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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Reference: Aspects of workers' compensation

WEDNESDAY, 13 NOVEMBER 2002

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Wednesday, 13 November 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, Ms Hall, Mrs De-Anne Kelly and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

Matters that are relevant and incidental to Australian workers' compensation schemes in respect of:

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

WITNESSES

Committee met at 11.02 a.m.

JOHNSTON, Mr Garry Patrick, National Director, Human Resources/Legal, National Meat Association of Australia

McKELL, Mr Ken, Manager, Human Resources (New South Wales Division), National Meat Association of Australia

NOLAN, Mr Terry, Chairperson, National Meat Processors Council, National Meat Association of Australia

WESTLAKE, Mr Andrew, Company Member, National Export Meatworks Council, National Meat Association of Australia

WOTHERSPOON, Mr Ross, Manager, Human Resources (Queensland Division), National Meat Association of Australia

CHAIR—I welcome to the public hearing into aspects of workers' compensation Mr Garry Johnston, Mr Ross Wotherspoon, Mr Ken McKell, Mr Andrew Westlake and Mr Terry Nolan from the National Meat Association of Australia. Thank you for joining us today. The proceedings here today are formal proceedings of the parliament and, therefore, warrant the same respect as proceedings in the House. The committee prefers that all evidence be given in public, but if there is evidence that you would like to give in private, you can make a request to the committee and we will certainly give that consideration. I now invite each of you to make some preliminary comments, an overview of your submission, and then we can move to questions.

Mr Johnston—Madam Chair, members of the committee, thank you for the opportunity to come before you to give evidence, to make statements and to answer questions—if there are any. The submissions we have made are fairly detailed. We feel quite strongly about the matter, so much so that we made a supplementary submission.

The NMA is of the view, obviously, that all employees are entitled to work in healthy and safe workplaces, free of accidents and hazards in the workplace. We agree that there has to be a proper, consistent and efficient rehabilitation system in place, no matter where the place is situated. The NMA does not expect governments to create the safe workplace for employees but we do expect governments of all persuasion to create the proper framework and, with respect, we expect governments to address the issues raised by the NMA membership throughout the pages of our submissions.

We have given examples in our submissions—we did say, not loosely, in our main submission that we could give hundreds of examples—of fraudulent or doubtful claims that members have come into contact with over a long period of time. The industry, especially the processing industry, has spent and allocated millions of industry dollars over the last decade to researching and implementing best practice, better risk management and proper OH&S systems around Australia. The details of those are found on pages 4 and 5 of the supplementary submissions. When I say that we have spent millions, it is millions of dollars in the last 12 years.

The NMA have highlighted what we say are real concerns about the fraudulent and doubtful claims that exist in the workers' compensation systems around the country. In a survey that we

have done, our membership estimates that those claims are between 10 and 20 per cent in the processing sector and, in the smallgoods, wholesale and retail sector, while less than 20 per cent, are not far less than 10 per cent. In that survey we defined fraudulent, exaggerated or doubtful claims as 'dishonest claims based on a false representation to gain unjust advantage'. The survey covered large and small processors and retail and smallgoods outlets around the country but, in the processing sector, it covered approximately 6,100 claims in the last five years. That is approximately 15 per cent of the processing sector. If 20 per cent of the claims are doubtful, as our members say, then we are talking about it costing the industry millions of dollars around the country.

You will see in the supplementary submissions that we have made some general observations. We find it difficult to come to grips with the fact that, in a country of 20 million with a work force of less than nine million, there are 10 substantially different workers' compensation systems and 10 different OH&S systems operating. I do not wish to repeat the other observations that are contained there because members of the committee will see them. I do wish, finally, to refer to the outcomes that we would like to see—not necessarily by this committee—throughout the systems.

There has to be developed, firstly, a national codified framework where there is consistency throughout the systems that are operating. That consistency has to be in definitions of industry, definitions of worker, definitions of ordinary time earnings and mandatory rehabilitation return to work schemes that are consistent throughout the country.

One aspect that has not been mentioned as a second matter is that, under the Workplace Relations Act, sections 170LZ and 170VR—which concern certified agreements and Australian workplace agreements—wherever there are changes in the OH&S in workers' compensation systems in a state, they automatically override anything in the AWAs or the certified agreements. We understand the logic in that. We also understand that, where there are complex matters that are the subject of added regulation, they are automatically taken up into the workplace no matter what the views of the employees or the employer. There has to be a national approach and some limitation on the common law courts, because this is a major problem around the country so far as our membership is concerned.

You will see from our submissions that there is a great problem in having lawyers and doctors involved in the system. So far as medical practitioners are concerned, there has to be some system of accreditation and some system whereby employers have the right to take their matters to another medical practitioner to obtain a second opinion. There has to be cooperation with the medical practitioners. A current theme throughout the NMA membership concerning the workers' compensation system is that doctors do not cooperate with the employer and that, once a claim is made in some systems, it is taken out of the hands of the employer and goes into the hands of the insurer and the employer loses complete control of the matter.

There are other future outcomes that we have put in our submissions and supplementary submission. One example is a case in the retail sector, which is case 2 under the heading of 'Fraud' in the supplementary submissions. The case was withdrawn from the court after the evidence was against the claimant. There were two days of evidence. That claimant had been paid $25,000 in the system, plus the legals and the medicals. Neither the insurer nor the WorkCover authority—this was in New South Wales—attempted to reclaim the matter, so that employee was given the benefit of the $25,000, plus legals and medicals, and nothing was done.

CHAIR—Mr Johnston, it looks as though we have a division in the House.

Ms HALL—No, it is a quorum.

CHAIR—I am on quorum duty, so I will hand over to the acting chair. I will return shortly.

Mr Johnston—I have finished what I wanted to say, if that is convenient.

ACTING CHAIR (Mr Bevis)—Are there any other opening comments?

Mr Wotherspoon—I would like to add to what Mr Johnston has said. This issue of workers' compensation—in particular doubtful or fraudulent activity—is a continual source of frustration for our members. I am continually hearing reports from them relating to the frustration associated with this behaviour and the lack of control the employer has over matters that fit that description.

There are probably varying types of behaviour that fit into the category. We are not necessarily just talking about somebody who has fabricated a claim under a false name or doctored up a doctor's certificate, although that is not unheard of. They fall into the category of the injury itself being very suspect, in some cases fabricated; the injury being not work related; the symptoms being exaggerated in some form or other; that there is an artificially delayed period of recovery; the medical diagnosis and prognosis are quite often in the employer's view unfounded and based on misinformation; and the doctors are generally either uneducated or uncooperative in the management of rehabilitation issues. All of those types of activities create problems for our members.

The common factor through all of that is that in our view there is an attempt—and it always starts from the individual claimant, of course—to get more out of the system than the person is entitled to, and basically it is an attempt to milk the system. There are a number of participants and contributing factors: there is the employee or claimant, himself or herself, with the intent to get more out of the system than the system entitles them to, or there is a general attitude that workers' compensation is fair game as an extra source of income; there are the doctors who do not know or do not care or, in some cases, in our view go very close to assisting the employee in maintaining an injury in the system; there is the legislation, which encourages and supports easy access to workers' compensation being a source of unearned income; there is the insurer, in the case of Queensland WorkCover, that tends to favour the claimant—quite often, WorkCover having had their attention drawn to some suspect claim, are fairly apathetic about doing anything about that claim; and, lastly, there is the legal system, the lawyers who actively promote claims because they obviously have something to gain. All of the parties have a vested interest in maintaining a high level of claims; they all have something to gain. There is no incentive or deterrent in there to reduce claims, and unfortunately this is a case where the buck does not stop with the employer because the employer is always the one who is paying it out to someone else.

I just want to round off and give you one or two examples of the kinds of things that do occur. In the first case, a stockman, who was a rodeo bull rider on the rodeo circuit, lodged a claim for a sore back. Ultimately WorkCover accepted the claim and the employee then initiated a common law damages action. The claim was ultimately settled out of court for some $220,000, and six months later the stockman went to America and joined the professional circuit for bull

riders. In a case like that there must be clear evidence or warning bells ringing somewhere that it should have been looked at far more closely than it was.

In the second case, a 30-year-old female trimmer had a claim for epicondylitis, or tennis elbow as it is known. She was totally incapacitated for a total of 34 weeks. The company exerted maximum effort to get the employee released for suitable duties but the employee complained of severe pain when performing the lightest duties for short periods of time. The company, in fact, had some video surveillance of the employee performing arduous tasks on her pig farm, apparently without any discomfort at all. Eventually the injury was pronounced as stable and stationary and a permanent impairment payment was made from WorkCover to settle the claim. The day following her payment she received a full doctor's release to perform her normal trimming job with her impairment, and has been working without incident for the past 19 months.

We hear about these kinds of things day after day. Often there is information obviously that we may not be aware of but there is sufficient information there to at least alert people to the fact that there may be something wrong. I will leave it there at this stage.

CHAIR—Are there any other remarks?

Mr McKell—Yes. Chairperson and committee members, there is a lot of commonality regarding the issues that Mr Wotherspoon has spoken about in relation to New South Wales and, as I understand it, in relation to the other states that our association is involved with. Over the last 18 months to two years changes have occurred to the workers comp system in New South Wales. Some of those have been in a positive direction, whether it is dealing with fraud or the significant debt that currently exists in the workers comp system in New South Wales. Our association lobbied the New South Wales government about further amendments in other areas. Unfortunately that has not occurred at this stage.

A number of changes in the current legislation have not addressed particular concerns that Mr Wotherspoon has referred to, even in relation to the examples that he has put. Quite assuredly, in New South Wales I receive on average every day one or two queries about workers' compensation concerns, whether that be cases, frustration with aspects of legislation or aspects relating to rehabilitation.

The primary area of concern for members is not so much a question of people being out there from the very start predetermining defrauding the employer, the insurance company or the workers comp system but of claims being prolonged in relation to getting the person back to work—a major problem area. The frustration that has come from the members that I have spoken to relates to the problem of communication when dealing with doctors—that is, the treating doctor and/or the specialist. Under the New South Wales legislation, the treating doctor is one of the parties responsible for rehabilitation and getting the person back to work. On the one hand, employers have the frustration of reading legislation that specifies that but, on the other hand, in a practical sense they are finding that that is not occurring. Equally, they have a situation where injured workers supply medical certificates up to a certain date, then suddenly they receive another certificate when they expect that person to come back and do suitable duties.

I have had examples of members who have said—and I am not just talking about large employers; this applies to small employers as well—that they have had medical reports restricting an employee from lifting up to two kilograms of weight. I have also had examples of members who have said that employees have received medical attention, specialist attention, and made a claim. The medical reports have specified certain restrictions. However, they do not as such relate to the positions that the company has available. The efforts of the companies in getting people back to the workplace are frustrated because of the medical reports and the reactions from the employee of not being fit to come back and even do suitable or light duties.

I understand the time constraints of the committee, but I have two recent examples from members which I would like to give the committee. The first relates to the rehabilitation of an injured worker. Information has been provided to me from a rehabilitation provider that:

... a particular injury could not have occurred on the slaughter floor under normal operating circumstances. The treating doctor was advised of this information and asked if he believed that work was a substantial factor in the said injury.

This is one of the questions that is contained in the injury report form. It continues:

The doctor advised that he could not and would not discuss the injury in question, but he did advise that, if his patient told him that the injury happened at work, he had no reason to doubt him. The doctor was advised that he ticked the box that said, "In my opinion, the worker's employment is a substantial contributing factor" and that tick could potentially cost the company a significant amount of money in relation to the process of a claim.

And, finally:

I believe that, with the changes to the workers comp system from 1 January this year, doctors were required to discuss individual injuries with employers' rehabilitation providers.

However, I reiterate that there has been a problem with communication, whether it be the rehabilitation provider or the employer or employee's representatives at the particular site. Another example that has been suppled by a member states:

In another case, a worker sustained a leg injury and was given a certificate of total incapacity by a doctor. The following weekend, it was brought to our attention that the worker had been playing rugby league for a town. When confronted with this, the worker denied that he had played football and later we had documented reports from the club officials, who admitted that he had played football on the weekend. The worker, when confronted again with the evidence from the football club, admitted that he had just ran on and ran off. However, this was not supported by the documented evidence. In this particular instance, the worker later completely withdrew his workers comp claim as well.

Another aspect which has arisen amongst members—not just in relation to this case—is the fact that, with regard to money outlaid for medical treatment in relation to the investigation of claims, that still has an effect on the employer's workers' compensation claims history. In that regard, there is no provision that allows for the removal of that cost for that employer, and of course the claims history covers a three-year period. They are a couple of examples that have arisen amongst members. There are many more, whether it be sporting accidents, communication restrictions or barriers between the parties to rehabilitation.

Mr Westlake—My company is represented on the export council, the National Meat Association. Our company is based in Victoria and is one of the largest sheep and beef exporters. We and other members of NMA are experiencing very similar problems to those already mentioned, and certainly some of these problems have been mentioned in the submission. There are numerous cases in Victoria of organisations having the same sorts of difficulties with the legislation as it is today.

Mr Nolan—Thank you for the opportunity of addressing you here today. As stated at the outset, I chair the National Meat Processors Council. That is just one division within NMA. For the clarity of the committee, there is a retail and general industry council, an export council and a smallgoods council. The council that I chair comprises domestic abattoir operators, domestic boning rooms and wholesalers.

When our members meet nationally, it is fair to say that workers' compensation is one of the areas of greatest concern. Reading our submission, you can see that the industry has been very proactive in funding reform in the OH&S area and it certainly is a top-of-mind issue amongst employers. An enormous amount of money has gone into the R&D area over the past decade in order to establish and implement guidelines. I believe the industry has come a long way. However, the cost of workers' compensation is crippling our industry.

Industry participants generally attribute this to a couple of main areas. Obviously the one we are here about today is the area of fraudulent claims. The common claim amongst members is the mismanagement or the 'just pay up' mentality that exists within the WorkCover administration. The other area is the lack of knowledge amongst the medical profession of our particular industry. You can understand the relationship that has built up between a person and their physician over a period of time and this often clouds the issue. If a person goes to their local doctor and requests time off, that is virtually the only information the doctor seeks. They never balance the equation by contacting the employer to hear the other side of the story.

Most members that I am aware of have rehabilitation programs in place. It varies from state to state, but there seems to be a distinct lack of consultation between the medical profession and the employers. This, of course, leads to fraudulent claims and, as Garry has rightly mentioned, some people state that that could be as high as 20 per cent. When we talk about fraudulent claims, the main area of concern is the propensity to prolong claims. People think that getting one more week off is not significant, but in our terminology that is definitely fraud—whether it be one day or one week, that is fraudulent.

Sadly, once it becomes a habit or people become comfortable with a prolonged period off work, very commonly that then escalates to common law. Whilst there may be only 20 per cent of fraudulent claims at that level, when it escalates to common law often the costs rise to 40 to 50 per cent of the total dollars in payout. The sad fact about that is that, of that payout figure, the claimant or the injured person may receive as little as 40 per cent, with 60 per cent of the payout figure remaining with the legal or medical professions. You have to ask yourself: who are we really compensating? Are we compensating the genuinely injured person or are we compensating the legal and medical professions? That is a sentiment that is echoed commonly through our committee. There are lots of examples we could give later on, if you require them.

Mr BEVIS—There are a number of issues I would like to pursue with you. Firstly, you mentioned survey work. Can you tell us when that survey was done?

Mr Johnston—Immediately the terms of reference were made public.

Mr BEVIS—So it is as recent as this year. Can you provide us with a copy of the survey instrument—not the returns per se, but the actual survey instrument? I am assuming that there was a survey and that there was a survey instrument.

Mr Johnston—That is so. I am hesitating, because in terms of the results—I understand that you are not asking for the results—I did give a general undertaking when I did the survey to maintain the privacy of those results.

Mr BEVIS—I am not after the actual returns of any of your members. I am simply after the instrument that was used to compile the information—in other words, the blank survey form that they might have filled in. I am not asking for any of the confidential details.

Mr Johnston—If we did that, I assume that would be made public to the committee and will be in the public arena?

Mr BEVIS—Unless you seek otherwise.

CHAIR—Mr Bevis, was it your intention that the committee use that for its private deliberations or did you want that on the public record?

Mr BEVIS—Until I see it, I do not know whether it might be something that should be included in our report or something that is, at the end of the day, not going to be relevant. However, if I am going to take any notice of anything that you say to us from your survey, I would like to know what the survey instrument was. It is a pretty basic position. You do not produce survey results without saying, 'Here are the questions we asked. This is the instrument we used.' If you have a problem with that, fine, but I put you on notice that, as far as I am concerned, if the survey instrument is not able to be perused, the information from it is useless.

CHAIR—This is a valid request from a committee member. Would it be acceptable to you, Mr Bevis, if Mr Johnston considered that on the basis of it initially being a private submission? Is that your concern, Mr Johnston?

Mr Johnston—It is, yes.

CHAIR—And that, if the committee were considering making it part of the public record, we went back and asked permission of Mr Johnston.

Mr BEVIS—I think if Mr Johnston wants to submit it on the basis that it be dealt with confidentially, then he can ask that that be so. He should explain why it needs to be confidential, given that the results are not.

If you want to make your submission confidential then that would be consistent with saying that you want the instrument that produced those things to be confidential. I do not understand, frankly, why you would want the public to know the things that you put before us today but not want them to know what the questions were. Frankly, my view is that you cannot have it both ways, but it is a matter for the committee and not for me.

CHAIR—Would you like to give that some consideration, Mr Johnston?

Mr Johnston—We will.

CHAIR—Mr Bevis has asked quite a valid question. I can see that the matter of confidentiality of a private submission is something that troubles you, so you may like to consider that.

Mr Johnston—Yes.

Mr BEVIS—If I could just be clear, I am not asking for the names of anyone who filled it in.

Mr Johnston—I understand.

Mr BEVIS—I am not asking for any information per se that anybody gave. I am simply after the instrument that constitutes the survey.

CHAIR—You are just wanting the blank survey form, Mr Bevis, with the questions?

Mr BEVIS—Basically, yes.

Mr Johnston—I understand.

CHAIR—We are clear on what is required.

Mr Johnston—Yes.

CHAIR—We may leave that for your consideration then, Mr Johnston. Mr Bevis, while Mr Johnston considers that, do you have further questions?

Mr BEVIS—I do. That was an unexpected stumbling block. One of the cases referred to was listed as case 2 under 'Fraud' on what I think is page 14. Our numbering is not always the same as yours. Reference was made to it by one gentleman. The bit I want to deal with, the second part of it, states that the employer was informed that WorkCover did not usually go about claiming wages and medical expenses back. I am interested in knowing who informed the employer. Is that something WorkCover directly said?

Mr Johnston—The example that was given to us in writing was in New South Wales. After the case was withdrawn after two days in court, the employer asked the insurer about recovering the money. The insurer said, 'We don't usually do that and we understand that WorkCover don't usually do that because it's too difficult.'

Mr BEVIS—Was the amount of moneys that would have been, on the face of it, able to be recovered, $25,000 in that case?

Mr Johnston—It has been paid out to the employee, yes.

Mr BEVIS—We might take that up with the insurer because I am interested in that. It is not uncommon for people in all sorts of businesses to write off bad debts, as it were, at a certain level, but I would have thought a $25,000 debt was worth a little bit of effort. We might seek to pursue that with the insurers. On the problem of fraud, can you tell us what percentage of claims you believe are fraudulent?

Mr Johnston—According to our membership, in the processing sector between 10 per cent and 20 per cent. Obviously it is much lower in the retail sector because of the nature of the work. The smallgoods sector varies. It is wide and diverse and goes from very small employers who might have 10 or 20 employees, up to places around the states that have 400. It appears to be lower in the smallgoods sector than in the processing sector. But in the processing sector the figure that has been given to us is between 10 per cent and 20 per cent.

Mr BEVIS—I want this to be clear. We are talking about fraudulent claims, not the term that a number of you have mentioned which was 'fraudulent or doubtful'. You may wish to lump 'doubtful' with 'fraudulent' but there is clearly a difference. Just so that I am clear about your evidence, do you and your members believe that there are 10 per cent or 20 per cent of fraudulent claims?

Mr Johnston—On page 2 of the supplementary submission we outlined what our members thought was fraudulent, which was that behaviour that could begin right from the start of the claim or arise during the processing of the claim. It could involve claiming the injury was work related, exaggerating the claim, delaying the rehabilitation program for financial gain or lying to the treating doctor.

Mr BEVIS—You are a lawyer, Mr Johnston. Do you think that definition you just read is fraudulent?

Mr Johnston—I do, yes.

Mr BEVIS—Do you think a court would find those things fraudulent?

Mr Johnston—I do, having regard to the definition in the *Oxford Dictionary*, based on a false representation, yes.

Mr BEVIS—How much money do you think has been lost through fraudulent claims?

Mr Johnston—We cannot put an exact figure on it, other than saying that it is millions of dollars.

Mr BEVIS—Per annum.

Mr Johnston—A large number of our members say to us that the amount of money that it has cost them in the last five years, having regard to fraudulent or doubtful claims as we have defined it, is between $200,000 and $1 million.

Mr BEVIS—Sorry, I am not quite sure I got that.

Mr Johnston—A large number of our members who participated in responding to us say that doubtful and fraudulent claims—as I have defined it a little while ago—have cost the company—each company—between $200,000 and $1 million.

Mr BEVIS—Over what time frame?

Mr Johnston—Five years.

Mr BEVIS—I notice in the survey data, or the tables which I assume are taken from the survey data, there is information about the number of claims that have been queried. Am I correct—please correct me if I am wrong—that the claims your members identify as being fraudulent or doubtful are the claims that the employers have queried?

Mr Johnston—Yes.

Mr BEVIS—Do you think that because there is a query raised by one party in an issue that has probably three or four legitimate parties to it, that equates to fraud or doubtful claims—because one of the three or four parties involved in the process thinks that there should be a query raised?

Mr Johnston—Let us be clear: nearly everyone who responded to us has HR and OH&S people on the plant. It is those people who contact WorkCover or the insurer, whether it is an agent or a statutory authority that has administration of the process. They are saying that they have queried claims. We have supplied the committee with the average of the querying of the claims. The results that I put in the table are the results that they have given me of the querying of the claims, and that has not been taken up. They are the representative of the employer. They see the process in place at the particular plants. They are saying that they queried the claims and that they have not been taken up. Yes, they are one of a number of parties to the particular aspect of the claim, but that is their belief.

Mr BEVIS—I understand that. But for the purposes of the committee in arriving at some conclusion, for example, the flip side of the coin might be a worker or a solicitor who acts on behalf of workers who might come before us and say that they think they have a legitimate claim and it was ignored either by the doctor, the system or whatever. They could hold that view honestly and fairly, but that does not mean there is a failing in the system necessarily. It seems to me that the proposition you are advancing is that because your member employers hold a view that a claim should be queried and it is either not queried or is queried but a different view arrived at, that of itself constitutes a failing of the system and fraud.

Mr Wotherspoon—The basis upon which employers query claims and say that there is suspect or possibly fraudulent behaviour is knowledge and evidence known to them. The couple of examples I gave are cases in point. Employers do not go around querying claims that they accept as being legitimate. The only reason they raise queries with the insurer is that they have a genuine belief based on actual evidence and knowledge, and the frustration comes from the fact that quite often their complaint or argument with the claim falls on deaf ears.

Mr BEVIS—I know there are different figures for the different jurisdictions, but New South Wales is, I think, the biggest, and the tables you have there for New South Wales show 2,100-odd claims submitted over a five-year period, of which 150 were queried. That is an average of 30 per year. In your submission, that constitutes fraudulent claims as being ‘a major problem and a primary issue’. I would have thought that that description overstated it a bit, with 150 claims that were queried, assuming that not all of them would be fraudulent. In other words, I am assuming your members can be fallible like the rest of us, even politicians.

Mr Wotherspoon—I am not sure about the other states, but I know from talking with our members in Queensland that, while all of the claims they query are queried on the basis that they believe there is some problem with them—

Mr BEVIS—I accept that.

Mr Wotherspoon—there are many more that they also believe there are problems with but, from sheer frustration, simply do not pursue.

Mr Johnston—That was the figure you referred to in the table. We are simply reporting to the committee what the members have said to us.

Mr BEVIS—I understand that, but I cannot ask them. I can only ask you.

Mr Johnston—Absolutely. Even with 150 claims on 2,000 that are queried, that would have an enormous effect on the average premium in New South Wales—the base rate—and feeding into the premiums of each individual plant creates an enormous problem. It might be misleading to quote it, but if we can extend it there are approximately 28,000 people working in the processing sector around the country and our survey covered 4,000 of them. The number of claims covered is over 6,000 for the last five years in that sector. If 20 per cent are fraudulent—and we are talking about the majority of the people in, say, medium to large plants that have cost us between $200,000 and $1 million over the last five years—it is an enormous amount of money.

Mr BEVIS—Some of the problems that you mention in your submission and in your oral presentation relate to common law claims—that is, not strictly part of the workers' compensation network, but rather the common law processes from injury. For instance, I think the rodeo example that you mentioned was a common law claim. I understand that problem. What I am not sure of is why this area of the law should necessarily be treated differently from any other area of the law when it comes to those issues—for example, if it had been a vehicle accident or, indeed, if it was a commercial issue. In your submission, in the section dealing with Queensland, you say:

> At any given time the meat industry experiences numerous outstanding common law claims. Such claims are often seen by the claimant as a natural step to be taken in getting as much out of 'compo' as possible.

I understand that concern and that dynamic, but, in terms of common law actions and 'getting as much as possible', if you had a defamation action against someone, probably your lawyers would say, 'Go for as much as you can.' If you were in a car accident, they would say, 'Go for as much as you can.' If you have a commercial action against a supplier who has failed to provide you with whatever it is there was a contract for, your lawyers would say, 'Go for as much as you can.' This is not something peculiar, as a problem, to people injured at work. It seems to me to be a dynamic of the way lawyers function and our court system functions. I am not a lawyer, but I am interested in your comment on that observation I make and, secondly, whether or not there is any reason, in your mind, why this area of common law should be treated differently.

Mr Nolan—This is not in answer to that question directly and this is not a common law case, but I had a member in Queensland suggest this to me. An employee left work and, on his way

home, had a car accident. He was paid out through statutory claims. The objection raised was that the driver was unlicensed; they said, 'That is not an area of concern for us to investigate.' You wonder what duty of care then is placed upon the individual to make sure he is licensed to be on the road in the first place and then you wonder whether WorkCover should honour a claim for an unlicensed driver who has an accident.

I know that does not answer your question on common law, but it is an example of how employers in Queensland must go through WorkCover and so are one step removed from the legal system. You cannot appoint your own legal advisers and you cannot appoint your own investigators. I have other examples, including one that did go to common law, where a member informed me that a fellow had a back injury. They had given WorkCover and its investigator all the relevant details, including names and addresses. He was actually competing in a horse sport—a national cutting competition. They gave WorkCover the day and the time of the competition and where he was competing; the investigator failed to attend and failed to record evidence. If they had their own investigators—namely, not WorkCover appointed investigators—they would be much more proactive in ensuring that evidence was recorded. They are one step removed from the process. They are just two examples. I am not sure they answer your question, but they highlight some of the frustration that exists.

Mr Johnston—I think the position here is that the injury or the accident that we are concerned with at any point in time is alleged to have occurred at work, or work is alleged to be a substantial or contributing factor. When it gets into the legal system, such as common law, and a statement of claim is filed, it is not filed against the employer. The insurer has control over the running of the matter and the employer is there frustrated and saying, 'But I know the facts of this case, because I complained about it,' or, 'I know it couldn't have occurred,' and they have no control over the matter.

That is why in many jurisdictions, when it does get to the common law courts, matters are settled on the steps of the court. The insurer says, 'Just pay up. We're going to lose it.' or 'We're before a bad judge.' or whatever. Once they put up their hand and say, 'Pay up,' in a situation that they have no control over, it affects the whole of the industry and affects their individual premium.

Mr BEVIS—Isn't that a generic problem with common law—defamation actions, vehicle accidents and those other things I mentioned? If one of your member companies had legal advice that it had action that it could take against a supplier for failure to do things, all of those dynamics that we are talking about kick in, it seems to me, in all of those scenarios.

Mr Johnston—But the defendant in those cases is the one who gives the lawyers the instructions. In the majority of matters dealing with workers' compensation, the defendant is the insurer and it is taken out of the control of the person who is paying the premium and the person who knows about the plant. We are not only dealing with that. It is a high-risk industry, there is no question about that. I do not think anyone in this room would debate that the meat processing industry is one where injuries do occur, and that is why the industry has spent millions of dollars in trying to make the workplace safer, but there are particular diseases that come along, and claimants put up their hand and say, 'I've got this,' and it is nearly impossible to prove otherwise. Q fever, which has come onto the scene in the last 10 years, is exactly that.

Mr BEVIS—I have other questions but I should stop so that others can pursue theirs.

Mr Wotherspoon—Perhaps I can add to that. I think you are right in terms of the inherent characteristics of the Commonwealth system, but there are other factors that come into play, one of which is what Mr Nolan mentioned, and that is the lack of control that the employer has. Another factor is that the rules are often different and the legislation, certainly in Queensland, has watered down contributory negligence rules so we are not really playing the same game as the full common law process. Also, the claim almost always has gone through the statutory process first and so it has already accumulated this history of a possible—in our view quite often—fraudulent characteristic about it, where the medical evidence in the first instance is often very questionable.

Mr BEVIS—Thank you.

Mr WILKIE—I share Mr Bevis's view that, without the instrument for the survey, the results are quite worthless to the committee because we do not know what was asked of your members. That is vitally important, because we are trying to ascertain the results and what they indicate. You talked about the millions of dollars spent trying to achieve a reduction in injuries in the workplace. Has that worked? What sort of reduction in injuries has occurred?

Mr Westlake—I can give you one example. In South Australia there was a lot of investigation done with glove manufacturers to identify a glove that was cut resistant which could be used in the workplace and not inhibit the operators with their knives. South Australia put together a cut resistant glove program that was picked up by some other states. Certainly some statistical data I have seen shows that that glove reduced cuts in one organisation by 80 per cent—with the technology.

Mr WILKIE—And has the association taken any action to try and bring that in across the board?

Mr Westlake—Certainly the OH&S organisation within NMAA has made the information available, and it is in their publications, so all plants are aware of it, yes.

Mr McKell—In relation to each of the states for the National Meat Association of Australia, there are representations on the respective workers comp WorkCover boards which involve the unions, representatives of industry, as well as the NMAA. This has been going on for a number of years. I can say for New South Wales, which of course I am particular to, there are industry reference groups. About 3½ years ago we wanted an industry reference board for the meat industry or in particular the meat processing sector. That was not possible. However, a subcommittee was approved by WorkCover. We have been meeting in the past on a monthly basis. At those meetings we talk about the various occupational health and workers' compensation issues and the development of programs. At the beginning of this year a Q fever register was established, which started off in New South Wales, did have involvement of some other states and now is on a national basis. That is one example.

In New South Wales every six months we had a network meeting which culminated in people from interstate—occupational health and safety people, WorkCover people and practitioners in the processing sites—coming to those meetings. Earlier this year there was the establishment of a national occupational health and safety conference, which was quite large in the number of people who attended, and that is going to be held on an annual basis. As far as people's interest,

input and involvement are concerned, and then relaying those back to the processing sites, it is quite large.

I acknowledge that there may be some sites—I will specify that—which may not be applying occupational health and safety. If they are not doing that, the results of their performance in relation to workers comp claims and occupational health and safety we expect would be much larger. However, the frustration that has come out of the members who have attended those meetings—whether it be the example that was given of greater hand protection through gloves, working on the slaughter floor or the boning room, whether it be generally personal protective equipment, or whether it be a matter of new systems, new technology, to reduce the risk of accidents—has been quite broad. The frustration is created when members are introducing that, but the rehabilitation process—whether it be the treating doctor or the employee—is not producing the results they require.

Mr Westlake—Protective equipment is one issue which has obviously reduced cuts in industry, but the actual mechanism of injury is so varied now. I will give you an example. A lady was involved in a fight with another lady in the workplace and the physical injury was very minimal—in fact it was not even medically documented—but the lady went onto anxiety and depression type WorkCover leave. The conciliation process in Victoria took 11 weeks before the lady was made to come to the table to talk with the employer, the return to work coordinator and the conciliator to see what needed to be done to ensure she was receiving the treatment she needed to overcome her injury and be able to come back to work. This lady was out of the workplace for 11 weeks, with no physical injury, yet because conciliation had not taken place she was not forced or encouraged to work with the return to work coordinator to try and identify the issues preventing her from returning to work. Eleven weeks off work obviously has a significant effect on premium.

Mr WILKIE—I would like to pursue this thought. If an employer has a decent occupational health and safety approach—as in the case that you quoted, with gloves that have reduced cuts by 80 per cent—has the industry done any survey of its members to work out who actually has decent occupational health and safety standards and, where they are applied, whether they reduce the number of claims? Obviously if there is 80 per cent fewer injuries, just in the cut area, you would expect to see a vastly reduced number of claims.

Mr Wotherspoon—It is very difficult to get safety statistics from an industry basis. There is a lot of anecdotal evidence that safety performance has improved—there is no question about it. The only real statistics that are available that I am aware of originate from the WorkCover system, so it is really a claims statistic. Even then, at least in Queensland, they are mixed up with a whole raft of manufacturing industries as well, so it is difficult to get some hard numbers on safety and proven figures. I am deputy chair of an occupational health and safety industry committee in Queensland, a tripartite committee, and there is no doubt in my mind that all of these strategies that have been introduced at various workplaces in the industry, in processing in particular, have generated results. There is improvement there. If you looked at the WorkCover industry rate, if that is a reflection of the performance of the industry, it has been coming down in Queensland in the last three years, so I think there is an improvement in safety performance, but I do not think it is always reflected in the actual workers' compensation claims that are necessarily put in.

Mr Westlake—If the claims that are questionable or exaggerated which weigh heavily on premium outcomes still exist within the industry, you can minimise your injuries but the actual management of the claims is a difficult area and your premium will still hold quite high because of the on-costs of those types of claims. An example is a mechanical tradesperson working within the industry who held a supervisory position. He had a minor back injury about two years earlier, but he resigned and went to another establishment, not a meat industry position. He went back on the tools as a mechanical tradesperson but did not declare any pre-injury on his employment application with the new employer. He was asked the question, 'Do you have any back injuries, any current conditions?' He did not declare on that application. A year after he left the employment of the meat industry company, he made application for a serious injury certificate in the courts and, although evidence of him painting his house for hours at a time on a ladder and so forth was handed up, he obtained his certificate. In effect it was a $200,000 claim on premium of the meat industry representative who had no opportunity to manage that claim and no opportunity to defend that claim because it was handled by a WorkCover appointed solicitor in a court of law. That $200,000 went directly onto premium for that meat industry representative, but he had no input whatsoever into that.

Mr Johnston—I should come back to the question Mr Wilkie asked about whether things are put into place. There is Meat and Livestock Australia, which is a statutory corporation made up of all processors. The NMA fully participates in most of the committees of Meat and Livestock Australia. Money is allocated to OH&S and workers' compensation issues, be they gloves, ergonomics, Q fever, or other matters. Those matters are undertaken by research at the various plants. As a result of the research and the matters that are undertaken at the pilot plants—those participating in the actual research—then documents are produced. Those documents—for example, the national guidelines in 1995 that we mentioned in the submissions, which are out of date now and are being updated—go out to all processors in the country. Then there is a follow-up procedure in relation to the implementation of matters to make the workplace safer and better and to reduce risk management. That is how it works in the industry.

Mr WILKIE—Yes. I can see that if you have employers who are not following good practice, it would mean they would have a higher number of claims, thus increasing premiums for everybody else. It would be in the industry's best interests to ensure that they did have good occupational health and safety procedures in place. You quoted 6,100 claims. Is that the total number of these claims over the last five years?

Mr Johnston—No, the 6,100 is limited to the processing members who replied to our survey. I gave the figure I estimated that covered around 4,000 employees—just under—in the processing sector. There are between 27,000 and 30,000 employees Australia-wide working in the processing sector, so it covered 15 per cent of the industry. That 6,100 relates to the 4,000 present employees; it does not relate to the whole of the industry, which would be substantially more than that.

Mr WILKIE—Your submission says that doctors should be held accountable, the legal profession should be held accountable and that WorkCover is quite apathetic. It sounds as though there is a great conspiracy going on out there amongst the players. Why would WorkCover not want to investigate claims and follow those up, given that in the end they are the ones who have to pay out—as an example?

Mr Wotherspoon—Every claim that is paid out ultimately generates further revenue for WorkCover through the premium calculation formula. I am aware of one member who, over a five-year period, has paid out just over a million dollars in premium and the claims paid on that employer's behalf are about $260,000.

Mr WILKIE—All right, so you think there is a vested interest there. What about doctors? They would not all be friends of the person that is injured. Someone says often they are friends or the family doctor. I could not see that being the case with the specialists and others who get involved in long-term injury claims.

Mr Westlake—The experience of the members in Victoria is that the doctor will see the patient and take the patient's view on their condition—and it may not necessarily be physically visible—and the employer may have submitted to the general practitioners a list of alternative duties that might be suitable for this person to remain at work. People get better at work—that is a known fact—they do not get better at home. But the doctors will often not consider the list of duties, nor contact the employer before writing out a certificate, 'Unfit for any duties' based on the opinion of the patient.

Mr WILKIE—In relation to lawyers often being complicit in cases, what benefit would there be in a lawyer following through a case, where he or she believed that the person was not necessarily in a position to receive a payment, when they may not in fact get their fee?

Mr Johnston—Money, fees.

Mr WILKIE—If they are following through a claim that is supposedly fraudulent and it came out that it was fraudulent, they would not get paid, would they? I imagine most of these workers would not have the money to pay a lawyer.

Mr Wotherspoon—The process is such that—I do not know what the percentage is, but it is probably better than 90 per cent—they are settled and never go to court. The lawyers know that the WorkCover lawyers are simply going to take the view, 'Let's get out of it for whatever we can.'

Mr WILKIE—But not 90 per cent would be fraudulent, would they?

Mr Wotherspoon—No.

Mr WILKIE—A lot of those claims would be quite valid.

Mr Wotherspoon—No, that is true, but there are fraudulent ones wrapped up with that.

Mr WILKIE—But why would a lawyer take on a claim that they thought was fraudulent?

Mr Wotherspoon—Because they know that the WorkCover lawyers will settle on it.

Mr WILKIE—I might come back to that later, Madam Chair.

CHAIR—I am following on from Mr Wilkie about doctors and lawyers and the concern with overservicing and overcharging and access to inappropriate treatment. How do you see this being addressed, if there is no financial downside, as it were, for treating doctors? We are not suggesting that all doctors overservice or whatever or may be susceptible to the entreaties of their patients, but there must be some percentage. There is also the case Mr Wotherspoon has just mentioned, where lawyers again will follow through not only on legitimate cases, but also on cases that are not, because they know that there is likely to be settlement. How do you see that fact being addressed—the fact that the only financial downside is either for the employee or the employer, and those who are involved in it, such as lawyers and doctors, really do not have a financial downside?

Mr Westlake—Madam Chair, one of the things employers are most frustrated about with the general practitioners who are seeing the injured employees on a day to day basis is, as I said earlier, they do not make any contact with the employer to see if there are any suitable duties. I am trying to think of some genuine and real examples: someone who has a minor cut or a sore arm, or who has slipped over and skinned their shin, or has perhaps a scald from the hot water that is used in the industry—they are clearly not incapable of any duties. There are plenty of things within most organisations that are genuine tasks that are done every day by someone. These are tasks that people can adequately fill on the day. There is never an attempt, most times, for doctors to contact the employer to see if any of those duties are available.

What happens next is a cultural thing. People get into their minds that they have a WorkCover injury, they have a WorkCover certificate, they have a doctor who is going to continue to write out a certificate based on what they say, and so they stay at home and convince themselves that they are actually quite unwell, whereas in fact they could come to the workplace and genuinely contribute, not aggravate their condition, and let it heal over time, as it would. That is a frustration for the employers. It would be a significant step if the doctors had to make contact. Obviously that is a resource issue for the doctors. If they had to make contact with the employer to discuss the condition, it would be a big step forward. Certainly the employer would never want the employee to feel like they were being forced back to work, but the doctors need to be aware that there are genuine duties available.

Mr Johnston—We would like to see—when I say 'we' I mean the NMA and the people at this table who represent the NMA—a curtailment of the common law system. The previous Victorian government abolished common law claims. The present government has reintroduced them. The present government in New South Wales has curtailed them to some extent in the last 12 months. There is no curtailment whatever in Queensland. There is little curtailment of the common law claims in South Australia. Our view is that there should be a codified national framework, that all the systems are consistent and access to the common law courts should be severely curtailed. There are, I understand, opposite interests to ours—be it the Victorian Trades Council or the Labour Council of New South Wales or any particular trade union of employees—who will say, 'No, you must keep open that common law access.' But we just see it as an escalating problem in terms of the system going mad.

CHAIR—Thank you. Getting back to Mr Westlake's answer to my last question, would you see the practice for doctors that you refer to of making contact with the employer as part of that code?

Mr Westlake—Yes, certainly I would see that, Madam Chair.

A relevant example that we have seen in Victoria is an 'unfit for any duties' certificate being issued on a regular basis, and then the gentleman concerned playing football that weekend. That is clearly a clash. What you see in the workplace is people who injure themselves outside work—they might have a strained arm, a broken arm or whatever from a motorcycle accident—will actually front up and work and want to have some alternative duties. It is, once again, a cultural thing. But certainly if the doctors were brought into that code and were made to talk with the employers, it would be a large step forward, I am sure.

CHAIR—I understand that in South Australia genuineness has to be verified rather than just being a certificate from a GP. How is that genuineness established outside the GP's certificate? I believe that is referred to in your submission.

Mr Johnston—I will have to take that question on board, if I may.

CHAIR—Thank you. That is fine. You make reference to a national code similar to the Corporations Law. How do you see that being framed?

Mr Johnston—We do not have a brief for the NMAA to say that the federal parliament should embrace it, it is constituted, it is Corporations Law, and we should have a national legal compensation system. It has not even been considered within the NMAA, so we cannot put that. I noticed the submissions of other parties before the committee. It is hard to put pen to paper, but we do see that there are national standards, whether it be Australia's standard codes for manufacturing industry or whether it be ANZFA standards for the food industry, which have been mentioned. We just see a national code that the various jurisdictions should adhere to in terms of consistency at this stage.

What that code would cover would be consistent with the definition of worker, the deemed worker, the nature of the industry, the definition of industry and ordinary time earnings in relation to workers' compensation. We have the ludicrous situation in Victoria—and it is not as a result of the act; it is as a result of certified agreements under the particular federal legislation—where people get rostered days off. After a year on workers comp, they come back and they are paid cash for the rostered days off that occurred at work when they were elsewhere rehabilitating. It is just an extension of the system in the ludicrous situation where we have people in this industry who get paid more to stay at home than work. That is the nature of the industry, because there are places out there that have incentive schemes in place.

Mr BEVIS—Is that by virtue of legislative workers' compensation schemes or industrial agreements that your members have entered into?

Mr Johnston—It is both. It is by the awards or the industrial agreements, and this committee can do nothing about that. But the irony of it is that people are able to stay at home and earn more because of the definition of the act in terms of the average over the past 12 months in some jurisdictions.

CHAIR—You raised the question of the narrowing gap between what people are paid on compensation and what they earn in the work force. How do you see that being addressed without harming those who are on genuine claims?

Mr Johnston—I think all we are saying is that there should be consistency in the programs around the jurisdictions—in terms of ordinary time earnings.

Mr Wotherspoon—I will give you another Queensland example. The legislation in Queensland requires the payment of 85 per cent of normal weekly earnings or the instrument rate of pay, the instrument being the award or the agreement. In the meat processing industry there is a widespread form of employment called daily hire. It is like casual employment. It is a 10 per cent loading on the pay rate, and the purpose of the daily hire, very briefly, historically, is related to the exigencies of the industries—to be able to stand people down when there is no stock, et cetera. That 10 per cent is calculated within the formula of normal weekly earnings. If that plant then has a need to stand people down, a person who is on workers' compensation continues to be paid their normal weekly earnings while everybody else is not paid at all, and it incorporates the 10 per cent daily hire. There would be a very simple solution to that, in our view. One solution is that compensation payments cease when that plant is stood down, or alternatively that we simply do not count the 10 per cent in the calculation of normal weekly earnings. You would get a fairer result. But that is what the current position is.

CHAIR—Thank you. I have no further questions. Mr Bevis?

Mr BEVIS—Jill Hall had to go to speak in the parliament. She asked me if I could ask for information on rehabilitation programs that the industry are involved in.

Mr Westlake—A lot of sites in Victoria have their own human resources people on site, but another level to that is that quite a few of them have engaged return to work coordinators who are actually trained and experienced in that area specifically. They come in and learn the industry so they can better understand how to rehabilitate people into those work positions. A lot of people have gone that way now, using professional return to work coordinators to assist with all the needs of the employee.

Mr BEVIS—Does the industry generally take a proactive role in rehabilitation activities?

Mr Johnston—Absolutely. I was not around in the industry in the 1980s or the early nineties, but in terms of the rehabilitation process it is a vastly different industry now across the country compared to what it was 10 years ago. The money that has been spent has been spent on effective OH&S systems and rehabilitation processes that are put in place, but the major problem that the employers face—not in all cases, obviously, but in a lot of cases—is the lack of cooperation of the employees in the rehabilitation process, the prolonging of the time to get back to work.

Mr BEVIS—If you have other thoughts on it, you may want to subsequently drop us a note. I am asking on behalf of Jill.

Mr WILKIE—In terms of rehabilitation programs, the National Farmers Federation said there is a real problem where an employee, for example, may be required to undertake some specialist visits or programs and cannot get access to those because they are obviously in the country and the specialists are in the city. There is no assistance being given to the employee to get to their rehabilitation or to their specialist and receive treatment. Has that been an experience of industry, because I imagine a lot of your plants would be in the bush?

Mr Westlake—Yes, certainly. There is one example I am aware of in Victoria. It can be up to three hours travel to get to certain specialists, but under the Victorian system the employee is fully reimbursed for personal expenses, including accommodation and travel, whether it be by train or private car. They are fully assisted to do that. All their expenses are met. They are certainly not out of pocket. Through the insurer and, I guess, through the general practitioner that they may be seeing, they usually seek out the best that is available to treat their condition.

Mr McKell—I have also had examples from members whose workers have had to fly down to Sydney and maybe stay overnight. In a majority of cases they may go to the major centres of Dubbo, Tamworth or Wagga to see a specialist on a predetermined arrangement.

Mr BEVIS—I have a question to put to you, Mr Johnston, on the comment you made about common law. If I am walking through Woolworths and they have an unsafe, slippery floor and I slip as a customer, I am entitled to take common law action against them—and probably succeed—if I injure myself. If I was working and did exactly the same thing in exactly the same way in exactly the same place, you are suggesting I should not have that facility available to me?

Mr Johnston—I am suggesting that the workers' compensation framework should take care of that particular matter.

Mr BEVIS—Does that mean that the payments currently set out in the various schedules for workers' compensation injuries should be adjusted to take account of that loss of entitlement of right to common law action, or is it just a net loss to those people?

Mr Wotherspoon—There is probably an assumption that the amounts in there are not adequate at this stage. In some cases, I think the argument might be that they are adequate. There is some debate within the community.

Mr BEVIS—But the assumption is that if at the moment I can get, say, $5,000 for an injury in the compensation schedule and, by virtue of the nature of the injury and the facts of the case, another $10,000 in common law, the total compensable value of that injury I suffered is $15,000. That is the current situation that I understand you have some concern with. It is not my assessment that it is undervalued. I am not making an assessment about that. I am simply saying that our current legal system assesses the total injury compensable value to me, in that example, at $15,000. You are suggesting, as I understand it, that I not have access to common law in that scenario. Does that mean, in that example, that I get the $5,000 and nothing else or does that mean the $5,000 in the schedule would be altered?

Mr Wotherspoon—Can I just add to that? What I was about to say was that there has been some debate in the community and even amongst some of the retired judicial profession. There has been acceptance that perhaps the courts have gone too far in a lot of these damages awards. Having said that, perhaps there is a case in some instances for the schedule to be adjusted. Without looking at some of the detail of the particular case, perhaps there is an argument there, talking off the top of my head. Certainly, a large proportion of cases that go to common law, we think, should not go down that track. They should be able to be adequately managed within a statutory system.

Mr BEVIS—If I can move from 'adequately managed' to 'fairly and justly compensated', why should I, as a customer in that scenario of falling over on a dangerous floor at Woolies, be entitled to a certain payment, but in identical circumstances save one fact—that is, I am an employee of Woolworths and not a customer of Woolworths—I do not have that entitlement?

Mr Westlake—In an example such as that, in the workplace the employee's weekly wages would be covered while he was considered to be unfit for any duties. That is the difference between the Woolworths scenario and the workplace. To go one step further, if you slipped over in your own garage at home, you could sue yourself, perhaps, under public liability, but you would have no wages paid to you other than your sick leave, whereas the compensation system does give you weekly earnings based on being unfit. The system is already paying you and it is already premium based. During your medical treatment, your GP or specialist will say, 'This is a long-term injury' or 'This is not a long-term injury' or whatever. There are a lot of factors that need to be considered.

Mr BEVIS—But what the system pays is significantly different.

Mr Johnston—In our supplementary submission, we suggest that access to common law should, as a matter of compromise, be severely limited, maybe confining it to only those injuries where there is significant impairment.

Mr BEVIS—Would that apply to other areas of common law, rather than just workers at their place of employment, or are we just going to single out workers at their place of employment and curtail their benefits or entitlements or access?

Mr Johnston—We are going to consider, as the community is considering—and has considered over the past six to 12 months—various limitations on tort liability.

Mr BEVIS—I am much more sympathetic to that, I have to say. That is outside our terms of reference.

Mr McKell—Can I add one comment, using that example of a customer and an employee or worker? One aspect is that that employee or worker would have, and should have, occupational health and safety training and safe systems within the workplace. Let me say that for meat processors, at the very least, they have the same restrictions for contractors and visitors, et cetera. In that scenario, whether it was Woolworths or Coles—and I add them because they are not members of ours anyway—does that then put the obligation on them to bring that information to their customers? I am just comparing apples with apples. Therefore, the expectation is that whatever the risk is—whether it is a slippery floor that should have been cleaned up or something else—there is an obligation on the employee, as opposed to the customer.

Mr BEVIS—I do not think your submissions make any reference to one of our terms of reference, which is employer fraud. Do you have any comments to make on that?

Mr Johnston—We have no information on it, but obviously being an employer association—and perhaps that is the wrong word—representing employers, we hear the submissions that are being put and the questions that are being put to other parties concerning audits. We do not accept that there should be a lack of payment by employers in relation to these areas, but we

should say that the systems are so complex—for instance, in terms of Queensland—that compliance is very difficult. Perhaps Mr Wotherspoon can take it up. It is extremely difficult in terms of the complexity of the system.

Mr Wotherspoon—The current 2001-02 annual report of WorkCover indicates that there was, I think, $1.47 million collected as additional premiums as a result of audits, but there was also $800,000 refunded as a result of overnominated wages. There is an indication there that, yes, there are cases where employers have not paid the right premium. Quite often that is because the system is complex and they have not properly understood it. I have no doubt that out there somewhere in the big wide world there are some people who will try and diddle the system themselves. Quite often that occurs when people feel that they are justified in doing it.

Mr BEVIS—I would make the observation that the identical mirror image of that could be applied to the claimants who are employees—that is, there are injuries for which claims are not submitted and people do not claim in every case everything they are entitled to, exactly in the same way as I accept precisely what you say to be the case. It does seem to me unfortunate that an employer association is not in the position to give the committee any advice about one of the terms of reference that directly affects its members, but that appears to be case.

Going back to where I started in relation to the survey instrument, I would like to make a final comment. If I can just be clear in respect of that survey instrument, I would expect that, if there was any advice or other supporting material that went with the technical instrument, that would also be made available to us. In considering whether or not you wish to respond to my earlier question, you should take that into account as well.

Mr Johnston—I understand.

Mr WILKIE—Early on in the committee's deliberations—not today, but in another hearing—we had an insurer who said that, in terms of fraud, it is only about one per cent that they could even identify, let alone investigate. I think it was the same insurer—I may be wrong—who mentioned that it was very good for them, because they had control of occ health and safety within the workplace, as well as being the insurer. They could enforce occ health and safety standards in workplaces and ensure that employers were complying with those standards. In that way, they knew that best practice was being followed. Claims were very few and far between, because employers were following good occ health and safety policies.

I see that you are encouraging members to be a part of good practice and doing the right thing there, but I imagine not all would necessarily take up that option. Would it be beneficial for insurance companies to also have the responsibility for specifying the sorts of occ health and safety standards that must apply to a workplace before they insured them and in getting that workplace to conform?

Mr McKell—There is concern about the requirements to satisfy the obligations now, let alone additional obligations.

Mr WILKIE—But if it is reducing the premiums and the number of claims that are being made, wouldn't it be cost effective?

Mr McKell—You would hope so.

Mr WILKIE—Any other comment?

Mr Nolan—We need to be careful about comparing one industry to another. We have already fully acknowledged that this particular industry may have some inherent risks that do not exist in other industries, such as people with knives, zoonotic diseases, all those sorts of things. It is difficult to compare the one per cent in a particular industry with the meat industry. There is probably a need for specialist skills, and, as we have all previously stated, a lot of R&D dollars have gone into that. No-one in this room could suggest that in the area of zoonotic diseases, especially Q fever, the meat industry is not leading Australia and the world in research and implementation of research.

Mr WILKIE—But given that the industry is in a situation where, as has been stated, it probably has a very high-risk environment, wouldn't having an enforceable occ health and safety standard of the highest rating be good for the industry?

Mr Wotherspoon—There is an enforceable standard now, and that is the legislation. All the employers are required, obviously, to comply with that. The history of possible breaches of that legislation certainly does not match the workers' compensation history, so I think the industry is complying with a good standard, a high standard, and is getting better and doing more. But that has not totally answered the problem so far as workers' compensation is concerned.

CHAIR—Is the incidence of injury in the meat processing sector rising, falling or on a plateau?

Mr Nolan—Anecdotally, I would suggest it is falling. I have not seen statistics.

CHAIR—That would be interesting. Other evidence we have had before the committee suggests that the incidence of injury, because of better management systems and so on, in various industries is falling, which is very encouraging and to be welcomed, but that the level of premium is rising. My next question is this: what is happening generally to the level of premiums in your industry? Are they rising or falling, or does it vary from state to state?

Mr McKell—Madam Chair, if I could respond to your first question, I believe the WorkCover statistical information, at least from New South Wales, was that the number of claims had reduced but the duration of the claims had increased, therefore raising the concerns as to the added costs, whether that be for the common law claims or the statutory payments.

CHAIR—That is in New South Wales. The number of claims is falling but the duration of the claims is increasing. Is there a commensurate increase in the level of premium then, generally, or not?

Mr McKell—Again, I would probably have to get back to you with the details, but the understanding is that with the duration of these matters that proceeded at that point—and still do—with the compensation court, it is, of course, the legal and medical costs that have the ongoing effect on the premiums.

CHAIR—Why is the duration of claim increasing then? Is it because of the severity of the injury or because of other factors?

Mr McKell—Again, that would be a matter of having a look at statistical information.

Mr Westlake—The issue of claims reducing has certainly been witnessed in Victoria in quite a few of the processes, but the mechanism that they work within, which has already been mentioned here this morning, is allowing claims to be extended through doctors and lawyers and culture and all those other matters. In Victoria, the WorkCover Authority have effectively gone out to the processors and visited the sites under this generic compliance type arrangement. Initially, the processors were told they were there to assist them to manage their WorkCover situation, but when they turned up they were actually there to do this generic compliance audit, making sure that certain systems and conditions existed within the workplace. They were not interested in talking to the processors about helping them to manage their claims.

When heavily questioned and taken to task over that, their response was that it was not their department. The compensation branch people that deal with these matters that everyone is struggling with did not come out into the workplace to see what the real problems were that people were experiencing. That remains an issue in Victoria. The Victorian WorkCover Authority perhaps have not taken on board that they need to get out into the field to see what the real problems are.

CHAIR—If I understand you, what you are saying—and correct me if I am wrong—is that where the management of occupational health and safety is within the employer's purview the incidence of injuries is falling, which is very welcome, but where the management of rehabilitation and so on is in third parties' hands, such as doctors, specialists and so on, the time is going up. Is that correct?

Mr Westlake—Yes.

Mr Johnston—You might have picked up in our submission that it is a real cause for concern across the industry. Over the last five, six or seven years, the industry has rationalised. A large number of plants have succumbed to competitive pressures and closed down or a number of plants have closed down for temporary periods of eight months, which is allowable under the industrial instruments, before redundancy payments are given. Where plants have closed down, up and down the eastern seaboard, there has been an increase in the number of workers' compensation claims after redundancies. The legislation under the various jurisdictions, especially in Victoria and Queensland, allows a period of time for a claim to be submitted. With an employee submitting a claim for an injury that took place before the redundancy, the employer has no record of particular matters of that injury other than the claim which lands on his desk. It is a real cause for concern. Some claims may be genuine but it is a large coincidence that, when redundancies occur in the industry, the claims increase.

CHAIR—What do you suggest, then, as a remedy?

Mr Johnston—We have not developed a formula in relation to the particular matter. We have thought about it and it has been a part of the submission that we have been doing for the last two months—and the supplementaries—but we just do not know what the answer is in terms of a legislative framework. But it is a cause for concern.

CHAIR—We have one more person who wants to make a submission today and we only have 20 minutes before Hansard leave, so time has caught us today, but there is the matter of the

blank survey that Mr Bevis put to you, Mr Johnston, which you were going to consider and come back to us on. If there are further matters, there is always the opportunity for a supplementary submission and it may be that other committee members want to invite you back for further questions. That is something we will consider, but I am afraid we will have to call it a day today.

Mr Johnston—I understand.

CHAIR—Thank you very much for coming before us.

[12.44 p.m.]

HEMMING, Mr Andrew Peter, Principal, Hemsem

CHAIR—Mr Hemming, I would like to welcome you today to the public hearing of the inquiry into aspects of workers' compensation. Thank you for being so patient and agreeing to appear. The proceedings here today are formal proceedings of the parliament and warrant the same respect as proceedings in the House. Your evidence today will be evidence given in public. Unfortunately, because of the video link, we cannot guarantee you any private hearing, but if you have confidential matters that you would like to submit to the committee you are very welcome to do so in a written form.

Mr Hemming—Thank you, Madam Chair.

CHAIR—I would like to invite you now to make some preliminary comments and then we will move to questions.

Mr Hemming—Thank you. If I may, I would like to remind the committee of the changes that took place in Tasmania in July last year, when effectively a gate into common law of 30 per cent of whole of person impairment was introduced, together with a 10-year weekly payment benefit level. There is nothing to prevent people having an entitlement under both of those benefits, provided they can prove it.

My submission to the committee, very briefly, relates to my experience when I was Chief Commissioner of the Workers Rehabilitation and Compensation Tribunal in Tasmania—which is the dispute resolution body—and also, for the last four years, working with industry and with unions. As I stated in my submission, my belief is that, in Tasmania at least, the incidence of fraudulent workers' compensation claims is relatively low. What is more apposite, I think, is the development of fraudulent behaviour, and that tends to revolve around the question of the system and the scheme itself permitting such behaviour to continue.

If we really are serious about making workers' compensation an affordable product, we really need to think about a scheme and a system which enables genuinely injured workers to be paid a reasonable amount of compensation whilst they are recovering, but which enables us to detect very early on developing fraudulent behaviour. Therefore, the first cornerstone of that type of approach is early intervention in the claim process. Speaking generally, you also need to have in the scheme very strong gatekeeping measures which prevent and discourage fraudulent behaviour.

Perhaps the most pivotal part of that is the medical profession. Without proper registration, certification and accreditation—and we have accreditation of medical practitioners here in Tasmania—followed up by meaningful and continuous training of medical practitioners, no workers' compensation system can properly discourage fraudulent behaviour. I am a bit of a fan of that. I have worked, to a certain extent, to try and promote that in Tasmania.

As to employer fraud itself, I have not seen much evidence that employer fraud exists here, past the quite obvious disincentive for smaller employers to make available workers'

compensation claims for workers when they are liable for the excess under their policy. As I said in my submission, I do not think there is much evidence here of collusion between employers and employees in that regard, but I have seen some smaller businesses attempt to persuade workers not to make claims. That has to be, of course, something that will come back to haunt them and to bite them very badly later.

As an overall comment in relation to fraudulent claims, it does not appear as if our workplace standards, our statutory authority, our WorkCover Tasmania Board is appropriately equipped to detect the level of fraudulent claims in Tasmania. No doubt you will be hearing from some of our insurers who operate here in Tasmania, and they would be in a much better position to be able to tell you. But my feeling and my view are that the incidence of fraudulent claims per se is small. The development of fraudulent conduct is something that any scheme has to live with and should react to in a very proactive way. The use of medical panels, for example, might be one way to discourage that. We have yet to experiment with those here. That is something we can look forward to and relish, I suspect.

As to detecting and eliminating claims and failing to provide to pay required premiums, we still use video surveillance quite often here in Tasmania to detect fraudulent conduct, but there are huge problems with video surveillance and I suspect the committee is quite familiar with those. My experience is that insurers use video surveillance to particularly force claimants into a position they want and they can control, and usually that means wrapping up a common law entitlement as well.

The indications from the last statistics from the WorkCover Tasmania Board, covering the 12 months ended June 2002, are that legal and investigating costs are dropping slightly. The overall cost of workers' compensation in the scheme in Tasmania is quite small bickies compared to other states. We are only talking about $120 million, although when you compare it to the number of workers and the number of claims here it is still important. Of that amount, about $11 million is spent on legal and investigating costs.

It is difficult to tell, because they are not broken down into exactly how much is spent on the lawyers and how much is spent on the investigation, but I would like to suggest to you that insurers maintain a reasonable level of investigation on claims here, where they think there is a possibility they can force a smaller payout—or maybe no payout at all, but that is rarer.

As I have just mentioned, we are contemplating using medical panels here in Tasmania, and no doubt you have heard from other people about that. We very rarely prosecute anybody for fraud in Tasmania, due to restraints not only from a budgetary point of view in the DPP's office, but also, quite obviously, from the point of view of the difficulty in proving fraud.

Fraudulent conduct and fraudulent behaviour is something different, of course. It is often learned behaviour, it is passed on behaviour, it is encouraged behaviour. I have said in my submission that the way to stamp that out is to develop a better culture within the workplace, and that is something that I feel is very important.

As to premiums, my submission suggests that there are problems with small businesses sometimes failing to pay premiums, often because they may not understand workers' compensation law and not realise that they are employing anyone at all. You may find that hard to believe but I have seen cases where people have been found liable to pay compensation

where they did not actually think they were employing anyone, so the issue of any particular scheme clarifying who is a worker and who must pay workers' compensation should be an issue that should concern any committee looking into workers' compensation in Australia generally.

With regard to premium levels, I have suggested in my submission—and, interestingly enough, I think this was covered in the last submission as well, because I was listening to it—that the general listing and standard of safety auditing and workplace safety accreditation needs to be recognised more by insurers. I think more work needs to be done with insurers in convincing them that the safer the system of work employed at an employer's premises the less likely there is to be injury and the less likely there is to be costly workers' compensation claims where the appropriate people are in place, the appropriate procedures are in place and employers are reacting strongly to injury, both before and after the fact.

My business works fairly hard at training organisations in both of those areas, but more particularly in the area of rehabilitation. That brings me to the last issue before the committee—safety records and claims profiles. My strong feeling in relation to this is that we are once again talking about changing workplace culture. From my point of view—and I have certainly seen it in large organisations here that we have trained with, and in small ones—that means commitment from the chief executive officer downwards; it cannot work unless it comes from the top. Therefore, it means sharing your vision with the workplace and it means having that workplace as part of the process. No health and safety committees can work properly unless the proper people are on them, for example.

In relation to rehabilitation programs, once again I would like to suggest to the committee that, unless medical practitioners are properly trained, know workplaces and understand workplaces, rehabilitation is going to be difficult. We have also discovered here in Tasmania that the provision of rehabilitation is an issue which needs looking at, and I believe that we will be looking at whether or not we need to register rehabilitation providers, which we do not at present.

Incentives to rehabilitate are, in my view, however, much more interesting. How many times have I heard an employer say to me, 'Where is my recognition from my insurance premium level of all the occupational health and safety systems that I have, of all the good practice I do for rehabilitation?' It is a legal requirement in Tasmania that anyone who employs more than 50 people has to provide a rehabilitation coordinator in the workplace. There is no recognition for doing so at insurance premium level.

In conclusion, my views about that are that perhaps in Tasmania we need to be looking at more incentive in our scheme, to be able to say to employers, 'Your premiums will reflect the level of safety and the level of commitment to managing workers' compensation claims generally.' I do not feel that that is presently the case. I think I might stop there, because I know you are constrained by time. I am happy to answer any questions.

CHAIR—Thank you, Mr Hemming.

Mr WILKIE—Thank you, Mr Hemming, and thanks for your patience. Obviously you work with a lot of different industries. Have you had much work with the meat industry, in meat processing?

Mr Hemming—No, but I have learned more about them this morning, I think.

Mr WILKIE—I was curious to see if you had found fraud a problem in that industry in Tasmania.

Mr Hemming—When I say, 'No,' I have done a little bit of work with an abattoir and I have to confess to you that my experience of them was that they were very proactive in claims injury management, probably given the nature of the industry. They were extremely hot on detecting fraud and they were extremely hot on stamping out fraudulent behaviour. This particular case is the only one I have had any experience of. Yes, I think they were doing the right thing. They have since gone into liquidation—I do not think for that reason.

Mr WILKIE—You said that in Tasmania prosecution of fraudulent claims is low, and part of that is the funding for the DPP. To what extent do you think that hides the real levels of fraud?

Mr Hemming—I think the real levels of fraud are probably hidden. You are right. But then again that is a question you should really ask of the insurers in Tasmania, because they are the ones that would know. I should have said that, because claims have been dropping steadily in Tasmania over the last five years, a lot of dollars have been put into education in relation to health and safety in the workplace.

I believe that people are now more aware of the types of fraudulent behaviour or perhaps even fraudulent claims—because I heard that distinction being made before—than ever before, and I think that has been a gradual culture change. Prosecution of fraudulent claims is very rare and is probably not masking completely the incidence of fraudulent claims, but I believe from talking to insurers that it is not that high.

Mr WILKIE—You comment on the need for more doctor training. What sort of training would you envisage?

Mr Hemming—I would envisage something more than presently takes places. To become accredited to issue certification under our scheme, you need to fill out a questionnaire. I would envisage the compulsory attendance of doctors at training courses with practical demonstrations, and the problem with that is that the money and the time has to come from somewhere, obviously. But, yes, I would envisage taking doctors away and I would envisage training them away from where they are at present, over a period of days. Exciting, isn't it?

Mr WILKIE—A number of people's submissions have talked about the complexity of the system, both for employees and for employers. Is that the same in Tasmania?

Mr Hemming—The complexity of the system is something that I think we are gradually breaking down here. The problem is often compounded by governments deciding to change the rules. We had a major change in the legislation last year here. We are yet to see how that is going to work. The complexity of the system can be fixed, but only if governments are prepared to listen to the people who know. Of course, that is the real problem, because everyone thinks that they know.

The issue really is that workers' compensation, being beneficial legislation, starts off as conferring a benefit on people, and employers find that really hard to grapple with to begin

with; therefore, they always feel they are behind the eight ball. This is not assisted by governments bandaiding legislation successively over years and years of legislative practice. You are on to my hobbyhorse now because what I think we need, if we are never going to go down the national workers' compensation one-system road, is to make workers' compensation legislation simple, easy to understand and a step by step process. We are a long way from that at the moment.

Mr WILKIE—Should we have one national scheme?

Mr Hemming—Yes. But whatever scheme we have has to be simple to follow, harder to commit fraud in than it is at present, and reactive—in other words, full of good, best practice early intervention.

Mr WILKIE—Thank you.

CHAIR—Mr Hemming, I am interested in your training and accreditation of doctors. We have had a submission from a GP who claims that it is not so much the training but the obligation between the doctor and his patient. A doctor is obliged to believe his or her patient when they come forward claiming that they have a cold, that they have sprained their ankle or that they have suffered a workplace injury. It places the doctor in an awkward situation vis-a-vis his relationship of trust with his patient. Do you really think that training and accreditation are going to overcome this situation of the doctor-patient relationship and the obligations there?

Mr Hemming—It is a good question, but I do not think that it is relevant to the question of training. There will always exist a doctor-patient relationship. What doctors need to understand generally is that there are enormous consequences in issuing a certificate for workers' compensation. I would like to see doctors understanding those consequences more clearly and, instead of sharing their own learned behaviour—which is what they do—undergoing training that demonstrated to them the potential for protecting the doctor-patient relationship and yet still achieved a good outcome for the rest of the parties in the system. It will be employers and insurers who will be most interested in that. I do not see that as a problem.

CHAIR—I do not have any further questions. Thank you for that insight. We appreciate you being so patient today.

Mr Hemming—Thank you.

Committee adjourned at 1.07 p.m.