr Hoy**—It is cost shifting, whether it is intended or not.

**Mr Kenna**—That is another issue.

**CHAIR**—I will pass back to Mr Bevis.

**Mr BEVIS**—Thanks. I will return to the issue of people falling between the cracks interstate. You mentioned that you thought there may be some MOUs between certain jurisdictions. Could you follow that up.

**Mr Hoy**—Certainly. I understand that the various WorkCover authorities who are responsible for managing claims in the various states do have mutual arrangements with their colleague states. I take it you want some details of what they are and how they work?

**Mr BEVIS**—Yes. Which jurisdictions have MOUs.

**Mr Hoy**—Who has got them.

**Mr BEVIS**—And what is the import of them. I do not necessarily want chapter and verse of the entire MOUs but just to get some handle on where they are and what they cover.

**Mr Hoy**—Yes. We can do that.

**Mr BEVIS**—Your submission refers to the fact that New South Wales is the only jurisdiction that defines fraud for the purposes of workers' compensation. There is an adjustment of the criminal provisions in Queensland. Do you have a view as to the desirability of there being a definition in compensation legislation?

**Mr Hoy**—I will see whether Mr Kenna can have a go at that.

**Mr Kenna**—I think the New South Wales one provides a model that could be looked at and used. I do not know how effective it is in achieving the results they want from it. I guess we would generally prefer not to have too much prescription in legislation. The more you put in there, the more difficult it is to allow flexibility. But, to some degree, if we were looking at a model, we would look at the New South Wales model.

**Mr BEVIS**—I guess the question is whether we should be looking at a model. Is this a feature that would be desirable to be replicated?

**Mr Kenna**—It is probably something, Mr Bevis, that you might like to ask the various states as to whether or not they have thought it desirable to do that sort of thing.

**Mr BEVIS**—A division has been called in the House so we will have to go, I am sorry. I will finish on that one question. The Commonwealth does not have a particular view about that?

**Mr Kenna**—Other than we do not like lots of prescription. But whether or not at the end of the day it would be important to have it is something we need to have a think about.

**Mr BEVIS**—I actually have a couple more questions.

**CHAIR**—We will be back as soon as we can.

**Proceedings suspended from 11.48 a.m. to 12.03 p.m.**

**CHAIR**—Thank you for your patience. I think Mr Bevis was asking questions. I have to leave.

**ACTING CHAIR (Mr Bevis)**—There is the question of who is covered—that is, who is an employee? Once upon a time that was easier to answer, I guess. It is now a more complex question. I wonder what the department's view is on how that problem should be addressed so that people are, for all intents and purposes, employees in the way they conduct affairs. A commonsense interpretation of it may well be that they are an employee but a technical legal interpretation of it may be that they are not. Therefore, they are not covered. What do you suggest is the best way for that issue to be approached?

**Mr Hoy**—I will have a go at that and my colleagues might add something. I think there actually needs to be recognition in the particular schemes that people are falling through the cracks and not being covered because of changes. The second point is that, in trying to address it, I come back to the point I made earlier, which is that there should be some national consistency in doing it—that is, if you are trying to adopt something in one state, it is not completely out of kilter elsewhere.

I am not necessarily saying that each of the schemes through their legislation needs to legislate a definition of an employee. As we were saying earlier, less prescription is probably better. However, I think there needs to be an acknowledgment under the various systems that they need to cover these different modes of operation. I think it is fairly easy to establish if you are in an employer-employee relationship. I think the point we were making in the submission is that we sense the various schemes have not recognised this and taken account of that. I do not know whether my colleagues want to add anything to that.

**ACTING CHAIR**—What about the people who are sometimes described as dependent contractors?

**Mr Hoy**—Independent contractors?

**ACTING CHAIR**—No, dependent contractors. By that, I mean a person who does not fit the traditional common law interpretation of an employee but nonetheless is engaged effectively full time or just about full time by an enterprise doing things that they may in fact have done the week before as an employee.

**Mr Hoy**—You are talking about that person as an employee as distinct from an employee of employers who, presumably, if they are working like that, would have specific cover for those people. You are talking about the head person?

**ACTING CHAIR**—I am thinking of circumstances in which the person in that situation actually does not employ anyone else. Maybe they employ their partner, who does the bookkeeping or whatever. For all intents and purposes, they do not have other employees engaged in the business they conduct. They may have a partner who is on the payroll or not.

**Mr Hoy**—But how do you mean that they are a dependent contractor as such?

**ACTING CHAIR**—The term has been used in a number of circumstances. I will try to give a definition. It was something the government looked at in respect of the taxation system. The government itself looked at the dependent contractor environment in relation to other matters but for similar reasons. They were not employees in the context of the traditional common law view, but in a commonsense view they were employees.

**Mr Hoy**—I am aware that the tax act has definitions of employees. I am not necessarily saying that you pick that up, adopt it and run that across particular industries. I am not sure I can add much more in terms of your question.

**ACTING CHAIR**—What do you do to those people? They do not get picked up in the system? They do not get covered for workers' compensation? Do we assume that they are all self-insured or what?

**Mr Hoy**—That is why I was actually asking earlier whether it was in their own capacity as a worker or on behalf of other people. I am not sure.

**ACTING CHAIR**—I will give you an example: someone who is a cleaner in a shopping centre in the last week who this week is the contractor. They still do the same thing they did last week. They are still doing it in the same place with the same hours of work and whatever else it may be.

**Mr Hoy**—I would have thought in those circumstances that person would have workers' compensation cover.

**ACTING CHAIR**—Through what means?

**Mr Rowling**—No. It depends a little on how it is defined in various workers' compensation schemes. But a lot of those people in those circumstances would be outside the workers' compensation schemes. We would assume, as do most of the schemes, that in those circumstances they would either purchase insurance for disability and income support or loss of income as a contractor for themselves or assume the risk themselves. The difficulty with assuming the risk themselves is effectively the community and the Commonwealth are also assuming the risk. That in itself is an issue.

**ACTING CHAIR**—I was going to pick up the point you finished on. Isn't that another means by which there could be cost transference?

**Mr Hoy**—There could be cost transference under those arrangements.

**Mr Rowling**—And that is effectively in the context of those earlier questions about the Commonwealth becoming the de facto workers' compensation scheme through social security. They are the circumstances in which that is occurring.

**ACTING CHAIR**—I will finish on this point. Given those considerations that you have just mentioned, isn't there some advantage in defining the employment relationship to cover some of those people so that there is not that cost transference and so that they are in fact picked up in the workers' compensation system?



**Mr Rowling**—To some extent, that is what the states have been struggling with under the workers' compensation arrangements. I suppose our concern in all of that is that it is not automatic that the workers' compensation arrangements are the best and most appropriate arrangements in those situations. Alternative forms of insurance and alternative arrangements may be more appropriate.

**ACTING CHAIR**—Do any of the states oblige people in that situation to take out cover?

**Mr Hoy**—Separate insurance?

**ACTING CHAIR**—I do not know the answer to that; I wondered whether you did.

**Mr Rowling**—Not that I am aware of.

**Mr Hoy**—I do not know the answer either.

**ACTING CHAIR**—Would that have any attraction, do you think?

**Mr Rowling**—It is certainly an alternative solution.

**ACTING CHAIR**—You mentioned in your introductory remarks that some recent studies have indicated—words to this effect—that fraud may be a significant problem. I am wondering which studies they were.

**Mr Hoy**—It is actually covered in the submission.

**ACTING CHAIR**—This is the Insurance Council of Australia submission?

**Mr Hoy**—Yes.

**Mr Kenna**—Covering New South Wales and Queensland.

**ACTING CHAIR**—I want to get clear what we are talking about. The identified fraud included employees and service providers. Who are the service providers—doctors, medicos?

**Mr Kenna**—Rehabilitation providers, physiotherapists.

**ACTING CHAIR**—Is there any breakdown to identify what part of the fraud estimate is due to, as it were, the employee and what is due to the medicos ripping the system off?

**Mr Kenna**—I think, from memory, that is a study by the Insurance Council of Australia. I do not have the paper with me. It is at paragraph 47. From memory, there is no breakdown between employees and service providers in that study.

**Mr BEVIS**—I have a couple of other topics that I want to touch on. You mention in the report the proposals contained in a green paper in New South Wales to try to address some issues of compliance. They had things like payslips identifying the legal name of the firm that

actually employs the people and having the name of their workers cover and having the detail of those things. Do you know whether that has been legislated?

**Mr Rowling**—Minister Della Bosca actually made some comments earlier in the week. I recall that they were starting to consider acting on those reports. But, as far as we are aware, they have not legislated yet.

**Mr BEVIS**—Do you have a view about those measures?

**Mr Rowling**—We did not assess them. We noted them but we really have not sat down and assessed them in any particular way.

**Mr BEVIS**—On the face of it, it seems to me to have a number of benefits for people to get a payslip that actually has on it the real name of the employer, as we do, for example, with the superannuation money. It would say, 'X is going here and X dollars has gone to this workers' compensation cover,' and so on. I think it is a state jurisdiction issue. I do not think the Commonwealth has power over these matters. It just seemed to me to make some sense. I wondered whether you had a view about it.

**Mr Rowling**—I think your comment to the effect that it is within the states' purview is one of the reasons we did not actually make a particular assessment of it.

**Mr BEVIS**—I cannot resist the temptation to point out that that has not stopped you making an assessment that a whole host of other things in their jurisdiction should be changed and, indeed, that the whole regime should be changed.

**Mr DUTTON**—Only for the betterment of the system, Mr Bevis

**Mr BEVIS**—I actually am not necessarily opposed to a national regime, although I have, I think, different reasons for arriving at a similar conclusion. But I could not resist the temptation, I am sorry. With respect to the claims profiles mentioned there, I notice—

**Mr Hoy**—What page are you referring to?

**Mr BEVIS**—I do not have your full submission in front of me at the moment. It is page 39. The claims profiles talk about different types of injuries. Is there any information in relation to stress, mental health and those sorts of claims profiles?

**Mr Kenna**—No. We tend to break those type of injury classifications down similar to this. It is a bit of an ongoing task, as part of our comparative performance monitoring project, to be able to report on those types of claims. But the difficulty arises with the different classification systems across the jurisdictions as to what falls under what category. They vary quite significantly. We hope to be able to report some material or some data in the next CPM report on certain diseases. So we will be able to take that to the next level as we have here.

**Mr Rowling**—I will add to that, if I can. A lot of that data is based on what the National Occupational Health and Safety Commission collects. Their data on stress is quite limited. The

data they produce at the moment shows very small numbers. As Mr Kenna indicated, a lot of the information is buried in disease collection.

**Mr BEVIS**—Can you tell us a bit about the interface between the workers' compensation system and the superannuation systems? I am thinking here of people with long-term illnesses and injuries. I have seen cases that are very often in the stress and mental health area, where someone may be on workers' compensation for a period. They then retire on ill-health and it becomes a superannuation issue. Is there an interface between the work you do and what the superannuation people do in relation to this or in the states?

**Mr Rowling**—Perhaps the best way of answering that is to say that precisely that interface issue has been drawn to our attention. We are going to start work on it soon. It has particularly been drawn to our attention in relation to the Commonwealth's own schemes, but it is becoming more apparent in relation to the interface between superannuation and workers' compensation generally. It is an area which is on our research list.

**Mr BEVIS**—I am sorry that there is not the data around. I have seen statements people make and press reports on stress being high in particular areas. I thought there may have been some official data collected and available on that. From the data you have, for example, there are things like back injuries in the health and care industries. Certainly there is a lot of anecdotal stuff you hear about people in nursing homes and hostels lifting patients and the like. With those problems, what is the feedback loop? How do we take that data and encourage changed practices to try to avoid a continuation of the problem?

**Mr Rowling**—I think the workplace relations minister has recently agreed to the national occupational health and safety strategy that NOHSC had put together, which introduces a whole set of targets for reducing injury and fatalities. It identified a number of priority areas. The issue about high incident risk and injury features largely in that. Basically, what the states and state ministers and the Commonwealth minister are trying to do is actually break that cycle. The interesting thing is when the states sat down to have look at the high incidence of risk et cetera, while issues of fatigue and stress et cetera were being raised, it was found that actually the more traditional areas—the physical injuries, the slips, trips and falls, if you like—are still the major sources of injury and the areas where high risk injury rates occur.

The states are working with NOHSC to bring back to ministers this coming November a set of action plans to actually see what they can do to tackle that. A couple of the states—New South Wales and Queensland—have taken initiatives already and had major summits with industry. The particular industry groups are focusing on what they can do within their own industry to break that cycle. But it is that sort of national strategy engagement with industry that is being used to try to break that cycle.

**Mr Hoy**—Mr Bevis, figure 8 on page 41 of our submission tends to look at those particular injuries across the various states. It is probably a bit harder for you to look at in black and white, but it is quite an interesting table. That is out of the CPM report. It gives you some idea of those different injuries in the different industries.

**Mr BEVIS**—It was health and community services that I was stressing.

**Mr Hoy**—That is bearing out the sorts of things you are saying.

**Mr BEVIS**—It is remarkably high. We have a process for the feedback loop. It is in its infancy. Thank you.

**CHAIR**—Thanks, Mr Bevis. Mr Dutton, do you have any questions?

**Mr DUTTON**—I do not have any questions.

**CHAIR**—Mr Hartsuyker, do you have any further questions? Ms Vamvakinou?

**Ms VAMVAKINO**—No. I am trying to regather where we are at.

**CHAIR**—Ms Hall isn't back yet.

**Ms VAMVAKINO**—She is actually in the chamber now.

**CHAIR**—Ms Hall could perhaps submit her questions in writing. There being no further questions from the committee, I would like to thank you, Mr Hoy, and your colleagues Mr Rowling and Mr Kenna. Thank you very much for your time.

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

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

**Committee adjourned at 12.23 p.m.**