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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Reference: Aspects of workers' compensation

WEDNESDAY, 16 OCTOBER 2002

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Wednesday, 16 October 2002

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

Members in attendance: Mr Bevis, Mr Dutton, Ms Hall, Mr Hartsuyker, Mrs De-Anne Kelly, Ms Panopoulos 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

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Committee met at 11.20 a.m.

BECKETT, Ms Kate, Committee Member, RSI and Overuse Injury Association of the ACT

THOMSON, Ms Ann, Coordinator, RSI and Overuse Injury Association of the ACT

CHAIR—I declare open this public hearing of the inquiry into aspects of workers' compensation. I would like to welcome Ms Ann Thomson and Ms Kate Beckett from the RSI and Overuse Injury Association of the ACT. Thank you for coming to meet with us today. We appreciate that.

I am obliged to tell you that the proceedings here today are formal proceedings of the parliament and warrant the same respect as proceedings in the House. The committee prefers that all evidence be given in public but, if at any stage you wish to give evidence in private, please ask to do so and the committee will consider your request.

I would now like to invite you to make some preliminary remarks about the issues that are important to you, before we move to questions and a broader discussion.

Ms Thomson—I think it is really important to put more emphasis on prevention in the workers' compensation system. Both Kate and I have completely preventable injuries. When I was injured, I was working as the coordinator of the Home Tutor Scheme in the ACT. I was a teacher. I have a BA with honours, a Dip. Ed. and a master's degree and I have been a university lecturer. So I do not fit the standard assumption about who is a workers' compensation claimant. I was working at a desk that was too high, I had a very old computer and I had had absolutely no training in how to use a computer safely. The moment I got injured, all of the equipment was replaced. That is too late. I think that is really important.

The second is that, once you enter the workers' compensation system, you are effectively doubly injured. First of all, you have the injury that you have and, secondly, you have the injury that is inflicted on you by the system itself. I am sorry; I am a bit nervous. The adversarial process, which is an important part of the workers' compensation system, is very damaging to the claimant. You have to endure attacks on your integrity, attacks on the reality of the injury, a lack of control over many aspects of your life, intimidation and pressure—all of which is extremely damaging. In my case, I did not take a single day off work. I have never taken a day off work because of my injury but I have still had doctors claiming that I am a fraud who is simply in it for compensation, which is absurd.

With an injury like occupational overuse syndrome, what is really important is to have some research into what are the best treatments and how to rehabilitate people so that there can be some actual evidence based rehabilitation and treatment. Essentially, the approach to overuse syndrome in Australia is to pretend that it does not exist. There is lots of evidence that, in fact, it is extremely common. There is no evidence based treatment at the moment. We just waste our time going from one treatment to another, each of which assures us that it will work, and it is just a waste of public money. That is where I would like to finish. I very much welcome your questions.

CHAIR—Thanks, Ms Thomson.

Ms Beckett—The only thing I would like to add to what Ms Thomson was saying is that I think it would be really important for injured workers to have a lot more control over their rehabilitation. At the moment, if you make any changes to the type of treatment you have, it is also assumed that there may be fraud involved. One of the problems with RSI is that it is cumulative in the sense that it depends what you have done that week how bad your condition is and what you might have done to actually flare up the condition. For example, with massage treatment, you get to a stage where you may not need it every week but, if you change that at all, Comcare—I have experience only with Comcare—get a bit strange about changing your treatment regime. I think a lot of people feel like they do not have very much control. I feel there is a lot of money wasted as well because either the doctor makes the decision about what treatment you have or it is an ongoing thing.

CHAIR—Thanks, Ms Beckett. We have your written submission as well, which is very helpful.

Ms HALL—Thank you very much for coming along. I used to work with people that had RSI, so I understand a lot of the problems that you have experienced. Firstly, on the percentage of people that have RSI, it is mainly women, isn't it?

Ms Thomson—It is not mainly women but it is disproportionately women. This was a research project that was carried out by Comcare into an ACT government agency where they interviewed 1,000 government workers to see if they had RSI symptoms, none of whom were workers' compensation claimants. Of those 1,000 workers, eight out of 10 had RSI symptoms and two out of 10 were working in constant pain. That incidence was equal across all employment categories, including right to the top, in everyone who was using a computer. There is this huge, hidden epidemic. A study at ANU, which was undertaken recently by a PhD student under Dr Gabrielle Bammer, found that 60 per cent of their clerical workers had been to the doctor in the previous year with an overuse injury. So those are signs, yes.

Ms HALL—And the clothing and textile industry, I think, as a whole—

Ms Thomson—Yes. They have even worse incidences.

Ms HALL—And chicken processing, meat processing—they are other industries that have a high proportion of people suffering from RSI?

Ms Thomson—Yes. This injury is being taken really seriously in other parts of the world. For example, in the European Community there has been a recent report on the incidence of overuse injury and measures to prevent it. In Holland, there has been a major inquiry into RSI, with a report. In the US, the National Institute for Occupational Health and Safety has a 500-page report into the work relatedness of overuse injuries, which found that there is considerable—in fact, overwhelming—evidence that they are work related. But in Australia they just seem to be ignored.

Ms HALL—I know there are a number of new tests that are being used now that substantiate the fact that RSI is an injury, but in the early days it was even argued that it did not exist.

Ms Thomson—It is still argued.

Ms HALL—That gets back to the problems that you were identifying of the adversarial system and the emphasis that is placed on you in relation to fraud.

Ms Thomson—Yes. Again, this report which was done for Comcare entitled 'The impact of workplace culture on injured workers return to work' shows that, if workplaces treat an injury as real, the outcomes are much better than if people are suspected of fraud. So just treating the person as if their injury is real is in fact very helpful to their rehabilitation. As far as tests go, there is still lots of work to be done.

Ms HALL—Yes, there is. I notice that you mention prevention, which is something that as a committee we need to take very seriously, looking at taking steps before problems actually occur in the work force.

Ms Thomson—Just as an example, in Britain there is now the RSI and health and safety law. So for every person who is working at a computer there is a checklist to make sure it is properly set up and that the person has training to use a computer safely, because there is so much computer related injury. In Australia, we have a web site and people can email us if they have RSI. We are constantly talking to people who are working with really poor equipment and have had no training and are injured because of that. It is like what happened to me. What is the point of coming in and replacing all your equipment when you are already injured? Several people have been injured in my workplace since I was injured, all of them from using inadequate ergonomics.

Ms HALL—There is a culture that exists within workplaces generally where you are encouraged to accept what you are given, not to complain and, if you do look at the ergonomics of your workstation, then there is a question mark put over you from the start?

Ms Thomson—Yes.

Mr DUTTON—I think that is a fairly broad sweeping generalisation.

Ms HALL—It is a question I am asking, if you do not mind, Mr Dutton. You can come in on it later and say that it is not correct. I am sure you have had a lot of experience going to workplaces and working with people that are suffering from RSI. You can share that with the committee. If you would like to comment on that, Ms Thomson, I would appreciate it.

Ms Thomson—There are workplaces that really care and there are workplaces that care but where there is just not the money. There often is not the money.

Ms HALL—I would like to push a bit further about the workers' compensation system. Maybe you would like to go through a bit from the time that you were identified as having the injury and the process that you go through, how it actually helps you towards wellness and returning to work, and how it actually stops you from achieving that wellness and returning to work. Could you give us a balanced overview of that.

Ms Thomson—What I come across all the time in my job is people who are pushed to return to work to the same duties very early. The most recent research, which I have included with the submission, is that it takes weeks or months to resolve this type of injury. If you return somebody to exactly the same work, you are simply going to turn their condition into a chronic

one. There is no problem with returning people to work, but there is with returning them to the same duties.

From what I see, workplaces which are flexible—and obviously you need to have a reasonably big workplace—and which think laterally about what they can do with somebody are often very successful in rehabilitating people. For example, I have seen people in the Public Service who are injured, sometimes at quite a high level, who go into a training position for a few months and they recover. Or I have seen someone working in K-Mart who was working on a checkout and she was moved to returns and refunds so that she is not pushing things through all the time, and she can manage that. If there is a cooperative approach, a partnership approach—'What can you do? Where can we find somewhere that you will fit in?'—I think a person can be rehabilitated successfully.

The experience of many of the people who have long-term chronic injuries and end up being invalided out or end up on invalidity pensions, where I believe there is a disproportionate number of people with musculoskeletal conditions, is that they are often moved to jobs of no importance, jobs that are just made up for them, very repetitive jobs such as filing or carrying things about, and jobs that just exacerbate the injury. Have I completely answered your question?

Ms HALL—That is fine. You were in the Comcare system, were you not?

Ms Thomson—Yes, and I still am.

Ms HALL—That is not a bad system—

Ms Thomson—No, it is a terrible system.

Ms HALL—in comparison to some of the state systems.

Ms Thomson—The trouble with Comcare—

Ms HALL—Are you still in the workplace?

Ms Thomson—No, I eventually took a voluntary redundancy.

Ms HALL—The problem with Comcare, yes?

Ms Thomson—One problem with Comcare is that it tends to have a very long-term relationship with people and, as the relationship goes on, people are challenged more and more. There is more and more pressure to get them out of the system. Essentially what Comcare will do is send them to somebody who they know will give an adverse medico-legal report. There are some very well-known doctors who, to my knowledge, have never given anybody with an overuse injury a positive medico-legal report.

Mr HARTSUYKER—When you say 'adverse legal report' that is a legal report—

Ms Thomson—A medico-legal report.

Mr HARTSUYKER—But an adverse report to the claimant, from the point of view of the claimant, not from the point of view of the employer?

Ms Thomson—Absolutely, yes. Generally what they will say, by the way, is that the person was never injured, that it is all in their head, that all they need is a pat on the back and that they will get back to work. It is a treatment system that has never been shown to work and has no evidence base.

Mr HARTSUYKER—How then does that person get accredited expert status if he is making this up?

Ms Thomson—For example, he may be a rheumatologist with a very poor bedside manner who is not very successful in his practice and prefers to earn $2,000 or $3,000 a time for medico-legal appointments or someone who wants to build up a little nest egg for their retirement. I guess I am very cynical—

Mr HARTSUYKER—That is a very emotive statement.

CHAIR—Excuse me; we are going around the table in order. I think Ms Hall still has some questions.

Ms HALL—Yes. In relation to medico-legal reports, just as you can go to one doctor that will give you an adverse report, you can probably go to other—

Ms Thomson—Yes.

Ms HALL—What ratio—about two to one? Would you say that most of the doctors that you are referred to by Comcare for that medico-legal report tend to be older?

Ms Thomson—Yes. I have never thought about it but they do tend to be older.

Ms HALL—Moving towards retirement?

Ms Thomson—Yes.

Ms Beckett—They are more than 60, a lot of them.

Ms Thomson—I have two adverse medico-legal reports and five favourable ones, all paid for by Comcare. The ones that were adverse claimed that I was a fraud right from the beginning, which I find incredibly offensive. How can you possibly say that for somebody who has actually never taken a day off work but has just asked for them to pay for some treatment?

Ms Beckett—That is an interesting point. They do not tend to look at your previous history in that regard. I never took time off work before my injury and I never missed a day from school. It just is not in my history to be a person who is malingering—those phrases that they use that you are malingering because it has gone on for a certain amount of time. I have actually never had a completely adverse report from a medico-legal doctor.

Ms Thomson—Part of the point about medico-legal doctors is: where is the compensation dollar going and how productive is it to make a concerted attack on a person's integrity? I think the research shows that it is not very productive.

If we look at Comcare, Comcare's actual statistics have really deteriorated over the last several years in terms of the breadth and depth of the statistics that they make publicly available in their annual report. If we look at their 1996-97 statistical compendium, which is the last statistical compendium that they published with their annual report, we find that over the previous four years their legal costs had quadrupled and had been a very substantial proportion of their overall costs. It is just not productive.

You can move people into the disability pension system or you can move them to invalidity retirement or you can take them seriously—give them the right equipment and give them some productive work. For example, in my work, we had to use the telephone a lot and I found that difficult because we had very heavy, old telephones. It took a year for me to get a telephone headset. A voice-activated computer is another really useful thing for lots of people who are injured using computers. It often takes a very long time to get them. They are provided without training. What people tell me is that they are often not properly connected to the rest of the work's computers so that they are not an effective employee. Let us have a system that works.

Ms HALL—Thank you, I have had my share of questions and that is a good point to end.

Mr BEVIS—Thanks very much for coming along. I was managing an office in the 1970s when computers were starting to be introduced and I remember the debates then about RSI. I always found it amusing that some of those people who denied the existence of RSI knew all about tennis elbow from their weekend socials but could not understand a worker getting RSI.

Ms Thomson—Yes.

Mr BEVIS—I am interested in the survey that you have from Comcare. You have explained that it is a survey that was done for the ACT government. Do you know when it was done?

Ms Thomson—Yes, 1999, as far as I can gather. It is not a dated report but 1999. So it is pretty recent.

Mr BEVIS—Looking at some of the survey responses, it is a bit different from the summary and—maybe this is something we need to raise with Comcare to get answers for—the respondents add up to more than 100 per cent. I am looking in particular at tables 2 and 3 on pages 5 and 6 of the report.

Ms Thomson—I suppose some people are women and non-English speaking or men and non-English speaking.

Mr BEVIS—On table 3 it asks people to identify why they did not lodge a claim, and obviously people were given the opportunity to identify more than one reason. I just wonder if you were aware of any of the further detail on the survey, because there are a couple of startling responses there as to why people were afraid to put in a claim even though they were eligible to and suffering some injury.

Ms Thomson—What is really sad is people saying, for example, that they would have to work harder if they took time off work—so that the work would just pile up when they were away and it would worsen the condition when they came back; that they would lose respect of the supervisor and the respect of their colleagues. And about five per cent were actually afraid that they would lose their jobs.

Mr BEVIS—I guess what I am after is some further details. I am assuming this is an executive summary. Do you know if the report is published?

Ms Thomson—This is all I have available. It is published on Comcare's web site.

Mr BEVIS—Thanks, we will try to track it down.

Mr HARTSUYKER—I go back to my earlier question about the correlation between bedside manner and decisions by medico-legal practitioners.

Ms Thomson—What I am saying is that, in my personal opinion, some of them are probably not very successful as doctors in ordinary practice. It therefore would be a temptation to go into a field where your patients have no choice as to whether to visit you or not.

Mr HARTSUYKER—I hear what you are saying. I do not know whether it is true.

Ms Beckett—A lot of the medico-legal doctors I have been to do not come from Canberra. I do not know how you find out anything about them. They have come from New Zealand or Melbourne.

Ms Thomson—Quite a few of our members have had very bad experiences with medico-legal doctors, ranging from them being extremely curt to them making remarks about their bodies such as 'You are a fat old thing, aren't you?' or attempting to cause people quite considerable pain by forcing movements which the people are unable to make. It is just not a productive way of doing things. That kind of treatment is not very successful with somebody who is well educated like myself, but I suspect it is very successful with a lot of people who are of non-English speaking background or who are poor and less well educated. They feel that somebody very important has said they are a fraud and they give up.

Mr HARTSUYKER—I am not a medical expert, but a lot of examination procedures are based on levels of pain, as I understand it, so perhaps that is a normal procedure. I do not have any knowledge of that.

Ms Thomson—There are AMA guidelines on how people should be treated in medico-legal examinations which recognise the fact that they are not a normal medical examination.

Mr HARTSUYKER—You are saying that they are being conducted outside AMA guidelines?

Ms Thomson—I would say so, yes—some are.

Mr HARTSUYKER—Have there been complaints made to the AMA on that?

Ms Thomson—We have certainly talked to the AMA about it on behalf of our members generally. If you put yourself in a position of a person with a severe work injury who gets badly treated by a medico-legal doctor, are they then going to get into another area of fighting in their life by complaining about a medico-legal doctor? They already have enough on their plate.

Mr HARTSUYKER—Whether you like it or not, our legal system is by its nature adversarial. There are two points of view. There is one point of view saying that person is totally appropriate in what they are doing; there is another point of view that says the other. It is just a fact of life. That is the way the system works.

Ms Thomson—But what I am explaining is that I do not think many people complain because, where they are in their lives, it is not a very wise or appropriate action for them to take. I do not think that the compensation system benefits from being as adversarial as it is.

Mr HARTSUYKER—I hear what you say. I have no further questions.

Mr DUTTON—Ms Thomson, how are you suggesting it should be resolved then if the current system is not working? I am not sure how else you would have it. I understand what you have said today. How would you have it resolved in a more expeditious fashion than you claim it is now?

Ms Thomson—For something like occupational overuse syndrome where there is not very much known about the best type of treatment, it would be important to actually put some money into research and into education of doctors. One of the papers that I have included on the tendonitis myth, and there are other recently published papers which back that up, says that most doctors are not treating overuse injuries appropriately. They do not understand the nature of the injury and the treatment is inappropriate. I think there needs to be some education of doctors and some money devoted to research. Then I think there really needs to be a partnership between the injured person, the rehab provider and their work manager to say—there are workplaces that work like that and they have really good rates of return to work and low rates of workers' compensation claims. They are the ones that say, 'Let us do our best to find you something. What equipment do you need? Let us get it fast instead of in a year or two years time.'

Mr DUTTON—Are we not at the end still going to be left with a situation where you have a proportion of claims where it is essentially a claim that has been made and that needs to be tested—the claim is not necessarily doubted but the veracity of it needs to be verified, does it not?

Ms Thomson—Yes.

Mr DUTTON—For that reason, you will be left with the same end result as we have currently, even though, as you say, through a process of education it may be that doctors are more knowledgeable and therefore it creates fewer problems. I accept what you are saying there. But at the end of the day, we are still going to be left with a scenario where claims need to be tested.

You claim that a low percentage would be of a fraudulent nature; other people might give different evidence from that. What the percentages are does not really matter, but they are

present within the system. At the end of the day, there needs to be a testing of the veracity of that claim because there will always be a proportion of fraudulent claims in there. I suppose that is what muddies the waters for people in your situation, as you say, who have a genuine issue or concern.

Ms Thomson—But I think there would probably be some fairly clear markers about which claims are fraudulent and which are not. For example, I do not know if you recall this, but in the police royal commission in New South Wales, one of the policemen who was corrupt claimed to slip on a milkshake. The day before, he had been filmed talking to his mate in the car about how he would go and see Dr So and So who was sure to fix it up. He was planning to have an accident, and Dr So and So, he had heard, would fix it all up for him. I would be very suspicious of any patients of Dr So and So.

But for somebody who goes to their GP with whom they have a long relationship and who knows them as a person and who knows their pattern of illness, and if the person has not been having any problems at work and in fact has probably been working very hard, where there are no markers to indicate that a claim might be fraudulent, why treat the claim as a potentially fraudulent claim? I would say that anyone who has an overuse injury for more than about two years is currently treated as if they are making a fraudulent claim. That is just not productive—no matter whether or not there are any markers in their past to indicate that they are likely to make a fraudulent claim. Does that answer your question?

Mr DUTTON—It provides me with some assistance, I think.

Ms VAMVAKINOU—I want to tease out a bit more that issue of the medico-legal doctors. There seems to be, if not an implication, some indication from the discussion that the medico-legal doctors, who I presume act on behalf of Comcare—

Ms Thomson—Yes.

Ms VAMVAKINOU—Is there a suggestion that they may be working within the framework of a brief, and that on behalf of the Commonwealth it is their job to deliver adverse results for the claimant? I just wanted an answer to that.

Ms Thomson—It is not that they are working within a brief. It is more that some of them have very well-known points of view. They can be relied on—I would say 100 per cent for some of them—to write an adverse claim. Comcare knows which doctors those are and at particular times they will send you to them. Kate, I think you had an occasion when you were threatened with being sent to one of those doctors by Comcare.

Ms Beckett—I am not even sure if I should discuss it in front of everyone. I was phoned by a claims person at Comcare—

CHAIR—Would you like to give that evidence in private?

Ms Beckett—Yes, probably.

CHAIR—We might arrange that then. You are feeling a little reluctant?

Ms Beckett—It probably does not matter because I did get a letter written to Comcare about it afterwards. They invited me to come in and sign some forms before the person went on leave. At that stage I had a six-year-old. I picked her up from school and they said, 'Just bring her along; all you have to do is sign the form.' I was taken into a room and really abused by the person until I was in tears and my daughter was in tears. The person basically accused me of being a fraud. I was doing 25 hours of work at the time, and she said, 'Unless you increase your hours from right now—I want you to tell me before you leave this room—we will send you to a doctor who will say you don't have RSI.'

Mr BEVIS—I do not want the name, but are we talking about someone in your employer's establishment or in Comcare?

Ms Beckett—A case manager in Comcare. I was so distressed about it—I feel like I am stressed still and that was a number of years ago—that when I went to work the following morning I collapsed in tears when someone said, 'How are you?' because it had such a detrimental effect on me. I feel very annoyed that it was done in front of my child as well.

Ms VAMVAKINOU—Did you have any recourse as a result of the way you were treated?

Ms Beckett—Everyone in my workplace supported me and wrote letters to Comcare; so far as I know, the person was quickly moved.

Ms VAMVAKINOU—My other question was regarding what you had said earlier about workers having control over their treatment and how you felt that perhaps, if there were a mechanism to facilitate that control, that would save money. I wondered whether you have thought through how that might happen or whether you have any ideas as to how that could be done.

Ms Thomson—For example, you could say that the person would have such and such a treatment so many times a year instead of every week, or at most once a week.

Ms VAMVAKINOU—Sorry, 'such and such treatment' would imply that the person affected has found a better method of treatment as opposed to the one that is being offered?

Ms Thomson—No, their doctor certifies a treatment but essentially they will say, 'You need it once a week.' You might be able to manage at times once a month. You are going through a really good phase. What I have found is I have said, 'Okay, I will do this once every two weeks now.' Then I get an adverse medico-legal.

Ms Beckett—It is because you have changed.

Ms Thomson—It is because you have changed. There is not the freedom within the system to match the frequency of treatment to the state of the illness. We have actually done our own little bit of research on which are the most effective treatments for OOS just by asking people, and that is just about the best research there is into effectiveness of treatment as far as we know. That is not a good enough situation.

Ms VAMVAKINOU—Do you find in some instances when you feel you want to decrease the treatment you would actually be saving money—

Ms Thomson—Absolutely, yes.

Ms VAMVAKINOU—Obviously you would be, as opposed to being expected to continue—

Ms Thomson—Yes. If you want to try another treatment, what I have done is try another treatment and pay for it myself. Then you think, 'Okay, this has been effective. I will move over to that.' Again, you attract attention which does not benefit you. It is not a system that works very well.

Control has been shown to be absolutely crucial for people's health. There is some very well accepted research by Dr Michael Marmot who carried out the well-known Whitehall study of thousands of British public servants. He basically found that the more control they had over their working lives, the healthier they were. It is extremely interesting research.

What happens to people in the workers' compensation system largely is that they lose control over their lives. They not only lose control over their working lives; they often lose control over their home lives as well because you can no longer help your children and your family in the way that you did previously. That is one reason why workers' compensation claimants have poorer outcomes than people with the same injury who are not workers' compensation claimants. It is really important to bring this element of control back into workers' compensation.

Ms Beckett—I wanted to say something about people reporting their injuries early on. There is a real disadvantage in not reporting them early on. In my situation, I waited until I literally could not do anything any more before I actually made my claim. At that stage it is disadvantageous for everyone, because it means that it is much harder to get you back to work and get you at a level that is actually useful to people in the workplace. I feel sorry for them, too, in that situation where they are left with a worker who is basically not able to do anything.

Ms PANOPOULOS—I have no questions.

Ms HALL—I want to go back to the medico-legal aspect and concentrate a little on the nature of RSI or overuse syndrome. If you have an X-ray of somebody with RSI, nothing shows up.

Ms Thomson—No.

Ms HALL—And with other tests it is very difficult.

Ms Thomson—Ultrasounds will sometimes show.

Ms HALL—There was a method that was being trialled, I think, looking at the levels of heat—

Ms Thomson—Yes, that is not very well accepted. Dr Bruce Lynn and Jane Greening at University College in London have been trying to develop a test using sensitivity to different levels of vibration. They obviously think they are on to something but that it is going to take some development.

Ms HALL—Part of the problem, and the reason that you can get conflicting medico-legal reports, is that there are a lot of different thoughts on RSI. There has been controversy within the medical profession about its existence and a whole heap of other things around it. Would you like to share that with us a bit?

Ms Thomson—Basically, what I would like to say is that internationally there is absolutely no controversy at all. What I have here is some research on work-related neck and upper limb musculoskeletal diseases from the European Agency for Health and Safety at Work and the 500-page NIOSH report, which I did not bring along because it is too huge. That is a discussion of the evidence for the work-relatedness of musculoskeletal disorders of the neck and upper limbs. The authors are scientists from a number of countries who are leaders in their field, and they have absolutely no doubt. They are also able to at least speculate with a degree of confidence about the physical mechanisms associated.

The paper by Dr Jill Cook, who is at Melbourne University, which is a fairly brief one published in the BMJ this year, talks about what happens and what you can see under the microscope with people with RSI. Obviously you have to take tissues, which you are not going to do from most people, as you can see major damage to the structure of the collagen fibres. They are a total mess. Of course, whenever we see an athlete who is injured, many athletic injuries are overuse injuries. For example, Cathy Freeman's injury and Pat Rafter's injuries are overuse injuries. The injury that a shooter gets is the same as a cleaner would get at work from using a spray bottle. An archer's injuries pulling back a bow would be very similar to those of a person working in a factory. There is never any doubt that those people should take a considerable amount of time away from the activity and that they should get very intensive physical therapy.

Ms HALL—Thank you. I wanted to draw that out a bit. So to some extent it could explain how you could have one doctor saying, 'Yes, it is there. It is a real problem. I accept that.' On the other hand, you could have another doctor saying, 'I have looked at the X-ray. There is nothing there. Therefore, it does not exist.'

Ms Beckett—Also medico-legals come from a variety of fields so they cannot be expected to think the same way. You may be sent to a rheumatologist; you also may be sent to a psychiatrist. A psychiatrist cannot find anything wrong with you. Therefore there is nothing wrong with you. Or a neurologist—

Ms Thomson—Or an orthopaedic surgeon.

Ms Beckett—They all come from a different background.

Mr HARTSUYKER—Does your organisation believe that some of those adverse medical reports are fraudulent? Part of our terms of reference relates to fraudulent claims and conduct by employees and employers or advocates for people who have the other view. Do you believe there are fraudulent reports being issued in medico-legal opinions or do you think it is just a difference of opinion?

Ms Thomson—I think it is a very poorly informed difference of opinion. For example, recent adverse medico-legal reports that I have seen will quote medical research at most from the 1980s. I think those particular doctors are extremely poorly informed. There is certainly

considerable financial benefit to them when you think that they are getting up to $3,000 for an appointment and a report, when much of the report is simply reproducible on a word processor. There is undoubted fraud; some doctors have been found to have included references to males' pregnancies, so they have just reproduced inappropriately. There is undoubtedly fraud, yes, and there is a lot of very carefully maintained ignorance.

Ms Beckett—Often they will not have read any of the reports sitting in front of them, and the pile of reports may be quite thick depending on how long it has been going on. I feel really upset that they have not taken the time before your appointment to read your report.

Mr HARTSUYKER—Which is what they are being paid for.

Ms Beckett—Yes.

Mr HARTSUYKER—In part.

Ms Beckett—Yes.

Ms Thomson—I would say it is almost invariable that they have not taken the time to read the report. As you walk in, they are starting to leaf through it and use the highlighter. Nearly every report contains inaccuracies which are simply a result of that, I would say—wouldn't you?

Ms Beckett—Yes.

Ms Thomson—They are simply a result of not having read what is before them.

Mr DUTTON—Ms Thomson, most of your evidence and experience obviously relates to Comcare. What experiences have you or your organisation had with WorkCover outside of Comcare?

Ms Thomson—I am sorry, I cannot help you there. What I would say is that there is not nearly enough emphasis on prevention, which would be something for WorkCover.

Mr DUTTON—But presumably members would have had claims or dealings through the WorkCover scheme as opposed to the Comcare scheme. Is that a fair statement?

Ms Thomson—They would have. But, in fact, we are the only surviving RSI organisation in the whole of Australia. Until very recently, our funding was $5,000 per year. Even though we get requests for assistance from all around Australia, our expertise or our experience and our ability to help people with different insurance schemes is limited.

Mr DUTTON—But even during the periods over which you have had adequate funding, as opposed to what you claim you now have, you have done no research or had any experience with WorkCover or any organisation outside of Comcare?

Ms Thomson—No. Lots of the people that we help are dealing with private insurers. I would say the one advantage of private insurers is that they tend to finish the relationship within a few

years. Even though they may harass people in a very similar way to the way that Comcare harasses people, there is generally a payout and the person gets on with their life from there on, whereas the typical pattern with Comcare is—for example, I have had a relationship now with Comcare for 10 years.

Some research is being been done at the ANU at the moment following up women who were injured with overuse injuries at the ANU in the 1980s. They were trying to compare clerical workers in the 1980s who were injured, which was about a third of their clerical work force, with those that were not injured. First of all, they found that a lot of the people who they thought were not injured were in fact injured but they had not put in a claim—because they saw what happened to their company-workers presumably. They had a control group. One of those groups of people that they followed up had rates of depression of about 40 per cent 15 years later. Even though quite a few people said that they had partially or mostly recovered, about 80 per cent had had pain the previous week. I think that is going to cast light on different insurance systems as that research at ANU progresses. That is current research. I think it is going to cast some light, because of the control groups that they have used, on the effect of different insurance systems.

Mr DUTTON—But you are not aware of any issues of a similar nature within the WorkCover scheme?

Ms Thomson—No. I should say our current funding is $15,000 a year. Are you interested in what we do with that?

Ms HALL—Yes.

Mr DUTTON—If it is of benefit to the committee, absolutely.

Ms Thomson—In the past year, we ran a course for people with RSI to help them move on with their lives, to try to help them find other avenues of employment and to sort of move past their injury. We have written a book called *Managing the basics*, which is to help people manage all their home tasks, as well as a book called *Kitchen and laundry hints* to help people manage in the kitchen and laundry. When I say ‘home tasks’, it is things like driving, writing and travelling.

We have a web site. We have had some funding to run a project on safer computing in schools. We ran another project to help women who are pregnant or who have small children, because that is an enormous problem if you have RSI. We produced a poster, a book and a leaflet to help those women and ran a publicity campaign about that. We have a newsletter. Having looked at web sites around the world lately, I think we have one of the best web sites on RSI in the whole world. It is a very informative web site which we update all the time. We hold regular meetings, and lots of people write to us whom we try to help.

Mr DUTTON—Excellent, thank you.

Mr HARTSUYKER—Your funding is from the federal government or from Comcare?

Ms Thomson—No, it is from the ACT government. We are very grateful for it.

CHAIR—Ms Thomson and Ms Beckett, I would like to thank you very much for coming before the inquiry. Would you just like to stay a few minutes in case Hansard has any details they would like to check. Thank you very much for your time and the effort you put into your submission. It has been very helpful.

[12.10 p.m.]

HELLSING, Mr Stig Hakan (Private capacity)

CHAIR—Mr Hellsing, I would like to welcome you formally to the inquiry. I am obliged to tell you that the proceedings today are formal proceedings of the parliament and warrant the same respect as proceedings in the House. The committee prefers that all evidence is given in public, but if you feel that there are matters that you would like to divulge in private, please ask and the committee will certainly consider that request. I would like you now to make some preliminary remarks, and then we will move to questions from the committee.

Mr Hellsing—First of all, I would like to thank the committee for taking note of my submission and for inviting me to this hearing. Even though I do not represent any organisation, I know there are thousands of people around the country who have suffered work-related stress burnout resulting in chronic psychological illness. As prolonged stress is known to affect the immune system, this can lead to physical illness, most commonly the symptoms of chronic fatigue.

Most of what I wish to bring to the attention of the committee is detailed in my submission. However, I would like to mention the following points. The insurers' methods of obtaining medico-legal reports are absolutely appalling. The widespread use of unscrupulous health professionals who have a vested interest in providing the insurer with favourable reports brings the system into disrepute. The insurer's psychologist hardly examined me, the appointment was over in less than one hour and no psychological testing was done. However, the court preferred his report to my own two psychological reports that were the result of extensive testing and examination, and also included an interview with my wife.

Another area of concern is the insurers' use of standover tactics upon the claimant's solicitor to persuade the claimant to settle their claim. I also want to draw your attention to the huge differences between the workers' compensation findings and the common law findings. Some of the Supreme Court findings are nothing but a deliberate miscarriage of justice. In many stress cases, it is not monetary compensation that is the driving force; rather, it is a desire for acknowledgment of the injury, conflict resolution and some sort of justice.

The whole process of workers' compensation—in my case, over a period of eight years—is extremely stressful and reinforces the original injury. This can be likened to a person with a broken leg who is required to have their leg re-broken repeatedly over time until eventually it does not heal.

I urge the committee to seek advice from various experts in the field of stress-related illnesses on ways of improving the current workers' compensation processes in order to minimise additional trauma to the claimant. Recognition of stress in the workplace and early intervention would go a long way towards minimising claims.

CHAIR—Thank you, Mr Hellsing. We will start from this end of the table.

Ms PANOPOULOS—I have no questions.

Ms VAMVAKINOU—None at this stage, thank you.

Mr DUTTON—Could you come back to me.

Mr HARTSUYKER—Just quickly, you are considered to have full capacity under common law and not so under workers' compensation law. Could you just explain quickly the differences between the two as it panned out?

Mr Hellsing—Under private insurance, you first go to the workers' compensation court, if you have a claim. If that claim is successful, the insurers want you off their books. You go on to common law, which takes the whole scenario into account and finalises the payment taking the future into account as well. Once you have done the common law proceedings, you are effectively off the insurers' books.

Mr HARTSUYKER—Am I reading this correctly when it says that you are classified as disabled under the workers' compensation law but fully capable under the common law?

Mr Hellsing—That is correct, yes. It is very confusing. The Supreme Court was of the opinion that I would make a full recovery very quickly.

Mr HARTSUYKER—Okay.

Mr BEVIS—Welcome. You made some comments in your submission about rehabilitation or the lack thereof. I was wondering if you could expand a bit on that.

Mr Hellsing—Rehabilitation has never been mentioned. I do not even know if there is rehabilitation available for cases like mine. Certainly I do not know of any.

Mr BEVIS—No-one in the system raised it with you?

Mr Hellsing—No.

Mr BEVIS—You were retired on permanent ill-health grounds from the workers comp system?

Mr Hellsing—Once the Supreme Court common law proceedings were finalised, yes, I was off the workers' compensation scheme. And I was not on the workers' compensation scheme until I had the successful claim in the workers' compensation court.

Mr BEVIS—That is the Magistrates Court that you have given us the details of here?

Mr Hellsing—Yes.

Mr BEVIS—You said in your submission that you made some efforts to do things yourself, which was then used against you.

Mr Hellsing—In the Supreme Court, yes. In the Magistrate's Court, it is mentioned in the decision that I did try some work in the nursery business and that I helped some friends in a

souvenir shop. On both occasions, I could not go back because I had a panic attack in one place and got very frustrated and could not sleep after seeing some trouble in the other place. The Magistrate's Court found that that showed that I had a problem, whereas in the Supreme Court they were using the same thing but they did not take into account that I had problems even doing a very simple job. All up I earned about $1,500 over a period of three or four months, which is about one week's normal wages if I had continued in my normal job. For some reason, the Supreme Court felt the fact that I had been going to two jobs—I did not apply for them; my wife fixed me up with those jobs—meant 'Mr Hellsing can work in a nursery and has also helped out in a souvenir shop; he should be able to get better and get back to an $80,000 a year job.' It is very hard for me to understand the logic behind that.

Mr BEVIS—I want to thank you for including the court decisions in your submission. There is some useful commentary in there, including the medico-legal opinions.

Mr Hellsing—It is a very confusing system once you have to start to deal with it. When I first put in for workers' compensation, I was still employed at the tracking station. I got a big surprise when I found out that the insurers firstly said that, after careful consideration, they did not think there was anything wrong. The only thing they did was talk to my manager at work. They did not talk to me; they did not talk to anyone else. Then I found out that, from that position, you actually have to have legal help to get anywhere. It was very hard to find any legal people in Canberra that were willing to take up the subject of what is going on at the tracking station. They said, 'No, we don't want to deal with that. They normally sweep that under the carpet.'

Mr BEVIS—Thanks.

Ms HALL—Once again, thank you so much for coming along. I can see you have been through rather a difficult process. There is nothing worse than getting caught in a system like this, trying to get yourself ahead and at the same time not being well. With your kind of illness, in some ways there is some similarity with the ladies that were here before you in that it is not something where you can take an X-ray and say, 'Right, there is a problem.' I appreciate it and I realise that it is probably quite stressful for you here today. Maybe you could clarify for me what happened when you finished work: did you have a case manager; were you under Comcare?

Mr Hellsing—No, private insurance.

Ms HALL—Which insurer? Was it under New South Wales WorkCover?

Mr Hellsing—No, under ACT WorkCover.

Ms HALL—When you could no longer maintain your employment, was there somebody that looked at the process? You mentioned that you did not have any rehab. Was there any attempt to look at a suitable alternative job for you?

Mr Hellsing—No. My claim was rejected so that is it.

Ms HALL—It was totally rejected. You were out there and you have had no assistance along the way. Since your case was finalised in 2001, have you been able to put it behind you and move on?

Mr Hellsing—Unfortunately, no. I still have quite severe problems.

Ms HALL—Yes. With the common law in the ACT, does there have to be a negligence component for it to be accepted? I am not familiar with the ACT common law system, whereas I am with the systems in other states. Did you have to establish negligence on behalf of the employer to be eligible for common law in the ACT?

Mr Hellsing—You do not have to, but in my case the employer admitted liability.

Ms HALL—They admitted liability—

Mr Hellsing—To get it before the Master of the Supreme Court, and it went to decide quantum only. Initially, they appealed the workers' compensation findings and that appeal was settled. The only change from Magistrate Burns's finding was the deduction of $1,500 for those four or five months when I had managed to work a bit part time.

Ms HALL—During the whole of this process, did you feel that you had any control or input into what was happening with you?

Mr Hellsing—No. I felt like I was being kicked around. I was very lucky that there were other people at the tracking station in similar situations. One of those persons became friendly with me. We could talk it out and sort of resolve crisis issues between the two of us. Apart from that, there was no help whatsoever.

Ms HALL—So there have been similar cases with the same employer?

Mr Hellsing—Yes.

Ms HALL—Similar outcomes?

Mr Hellsing—No. Once I got the positive finding in the workers' compensation matter, the door was more or less shut.

Ms HALL—Do you have a little word of advice for this committee, as we are looking at fraud and workers' compensation, on how that impacts on you as a person who has suffered a workers' compensation injury and how the whole system works?

Mr Hellsing—I think the committee should seriously consider whether stress-related claims should be part of the workers' compensation scheme. If you can find another way of dealing with it that does not reopen the wounds all the time when you have to deal with someone, it would be far more beneficial.

Ms HALL—Do you have any suggestions?

Mr Hellsing—You need some sort of support from someone that understands the whole thing. The lawyers have a very poor understanding of what has gone on because I look okay and I can behave okay. They just do not understand that there actually is a quite substantial change.

Ms HALL—The lawyers are not about giving you your life back. You want somebody who can help you move from where you are now back to a 'more normal' life?

Mr Hellsing—That is right. The only aim for the legal system is to get you some sort of money at the end, whereas I am fighting to get some sort of life back. There is conflict between the two as you go along.

Ms HALL—Thank you very much for sharing that.

CHAIR—I have some questions, Mr Hellsing. Firstly, working for a drunken supervisor in such a high-tech facility must have been very difficult.

Mr Hellsing—It was frustrating from day one because he was my supervisor all the time I was out there but, as I did not have direct dealings with him to start with, we would pass it off as a joke. There were more people on the shift that had alcohol problems. Actually, four out of 14 had quite severe problems. Once I got second in charge, the thing that really wore away my barrier for coping with it was not only that I had to do his job but also that the people in a similar position on other shifts got the normal pay rises. However, I had the misfortune of getting this specific supervisor who did not bother to fill in the paperwork and, for whatever reason, the management did not want to do anything about it. They were fully aware of the situation for several years.

CHAIR—You were covered under which workers' compensation scheme? The ACT scheme?

Mr Hellsing—The ACT workers' compensation scheme, yes.

CHAIR—Perhaps I do not understand but I did not realise that you would have to go to court to prove your injury, if I could call the stress an injury? Is that the case with all claims under the ACT workers' compensation scheme?

Mr Hellsing—You have to go to court when the insurers reject your claim. I should clarify it. In 1994, the doctor put me on two weeks stress leave, and my first claim was to have that leave reinstated as sick leave. That took me about two years, and actually it cost me more in legal costs than I gained in having the two weeks reinstated.

Then I could not get help anywhere, and it took up until 1997 until someone actually diagnosed me with chronic stress symptoms. At that stage I managed to get a solicitor to look into the case, and then the solicitor filed another workers' compensation claim which was rejected. Then you have to take that to court.

CHAIR—Okay. Obviously stress is a very difficult matter to define. Do you think that this difficulty in defining stress has contributed to the problems that you had in resolving this matter successfully?

Mr Hellsing—I want to say two things. First of all, there is such a gradual change in yourself that you just think 'Maybe it is the kids.' or 'I am getting a bit more irritable and I cannot sleep; maybe it is something else.' You just do not know what is happening to you because it is uncharted territory. You have never been down that track before. If you hardly ever see a medical doctor, you just do not know what is happening to you. The problem is that, if it is not recognised in time and it goes on for years, it becomes chronic. It is very hard to regain your normal functions once it has been going on for years and years.

The other problem is that it is very hard legally to have a stress case recognised. It is not in the interests of the insurer to recognise it; it is not in the interests of whatever employer you work for, because, invariably, if people are getting stressed at someone's workplace, it is a sign of poor management.

CHAIR—Would you go as far as asserting that there are employers—not all employers but some employers and some insurance companies—that would take advantage of the looseness of the definition to fraudulently reject such claims?

Mr Hellsing—Definitely, yes, because the insurance companies are normally share companies, and they try to save as many dollars as they can. The employer does not want their workers' compensation fees to go up because, I believe, if it is shown they have a few cases they actually have to start paying a bit more. In all of this, prevention is definitely the way to go. It was recognised out there that people had problems. It is just that no-one knew what to do about it, and things just kept going on and on. Even though we had a qualified counsellor in to help out there, she could not do anything.

CHAIR—Why was that?

Mr Hellsing—I spoke to her on several occasions. She said, 'It is obvious that management are not going to do anything about the situation. So your best strategy would be to just, when you are driving home, select the point on the road and tell yourself, "Once I pass that point, you are away from work, leave all your stresses behind and you will be right."' That did not work.

Ms VAMVAKINOU—Just on this: you referred earlier on to panic attacks. That is what your stress condition was, a panic attack?

Mr Hellsing—That is part of it.

Ms VAMVAKINOU—Panic attacks are a form of anxiety disorder, anyway. I would assume that they would be not only documented but also fairly well recognised by the medical profession as being a very debilitating condition. In your process, you seem to have had incredible difficulty in actually being able to prove you were suffering from panic attacks.

Mr Hellsing—Yes, but the panic attack is just a small part of the whole scene. The ongoing problems that are still with me are that I overreact to stimuli. The wall clock that you have up here probably does not bother you, but to me it comes in really strong and loud. Also, I have had big problems sleeping for the last 12 years.

Ms VAMVAKINOU—In the time that you have suffered from these conditions, you have not been able to find a mechanism for recovery?

Mr Hellsing—I had small help from some antidepressants and sleeping pills. But I found most of the antidepressants also have side-effects that, in my case, makes the tinnitus become more prominent.

Ms VAMVAKINOU—So you suffer from tinnitus as well?

Mr Hellsing—That is one of the problems. When you try to sleep, it is never quiet; and when you wake up, the tinnitus is there again.

Ms VAMVAKINOU—Yes, thank you.

CHAIR—Mr Hellsing, I notice that you have put some medico-legal evidence before the committee, and that is very helpful, thank you. Did you feel that those particular doctors took an objective view of your difficulty? I notice you quoted Dr Wu in particular.

Mr Hellsing—That is in the magistrate's findings. It is probably worth mentioning how that came about. Dr Wu was the first psychiatrist that the insurer sent me to. I had to go and wait in the foyer at the Hyatt Hotel here. The doctor was running very late. I had to sit there for about an hour and I got more and more uptight about it. I was just about to walk out from there because I could not stand it any longer when the doctor came.

Instead of seeing the doctor in a normal doctor's practice, he had one of the luxury suites in the hotel and I found that a bit intimidating. In one hour, you had to try to first of all give all your background about schooling and where you were born and all that sort of stuff; then at the end you were trying to squeeze in a bit about what had actually happened at work over a period of many years. Dr Wu's report said I was malingering, whereas my employer said in court, and out there as well, that I was an excellent employee at the tracking station. Obviously they got their wires crossed somewhere. If that specialist had taken any sort of interest in the background, he would have contacted the people at the tracking station and he would not have come down with a finding of malingering.

CHAIR—Were you permitted to get your own medical opinion—Dr Wu was a psychiatrist—and submit that to the insurers or could you deal only with the doctors they recommended?

Mr Hellsing—No, your solicitor sends you off for other medico-legal reports. On the subject of medical legal reports, there is one report about the tinnitus that the insurers wanted and I had to see a doctor in Sydney about it. The doctor did his tests and said, 'Sorry, I cannot tell you what I think about it but you might find out in time.' I never heard anything more about it.

In the workers' compensation case, the insurer did not produce the doctor's report. Before the Supreme Court case, I actually obtained a copy from my file in the Supreme Court and I have since obtained a copy under freedom of information. That ENT specialist acknowledged that I had a genuine claim for the tinnitus. So it is very hard to understand that we have an insurance system where the insurer sends you to a doctor for a report, that report comes back to the insurers saying, 'Yes, in this case, the claimant has a genuine claim,' and the insurer says, 'Oops, we better hide that one.' It is more or less the same situation as work; it is a lack of duty of care from the insurers.

CHAIR—You mentioned in your submission that alcoholism was prevalent in that particular workplace and there were also suicides. Was yours the only workers' compensation claim made at that time, were there other employees who made claims, or are you simply not aware?

Mr Hellsing—I am aware of four workers' compensation claims that were made between 1997 and 1999. Mine went in 1997.

CHAIR—So yours was the first?

Mr Hellsing—I think someone had some sort of claim before that. But yes, mine was the first.

CHAIR—So yours would have set an unfortunate precedent from the insurer's point of view had it been successful.

Mr Hellsing—That one was the one that was successful. But there were further complications with that because another person also claimed for tinnitus, his claim was rejected and the insurer argued that the tracking station could have nothing to do with it, even though they were fully aware that they had accepted liability for me contracting tinnitus at the same workplace. There you have the problem: to what lengths can the insurer go to save the dollar? To me, that is misleading the court. I have put a statutory declaration in to the Magistrate's Court about these things, but it is in the too-hard basket. No-one wants to do anything about it.

CHAIR—I have no further questions. Do any of the other committee members have questions? Mr Hellsing, I would like to thank you very much for the work you have put into making your submission and for appearing today. Hansard may have to check some details with you.

Mr Hellsing—I have a copy for them. Thank you.

Resolved (on motion by **Ms Vamvakinou**):

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

Committee adjourned at 12.41 p.m.