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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Reference: Aspects of workers compensation

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Thursday, 21 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, Mr Hartsuyker, Mrs De-Anne Kelly, Ms Panopoulos 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 9.59 a.m.

ROBERTS-YATES, Dr Christine, Researcher, Flinders University

CHAIR—I declare open today's public hearing of the inquiry into aspects of workers compensation. I welcome Dr Christine Roberts-Yates. Thank you for taking the time to join us today. The proceedings here today are formal proceedings of the parliament and therefore warrant the same respect as proceedings in the House. In providing your evidence today we ask you please to not name individuals or companies or provide information that would identify particular individuals or companies adversely. The committee is interested in the broader principles in relation to our terms of reference and issues that you wish to raise in relation to those. The committee is not prepared to provide the protection of parliamentary privilege to allegations about particular individuals. We prefer that those appearing before the committee give their evidence in public. However, if there are some matters that you would like to submit in a private setting, if you ask the committee, we will certainly consider that request. I invite you to make some opening remarks and then we will move to questions from the committee.

Dr Roberts-Yates—I am undertaking research with the School of Medicine at Flinders University in relation to claims/injury management and rehabilitation. My research will be complete in June of next year. The result of the research will be some recommendations for a partnership approach to claims/injury management and rehabilitation. I have been endeavouring to speak to the stakeholder groups—I must have spoken to about 200 individuals, covering injured workers, employers, case managers and medical and vocational personnel. I have some key principles from the stakeholder groups which I will just go through quickly. Then I will go through some recommendations from several of the groups. I have not got them all because I have not completed the rest.

Some of the principles from the WorkCover corporation that were given to me were: cost pressures within the WorkCover corporation are of concern; the formal, precise language of the workers compensation process is generally perceived as being open to misinterpretation; the legislative script determines the behaviour and practice of the key stakeholders involved in the rehab process; WorkCover is positioning itself as a facilitator rather than a controller of service relationships and provision; return to work is a primary focus of the WorkCover corporation; and its evolving new culture will move injured workers away from a compensation orientation towards a life and work restoration response.

The key principles from the injured worker's perspective are: the majority of injured workers are generally committed to an early and successful return to work; some workers are frequently driven by economic factors; workers rarely have access to information explaining the compensation process from the onset of injury; and workplace injury is considered by claimants to be the modern equivalent of leprosy—that metaphor came up several times. In addition, injured workers may be described as having experiences involving loss of self-esteem, self-worth and identity, traumatic separation from the workplace, financial loss, exposure to an overwhelming range of professional strangers, introduction to a process perceived as alien and threatening, loss of control, grief and feelings of shame, diminished organisational trust, anger, stress, guilt, anxiety, self-blame and depression, inability to manage emotions, alienation, disenfranchisement, loss and change in many areas, familial and personal adjustment to the rehab process, imposed redeployment and life transition, and a process with a focus on compensation rather than return-to-work outcomes and new learning.

From the employees' point of view the key principles are: early intervention and a supportive workplace are the keys to a successful return to work; the primary responsibility of the employer and treating professionals is the injured worker; the secondary role of the employer is to provide cost-effective means to reduce liability; injured workers are perceived to be a liability once the employer's levy to WorkCover has been increased on their account; and workplace education plays a significant role in assisting all parties to understand injury management and return-to-work processes.

From the claim/injury management point of view—that is, the case managers—the key principles are: a consultative methodology should underpin injury management and rehab practice; the primary function of a case manager is claims processing rather than case management—and that is problematic; a 'total person' approach to rehab and claims/injury management would be less stressful and more cost-effective; case loads need to be determined at a reasonable level, that is, less than 100—but in my research that has gone to less than 50—in order to manage rather than merely process claims; and the constant change of case managers handling claims hinders successful rehab and return-to-work outcomes.

From the medical and vocational rehab practice point of view, the key principles are: reinforcement of an injury mentality by medical service providers will not assist the worker to move forward; useful and respectful communications patterns will influence cooperative relationships and result in more successful returns to work; a system of WorkCover accreditation for those treating medical experts providing services to injured workers should be a prerequisite for the involvement with and treatment of injured workers; a blend of time based and item based payments for consultations with injured workers would facilitate more constructive involvement of the GP, particularly in the initial stages of the claim; and early medical assessment of the claim and the description of entitlements would facilitate successful management of the claim.

The injured workers believed that there was a need to participate collaboratively and inclusively in their rehab and return to work and that access to information, constructive and timely communication, a degree of assertiveness and active participation by the worker would enable a more successful return to work. There are a number of barriers and these include uninterrupted payment of financial entitlements. If the following barriers were addressed, there would be more positive outcomes. Workers believed there should be: uninterrupted payment of financial entitlements; respectful, ongoing communication between the claimant and key stakeholders; an information package outlining the rehab and return-to-work process, to be distributed to the worker at the onset of injury; an opportunity to be informed about their medical condition and treatment regimes by the treating medical experts in respectful, clear and simple language; quality management of suitable return-to-work placements by the doctor, rehab provider and employer; education of workmates and the community in order to promote a nonjudgmental response to invisible injuries; treatment of the injury in terms of the whole person; and more transparency in regard to dispute resolution.

The employers concluded that the more general elements for successful rehabilitation, return to work and the resultant cost reduction are: early intervention and step by step reporting procedures; time for case managers to attend to detail and respond promptly at each key step in the claims process; timely diagnosis, the early implementation of treatment protocols and open communication with treating medical practitioners; ongoing social, technical and ergonomic support in the workplace; high levels of organisational trust and ongoing open communication;

a recovery focused management model with allowance for the processing of disputes; ongoing training across the work force; schedules of incentives to encourage sustained return-to-work outcomes; a people orientated management which reflects a culture of shared concern; effective relationship management prior to and post injury; and effective management of information lines.

More specifically, they stated that the development of a national model and best practice guidelines with allowances for state differences would be exceedingly helpful, as would a review and modification of the worker's weekly income maintenance entitlements—for example, 100 per cent for the first 13 weeks, 80 per cent for 13-26 weeks and 60 per cent thereafter. Some even advocated redemption payouts to be paid into a WorkCover fund and interest paid accordingly. They advocated a sliding scale cash bonus to be paid to the worker on application for a return to work to pre-injury duties with no restrictions after three to six months, and they said that more flexibility is required for the completion of rehabilitation and return-to-work plans by accredited workplace personnel on site and fewer company personnel. They recommended that all employers have a free copy of the act; that middle to large employers nominate personnel to undertake case management training with WorkCover; and that more officers inspect work sites and determine more flexible industry rates.

Case managers felt that formal qualifications and ongoing training in areas such as psychosocial issues, emotional management, anger management, medical and legal terminology, conflict resolution, communication, negotiation and suicide were critical. They recommended respectful communication; a reduction of the case management portfolio to 30-50, which would include the management of vocational rehabilitation; that all aspects of the claim be actively addressed from the onset; increased clerical personnel to liaise with case managers and assist with administration; an adoption of a whole-person approach; different levels of risk and liability management in advice to employers; positive reinforcement schedules, including financial incentives for workers at each sequential step in the return-to-work process; more engagement in face-to-face contact with workers and employers; provision of more claims officers to deal with low-risk claims; and the development and issue of entitlement information packages to workers that are congruent with the level of disability incurred.

In relation to fraud and noncompliance—I did not spend a lot of time on this—579 injured workers were dismissed by employers in South Australia following WorkCover injury in the three years up to June 2000; that is equivalent to 7.5 per cent of the national work force. In South Australia where an employer has fewer than 10 workers, suitable work must be made available for 12 months unless it is impractical; if the employer has 10 or more workers employed, the employer's obligation is open-ended. Regarding noncompliance issues, if the offence is in South Australia, an employer is fined accordingly. In South Australia, breaches of the legislation are dealt with by administrative sanctions—that is, increased or supplementary premiums. This enables breaches to be dealt with more expeditiously than through the courts. Each supplementary premium on noncomplying employers covers ongoing costs of workers' claims until compliance is forthcoming.

The perceived lack of compliance by some employers and an extreme reluctance by some scheme administrators to address the issue is problematic. It is perceived that some claims agents view employer compliance as an optional obligation. Workers object that there is no

enforcement of the employers' obligation of mutuality, whereas failure on their part to comply results in suspension, if not termination, of income maintenance payments.

There is a general perception that less than one per cent of workers are fraudulent. Employers believe that workers have nothing to lose by lodging a fraudulent claim but that it would cost the employer everything. There is a concern that there is a psychological extension of the claim by the worker, and that is deemed as fraudulent. There is a concern that there is a crossover between industrial issues and claims. Employers are concerned that they cannot recover the cost of investigations that may run into thousands of dollars. They feel there needs to be a link with WorkCover as soon as a business is registered, because some employers never put in a claim to WorkCover in order to keep their rate down and stabilise productivity.

There is a perception that there will be more abuse of the system if one brings in common law and that it would be more costly. Employers feel that doctors are into self-justification. They feel that liability for life has tremendous consequences for the employer, particularly with workers who have registered a life claim. They feel that case managers are not managing the case because they are too preoccupied with compliance with the WorkCover standards and that this extends costs for the employer. They also feel that small to medium employers wear the cost when cases are managed inefficiently because of the inexperience of the case manager.

CHAIR—Thank you, Dr Roberts-Yates.

Mr WILKIE—You said that you did not look at the issue of fraud. Why was that?

Dr Roberts-Yates—It is not that I have not looked at it. I have been involved in looking at the stakeholders' perceptions. Fraud would come into that, but I have not looked at fraud in a specific sense. It ripples through everything. For example, some employers would believe that the psychological element extends and then goes into a fraud claim. Some workers would say that the impact on and disruption to their lives—the fact that they are not paid and they have a reduction in salary et cetera—would at times make them give up and that that could be termed as fraudulent. I have not looked at fraud as a specific area. That will happen later down the track when I bring things together.

Mr BEVIS—One of the things you mentioned that you were looking at was accountability and transparency in the system. Amongst other things, you referred to exempt employers and self-managed employers when it comes to the operation of workers comp. How do accountability and transparency adequately function for self-insurers and exempt employers?

Dr Roberts-Yates—I suppose it would indicate that they have more leeway to put in place plans, or strategies, that can bring about a return to work. They have more leeway to be flexible; there is less rigidity in their operations and their infrastructure. There is a belief with employers who are with WorkCover that there is a lot of focus on actual compliance with WorkCover standards, and therefore they feel frustrated—one is not saying that this is fact—because there seems to be more compliance with standards. They feel that WorkCover is quite punitive in terms of telling them what to do. This may not necessarily be the fact, of course, but they feel that there is less flexibility; whereas self-managed and exempts feel they have more flexibility to do what they believe is outside the prescribed guidelines. Other people would say that the act is there to be interpreted and that it is in fact quite flexible; that it depends on the creativity of the person or the people, the stakeholders.

Mr BEVIS—How does the system validate the flexibility that you have mentioned that employers in that situation have? How does the system validate that they are using that flexibility in keeping with the aims and objects of the scheme rather than for what might be a short-term financial gain to the enterprise?

Dr Roberts-Yates—I am thinking of an exempt employer who gave an example of a person who had been on the system for, say, two years—and there was a two-year review coming up, obviously. The person had emotionally turned off from the workplace. With the breakdown in relationship at whatever level, the worker perceived the alternative duties offered as being quite demeaning, but the employer did not really have anything that this worker could do in a meaningful sense long term that would then enable that worker, in terms of their restrictions and capacity, to continue.

In this instance, I believe the exempt employer negotiated with the worker to look at a redemption payout. In terms of that, they also said, 'We will have an obligation to provide you with a future job.' So they trained the person and provided them with work experience and looked at a new employer. Once they had their redemption payout, they would just move from one employer to the other. They have considerable flexibility in doing that in the way in which this was done.

Mr BEVIS—I appreciate that, but what I was trying to get to was not so much a specific case example of someone doing the absolute right thing or the absolute wrong thing but how the system verifies or satisfies itself that that flexibility is in fact being used for the objects and purposes of the scheme rather than for what might alternatively be—

Dr Roberts-Yates—That is rather difficult, but perhaps one could look at the schedule of outcomes over a period and follow it up. There is a point of view about a worker who gets sick, goes into redemption payout and three months later is back in another job. How one actually monitors that is exceedingly difficult. That is something I will be coming up with in nine months time when I have brought all the information together. I am conscious that I am only three-quarters of the way through.

Mr BEVIS—A related issue is what becomes the threshold test for saying this employer is able to self-regulate but that employer is not.

Dr Roberts-Yates—It is a matter of what their infrastructure is and what resources they have within their company. When I have been talking to employers, they have indicated that they would like some documentation of good practice that relates to particular industries so that it gives them an idea of what can be done. They find sometimes that they are isolated, particularly the small to medium employer.

Mr BEVIS—I am wondering whether there might be a parallel if we are talking about, as it were, self-assessment.

Dr Roberts-Yates—Yes.

Mr BEVIS—In the tax system, people self-assess but you are then subject to full audits—

Dr Roberts-Yates—Exactly.

Mr BEVIS—without warning and with very serious consequences, including very hefty penalties, if the people doing the auditing—the government agency—think you have done something wrong. Every member of parliament deals with plenty of people audited by the tax office who think they have been unfairly dealt with. I am just trying to find some frame of reference for a self-regulating employer. Is there some point of reference that makes sense of that analogy?

Dr Roberts-Yates—One always has to be careful that people are not being dismissed in a summary fashion, in a cavalier fashion, just because the case is too hard or the relationship has broken down. At the end of the day, it is easier to get rid of the person than it is to continue with structures and training and persevere. Smaller employers, in particular, are very frustrated because they feel that they have to employ casual people to take the place of the person who was injured. They only have a small profit margin and everybody, at the end of the day, is looking at costs.

Having a schedule of evaluation is difficult because one is dealing with human beings and each one has agendas, each one has a different script and each one has a vested interest. From my point of view, I can see the perceptions of all the stakeholders, and that is not necessarily very helpful at times. In fact, it is even more confusing. The whole thing is just bigger than *Ben Hur*.

There is no rule of thumb that says what works in this situation will work in that situation. It is based on the needs of the individual. It is even based on the personalities of both the worker and the employer. It is based on the records for those who have preceded the injured worker: whether they have successfully complied or returned to work with a minimum of fuss, with goodwill and with motivation. If five workers have done well before you but the sixth has not, and you are the seventh, there is residual disquiet and perhaps bias against you. So it is terribly complex in terms of social factors, psychological factors, work factors, colleagues, family, the worker's financial dilemma, whether the worker's relationship has broken down, whether depression has set in and whether everybody says, 'I've had enough'—and then everybody really just wants an out.

Some employers firmly believe that, in cases where the issues are very complex, everybody should agree that the worker be fast-tracked out of the system. Other employers are resentful if a worker registers a 10th claim when they had no knowledge of the other nine. One says to them that there could be a certain amount of bias if it were understood that a person had nine claims. Those claims could have been two lacerated fingers or whatever, but they say, 'We really should know.' So there is tremendous disquiet, which becomes suspicion and then angst, and then the whole thing breaks down. In terms of evaluation here, I do not know. How does one evaluate Centrelink motivating people into getting work when they are long-term claimants?

Mr BEVIS—You have just put your finger on the headache for us and for parliament as a whole, which is that we do have to take into account the interests of all the stakeholders and in some way try to find the balance. The dilemma you just described is the dilemma for parliaments around the country.

Dr Roberts-Yates—Yes; it is just horrendous.

Mr HARTSUYKER—You referred to invisible injuries. Do you think there is in-built cynicism in the system on the part of professionals and all those involved with regard to that?

Dr Roberts-Yates—I think so.

Mr HARTSUYKER—In your research have you come across fraud in relation to invisible injuries?

Dr Roberts-Yates—Again, fraud is very difficult to determine in terms of invisible injuries. It is like pain management. If, for example, a worker has had considerable surgery on an ankle, the clinical guidelines say that he should be feeling considerably better in 12 weeks time. If the worker is not feeling considerably better, to him that pain is a reality. It is the job of the rehabilitation provider, the doctor, the stakeholders and the employer to bring optimism into that person's view of moving on and to coach them into the next step. I think it is exceedingly difficult to deem or prove that person fraudulent in still adopting the sick role when, for them, the pain is a fact. One hears lots of feedback in that surveillance is very expensive. One cannot generalise, but the word 'cowboy' comes to mind when one thinks of the people who undertake these surveillance activities, and this has been mentioned several times. There is not a professional aspect to this surveillance: they identify the wrong people and they do things—such as following people, being intrusive et cetera—which in other areas of life would definitely be criminal.

If one has an arm in a sling or whatever one gets sympathy from one's work mates for a period, but research says that in time even that sympathy wears thin. I remember one person saying to me, 'I was back to work after my back injury after four months and I don't see why anybody else can't be.' So, again, I think one has to understand the individuality of this. There is definitely more sympathy for visible injuries. There is also the issue of how one manages visible injuries which become invisible but with lingering pain. So the psychosocial aspects are really important. All the stakeholders must enable the worker to move forward rather than disable the worker by focusing on the pain syndrome. But I do not think I would like to be the doctor or whoever determining whether it was fraud, because the variables are so many. But, yes, if a person with an invisible injury had a protracted claim there would be bias or suspicion that there was fraud, though it would not necessarily be stated.

Ms PANOPOULOS—With regard to the methodology for the research, did you interview staff?

Dr Roberts-Yates—I interviewed employers, managers, supervisors, middle and upper executives, personnel from WorkCover, over 80 injured workers, and case managers.

Ms PANOPOULOS—Of the 80 injured workers, were they across all sorts of industries?

Dr Roberts-Yates—Yes. They were from manufacturing, security, nursing, labouring—a whole range. I think there were about 15, and they all had different injuries: leg, shoulder, arm, head, back or stress.

Ms PANOPOULOS—Were the questions that you put to each of the 80 workers the same?

Dr Roberts-Yates—I asked them in the first instance to give me a narration of their story from the moment the injury happened to its conclusion. I prompted along the way with certain questions if I was not getting the information that I needed to have a balance. I had a list of cue questions, but I found that when I asked workers questions they were not very responsive. They preferred to tell their story in their own way. There was a lot of anger and frustration in their stories. The interviews might have taken an hour and a half to two hours—maybe one had several sessions—and some took five or six hours.

Ms PANOPOULOS—Would you be able to provide the committee with a list of the prompt questions—not necessarily now but in your own time?

Dr Roberts-Yates—Yes.

Ms PANOPOULOS—That would be useful because it is very difficult when assessing the methodology of a study like this to try and find some common denominator.

Dr Roberts-Yates—I sent the committee the first paper that I had published about the research and how it was done and what the three main focus areas were. All of that was in the first paper.

Ms PANOPOULOS—When interviewing the staff, did you ask them any questions relating to fraud?

Dr Roberts-Yates—I did not use the word 'fraud' but, yes, that was inferred.

Ms PANOPOULOS—What word did you use? What did you ask them?

Dr Roberts-Yates—I inferred that the worker was perhaps abusing the system. I probably used the word 'abuse' of the system.

Ms PANOPOULOS—Of those 80 workers, did any of them imply any fraudulent activity at all on their part or that of any other worker?

Dr Roberts-Yates—A couple of workers indicated that they felt very cross with the non-genuine claimant who was then making it hard for the rest.

Ms PANOPOULOS—All 80?

Dr Roberts-Yates—Most of the 80—say 75—would not have done.

Ms PANOPOULOS—But none of the 80 that you interviewed confessed to fraud?

Dr Roberts-Yates—They did not confess, but they had a perception that they saw others acting in a fraudulent way.

Ms PANOPOULOS—Not themselves?

Dr Roberts-Yates—No.

Ms PANOPOULOS—And you would not have expected them to admit that they had been fraudulent anyway?

Dr Roberts-Yates—No.

Ms PANOPOULOS—You mentioned in your oral submission that there was a perception that less than one per cent of workers were fraudulent. Where was this derived from?

Dr Roberts-Yates—From the employers, who perceived that it was a WorkCover statistic.

Ms PANOPOULOS—Where did that come from? Is that a summation or an inference from your interviews with them?

Dr Roberts-Yates—Yes.

Ms PANOPOULOS—Did you ask employers a specific question regarding fraud?

Dr Roberts-Yates—No, they just came up with it. Actually, I did ask several. One of them said that they found it very difficult to verify or to gauge in a practical sense whether fraud was happening but their gut reaction was that, yes, it definitely was. They felt that some workers had a script they adopted when they got out of the car or walked through the gates or whatever and had to keep to that script in order for their story to be verified. When they heard other feedback from the worker's colleagues or work mates who were friends in their community that they had seen them doing this and that, they became suspicious because it reinforced their gut feeling that, yes, there was fraudulence happening here—usually in relation to stress or depression or that kind of thing.

Ms PANOPOULOS—But that figure you mentioned of less than one per cent was not based on any statistics?

Dr Roberts-Yates—No. It is what the employers are perceiving.

Ms PANOPOULOS—It is your interpretation from the aggregate of broad conversations you had with employers, so it is not based on any statistical analysis?

Dr Roberts-Yates—No.

Ms PANOPOULOS—Does it follow that the research you are conducting presupposes no fraud or, at best, minimal fraud?

Dr Roberts-Yates—One would have to define 'fraud' and the levels of fraudulent behaviour.

Ms PANOPOULOS—Are you going to do that in your study?

Dr Roberts-Yates—I may towards the end. It has not been one of the major focuses to date, because I have so much data from the perspectives of all the stakeholders that I am drowning in it. Fraudulent behaviour comes through all the time in relation to the sick role—the fact that people have a script for work and another script for home and the fact that people cannot do

physical things at work and can do them at home. Some employers would say that fraudulent behaviour includes, for example, a worker who perceives that they can get duties which they prefer by discussing with the doctor that these are the only duties they can do and having the doctor write on the medical certificate, 'You will do those duties,' and who then comes back to work and does them. Meanwhile, the other people in the factory or whatever cannot do those duties because the workers compensation people are doing them. Employers would even consider that fraudulent. So it depends on what we mean by fraud.

Ms PANOPOULOS—If you are intending to define fraud and subclassifications of fraud at the end of the study it is really, from my perspective as part of this committee, of minimal value because the definition comes after all the interviews and research.

Dr Roberts-Yates—Yes, sorry.

CHAIR—Were you able to categorise injuries or illnesses? Did it come to your mind that there were specific categories? Obviously every injury or illness is different, but did it seem that you could categorise them by duration or severity? Did you, in a sense, put them into certain categories, or did you find each so very different?

Dr Roberts-Yates—There was a general feeling among all the stakeholders that people took longer to recuperate from soft tissue injuries than severe injuries. Again, there was considerable frustration as to why this is so. My next paper will focus on the medical perspective, so I guess this will be further elucidated there.

CHAIR—So there was soft tissue injury and severe injury and you found that soft tissue injury generally took much longer to recover from?

Dr Roberts-Yates—There was a general feeling that soft tissue injury took longer and that, if one had stress or depression as a sequela, one had really lost the plot and the case was over.

CHAIR—Stress or depression made it very difficult for people to rehabilitate and get back to work?

Dr Roberts-Yates—Yes. The other feeling one gets from listening to everyone is that, if the person does not return to work within the first six months, it is increasingly difficult to do that with the pre-injury employer. Having said that, there are lots of relationship breakdowns in that first six- to 12-month period, for whatever reason, which impact on whether or not the person is going to recover quickly.

CHAIR—You would have dealt with injuries that were more than just one week or two weeks off work?

Dr Roberts-Yates—Yes.

CHAIR—So that category is out of it?

Dr Roberts-Yates—Yes, this research is based on the 20 per cent of workers who are deemed by insuring companies to be 'challenging'. Whether it is because of the nature and the severity

of the injury, because of attitude or motivation, or because of complexity in that the employer cannot give them appropriate alternate duties, they are seen to be challenging. One asks the question: why are they challenging? One gets the feeling from listening to all this that workers should be treated less like numbers and more like people from the first moment. I remember somebody saying, 'What is the number?' And I said, 'Don't you deal with people's names?' It is only a small thing, but to a worker it is really important. A lot of the feedback from workers was, 'I want to be treated as a person.' 'I just feel like a number with skin on,' was a quote from one worker which I thought was quite eloquent.

These people want general respect. They are feeling guilty, they have a sense of shame, a dislocation and fear. Particularly when dealing with males who have a work injury, when the work is their total identity and they are the main provider—and I am not saying this is not the same for women—they have a sense that their total identity has been destroyed. Where are they going to go? A sense of genuine panic comes into their lives. Some workers would then feel, 'I just have to get back to work quicker,' and then they re-aggravate because they are trying to do it quickly. Other people could say, 'If you do that and work beyond your return to work plan, that is negligent behaviour.' Other workers very consciously felt that case managers were clerical officers and not the managers of people—and certainly not the managers of injury and all of the complexities that that has.

CHAIR—Getting back to the categories, soft tissue injuries generally took a long time to heal?

Dr Roberts-Yates—That was the perception, yes.

CHAIR—Could you give me some indication of the sorts of injuries that would make up what you would term as 'soft tissue injuries'?

Dr Roberts-Yates—The employers would see soft tissue injuries as being the ankles, wrists, arms and shoulders.

CHAIR—These are strains and breaks?

Dr Roberts-Yates—Yes, carpal tunnels, where they have had arthroscopies, strains and those kinds of things. They wonder: why is this happening? Why isn't the person back at work, when so and so 10 years ago had his arm missing and he was back at work in six months?

CHAIR—What is the range of time taken for those soft tissue injuries? What did you find was the minimum time for someone to rehabilitate and to return to work and what was maximum time?

Dr Roberts-Yates—Some of the workers that I spoke to said they were back at work within six weeks or a fortnight and others were taking 18 months.

CHAIR—What would you categorise as constituting severe injuries typical of the sorts of injuries you saw people with?

Dr Roberts-Yates—Some were amputations or back injuries, where they had had disc fusions et cetera, where they had had extensive surgery; some had multiple injuries.

CHAIR—Was there a group that was so severely and traumatically injured that they were never going to be rehabilitated or go back to work?

Dr Roberts-Yates—I spoke to some people who had severe injuries and were in wheelchairs but were still working. I did not speak to any of the others who may be in that category.

CHAIR—You mentioned stress and depression. According to what you said, that was obviously a big inhibitor to recovery.

Dr Roberts-Yates—Yes.

CHAIR—Was that evident right across the range of injuries—soft tissue injuries and severe injuries?

Dr Roberts-Yates—Yes.

CHAIR—Were the stress and depression work induced, or did it vary? Was it, for instance, as a result of the injury and their concern about where their future lay?

Dr Roberts-Yates—Yes, concern about the future, a stigma attached to being on WorkCover, a community stigma as well as family disbelief and suspicion. Also, some were placed on alternate duties, and if they felt that the way in which that was done was demeaning they felt less of a person. I remember one worker saying, 'I was a tradesperson, yet I was asked to do this, this and this.' People are proud of who they are and what they are if they have worked in a situation for 20 years. Then there were older people who had been in the system. I am thinking of one gentleman who had been a concrete layer for 27 years and had a severe back injury and also other non-compensable ailments. He felt that he was still being pushed into work training and rehabilitation when he was 60. He should have gracefully just left the system. There is an arousal of emotions that is escalated by the process—by the perceived cavalier fashion of stakeholders, including rehab providers and case managers and including doctors that the worker believes are on the side of the employer. They also have family issues and relationship breakdowns within the family. Then they have the frustration of not being able to do the chores and having to be dependent on other people. There is all of this.

CHAIR—Could changes have been made to the system to alleviate the stress and depression? Was it related, for instance, to the delay in getting to rehabilitation? Were there factors that could have ameliorated that?

Dr Roberts-Yates—Yes. For example, I think the big stress for workers is the fact that some of them do not have their payments paid promptly. Their salary is determined from their 12-month earnings. Lots of workers do not believe that their overtime has been included in that, and therefore they are getting less. They say, 'But I've got these financial commitments.' They perceive claims agents as saying: 'That's tough. That's your problem; that's nothing to do with us. This is what you're getting.' I have heard workers say they were not paid for eight, 10, 12 weeks. Some even had to go onto social security and then, because obviously their claim was not accepted—

CHAIR—That brings me to another question. I am sorry to interrupt you. Did you see many injured workers who were failed in some way by the state system because of the duration, delay or caps of the payments who were forced onto the Commonwealth?

Dr Roberts-Yates—A few of them were, yes.

CHAIR—Roughly what percentage?

Dr Roberts-Yates—About two per cent, because I think lots of them would then get legal assistance to force the claims agent or the employer to do that. When one involves litigation, there is a strong feeling that you have lost a run again, because you have a strong vested interest as well, but some workers feel that that is the only way they can go.

CHAIR—Two per cent of 80 workers would be about one or two workers; is that right?

Dr Roberts-Yates—Yes.

CHAIR—Were they on a disability support pension?

Dr Roberts-Yates—They said they had gone to Centrelink and, when it was all finished, they went back onto WorkCover and had to pay back Centrelink. It was all organised that that was paid back. Meanwhile, it does cause a lot of stress. The other stress factor is the 80 per cent reduction for workers. Employers believe the 80 per cent reduction should come in much sooner. They believe it should come in at six months, if not before, as an incentive to return to work. So there are these two perspectives: the employer is stating, 'Somebody is getting paid for staying at home and adopting a sick role,' and the worker is saying, 'But I was injured; this was not my fault. I have a mortgage to pay, I have financial commitments, and I can't do it.' It is a question of how to turn it around so that they are returning to work as quickly and as safely as possible when they are healthy enough to do so.

CHAIR—What do you think is the answer to that question?

Dr Roberts-Yates—I think initially the workers need to feel that they are genuinely believed. Their injury needs to be acknowledged. They need to believe and know that the employer is doing something about it with an investigation report and that something is being done. So many times workers have said that the machine or whatever it was is still operating as it was, just waiting for somebody else to come along. They need to feel more respect. In fairness to the case managers, they have a horrendous load. For this paper I said that this is the dilemma of the case manager: decision maker, system player, negotiator, paralegal, medical specialist, mediator or enemy? Those are just a few perceptions of who they are for the worker.

Case management could be more person oriented, but we have these protocols of WorkCover where we get into the dilemma of audits. How is one validating and verifying that things are being done? You do that through compliance and standards and so on. The worker has no idea of the role of the case manager in terms of compliance to WorkCover standards that they have to go through. Their first consideration has to be whether they have their files correct in case they have an audit. I know many case managers have said, 'If we had more clerical support, which is going to increase cost, we could then do this.' Some case managers have even said, 'If we cut out the rehabilitation provider, the case manager becomes the injury manager, which

includes vocational rehabilitation; with one fewer stakeholder and with face-to-face contact with the worker we can problem solve.' I think problem solving is what the worker needs. Also, they need, at some point in their case, the opportunity to have some psychological counselling—not on a merry-go-round, a carousel that never stops but, say, three or four hours at some point when the need is determined to reduce the barriers of the return to work and to re-establish well-being psychologically and emotionally.

CHAIR—Thank you for that insight. It is very helpful. It was put to us yesterday that there is a difference between illness and traumatic injury. Is it the case that you would generally have seen—and correct me if I am wrong—the more traumatic injury?

Dr Roberts-Yates—Yes.

CHAIR—It was raised with us that there may be what could be termed 'an imposed disability function', where people genuinely believe that they now have a disability but it is not perhaps as severe as it may be.

Dr Roberts-Yates—Yes, definitely.

CHAIR—This did not apply to all cases.

Dr Roberts-Yates—No.

CHAIR—Is that something you would agree with or disagree with?

Dr Roberts-Yates—Yes, in a small percentage of cases, quite definitely. The perception becomes the reality and then that drives the next step, which is not returning to work, unfortunately. This is why they need some kind of assistance.

CHAIR—Does this get back to the psychological counselling?

Dr Roberts-Yates—Some psychological counselling which is practical. The psychologists doing that need to have an awareness of industry and organisations so that they understand how to link it all in and close the loops or open some.

CHAIR—Moving on to something else, you used the phrase 'script for home and script for work'. Could you elaborate on that?

Dr Roberts-Yates—There is a wide perception amongst employers that—this is within, maybe, the five per cent within the 20 per cent we are talking about—workers adopt a script and that that script really gives them the pegs on which they balance their work life; that is the sickness role. They will limp into work or they cannot do the duties negotiated or whatever. I am not saying this is the reality but this is a general belief. That, of course, reduces, if not destroys, the employer-worker relationship. One talks about: what about some reassurance? What about some acknowledgment? What about some pain management strategies in the workplace? What about some enabling structures coming in here so that, if there is a genuine concern, one can actually look at that and monitor it with the worker as equal partners?

CHAIR—You said that this so-called role-playing was five per cent of the 20 per cent. Was that the supposition?

Dr Roberts-Yates—Yes.

CHAIR—From your insight into the cases, did you agree with that percentage or not—did you see it as more or less?

Dr Roberts-Yates—No, I did not see it as more than that. I think that most of the workers were genuine. It is difficult because, when the worker is relating to you a story of pain, perceived anguish, suffering and all the injustices that they perceive have happened to them, to them that is real—even, for some of these workers I was talking to, four or five years after the event. The story is as clear now as it was five years ago—the lack of acknowledgment and the idea that people did not believe that they were genuine. The residual impact of their injury is this psychological distrust of organisations and the people in them. It is very strong, particularly, again, with males. It is a disabling factor, and there is a perception that one is into punishment. For example, if you get to the two-year point where there is a review and you are not with your pre-injury employer but are going to a different employer, you are definitely into either a difference or a punishment. That is what the worker feels is happening to them. I think some of them give up or become so angry that they just want their payout and to get on with life. They want to finish with the system. Meanwhile, the employers are thinking: 'I really don't know why this is happening. We really did our best to accommodate so-and-so.'

CHAIR—Can I take it from your submission today—and thank you for that—that you see the need for better case management and better support with that, as well as more of a problem-solving approach with many of these workers? And for those who have developed what one could call an imposed disability—a mental attitude—is there a need for psychological counselling? Do you think that that would assist people?

Dr Roberts-Yates—Yes, that would assist in some part, but we also need within workplace organisations to have an empathy which is rigorous—if one can have a rigorous empathy. We need to have management plans at the employer level, the doctor level and the rehabilitation provider level. There is a view that there are too many vested interests. Workers have a view that the insuring company states, 'This is the rehabilitation provider that you will have.' The worker can obviously select the doctor. The selection of independents is problematic, particularly when workers withdraw their medical authorisation and the case manager says, 'I have to get an independent view in order to further your claim.' The worker does not understand that that is the process. That is further angst and stress. At the end, it has to be more of a partnership approach with everyone. So how do we learn to be better partners in technical, emotional, social and psychological terms? The feedback from workers was that the treating medical experts were at times dismissive, arrogant and indifferent. They used language that the workers did not understand, they had no time to explain things properly and all that kind of thing. So how do we have equal partnerships across the stakeholders which will then reduce costs and have more successful return to work outcomes?

CHAIR—Thank you very much for appearing today.

Proceedings suspended from 10.54 a.m. to 11.23 a.m.

TRINNE, Mr Ian Richard, President, Injured Workers Association of South Australia

CHAIR—Welcome. The proceedings today are formal proceedings of parliament and warrant the same respect as proceedings of the House. We would ask that in providing your evidence today you do not name individuals or companies or provide information that would adversely identify individuals or companies. The committee is interested in the broader principles related to the terms of reference. The committee is not prepared to provide the protection of parliamentary privilege to allegations about particular individuals. The committee would prefer that your evidence be given in public but if there is a matter that you would like to raise privately you can ask and the committee would be happy to consider that. I now invite you to make some preliminary comments and then we will move to questions.

Mr Trinne—Is it okay if I make an observation on information that was supplied by the previous speaker?

CHAIR—Certainly on the information, yes.

Mr Trinne—The previous speaker talked about one per cent of injured workers being fraudulent. There were some figures in the *Advertiser* couple of years ago, supplied apparently by WorkCover, that showed that it was considerably less than one per cent. That included doctors, physios and all of those other people that WorkCover chase around because they think they are fraudulent. From memory, 0.02 per cent was the actual figure for injured workers that had been prosecuted as being fraudulent during the period they were talking about.

The other point I would like to make is that, every year, about 50,000 people are touched by WorkCover in this state and there are 4,000 people who are permanently injured. I would not think that interviewing 80 would be a fair cross-section.

CHAIR—Thank you for those observations.

Mr Trinne—I have an opening statement I would like to read. It is essentially about the first section of your terms of reference:

- the incidence and costs of fraudulent claims and fraudulent conduct by employees and employers and any structural factors that may encourage such behaviour; ...

Merriam-Webster's *Collegiate Dictionary* defines fraud as:

1 a : DECEIT, TRICKERY; *specifically* : intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right **b** : an act of deceiving or misrepresenting ...

The dictionary.law.com site defines fraud as:

... the intentional use of deceit, a trick or some dishonest means to deprive another of his/her/its money, property or a legal right. A party who has lost something due to fraud is entitled to file a lawsuit for damages against the party acting fraudulently, and the damages may include punitive damages as a punishment or public example due to the malicious nature of the fraud. Quite often there are several persons involved in a scheme to commit fraud and each and all may be liable for the total damages. Inherent in fraud is an unjust advantage over another which injures that person or entity. It includes failing to point out a known mistake in a contract or other writing (such as a deed), or not revealing a fact which

he/she has a duty to communicate, such as a survey which shows there are only 10 acres of land being purchased and not 20 as originally understood.

… … …

Extrinsic fraud occurs when deceit is employed to keep someone from exercising a right, such as a fair trial, by hiding evidence or misleading the opposing party in a lawsuit. Since fraud is intended to employ dishonesty to deprive another of money, property or a right, it can also be a crime for which the fraudulent person(s) can be charged, tried and convicted.

From what I have just read, the act of fraud is clearly defined and can be quite wide ranging in its meaning. Section 38 of the Summary Offences Act in this state says this about fraud:

A person who, by fraud other than false pretences, obtains any chattel, money, valuable security, credit, benefit or advantage is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 2 years.

The South Australian Workers Rehabilitation and Compensation Act allows, so therefore condones, the use of fraud and any other illegal moves to achieve the current goals of the WorkCover corporation and its agents. The 'get out of jail free' card for WorkCover, its agents and contractors is section 122(4) of the Workers Rehabilitation and Compensation Act. Section 122 reads:

(1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence.

(2) A person who is guilty of an offence against this Act for which no penalty is specifically provided shall be liable to a fine not exceeding $2 000.

(3) Proceedings for an offence against this Act shall be disposed of summarily.

Subsection 4 is the really good bit. It says:

(4) Subsection (1) does not render the Corporation, a member of the staff of the Corporation, or any person acting on behalf of the Corporation, liable to prosecution for any act or omission related to the administration or enforcement of this Act.

Since the start of my need to be involved personally with the system because of a workplace injury, I do not recall anyone I have had to deal with who did not initially try one or more of the various definitions of fraud on me. When I was concerned about my welfare and started to read up on my rights, in many cases the lies I was told got bigger and bigger. I would submit that the group most affected by fraud in this state is the injured workers. To continually have to fight for your basic legislated rights against corporate bullies and 10c tyrants—people who will be wilful and premeditated in their plans to rob you—is draining on the health and resources available to the injured worker.

My workplace injury happened in 1995. Since that time, I have held committee positions with the Injured Workers Association, I have been a member of other similar organisations and met and talked with hundreds of injured workers and I have only found one who believed that she had been treated fairly and compassionately after her accident. This happened only because her employer was disgusted with her treatment and made the agent do their job properly. There are many freedom of information documents available that show wilful and premeditated breaches of the act—which is fraud against injured workers. Some of these documents are publicly

displayed, but even that could not push the previous government in this state, the Liberals, to do anything about the problems. Clearly, if you are the government and fraud helps line the coffers of a government department, there is no wrong being done.

The WorkCover system—which includes WorkCover, the agents, the so-called rehab providers, all the private detectives and all the other hangers-on—has all the power over an injured worker. Power corrupts; absolute power corrupts absolutely. The current legislation provides immunity from prosecution, and the management of this system knows it. The reward for someone who is motivated and interested in working but is unfortunate enough to have a permanent incapacity because of a workplace accident is that the rest of their life is made a misery by continued poor health, no rehabilitation and no money. The act is called the Workers Rehabilitation and Compensation Act. I know of no-one who has been rehabilitated to achieve a lifestyle as similar as possible to the one lost, and I know of no-one who has been fairly compensated. The South Australian WorkCover system has been put up, on occasion, as the best in Australia. The best of a bad lot is still bad.

Further to the 1998-99 figures supplied in the original submission, using a broad brush, the 80-20 rule of business would have us believe that 80 per cent of injured workers would not know whether they had a right to a claim and that only 20 per cent would understand their basic rights. If the rule applies here—and it seems to work everywhere—then the agents could be making bucket loads of money by having 80 per cent of the claims drop out by using a policy to reject at first application. It is interesting to run the 80-20 rule over the WCT—the Workers Compensation Tribunal—figures. Without digging too deeply, it could work like this. WorkCover touches about 50,000 workers a year in South Australia; 4,000 are permanently incapacitated. The WCT gets about 7,500 notices of dispute, expedited decision and other applications a year. This would mean that 40,000 people—80 per cent of those who are work injured—do not have a clue about their rights; 10,000 people—which is 20 per cent—have a basic understanding of what should happen; and of the 20 per cent who know what is going on, 7,500—which is 75 per cent of them—are complaining to the WCT. I understand that these percentages are open to dispute. Unfortunately, in 1999 the WCT did not or would not supply figures that any other business would collect to analyse where their business was coming from. I hope to show you the need for accurate, publicly available figures so comparisons across a whole range of areas can be made and so basic checks can be kept on how the system is running.

Finally, on the issue of fraud, knowing what you now know, ask yourself this: if you were an injured worker with a permanent incapacity, how safe would you feel knowing that there is no-one with any power in the system to help you? The agents are only there for profit, and being long-term injured does not contribute to profit. If you chose to take a dispute to the Workers Compensation Tribunal, not only is the wait now over six months, but the WCT is funded by WorkCover and is staffed by many who are ex-WorkCover corporation, ex-WorkCover agent and ex-WorkCover law firms—and many people believe that leopards do not change their spots. Combine this with the scheme critical list, and what chance do you think you have of a fair and unbiased hearing, resulting in a fair and proper outcome?

In closing, I would like to say something about credibility. *Webster's Revised Unabridged Dictionary* 1998 says that credibility is 'the quality of being believable or trustworthy'. The web site http://dictionary.law.com says that a credible witness is:

... a witness whose testimony is more than likely to be true based on his/her experience, knowledge, training and appearance of honesty and forthrightness, as well as common human experience. This is subjective in that the trier of fact (judge or jury) may be influenced by the demeanor of the witness or other factors.

How do you sift the rhetoric from the truth? Everyone has an axe to grind. Clearly I, along with a great number of others, believe that injured workers in this state are treated badly. Personally, I feel that animals in this state are better protected than injured workers. The agents/insurance companies will be pushing their barrow, wanting you to believe that they do not get enough out of workers compensation because of all the liars and cheats putting in claims for compo.

WorkCover is a government department and, like all government departments, is full of bureaucrats trying to justify their existence. Given the current problems popping up all over the place with corporate governance, reports and information gathered from WorkCover systems and the insurance industry may have to be very carefully scrutinised to get the real truth about how they operate. Job Search contractors all have their own interests at heart. They rely heavily on WorkCover's agents—basically insurance companies—for continued work. Many work through rehab providers, who very often, as in my case, are owned by an insurance company that is an agent for WorkCover. Many would argue that in order to continue working for large companies, whether they be building companies or insurance companies, one should not bite the hand that feeds it.

As members of this committee, you have the unenviable job of trying to sort the wheat from the chaff. When you are doing this, remember the old saying about leopards. Attached to this document, which I will leave with you, are copies of letters to various people about WorkCover related issues that you can do what you wish with. Sadly, from what I have seen, my case is really not out of the ordinary when it comes to dealing with WorkCover, their agents or their contractors as an injured worker. Thank you for your time.

CHAIR—Thank you, Mr Trinne. Also, thank you for the material that you have supplied to the committee. The committee does not have time now to consider the contents of that during the hearing, but we will consider the material in detail and at our next meeting in Canberra will resolve as to what formal status we give it. The committee will certainly advise you after that meeting of the status that has been assigned to the documents. We will move to questions now.

Ms PANOPOULOS—Your association is listed as a non-profit organisation. How does it operate? Are there subscriptions, is there funding from some government body?

Mr Trinne—There is a subscription arrangement: $10 for six months, $20 for 12 months.

Ms PANOPOULOS—Is that the only funding that is received?

Mr Trinne—We ask for a gold coin donation to cover coffee and so on at meetings. There is no other funding.

Ms PANOPOULOS—On our page 66 of your submission—your page 3—the third paragraph states:

Commonsense indicates that putting profit hungry middlemen into the scheme will result ...

Do you have any particular evidence or examples, without using people's names, regarding that claim? It may seem to be commonsense to you, but I am trying to find some evidence to back up that assertion.

Mr Trinne—I do not have any specific evidence to prove to you that that is what happens. But, clearly, if you have a system that runs and you divide it up into little systems and everyone has to make a profit, then it must cost more. It happens all over the place. The British Rail system—

Ms PANOPOULOS—I understand your feelings about that. Two paragraphs down on page 66, your submission also states:

In our belief, the initial positive results have been achieved not through the reduction of the costs of administering the scheme ...

Is that similarly based on your perceptions, or do you have particular evidence or examples that you would like to give the committee?

Mr Trinne—The paragraph after that says:

Please note some discrepancies: The Advertiser, 18 October, 1997, page 18 shows that Workcover in the previous financial year cut its unfunded liability by $97 million.

It goes on:

An earlier article in the same paper dated 29 July 1997 talks about a 48 per cent blow out in legal costs incurred by Workcover in the first 11 months of the just ended financial year. Some may argue that putting the above information together shows there should be concern for how the system is really operated.

In one year, they took $97 million off their unfunded liability. That was never spoken of again. If it were an internal cost-cutting exercise that made things run so much better that they could save that amount of money in a year, these people would be able to lend money to the federal government. But it was not. It is my belief that most of that money came from changes in legislation that stopped injured workers rights and entitlements—

Ms PANOPOULOS—You stated that that was your belief.

Mr Trinne—Yes.

Ms PANOPOULOS—Are you able to refer to any particular studies or analyses to show that?

Mr Trinne—I do not have that with me, no.

Ms PANOPOULOS—That is all I was trying to ascertain out of that. On our page 68, the submission states:

An additional problem is the fact that a large number of employers refuse to re-instate rehabilitated workers with subsequent restricted work-abilities to a suitable position.

Similarly, did you ascertain that from your discussions with injured workers who are members of the association or by reference to some study or some analysis?

Mr Trinne—It is not a reference to some study.

Ms PANOPOULOS—No, I am asking what you relied on to make that statement.

Mr Trinne—Talking to injured workers.

Ms PANOPOULOS—You made a conclusion, two paragraphs down, which states:

Agents seemingly wilfully and knowingly breach the Act in a effort to maximise profit for their companies ...

Is that based on your overall assessment from talking to numerous injured workers?

Mr Trinne—Mostly, that comes from freedom of information files that were generally hard fought that found notes by so-called case managers that show that they were actually planning to do people in.

Ms PANOPOULOS—It would be useful for the committee, if there is that information, to provide some sort of evidence or illustration of the point you make.

Mr Trinne—It has been on the Internet for years—just type 'WorkCover whistleblower' into a search engine. There is 10 megabytes of stuff there that, at the very least, shows there is cause for concern with the South Australian workers compensation system.

Ms PANOPOULOS—It is not for me to tell people—like you, who have taken the time—what sort of information to provide to the committee. I thought it might be helpful for me, particularly, to understand the statement that you made about agents if you were able to provide that information; that is all.

Mr Trinne—One that comes clearly to mind is an FOI document that clearly showed that the case manager for a particular person wrote down, 'This person is a member of the Injured Workers Association so we are going to stop all of their benefits.'

Ms PANOPOULOS—I understand how strongly you feel about this, and I am very grateful for that example. It would be useful for the committee—not that I am doubting your word—to have a copy or access to that.

Mr Trinne—I will get you a copy if you like. That is not a problem.

Ms PANOPOULOS—That is what I am asking for. You made the comment in your oral submission that you knew of no-one who had been fairly compensated.

Mr Trinne—Yes.

Ms PANOPOULOS—Roughly speaking, how many injured workers would you have spoken with?

Mr Trinne—Some 300 or 400.

Ms PANOPOULOS—And, out of all of them, none had been fairly compensated?

Mr Trinne—Yes, correct. I do not know any injured worker who is happy with the way anything goes with the system.

Ms PANOPOULOS—But you made the statement that you did not know anyone who had been fairly compensated. Do you know the details of the payouts of these 300 or 400 workers?

Mr Trinne—No.

Ms PANOPOULOS—So you did not make that statement with the knowledge of how they had actually been compensated?

Mr Trinne—No, I made that statement from talking to them, and clearly they were not happy and did not feel the situation was fair.

Mr HARTSUYKER—I go back to your statement:

Agents seemingly wilfully and knowingly breach the Act in a effort to maximise profit for their companies ...

Do you consider that they are acting fraudulently in doing that? If so, have you referred some of those cases to the proper authorities?

Mr Trinne—I consider they are fraudulently doing it. I have taken the issues to the South Australian police department, who did not want to know.

Mr HARTSUYKER—Can you give us some examples of what you consider to be a fraudulent act in this way?

Mr Trinne—The one that I started to mention before would be a fraudulent act. There is absolutely no reason why anyone should be taken off any benefit just because they are a member of an association. There is absolutely no reason for that. So that would be fraudulent behaviour. I have documentation that shows that personally my case manager decided, 'This bloke is just going to dispute anything, so we will run an action against him anyway and see what happens.' I have other documents along those lines that I can supply, if you want.

Mr HARTSUYKER—Is there any evidence of falsification of records or whatever by WorkCover agents to achieve a particular result or some fraud of that nature?

Mr Trinne—In this document that I brought in I have one example where the written report bears no resemblance to the actual happening. So you then have a document in the system that says something that, in my case, I believed was not right. The Freedom of Information Act allows you access to the information so that, if you see a problem, you can contact the department in question—in this case, WorkCover—and ask them to put right or at least discuss with them perhaps why it should come out or why it should stay in. I have done that on at least one occasion with no response from WorkCover.

Mr HARTSUYKER—So what happened is that an accident occurred at work—

Mr Trinne—No, it was a falsification of what actually happened about a Jobsearch arrangement, which was put into the record by an employee from a department of WorkCover and which disadvantaged me in other areas of my claim.

Mr HARTSUYKER—So you were seeking some form of employment and then a report was written that you failed to adequately seek that employment or something along those lines?

Mr Trinne—Yes. The report stated that the person I went to see was so disappointed that he was no longer going to take anyone through the WorkCover system. When I went back to talk to that employer and showed him the document, he said that, if I needed him to produce a document that said that was clearly not right and he had never actually spoken to the person who did the report, he would do that.

Mr HARTSUYKER—Did you obtain such a document from that employer?

Mr Trinne—I did not obtain that document. I wrote to the relevant department of WorkCover and I said, 'This is not right and it needs to be fixed—I can supply a document or, indeed, I can supply you the tape from the conversation.' It got to the point when dealing with these people that I was taping everything that happened. So, either way, I could do that. But there was no response from WorkCover. A further Freedom of Information application showed that they knew what was going on, but there was no response.

Mr BEVIS—Have you any idea what percentage of South Australian WorkCover outlays are made up by legal fees? You make some point in the submission about the costs of people in the middle. Do you have any idea what it is?

Mr Trinne—At one point it was in the media that they were $17 million over budget in one particular year.

Mr BEVIS—Yes, but I was just wondering what that represents in terms of their total outlays. If you do not know that, that is fine.

Mr Trinne—I do not know. What I do know is that WorkCover picks up all the legal fees for litigation, so as soon as any problem with an injured worker comes along—when someone discovers what their rights are and wants them—it gets handed over to a lawyer. In that case, WorkCover starts picking up the legal bills for that. But I cannot say definitely what the cost of their legal arrangement is.

Mr BEVIS—At the end of your submission you refer to the three main areas of concern to you in the system. The first of those is at odds with some other evidence that we have taken in other places. You say that the worker is disadvantaged in the dispute that may occur in a workers compensation environment. The committee has heard from other people—and I do not think I am paraphrasing too much; I think it was pretty much these words—that the system is stacked in favour of workers. You obviously have a different view of that. I was just wondering what leads you to that different conclusion.

Mr Trinne—If you have a dispute with the system, initially you are supposed to contact your case manager. If it cannot be resolved at that level, then you can contact the WCT. It then generally goes to conciliation and, if you cannot resolve the problem at conciliation, it goes to arbitration. If it is not resolved there, it then goes to a judicial determination. The current Workers Rehabilitation and Compensation Act was initially set up to minimise litigation, to try to keep lawyers out of it to a degree, so as to talk in basic language: the injured worker could sit down with a conciliator and someone from the insurance company and thrash out the argument. But when you get to conciliation you are generally presented with a lawyer or a barrister. Even if you stand on your dig, like I have done at the Workers Compensation Tribunal, and say, 'I want the decision maker here,' they will not do it. They will not get anyone from the agency who can sit down with you and actually make a decision. It is a lawyer or a barrister against an injured worker, who at that level is very often self-represented, and that lawyer or barrister cannot and will not make a decision. You leave the meeting wondering what they were really talking about, because it is all lawyer-speak, and you end up getting your own lawyer. WorkCover pays for 85 per cent, I think, of the legal costs at a judicial determination level, but only at that level.

If you are long-term injured, until the end of the first year you probably just roll along with it. It is at the end of the first year that they reduce your wages by 20 per cent. Then you ask, 'How am I going to pay the bills?' It is then you engage a lawyer. Not only are your wages reduced but you also have to find a lawyer that you can trust—and I hope none of you are lawyers, because I do not think there are any you can trust. The system then just goes down: because there is never in a meeting anyone that will make a decision, it goes around and around. There are more lawyer's fees and more conciliation—it is a total catch-22 situation. At the end of the day you get so stressed out—you have no money and you have legal bills. There is just no equality in it; there is no power. There is no-one to whom you could go, even a conciliator at the WCT. You cannot say to the conciliator, 'The act here says he can't do it; make him do it.' They will not. So what happens then? It then goes to the next level, and the only way to take it to the next level is with more lawyers and more meetings.

Mr BEVIS—That prompts what I was going to ask but you may have three-quarters answered it anyway. On the same page of the submission, you refer to the fact that, in your estimation, 80 per cent of workers—I am not sure what the 80 per cent rule is; you may want to enlighten me about that—stop pursuing a claim. They will accept whatever is on the table even though they would have a greater entitlement if they had the resources to prosecute the case to its end.

Mr Trinne—Or if they had an understanding of what was going on. The 80-20 rule is a general rule—it is an approximate rule—where you get 80 per cent of your business from 20 per cent of your clients. I think even Dr Roberts-Yates mentioned it. I have taken that general business rule and placed it over the figures. I cannot say that 79.5 per cent of injured workers did not pursue a benefit that they had a legal entitlement to, because you would not even know.

Mr BEVIS—Is the assessment of the roughly 300 workers that you mentioned before of their own circumstances, as conveyed to you, that they did not think they got a fair deal?

Mr Trinne—Yes.

CHAIR—In your submission, your concerns relate to three areas. The final one is the increasing burden on the average Australian taxpayer because of artificially pushing workers from workers rehabilitation and compensation into other publicly funded schemes such as social security, welfare support, medical and so on. Of the injured workers that you know—and you mentioned 300 whose circumstances you are familiar with—what percentage roughly have been forced onto federal schemes such as disability support or some such?

Mr Trinne—I cannot say.

CHAIR—I hate to use the term 'gut feel', but do you have a feeling about it? Is it 10 per cent or 20 per cent? Is it significant?

Mr Trinne—My gut feeling—and there is quite a bit of gut because I cannot exercise—is that it would be significant. If you like, I can tell you why I feel that way. Eventually, you get to the point where it all stops. You either give up or you choose to accept the payout from WorkCover. And then they pay you out and generally there is a preclusion period when you cannot get any social security. If you are permanently incapacitated, there is a real problem in getting a job. There are not enough jobs around now for people who are fit and well, so being incapacitated makes it even harder. What happens when you cannot get a job? Clearly, the only other alternative is Centrelink. The preclusion period, interestingly enough, seems to work out that when you finally run out of money that is when the preclusion period finishes so, when you are broke you can then move onto Centrelink or some other benefit. There is no ability to keep any money aside for further medical treatment if you need it, because Centrelink does not like you having any money either.

CHAIR—That is obviously a very unfortunate situation. What do you believe WorkCover could have done differently to relieve the number of workers left in that situation of depending on social security? Is it a natural consequence that there will be a percentage of people whose injury is such that they simply cannot work again, or do you believe that there is a deficiency in the system?

Mr Trinne—I guess there are always going to be workers who are disabled enough that it is going to be extremely difficult for them to get work; that is an unfortunate consequence of the industrial age. But one of the rewards for being motivated enough to go out and get a job should not be a lifetime of restrictions and money problems because you are unfortunate enough to have a workplace accident. I do not know how to resolve the problem. All I know is that there is a problem there. It should be WorkCover's problem. If the insurance company is going to insure you, then really it is their problem. If your house burns down, they do not get halfway through it and say, 'This is too hard, we're going to get rid of you. Go and see the Housing Trust.' In the case of comprehensive insurance, if your car gets wrecked it gets fixed or it is replaced to the value or presentation that it was before. It does not happen in the WorkCover system.

CHAIR—Do you think, as you just said, that if the responsibility for caring for those severely injured workers lay with WorkCover there would be a greater effort at rehabilitation and training? Is that what you are saying, or have I misunderstood you?

Mr Trinne—I am not unhappy with the way you took it. My view is that there is no rehabilitation and training.

CHAIR—None at all, in WorkCover?

Mr Trinne—I do not know of anyone who has been rehabilitated to the point where they can start their life again at the best level they can and I do not know anyone who has been compensated financially to do that either. It seems to me that the prime reason for the Job Search contract was to be able to say, 'You are crook—you can be a taxi driver,' because they do not even need to be able to find a real job for you. They only have to deem that you have the capacity to be a taxi driver and they can throw you off the system. It does not matter if you do not have the physical capacity to do it. That is just the way the system seems to work. The real joke of it is, 'You can be a taxi driver.' It actually talks about taxi driving in part of this document.

Mr WILKIE—You are talking about people who are permanently incapacitated not receiving rehabilitation, as opposed to normal workers who might get some rehabilitation to get back to work?

Mr Trinne—Yes. If you were, well, an MP—and I know the system is different; you got a much better deal than we got—and you had a particular lifestyle because of your ability to do certain things, if you became injured at work and were not able to do your job, would you be happy for a Job Search contractor to come along and say, 'It doesn't matter that you can still effectively work at this level but in other areas—you can be a taxi driver. Bad luck. We have records showing that there have been taxi driver jobs advertised in the paper every week for the last 12 months. You have the capacity for it—bye. If you want to retrain to do something else, that is fine—you go to TAFE.' That is what happens.

CHAIR—Time has got the better of us, but thank you very much for your submission today.

Mr Trinne—I could go on all day.

Ms PANOPOULOS—Forgive me for not being overly familiar with the current South Australian scheme. How long has that scheme been in place?

Mr Trinne—Since 1986.

Ms PANOPOULOS—In your oral submission you were very critical of the previous Liberal government for not changing it. Has the scheme been changed to your satisfaction by the current government?

Mr Trinne—The current government has only been in for—you are a Liberal, are you?

Ms PANOPOULOS—I asked that question because you made some very strong remarks—and obviously you have had a lot of personal experience—about the inadequacy of the system, and I was trying to establish how long this system had existed. Secondly, you do not seem to be satisfied with the current system, so I take it that the scheme that existed under the previous government has not been changed or amended in any way. Is that correct?

Mr Trinne—That is correct, but they have only been in for a couple of months, so it is not going to have changed. The current government is partly to blame for the problem anyway. The Liberals have not been in since 1986.

CHAIR—Thank you, Mr Trinne.

[12.09 p.m.]

REYNOLDS, Mr Peter (Private capacity)

CHAIR—Welcome. Thank you for joining us today. The proceedings here today are formal proceedings of the parliament and warrant the same respect as proceedings in the House. We would ask you, in providing your evidence today, not to name individuals or companies or provide information that would reflect adversely on them. The committee is interested in the broader principles related to our terms of reference and issues that you may wish to raise regarding that. The committee is not prepared to provide the protection of parliamentary privilege to allegations about particular individuals. The committee prefers that all evidence be given in public but if there are matters that you would like to raise in private please ask to do so and the committee will consider your request. I now invite you to make some preliminary statements and then we will move to questions.

Mr Reynolds—My comments are further to my written submission that I forwarded on 2 August 2002. I have a copy for each member of the committee if they wish to read along with me.

CHAIR—We have your submission in front of us, thank you.

Mr Reynolds—My working background as an investigator gave me an insight into the workings of the injury claims dispute system. There were activities that may be of interest to this inquiry because, when coupled with my experience since ceasing work as an investigator and becoming a victim of an injury—followed by my becoming a victim of the injury claims dispute system—my experience on both sides of the fence has given me an even greater insight into the workings of the injury claims dispute system. This experience has further developed from my own injury claim in the system, involving the insurance company, the medical profession, the investigations and the court legal system, together with my subsequent associations and connections with others in the injury claims dispute system, and learning of their adverse treatment. I have consequently become involved in attempts to help other victims and jointly expose what I personally perceive as gross anomalies within the system.

I have compiled my own case history, together with that of others, in document form, and continue to do so. It is a tedious task, given my disability and the complexity of the injury claims dispute system. I am happy to refer you to my documentation as an evidential tool should this be required. There are some startling comparisons that arouse curiosity and suspicion, involving individuals and parties across the board within the injury claims dispute system. In the best-case scenario, the system is grossly incompetent and fails miserably to address the real issues of an injured person. In the worst-case scenario, it is corrupt. There are indications of attempts—and indeed successful attempts—by medical practitioners for the injury claims dispute system to avoid, ignore and/or cover over certain important or pertinent information relevant to the individual claimant who is being assessed. This is clearly apparent from a careful and extensive examination of medical reports, tape recordings of interviews or examinations, court transcripts and other relevant material.

A pattern of gross incompetence in some areas is evident, as is one of obvious bias on the part of some medical practitioners. Intriguingly, there are indications that some are not only failing to search for the truth in their assessment of claimants, but they are not interested in the truth; their medical reports are grossly misleading or deceptive. Yet, when this is brought to their attention and to that of the insurer and others involved in the injury claims dispute system, one could be forgiven for concluding that there is an attitude of some medical practitioners working in harmony with the insurers, as opposed to being independent. This is apparent by those that even claim to be entirely independent and in fact incorporate that claim into their business name.

Whilst it is appreciated that medical examinations are an integral part of the insurance industry, to combat fraud, I believe that little is achieved by such an industry engaging in fraudulent and/or deceptive methods itself, whilst claiming to be the victim. Indeed, great cost is added to the system at large, not only from a monetary point of view, but more importantly from a social aspect. I believe that there is perhaps greater burden placed upon the individual injured person and their family than what was initially caused by the injury itself. For the system to be cleaned up, if that is the intention of this inquiry, it is essential for these medical practitioners—or, as the *Australian* newspaper succinctly put it, 'hired guns' or 'prostitutes'—to be weeded out.

I take the opportunity to quote some of the media articles on this issue. The first one is from the *Australian* dated 17 January 2000 entitled 'Forensic tool a hired gun':

... JUDGES identify bias as the single most serious problem when dealing with expert evidence—and psychiatrists are the worst offenders.

GOVERNMENT agencies continue to deploy notorious psychiatrists against citizens.

……

Some [psychiatrists] regard certain of their peers as "hired guns" who take cash for comment when giving evidence.

And from an article in the *Australian* on the same day entitled 'Judges weigh psychiatric bias':

The real issue is the shadow it casts on the psychiatrists who infest our legal system.

……

Judges are deeply troubled by the relationship between psychiatrists and the parties who engage them.

……

Judges are clearly troubled by the protracted and sophisticated relationships between the insurers, their solicitors and the psychiatrists in question.

Then the article refers to a particular psychiatrist:

... he had admitted to an astonishing string of errors, gross errors and lies.

He had been selective in preparing his report, he conceded deleting specific passages and deliberately overlooking various other "stressors" that might have worsened ... depression. Moreover, he had gone out of his way to conceal evidence ...

……

... reports were “almost inevitably slanted in favour of the GIO”.

……

... “gross generalisations” and, noting his tendency to accept the employer’s version of events, directly questioned his objectivity.

... “there are medical witnesses who are little more than prostitutes, known for their ability to express the extreme views for which they are notorious.”

The next article is also from the same edition of the *Australian* entitled ‘Bias casts doubt over expert’s role’:

... the [psychiatric] profession suffers from a reputation for being subjective, and not reliant on hard facts.

The next one is the *Australian* of 18 January 2000 entitled ‘Sacked or psyched out? Tests under fire’. Mr Sheridan was the subject of a psychiatric report despite not being seen by the doctor who wrote the document. The article says:

Basing assessments on employer-written reports was considered inappropriate.

……

“The use of verbal information provided by employers without confirmation in writing was considered unsafe.”

The next article is from the Adelaide *Advertiser* dated 1 October 1993:

Insurers tactics slammed.

……

Insurance companies were accused of ripping off millions of dollars from Australians by rejecting genuine claims.

The next article is from the Adelaide *Advertiser* of 21 May 1996:

Workers ‘misled’ on compo.

……

Insurance companies were deliberately misleading injured workers.

……

The Opposition’s Industrial Affairs spokesman, Mr Ralph Clarke, urged the Government to investigate the handling of claims by the insurers. ... It’s just another example of the insurance companies trying it on.

The final article is from the Adelaide *Advertiser* of 2 December 1996:

Insurers accused of WorkCover scam.

……

Two WorkCover insurance companies have been accused of doctoring client files.

Mr Ralph Clarke stated: 'What guarantees do we as a community have that we will not be ripped off by unscrupulous private sector operators who are in the game only for profit rather than community good?' Details of altered documents included dates and addition of information 'in such a way as to represent the added material as original'.

My own experience as a private investigator and also as an injured person and a victim of the system, and that of other injured people that I have spoken to, reinforces this evidence that I have just read from the media.

But I believe that there appear to be even darker forces at work within the system. There are indications of attempts and indeed success by investigators and members of the legal profession, right through to the court system, to avoid, ignore and/or cover over certain important and/or pertinent information relevant to the individual claimant who is being assessed and/or disputed in his claim. This is clearly apparent via a careful and extensive examination of all relevant material, including court transcripts. A pattern of gross incompetence in some areas is evident, as is one of obvious misrepresentation and/or deception on the part of some lawyers and judges. But intriguingly, there are indications that some are not only failing to search for the truth in their assessment, representation and judgment of claimants, but they are not interested in the truth. This is entirely contrary to guidelines for investigations and surveillance. Even more than this, it is in itself fraud or dishonesty—that is, the use of deceit to obtain an advantage or avoid an obligation.

There are clear indications of a total lack of integrity, honesty or a high standard of ethics—if there is any standard at all. Therefore, for the system to be cleaned up, if that is the intention of this inquiry, it is essential for these elements to be exposed to scrutiny. There is more than a reasonable suspicion of dishonesty within its realm. I would also seek the opportunity and permission to provide further detail in addition to my submission, at a later date, because, as I have mentioned, I have documents for all the cases—my own case and other cases—that I have looked at.

CHAIR—At a later date, yes. Certainly, you are most welcome to send additional material to the committee. The committee will consider the status of that material when it arrives, and at a meeting in Canberra.

Mr Reynolds—Thank you.

CHAIR—Have you concluded your preliminary remarks?

Mr Reynolds—Yes, thanks.

CHAIR—I will ask my colleague Mr Wilkie to lead off with questions.

Mr WILKIE—When you were an investigator, what was the most common type of injury you investigated in workers compensation claims?

Mr Reynolds—I would say the most common would have been back or whiplash injuries.

Mr WILKIE—What sorts of methods would you use to investigate them?

Mr Reynolds—Preliminary inquiries would involve telephone inquiries confirming the address, and background checks, such as credit inquiries, into their financial affairs. We would get information from the insurer and also from the employer, if they were employed, and information about medical appointments that were arranged for them. From there, we would locate the claimant at whatever address we were given or, if not, at an address that we would find them at, and conduct surveillance.

Mr WILKIE—Did they know that you were doing it? Were they advised?

Mr Reynolds—No, the majority were not aware. Some became aware through their suspicion being aroused.

Mr WILKIE—You made the comment somewhere in your submission that in many cases where you found there was not a case to answer, that evidence was never presented to anyone else. How common was that?

Mr Reynolds—Do you mean evidence of surveillance?

Mr WILKIE—No. Let us say that you were carrying out surveillance on someone and you found out that in actual fact there was no fraud. I do not know where I read it, but I think you said that often that evidence was never taken into consideration.

Mr Reynolds—Yes, it was a common practice that, if the evidence was not suitable to the means, it was never declared or never taken to court to be screened. In other words, it could be helpful to the claimant, but it was never screened because it was not acceptable enough to dispute the claim.

Mr WILKIE—From your understanding, was it common for them to then still pursue a claim against the employee, even though they knew that the employee was not acting fraudulently? Would they still instigate a court action?

Mr Reynolds—Absolutely, yes. They would conduct surveillance just to find out what the person was up to. It had nothing to do with fraud. They would try to get some degree of evidence on a person. Admittedly, while many people were perhaps doing things that they should not have been doing, there were genuine cases as well that I would observe, bring to the attention of the company and report on.

Mr BEVIS—To what extent are your assessments and observations in your submission—written and oral—based on your experience as an investigator, and to what extent are they based on your experience as a claimant, from the other side of the table?

Mr Reynolds—I have now had the opportunity to see both sides. As an investigator, I felt that I was always doing my job—investigating people and trying to find out the hard facts—and that the insurance company was doing the right thing according to whatever facts were reported. I have since learnt, after becoming an injured person and becoming a victim of the system, that that is not so. Facts are covered over: in surveillance, in reporting and, as I mentioned, extensively in doctor's reports. Doctor's reports are extremely deceptive and, having brought that to the attention of doctors and insurers, I find that nothing has been done to remedy that

situation or settle a claim based upon that deception. Therefore, there has to be a higher deception involved.

Mr BEVIS—That is actually one of the issues I was going to raise: doctors providing misleading reports. What leads you to believe that doctors provide misleading reports?

Mr Reynolds—I myself have attended, from memory, five medical interviews or examinations. What happened at those interviews or examinations and what was then actually reported to the insurance company were extremely contradictory.

Mr BEVIS—Was that a matter of medical judgment or a matter of just undisputable fact?

Mr Reynolds—Undisputable fact. My wife was present with me and I also tape-recorded the interviews, as a result of initial deception from the first medical appointment. It is things like doctors reporting that, in the waiting room, I was able to take my trousers and shoes off without any difficulty when that was something that never happened; I was never asked to remove my trousers. It is things like the doctor telling you he believes you have a genuine problem, but then reporting contrary to that. He is quite happy to befriend you in the waiting room and tell you what he believes is right or say certain things to get more information. It also instances where you give them information about the specific accident but it is not reported in the medical report.

Mr BEVIS—Was this a doctor of your choosing?

Mr Reynolds—No, it was doctors for the insurers. The doctors are, across the board, general doctors that are used by the insurers. I have come across other case histories and one involved a couple of doctors that I was involved with in my case. As I say, if you carefully examine the reports and transcripts of interviews with the doctors by investigators, you can see that there is a cover-up of information which they are aware of. I will mention one case. A colleague of mine was prosecuted for fraud based upon the assumption, or presumption, that he was unable to walk without a walking stick. When speaking with the doctor, he clearly—and if you read the transcript, you would pick this up; and it was also in the transcript of when the doctor was interviewed by the investigator—used the word 'sometimes'.

Although these words were used and repeated by the people involved in the interviews—and the lawyers get to see the wording; the judges get to see the wording—he was actually successfully prosecuted for fraud. In actual fact, it was purely because they decided that he said that he used a walking stick when he walks. They had film evidence of him walking, on occasion, without the use of a walking stick—which is unfortunate for him. The other fact is that they have taken film of him showing extreme pain from going into bending position and then coming back upright again; he has demonstrated pain on the film. Numerous people—doctors, lawyers and judges—have viewed this film and not one of them has commented on the fact that this man has shown gross pain. They have skipped over it, ignored it, covered it over and so on and so forth. On an occasion when he was actually filmed showing that he was moving quite slowly and in discomfort, they have claimed in the film process that they were unable to obtain film. Yet the film is there and it clearly shows this man has a disability—and it is ignored.

Mr BEVIS—In your submission you mention film evidence being conveniently edited or destroyed if it was not suitable material for disputation of alleged or claimed injuries. Is that

from your experience as an investigator? Do you have any experience of that as an investigator, or any knowledge of that?

Mr Reynolds—Yes, and as a victim as well. As an investigator I would observe film being discarded and edited.

Mr BEVIS—Someone might say that is in the normal course of taking a one-hour film or a 40-minute film and turning it into a three-minute exhibit. I guess the question is not whether it is edited, but whether it is edited in a way to subvert the process or mislead in giving of the evidence.

Mr Reynolds—Even if it was converting a one-hour film into 30 minutes, it is dishonest, it is not showing the full extent of the facts. But that could be argued, for sure. If that is the case then let us examine it and find out whether it is the case. Let us expose it to find out what the facts are, to find out whether the insurance industry is corrupt through other means such as medical practitioners, investigators, lawyers, judges and so forth. Let us examine it carefully so that we can all get to know what goes on within the system and find out where the corruption lies.

Mr BEVIS—Other evidence has been given to us that you can go doctor shopping, that lawyers acting on behalf of workers know that Doctor X is a soft touch. He will write out a certificate and say 'You've got whatever it is', whether or you have it or not, or that you need three weeks off when you might need two days off—that sort of thing. As an investigator, and as an employee, that is really the other end of the continuum from what you are saying about doctors. I invite you to comment on that.

Mr Reynolds—That can happen too, and that can be viewed as being fraudulent. I believe there has been media attention when insurers have accused doctors for claimants as being fraudulent in that regard. I cannot really comment on that, but the full picture needs to be looked at to determine where corruption is involved in the system. I have also had suggestions made to me by my employer that I cease filming. For example, if you felt that the claimant was doing something that was detrimental to the cause that you would cease filming. Or if you had just arrived at the premises and the claimant was limping or doing something that was detrimental to the cause, you would move on; you would not stop to do observations. You were asked, or the suggestion was made, that you do not film.

Mr BEVIS—Why do you think that was?

Mr Reynolds—There is no money in it, perhaps. If we work for an insurance company where we have got to achieve a goal or a purpose, where the end result is to reduce money paying out claims, then why would we want to expose a person's disability? We would naturally want to show film that was detrimental to the claimant.

Mr HARTSUYKER—I want to follow up on your last statement. You have actually been pressured to conduct an investigation to achieve an outcome as a professional investigator. Is that what you are saying?

Mr Reynolds—Through suggestions, yes, but I did not succumb to that pressure. I guess I was unusual in that way. In the end that may have been detrimental to my situation whereby once I had an injury I became a victim of the system. I was victimised fairly badly and my case

was mistreated by doctors that I had been involved with as an investigator. I had had communication with these doctors, either through their reports or via the telephone—investigators would make direct telephone calls to doctors to get information. I then became a victim of the very system that I had actually worked for.

Mr HARTSUYKER—When you commenced a job as an investigator, were you briefed to go out and film this person or obtain evidence on this person, or were you briefed specifically as to the outcome that was desired before you left the building? What was the brief that you got as an investigator?

Mr Reynolds—There was not a brief to achieve a specific outcome that I can remember. It would take some recollection, thinking back on some of the cases, to recall that.

Mr HARTSUYKER—If I may interrupt, your general mode of operation was to go out and observe rather than to go out and—

Mr Reynolds—Collect surveillance. It was generally based upon medical reports that we had obtained. Medical reports would often indicate that there was some curiosity about a particular person or a suspicion that they were involved in something. The inclination was that perhaps they were up to no good, and we would follow that up. My experience, and what I have learnt with the medical system in particular, is that those medical reports were not necessarily accurate; in fact, I would conclude that they were grossly deceptive. More than likely, there were things in there that were designed to pursue the claim further. I just thought of a particular case where I was asked to use something to apply deception, if you like. I was asked to screen film in a court case. There was not a lot of footage on this particular person; it was 16-millimetre film, not video. I think I have alluded to this in my submission. I was asked to take a large canister of film when there was a very small reel of film inside that canister, purely to have the effect of a bluff tactic—to make the opposite side think that there was a lot of film on this particular person, in the hope that they would settle their claim. That was something that I was asked to take along to court.

Mr HARTSUYKER—With regard to reports that you have prepared, were you ever aware that the report that was tendered in evidence to the court had been materially altered or altered in any way from the reports and the material that you provided to the organisation that you were working for?

Mr Reynolds—I need some clarification on that.

Mr HARTSUYKER—If you observed X happening, were you ever aware that, when the evidence of what you had observed was tendered in court, it was said that that you had observed Y or a different outcome, or that there was any fraudulent tampering with the evidence that you had provided?

Mr Reynolds—Only to the extent that, as I mentioned before, film evidence was destroyed or deleted. I could not say from reports, because I would not have read all the reports that were submitted to the insurer ready for assessment or court cases. It would be impossible to say. There were somewhere in the vicinity of 20 or 30 investigators. I was known for not complying with some of those wishes to delete evidence or not film a person if they were putting on an act or if the film was detrimental to the cause. I felt that if a person had a problem that showed up

on film, it was surely to the insurance company's interest that that be known so that they could settle the claim fairly. I did get a reputation that was unusual in that regard. I simply refused to do that.

Ms PANOPOULOS—You were an investigator for seven years. Who did you work for?

Mr Reynolds—Am I allowed to mention them?

CHAIR—Is this relevant?

Ms PANOPOULOS—Did you work for the same employer over that time?

Mr Reynolds—I worked for one employer for approximately two years and the second and final employer for five years.

Ms PANOPOULOS—You mentioned in your written submission that there was an ignoring and a cover-up of facts by doctors, lawyers and litigators. Are you including in that the insurance companies as well?

Mr Reynolds—Yes. I have written to insurance companies.

Ms PANOPOULOS—So everyone was 'in on it', so to speak?

Mr Reynolds—I believe so. I believe that if you make somebody aware of the facts and they ignore it, then they must be in on it.

Ms PANOPOULOS—When did you form this particular opinion?

Mr Reynolds—It is something that has happened gradually over the years, and it has been built only on facts. As an investigator I was trained to gather facts, so I guess I have the ability now to assess documentation and what people tell me very carefully and formulate a very reliable opinion, based upon what I read and what those facts are.

Ms PANOPOULOS—But you certainly did not become aware of it after you stopped working as an investigator? You had some knowledge.

Mr Reynolds—Before, as an investigator? Yes.

Ms PANOPOULOS—Mr Hartsuyker asked a question similar to this, but I am not clear about your answer: were there any particular instances in which evidence was collected and to your knowledge changed?

Mr Reynolds—Only in the sense that film was taken out, edited and discarded—yes.

Ms PANOPOULOS—During your seven years in employment, did you ever raise these concerns with any relevant authorities?

Mr Reynolds—Not officially, only through casual discussion with my supervisor.

CHAIR—Thank you, Mr Reynolds.

[12.42 p.m.]

MOORE-McQUILLAN, Mr Mark (Private capacity)

CHAIR—Welcome. The proceedings here today are formal proceedings of the parliament and warrant the same respect as proceedings in the House. In providing your evidence today, I request you not to name individuals or companies or provide information that would adversely identify individuals or companies. The committee is interested in the broader principles related to our terms of reference and whatever issues you wish to raise regarding those. The committee is not prepared to provide the protection of parliamentary privilege to allegations about particular individuals. We prefer all evidence to be given in public, but if there is a matter you would like to raise privately with the committee, you may make that request and we will give it consideration. I invite you to make some preliminary statements and then we will move to questions.

Mr Moore-McQuillan—Following on from Mr Peter Reynolds and Ian Trinne, they covered a fair few topics. Sitting at the back and listening to the proceedings today, you have asked a few questions which have not been answered correctly. You might leave here today and not know how things work. Some of the things that have been hinted at have not been answered because they are out of Mr Reynold's and Mr Trinne's scope, but they are within my scope as an ex-president of the Injured Workers Association.

I was injured on 9 September 1990. I am still injured but I am one of the people who have been ceremoniously dumped onto the disability pension scheme because WorkCover think that is the best way to deal with me, rather than give out benefits—it saves them money. In my submission, while not naming any names, you will find that there are a lot of questions you may wish to ask on how the procedure works in this state. By way of general background, since 1996 I have become more involved in the WorkCover system in South Australia because WorkCover did fraudulent activities to get me charged fraudulently. That is when it all started. I realised that there was something more going on. That started back in 1994. By the time it got to the courts in 1996, we were into full-blown aggression and a cover-up.

At my own dwelling, I take around 10 phone calls a week, on average two a day. I seem to get a run from Wednesday to Thursday, and Friday specifically is a big day because WorkCover have a policy that Friday is 'bad news' Friday, when they really annoy the hell out of anyone who is on WorkCover. You have to sweat on it all weekend and then get your answer on Monday. Case managers will not answer the phone or anything else, but they will do everything they can like deliver letters to you on a Friday—they will courier a letter out to you on a Friday—so you are stuck with the situation.

An earlier witness today—I forget her name—was talking about the stress, depression and whatnot of the injured worker. The injured worker is given no chance whatsoever anywhere in this state to recover without walking out with a stress claim. It is part of their psyche; it is part of their training—it is mind games. The more they can mess with your head, the better off they are. As soon as they get you upset and angry, they turn around and do not have to deal with you. That is how they start off. It starts from the phone calls. I think you have all played the game before: you pick the phone up and start talking. They say, 'But you're aggressive.' 'No, I'm

not.' 'Yes, you are.' 'No, I'm not.' 'Yes, you are.' And after a while, 'Yes, you are, because you are playing this stupid game.' Then they say, 'We don't have to talk to you any more.' Next day, you start again, and away it goes.

You have heard comments made by a few of my friends about tape recording, especially of doctors. It is also a common practice of people I deal with and people who have talked to me over the years. Advice that I give them is to record all conversations any time they ring WorkCover, because you will find that they will lie to your face and they will not put anything in writing. The worst thing about it is that they will give you advice orally, then they will send out their dog pack—their surveillance crew or stalking crew. They will get you doing exactly what they told you to do, then they will say, 'We didn't tell you to do that; you're up for fraud.' It is harassment. So you have to get a tape recording of everything they do and everything they say.

Most people read letters and just say, 'That's what it means to the general public,' but not WorkCover. WorkCover have employed wordsmiths that use ambiguous words like the word 'deemed'. Deemed is a 'fictitious' word that means it is make believe. It is deemed because in law it exists—only in law. The funny thing about deemed money is that you cannot spend it, earn it or do anything else with it, but it is deemed that you have it, so you can do what you like with it. If they say you are deemed, after two years, to be earning $1,000 a week, guess what? You are: you are earning $1,000 a week. You cannot live on that money, but they do not have to pay it. There are a lot of inherited problems in this state alone. I think in 1998 there was another push to make this state's WorkCover system federal. All the CEOs of WorkCover met—and I have a copy of that report—and they deemed South Australia to be the best WorkCover act to follow. If this is what the best is, I would hate to see what the other states are like because this is real murder on the individual. We have 50,000 people a year injured in this state. Out of that, only a minute number of people go through WorkCover. It is common knowledge in the work force now—this system has been going since 1986—if you are injured, do not put in a WorkCover claim because two things will happen to you: you will lose your job and you will be tarnished for the rest of your life.

An example of this, without going into names, was an individual who was working on a press. The press had infra-red lines and everything else and even guards. Even if the guard did not come down and he put his hand in, it would still break the beam and the machine would not work. This thing was basically failsafe and foolproof, but one thing the employer did not know was that, if there was a power blackout, which we have a lot of these days because the ex-CEO of WorkCover is now in charge of our power—that is a South Australian joke and it is really right up our alley here—the machine would fault and close down. This person was operating in this job on a 120 tonne press. The power went out—no fault in that; it was an act of god—he put his hand in and lost the hand below the wrist. Two weeks later, his case manager had him back at work with his arm in a sling bandaged up—even though his hand had been amputated—and he was operating the press with his left hand because they said, 'You could do it that way.' Now, 11½ months later, this bloke had really had it. He had been run around by the WorkCover system to the point that he was really upset. He said, 'I've got a stump on one hand; I'm working with my left hand, which is not my favourite hand, and I'm not getting any treatment; I'm not getting any physio; I'm not getting any benefits.' After 11½ months, when he finally caught up to me I said, 'Mate, you've got rights.' He said, 'Why didn't they tell me that?' They said, 'It's a bit late now. You've been back at work for 11½ months. If you can't use your right hand but you can use your left, it's all right.' They have now decided to make a false hand for

him. The funny thing is that it has only taken them six years to get around to doing it. This person was back at work for 11½ months operating with his other hand. That is the system we work under, and that is an example of just how callous it gets.

I find it disgusting that that actually happened—that, as an injured worker, you had that stress and someone playing mind games with you on the phone, someone writing letters, someone sending out surveillance and then involving the doctor. There is a term called 'doctor shopping', but most people go to see their local GP when they get hurt. He fills out the form and sends it to WorkCover, but the first thing they do is scrap it. Then you are in the legal system straightaway. WorkCover knocks back over 95 per cent of all claims. You have to then go through the compulsory conciliation process. 'Compulsory conciliation' is an oxymoron. The only thing that is compulsory is you having to turn up; they do not have to agree to anything—they do not even come into the room. It is common procedure now for the WorkCover lawyers to stand out in the waiting room. You go into the room with the conciliator and he will say, 'They're not going to agree to anything. Just go JD.' You have spent time and effort to go there and they are not even interested in sitting down and doing it. They know that the longer it takes to go through the legal system, the more money they will get, and that is what it comes down to.

This really is an archaic system. If this is the best in Australia, I would hate to see what the rest are like. However, it is no good coming here and describing all the faults if you are not also going to offer some solutions to try and solve the problem. Firstly, I do not believe that judges and lawyers should be let loose in trying to fix a system that they are destroying. Some of you may be lawyers—we have all heard jokes about lawyers—but the thing about lawyers is that they stick together. If you are a judge, you are an ex-lawyer—you look after your own. That is the problem we have, and that is what happens with the judicial system. A judge will never go against his friend who might have worked at the same firm before he became a judge. When they are friends and buddies who have drinks at the same place, it becomes very hard to get through that system. They say that the worker has that system, but it is also in the judicial system. That is one of the solutions.

I think you need—and this should be right around Australia, that would be the best way—a complaints authority. This complaints authority would be one person or an organisation that you could put a complaint to about WorkCover or about the situation you are going through. It would be heard independently—not through the judicial system, because you have to take the judicial system, the conflict and the adversarial nature out of this. The Burns report came out as part of the committee investigations prior to WorkCover being established in 1986. The report, which is in the South Australian *Hansard*, said quite clearly that the best way to resolve the problems with the pre-WorkCover system was to get rid of the lawyers. It was very complex and had a lot of suggestions in it. The strange thing was that that was what everyone adopted, but the first thing that happened was that lawyers got there and destroyed it all and got it back to their own systems. So, now, even though its objective is to reduce the adversarial or quasijudicial—or whatever you want to call it—nature of the system, you have a system that is highly litigious.

Some people here have mentioned fraud. There is less than one per cent fraud on WorkCover in South Australia. That figure came from the fraud department and is in their own publication. This publication is brought out by WorkCover in South Australia and is sent to all and sundry. All government departments get it and all private businesses get it. In fact, my old man was sitting in Cairns, which is not part of South Australia, and he was given a copy of it which had

my name on it saying that I was fraudulent and with the history of it. He said to me, 'You're stuffed now. Your name is tarnished Australia wide. They've got a set against you and have decided to go ahead with it.' In 1996 they charged me with fraud by deleting a section of the act. If you are injured, you have to stay positive—if you do not say positive, you are just going to become a fruit loop like they want you to become; that is their aim. There are times when you cannot do the job that you were doing when you were injured but where you have other skills. If you do something with those other skills—or do something else or retrain—you have to declare the income you receive under section 35 of the act. They have a formula for how you work it out. In other words, let's make it easier for everybody, so we can all do the maths.

Say you are earning $1,000 a week and you have been on the system for more than two years. For argument's sake, say you earn $500 at another job, where before you were earning only $1,000. You declare the $1,000, they take the $1,000, minus the $500, which leaves $500. They then take 80 per cent of that, which works out to be $420, and that is what they pay you. That is the formula under section 35(1)(b)(ii). In my case, they forgot to mention that to the judge—or they did not forget but actually deliberately deleted it. Not only did they deliberately delete it but it caused a conviction against me and legal costs of over $17,000. They are so good that even when my lawyer raised it they said, 'But we are allowed to delete the act because, under section 122(4), in administering the act we can delete, change or do whatever we like.' That is how it works; so you end up becoming a victim. At that time, the way they got back at me was to charge me with fraud—and that started off the process of trying to get myself cleared.

The other thing is that there is fraud. I think it was fraudulent because not only did they defraud me on section 35(1)(b)(ii) but they also defrauded me at the very beginning, way back. I think you heard from Dr Roberts-Yates this morning. She said that when a worker goes on the system and he gets paid, they work out the average income and his overtime and everything else and then pay him. She said that at the beginning. She then said that 80 per cent of your income is calculated. The problem is that section 4(7) of the act describes how they work out your income. If your employer is paying you less than your statutory award—or however the award rates are given—then WorkCover must pay you the award rate. Not in this case. Under this system, they will pay you less than the award rate. In my case, I had two incomes when I was injured and the appropriate rates were worked out just before March 2002. Since 9 August 1990, based on section 47 of the act—which covers the interest paid for money owed—and the loss of wages that have not been paid yet under section 4(7), there was $940,000 owed. I have been on the system 12 years, and I am not the only one. The answer from WorkCover is, 'We know we have been underpaying you,' which is an admission of fraud. Then they go one step further and say, 'It would be prejudicial to WorkCover to have to fix that up now. We should be allowed to get away with it because we have been getting away with it forever.' That is the answer that came from the case manager after they got legal advice.

The stupid thing is that you come back to a thing called the scheme critical list, so you think, 'Right, we will go to the courts.' But you cannot really get to the courts because the courts are owned by them—by their own people and their friends—and the system just goes on. This situation has been going for 12 years and the money owed is growing. My penalty was that I ended up on the disability pension. Rather than pay me, they threw me off. That is the way it is.

CHAIR—Mr Moore-McQuillan, this is a very helpful insight; thank you. But we might move to more general principles now. For instance, I notice in your submission that you have

made reference to the legal costs in South Australia and so on. Perhaps if you could address the issue more generally, that would be really helpful. Then we can move to questions.

Mr Moore-McQuillan—I will make it easy for you. Let us move to surveillance, which I think you will find on page 2 of my submission. In South Australia it is illegal to place somebody under surveillance unless you are the police and have written permission from the police commissioner. The trouble with surveillance is that it then leads to section 19AA of the Criminal Law Consolidation Act, which is the part that says it becomes stalking. If you start harassing someone and causing them mental stress and strain, and you attend their place more than twice, you become a stalker. There is no part of the legislation that says you have to tolerate that. After approaching the outsourced agents about this, the answer was, 'You are on WorkCover; we can do what we like.' That is the situation. There is legislation set down for surveillance, and it is very heavy.

The trouble with surveillance now comes back to your question about lawyers' fees and everything else. It used to be that the Chief Executive Officer of WorkCover gave the order for surveillance to one of the seven heads underneath him. One of those heads would get the okay and that would be passed down, through section 110. Now the situation is that the chief executive officer probably does not even know what is going on—I do not think he has a clue. The case manager can put surveillance on you, and if it is not the case manager it can be a lawyer or it can be anybody else who is deemed to be part of their system. So you have got a line, or chain. If I go and see the first person, that person sees the next person, then the next person—by the time we get down the end of the line to Mr Wilkie, we are about five or seven removed from the original WorkCover employee, and that person is protected, more than I am myself. The lawyers have become the case managers. That is what it all comes down to.

In 1996, there was a report released in South Australia. They spent $1.6 million on legal fees—on lawyers and legal representation. That was the time they had a go at me. The year after that, it rose to $7 million. By the time I started being upset with the system in 1997, the figure had increased from $1.6 million to $7 million; this is part of their annual report. In 1999, the figure exceeded $20 million in legal fees. In the year 2000, the legal expenses of WorkCover in relation to my case formed 10 per cent of the income of a large law firm in this town. I am only one person, so I was big money for them. They said they were dealing with a couple of million dollars and I was the source of 10 per cent. That was the figure they quoted under oath. We are starting to talk about large figures. They spent two years stalking me and keeping me under surveillance, to get me doing what I was told to do in the first place. So you come down to that as a—

CHAIR—At this point, I think we may have to move to questions, if you do not mind.

Mr Moore-McQuillan—I would like to do that.

CHAIR—I think that would be very useful to flesh out the issues that you have raised.

Ms PANOPOULOS—You mentioned that you have been involved in the system for 12 years. You were injured in 1990. What was the nature of your injury?

Mr Moore-McQuillan—I fell down 21 stairs while turning an alarm off for my employer. I was at the top of a stairway that was carpeted. The alarm went off at seven o'clock in the

morning, because a person came and bashed on the front window to wake everybody up. I was a diving instructor. It was a two-storey building and I was upstairs. The person could have come around the back but decided to set the alarm off at the front, thinking it was funny. Because my employer did not like the idea of paying $70 call-out fees, I went from the top and just walked down. As I got to the top, I slipped. My right leg slid out and my left leg, if you can imagine, was then in the full splits. My left knee was in my left ear. I put my kneecap through the drive muscle, took the tops of the fibula and tibia off and chipped the femur as well. I took three toes on the left side and put them on the top, damaged both hips and one part of my back, and took the other knee out as well. I could not walk for six weeks after that, and then they turned round and said, 'It is only a sprain.'

Ms PANOPOULOS—I understand that would have been very frustrating. In those 12 years, have you had the opportunity to seek any other employment?

Mr Moore-McQuillan—Yes, I did. They took it off me. In 1994, I started employment as a correctional services officer in the local jail system. WorkCover came along and said, 'No, no. You are too much of a liability'. After a month, I was off. I did not get that job. I was then employed in the private arena, by a local firm, as a security guard for large concerts and so on. WorkCover came along and took great delight in saying, 'No, you can't do that.' All I had to do was sit at the back door and, if someone did not have a pass, say, 'No, you're not coming in.' I just had to be the grouch, Oscar in the can. Hard job! I got paid for it, but WorkCover said, 'No, it's too much for you. You're out.' They actually went to the employer and made my life a misery.

In that 12 years, I was given physio and I have had three operations on my left knee and one on my right, to the point now that replacement is the next option. You might notice that I am on crutches. I go back to what Dr Roberts-Yates said about people who are in a sling getting sympathy, but WorkCover do not even see those things. They know I have crutches but as far as they are concerned I am out earning $1,000 a week because they have deemed I am—even though I am on crutches and I cannot walk. I have had physio. I have never had a return to work program and I have never had retraining. They say, 'We will give you two weeks of physio and at the end of the two weeks'—and what benefit would that be to anyone?—'we won't be paying any more.' So you do not go, and you have to wait another nine months by the time you haggle with them in the legal system. Then they give you another two weeks and you go back again.

Mr BEVIS—Earlier you referred to a fairly large amount of money—I think it is in your submission—that you say you have not received but should have. Did I hear you right when you said that at the time of the accident you had a second position?

Mr Moore-McQuillan—I had two jobs.

Mr BEVIS—Have you calculated the money on the basis of that second job and the lost income?

Mr Moore-McQuillan—The way the act works, it does not matter whether you had 10,000 jobs. At that time, I was also employed as a diving instructor. I worked for 54 hours a week as a shop manager of a diving shop and, after hours, I worked as a diving instructor for that shop. They were classified as two separate jobs, with different rates. They said there is a rate for working in the shop for 54 hours, and there is also a rate for working as a diving instructor,

which, surprisingly enough, they have only just decided to set at $1,000 a week. I was paid as a casual employee. I also received $996 as a shop manager. So you take those two and add them together. To work all this out, I sat down with an Excel formula and it took me over eight hours. It took them 10 minutes to work it out. I rang up a bloke called James at WorkCover and he said, 'Just tell us the rates' and he said, 'There's the figure.' I said, 'Why didn't you do this all the other times?' He said, 'It is not our job to do all that.' If an employer asks for it, they will do it, but if an employee asks, they won't.

Mr BEVIS—How do they deem this income? I am a bit confused. I understand what deeming is, but I am not sure of the income they say you are getting, or are able to get, for whatever purposes they deem you are in receipt of.

Mr Moore-McQuillan—They are saying that at the moment I am earning a $1,000 as a diving instructor.

Mr BEVIS—Is that because they believe you are capable of doing the work of a diving instructor?

Mr Moore-McQuillan—No, because they filmed me doing diving instruction work. This goes back to 1991 and it was also brought in a judicial determination in 1998—JD2 I think it was. I went to a roundtable conference inside WorkCover. As a diving instructor you have people's lives under your control. I was a master instructor at the time, although I have lost qualifications as this has gone along. The problem for me was maintaining my qualifications. To do that, if anything new comes along, say, when they change a course, you have to know how to do that course. You have to have taught at least one course a year to keep yourself concurrent. I said, ' How am I going to do that on crutches?' They said, 'We don't care how you do it as long as you do it.'

So for the last 12 years, by hook or by crook, I have been doing what I can. I have done an advanced course where I stood on a jetty and told people what to do, because they were supposed to be divers already. I can get away with that and still keep myself current. They filmed me doing that. I said, 'I thought I was allowed to do that.' They said, 'No, you are earning $1,000 a week and that is it.' I might have done that for only one week, but they can take two years to film me—from 1998 to the beginning of 2001. They got exactly three hours of film of me doing that. They said, 'That is an income of $1,000 a week.' That is deemed. So that is it.

Mr BEVIS—I now understand where the deeming comes from. In your submission you said that the surveillance company is owned by personnel who are actually in the investigation department of WorkCover. I do not want you to mention names for the purposes here—

Mr Moore-McQuillan—I realise that. The person has left now. He is now part of the taxation department, doing the same thing for them. It is getting muddier as it goes.

Mr BEVIS—Do you have the evidence for that and have you given it to the authorities?

Mr Moore-McQuillan—Yes, we did that. We went to great lengths to do that. In 1998 we compiled a fair volume of material. At that time there was going to be a TV show about the corruption and the stuff we exposed. By hook and by crook and by false pretences, they got

hold of it and then it was suddenly pulled. The way we found out was that we got the name of the person in WorkCover, went to the small business registry here and looked up who owns what company and where, and this person was a major shareholder in the surveillance company that was contracted by WorkCover to go and harass everybody on WorkCover.

Mr BEVIS—You actually presented that to the minister, the state government and whoever?

Mr Moore-McQuillan—Yes, we did all that. It was not through not knocking on doors, I can assure you, and there are many doors I put my knuckles through to try to get in there and say, 'We need something changed here.' There is another example of that; and I do not want to pick on Liberal, Labor, Democrats or whatever—let's just be across the board—but the last time this legislation was changed it was changed by one member of parliament. That member of parliament owns a chemist shop in his electorate. There are only two chemist shops in the electorate, and there is only one that has got authorisation to have a WorkCover provider number. In other words, if you have to go to a chemist shop, you cannot go the other one, because he has not got the number. The one chemist shop has it, so you have to use that chemist shop to get all your pills. He is getting the kickback either way—and he is the one who changed the legislation.

Mr BEVIS—That might be worth looking into at some point. There are a couple of other things I wanted to quickly mention. In your submission you give figures about the legal costs of WorkCover. Those figures came from their annual reports, did they?

Mr Moore-McQuillan—Yes, and it was from publications. In 1996 it came to our attention when it was in the Adelaide *Advertiser*, and it was quoted from the annual report that WorkCover send out every year. So then every year after that we started checking the annual report to make sure of our figures. Then they started dropping it out when we started to show an interest in it. You have to hunt down some of the information, but it is in there.

Mr BEVIS—That is a profitable little venture for someone.

Mr Moore-McQuillan—Yes.

Mr BEVIS—I have a final question. Also in your submission you refer to employer fraud and employers not paying the correct premiums. It is unclear to me from the paragraph whether or not the state act does include a penalty but no-one gets penalised or whether the law does not have a penalty in it.

Mr Moore-McQuillan—It does have a penalty. There are two parts to that. First, if you are an employer and you do not pay the WorkCover premium for an employee or employees, then there is a penalty attached to that. It is a $50,000 fine and a jail sentence. It is not a light sentence. It is not a slap on the wrist. With my employer they just said, 'Catch up on the premiums; you will be right. We'll fix that up.' Second, in the WorkCover act—I think it is section 54—it says that if you are an employer and you are found to have been negligent or whatever, you may be required to pay the compensation that is outlaid by WorkCover for the injury that has been sustained. They do not do that either. The employers have actually asked for that to be deleted from the act. If you have a look, they have just said, '$97 million—we have been so efficient, we can wipe out so much', and they gave them a reduction. The system works in a twofold way. WorkCover is supposed to work on both sides of the fence. At the moment it

is not working on both sides of the fence. It is working only for the employer and for the interests of the statutory authority that it is meant to look after, which would be the government's interest.

CHAIR—Following your injury, what was the process you went through? Did you get a lump sum payout?

Mr Moore-McQuillan—No, I got nothing. My process is: I got injured on the ninth of the ninth, 1990; it took me till August 1991 to get it through the Workers Compensation Tribunal—at that time, it was the Workers Compensation Appeals Tribunal—to find out that I had a compensatable injury; and then, in 1992, they had the roundtable conference and told me what I had to do and what I did not have to do on the system. In 1994, I was told to go out and look for employment. Every week, I had to look for three jobs. Even though it was not written down, I did all that. When I did find a job, they told me I was fraudulent. After that, it has just gone on and on—to the point where I have seven actions in the High Court at this very moment concerning WorkCover.

CHAIR—You have seven actions in the High Court?

Mr Moore-McQuillan—In the South Australian full court. I take things very far. I will follow them to the end to prove my innocence.

CHAIR—Pardon my asking, but how do you fund that?

Mr Moore-McQuillan—Surprisingly enough, when you get a disability pension thing, which is a really good asset for them to give me, you get exempted from fees.

CHAIR—Legal aid.

Mr Moore-McQuillan—From applying for them. In terms of cost, it works in my favour that way. Before, when I was on WorkCover, it was paying for it all the time. WorkCover at the moment is seeking costs against me for over $320,000. They owe me $940,000 plus another $240,000 in expenses, but they are not interested in paying that; they just want to bankrupt me for $320,000. It does take a toll on your family. They used to ring up my first lady friend, in the beginning of it, at work, harass her at work and harass her at any time they could get hold of her when I was not around, to the point that she said, 'I've had enough of this. I'm out of here,' so I was single. Now I have another lady friend, and they are doing the same thing again. But this time they did not know anything about her, then all of a sudden they found out about her, and they said, 'We're prejudiced. We've been upset because you didn't tell us you had a lady friend.' I thought, 'Well, excuse me, what part of the act says that I have to tell you what I do, when and how, with the opposite sex?' But they are very insistent.

CHAIR—Following 1994, did you go onto a disability pension?

Mr Moore-McQuillan—I went on the disability pension from March last year.

CHAIR—So what did you do in the interim? When did they deem you to be earning $1,000?

Mr Moore-McQuillan—March last year, 2001.

CHAIR—So, up until that time, you were receiving income from work.

Mr Moore-McQuillan—Periodically, yes. What they would do was they would pay you, then they would forget to pay you, then they would pay you, then they would catch up and they would pay you—a merry-go-round. They would do anything just to play the mind games. This is November, five weeks out from Christmas. We are dealing with nice people. They will start sending letters out now to everybody else on injured workers, saying that they will start taking the benefits off them two weeks before Christmas so that they have nothing but a miserable Christmas. Then, come Christmas, their case manager will go on holidays—this has been the procedure for the last 12 years—and you cannot do anything till the end of January. So you are not sure if you are going to have an income, then you do not have an income and you are not sure whether you are going to be buying presents or not because you are injured. That is a case manager for you.

CHAIR—The incident that caused them to deem you to be earning the $1,000—and I know Mr Bevis has pursued this, but I just wanted it clear in my own mind—did WorkCover ask you to look for work? Was that the problem, or was it that you were trying to maintain your master diving?

Mr Moore-McQuillan—They asked me to look for work; that has been part and parcel of it. There has been no retraining, no advice on how to do it. If you found a job, that was good, but then they hammered the hell out of the employer. The $1,000 a week was from me maintaining my qualifications.

CHAIR—Your master diving?

Mr Moore-McQuillan—Yes.

CHAIR—And they filmed you doing that? Can I ask you, though, realistically, can you dive?

Mr Moore-McQuillan—No.

CHAIR—Right.

Mr Moore-McQuillan—I will start again. Realistically, can I dive? If I went to a diving physician now—

CHAIR—Not for leisure; I am saying, realistically, can you dive in a professional sense?

Mr Moore-McQuillan—That is the bit I was going to say. As a recreational diver, I would probably be able to bludge my way through it and have a bit of enjoyment and a bit of relaxation, but that's it. However, diving professionally with people under my control, no. Because, if I was diving, I can have up to eight people in my control—so, everyone here—and if you bolt to the surface, which is a bit of a problem for an air embolism or a lung expansion or anything like that that can occur, I could not catch you, because my legs do not carry me that far.

As it is now over the period, I have changed wet suits, tanks, weight belts—I have changed every configuration to try to get weight off. The only place that actually gains weight is on me. I am more 'Save the whale' now than before. I was 80 kilos when I got hurt. I am now 132, which is a big problem because I do not think my heart will take much more of it pressure wise. As a professional diver, as a master instructor, I was able to teach instructors to become instructors. I lost that qualification through them. I said to them that I have to do a course. It was a course where I could sit down. They had a video and I could access it off a video. They said, 'No, we are not paying for that.' As for maintaining my skills in open water, if I had to do an open water class, I could not do it because of the demanding physical skills. I could not do a rescue course because I could not show people safely. If there was an injury and I had to do an in-water resuscitation or something like that, which I would be expected to do as a professional, I would have difficulty with my injuries.

CHAIR—You mentioned that you had secured other positions. I think you shared that with us. Why did WorkCover instruct you not to continue in those positions?

Mr Moore-McQuillan—They are their mind games. That is what they like to do. That is their fun. There is no reason or rhyme for that. If you knew that answer, you would be the only person in the world to know.

CHAIR—How can they instruct you to stop work? I am sorry, I am not arguing with you; please do not think that. I am just trying to understand. Did they tell your employer not to continue employing you?

Mr Moore-McQuillan—No, they do not do that because that would be too easy. What they do is they go and hammer the hell out of the employer. They go around and say, 'Your premiums are going to rise if you keep this person there.' Or every time a person goes to a job, WorkCover comes along and starts auditing. So when the person is trying to do his job, he has to stop doing it. We did large concerts. The cricket is on today. That was part of it. My job was to sit in the members stand. I watched the game and I got paid. If you had a pass, it was good. If you did not, it was a case of, 'See you later.'

CHAIR—It sounds like a pretty good job, actually.

Mr Moore-McQuillan—It was. It was cushy for me. I enjoyed watching the cricket. But they said, 'No. It was too hard for me.' They said—

CHAIR—But why do you have to obey them?

Mr Moore-McQuillan—Because WorkCover came along and said, 'If you don't, you are fraudulent.' They hammer the hell out of you. It is so hard to turn around and say, 'You can do this.' And then they turn around and say, 'No, you are not.' You have heard the word 'scripted'—remember the bit about having a limp. It is not a scripted limp; it is the opposite to scripted. It is actually forced. You have to be this way every day. If you go out one night and you see Christ and he touches you and you are healed, I give you the hint that next day you will be acting like you are crippled because it will not do you much good at all with WorkCover, because they will film you. Not only that, you cannot even tell them that you are healed because you cannot go off the system saying that you are healed.

CHAIR—So even the good Lord cannot get around WorkCover South Australia: is that what you are saying?

Mr Moore-McQuillan—You cannot, because you cannot go off the system until they say you can go off the system. You cannot go and see your doctor and say, 'Look, I am 100 per cent; I want to go back to work; I am fit'—because he cannot say this.

CHAIR—But they have deemed you to be earning $1,000 and they have put you on the federal system.

Mr Moore-McQuillan—No, they threw me off their system and left me with no income whatsoever.

CHAIR—I am not trying to trap you in any way. I am just curious. The position that you had with the ticketing and so on, have you tried to go back to them and get that position?

Mr Moore-McQuillan—Yes.

CHAIR—What was the reaction?

Mr Moore-McQuillan—The problem is now that my condition has deteriorated. My knees have deteriorated to the point where I am now on crutches all the time. This would not look too good standing there and arguing with someone who is going to take a runner and run past you anyway. But there are some things you can do. There must be some things; you just cannot be a vegetable for the rest of your life. But the system does say, 'You are or you're not; you're either total or you're not.' There is a switch. So, even if you are half and half, you cannot be. You have to make your mind up. 'Do I go or do I stay?' You are either crook or not. I have tried to go for those jobs.

CHAIR—Do you want to work again? I am not meaning to pry.

Mr Moore-McQuillan—I plan to. All I ever asked them in the very first place was to clear my name. To get my qualifications back, there are only two places where I can do it. One of them is in Malaysia, which I do not think I will be visiting in a hurry. The other place is the States and I do think I will get in there because of the way I have got my record shaped up. They will think I am worse than their little mate Benny. As it stands now, they are the only two places where I can get my qualifications back. To get my qualifications back, I have to one step higher, which would be the course director. To be a course director, only two courses are run a year at something like $US14,000 a time and it goes for 10 days. I cannot even get into those countries. I am US barred. We have a mediation process and they say, 'Big deal.'

CHAIR—How many people do you know who have been through a similar situation where they are now on the disability support pension because WorkCover has deemed them to be able to work? How many are there?

Mr Moore-McQuillan—There are a few.

CHAIR—There are a few?

Mr Moore-McQuillan—Lots. When you asked before about the percentage of people who had been thrown on the system, it was substantial—

CHAIR—I did ask that to one of the previous witnesses.

Mr Moore-McQuillan—Yes, I know. It was 10 per cent or 20 per cent. I would put it up fairly high, because once you are on the system and you go off it, there are not very many who have actually returned to the work force. You would find that the percentage would be over 50 per cent and into 70 per cent or 80 per cent of the people still on the dole in some shape or form because they have been injured, paid out and are still in the system.

The other problem we have with that—and it is one thing that has not been hit on here—is that if you are injured and they redeem you, so they sign you off the system, you can go back and find another job. If you find another job, when they redeem you and send you off the system—the full procedure—they will turn around and say, 'You are capable. We deem you to be earning $500 a week, or $1,000 a week, or whatever.' If you get hurt again they will say, 'Yes, you are injured and you are covered, but you are already getting $1,000 of make believe money so you do not get a cent.' That is the truth, and that is what is actually happening now. We have a sleeper where if you are injured once and you go off the system to go back to work, which is what the system was meant to do, God help you if you get hurt again because you do not have an income. Then you are stuck, because you will be injured the second time and deemed to be earning fictitious money that does not exist. Blocki was the case for that.

CHAIR—You then go on to the disability support pension.

Mr Moore-McQuillan—No, you cannot. The disability pension system has a bit of a problem because they say you are a WorkCover problem and you should be dealing with WorkCover. When I was thrown off the system, it was just that WorkCover refused to pay. They said, 'If they have refused to pay then you are covered by us.' When they do decide to pay then we get back to feeding Peter to fight Paul.

CHAIR—I am really interested in these very high legal costs. Mr Bevis asked you about these, and you said they came from WorkCover's annual report. If you do not mind, we will check that—not that I disbelieve you.

Mr Moore-McQuillan—Go right ahead. That is where we got them from.

CHAIR—You are contending that these legal costs show quite a big rise in legal fees. One of the other witnesses was saying that the legal system is now used almost as an investigative unit.

Mr Moore-McQuillan—It is used as everything.

CHAIR—Is that part of the process of deeming that people have an income and getting them off WorkCover and the responsibility on to the federal government? Would you go as far as to say that, or am I postulating too far?

Mr Moore-McQuillan—This is how the system works. It is quite simple. If you are an injured worker you are assigned a case manager. If you have a problem, need something sorted out or need to know your rights, you contact that case manager, who is supposed to be the

deemed person to contact. You ring up and say, 'I have this job', or 'Can I do this position?' and he will say, 'I will get back to you.' He hangs up, that is if he is not playing silly mind games with his phone. Then he rings up a lawyer, and the lawyer will then give him legal advice and then he will send you a letter saying, 'No', or if he rings you back he will say whatever he has to say, but it is after they have spoken. Every time you ring a case manager he then rings a lawyer, and the lawyer gives him an answer and it comes back to him. The problem with it is that when you go to court, the primary decision maker is the case manager. The legal representative is the person who gave legal advice, and they deem this legal advice, but he is actually the case manager. The lawyer is the person who is controlling—

CHAIR—Why do you have to go to court?

Mr Moore-McQuillan—Because every time they say no, if you want physio, if you want treatment or if you want your doctor's bill paid, because they do not do that very often, then you put in a notice of expedited decision. They knock it back, and then you put in a notice of dispute and you are in the legal system. Before long everything is litigated and everything has to go to the Workers' Compensation Tribunal.

CHAIR—It is pretty good business for lawyers.

Mr Moore-McQuillan—It sucks. It is great for lawyers. Check out how many BMWs and how many Jaguars get sold here. If you are a poor lawyer, and you get into the WorkCover system, when you retire you are really riding high on the good hog here.

CHAIR—As there are no further questions, thank you, Mr Moore-McQuillan.

Mr Moore-McQuillan—No worries. Thank you for your time.

CHAIR—Thank you.

Mr Moore-McQuillan—I have just one more thing to say. I am reasonably good with how the system works—inside out and backwards and from both sides of the fence—because I have dealt with it all. If you have any problems in the future, if you are unsure about something or if things have not been clarified and you have questions, feel free to ring and ask me because I am only too happy to assist. I have banged, belted and knocked on every door you can find to get some kind of solution and something sorted out because this is an archaic system that needs fixing. Anyone can tell you what is wrong, but to give solutions is another thing, and I try to do that.

CHAIR—Thank you very much for your cooperation and that generous offer.

[1.31 p.m.]

KOWALSKI, Mr Kazimir (Private capacity)

CHAIR—I welcome Mr Kaz Kowalski. Thank you for joining us. The proceedings here today are formal proceedings of the parliament and warrant the same respect as proceedings in the House. In providing your evidence today we ask you please not to name individuals or companies or provide information that would adversely reflect on individuals or companies. The committee is interested in the broader principles that relate to our terms of reference and in information that you can bring forward on that. The committee is not prepared to provide the protection of parliamentary privilege to allegations about particular individuals. I invite you to make some preliminary remarks, bearing in mind that we are fairly short of time, and then we will move to questions.

Mr Kowalski—I thank you for allowing me this opportunity, as I was not notified. I would like to start off by saying that in South Australia we have the Workers Rehabilitation and Compensation Act. Rehabilitation is supposed to be put ahead of compensation—this is what parliament intended. It is supposed to be a non-adversarial system; however, QCs appear in the workers compensation tribunal at the drop of a hat. This is why things drag on forever and the costs—the legal costs in particular—are extraordinary. I know that the terms of reference for the inquiry are to inquire into and report on:

... the failure of employers to pay the required workers' compensation premiums or otherwise fail to comply with their obligations; and ... the adequacy, appropriateness and practicability of rehabilitation programs and their benefits.

In February or March this year, I sent a letter to the Prime Minister, Mr John Howard. At the time, my employer which is an exempt employer was seeking funds from the federal government to continue its operation in South Australia and also from the state government. I believe that the federal government donated $70 million and the state government $20 million towards its war chest. At the time I notified the Prime Minister that that exempt employer had reported to WorkCover that at that point in time it had spent $239,166.44 on legal expenses, $1,718.02 on investigation costs, $46,333.47 on other expenses and the paltry sum of $35 on rehabilitation. I also pointed out to the Prime Minister that I sent a copy to the Leader of the Opposition, Mr Crean. He was not interested; I never had a response from him. I contacted my local federal member, David Cox, and he was not interested. I contacted Andrew Southcott and he was not interested. It appears that people are not too interested.

I have provided the committee with a copy of a letter from WorkCover; it is a 107B application. An exempt employer has a legal statutory obligation to inform WorkCover about workers' claims for compensation. They have to do that under the fourth schedule of the act. It is a fortnightly report. Earlier this year I took out an application under 107B, which is like a freedom of information application. I have provided the committee with a response from WorkCover—Fran Michelizzi was the review officer—in which they provided me with copies of EDI reports, or electronic data interface reports. It is information that exempt employers put into their computer, it is electronically transferred to WorkCover's computers and then WorkCover puts that in and holds it as a report. I have provided an EDI report—296584/1—which relates to a May 1989 accepted compensable back injury. You will notice it is called 'Exempt desktop, Kowalski, Kazimir, 296584/1, portfolio manager'. It shows that the exempt

desktop, Kowalski, Kazimir, 296584/1, portfolio manager'. It shows that the exempt employer has reported to WorkCover that it has spent $466,738.55. That report was last updated on 24 July 2001. So those legal costs from when I first notified the Premier were $239,166.44. The latest report is $466,387, and $35 on rehabilitation—a total of $494,058.65.

I have attached a further report, which is 296584/3, concerning a minor 1988 finger injury for which I had a minor operation. You will notice on the report that the sum of $141,925.52 was reported to have been spent on that claim. The section 43, although it does not appear on there—the employer has not paid me—was about $280. It is out of the ordinary. To avoid paying a $283 section 43 entitlement, they spent all this money—$56,140 on legal costs, and other costs, $80,468.

I have also provided you with a copy of my letter to the Minister for WorkCover, Mr Michael Wright, which is dated 6 November 2002. In December 1997 I suffered a heart attack. In 1991 I suffered a mental breakdown. In January 1998 I had open heart surgery. I wrote to the minister on 6 November asking for a response in relation to the heart attack, and what obligations the exempt employer had. I asked for a response before today so could I provide the response to this committee. Last night I was informed that there is no record of this facsimile in the minister's office. I attach to that a claim, 296584/4, in relation to my heart attack for you to have a look at. I have another facsimile, which again I faxed yesterday, which is dated the sixth, and a facsimile dated 19 November 2002, again reminding the minister that I was seeking the information before the committee hearing today. That was not responded to, either.

It is supposed to be a non-adversarial system. It is an adversarial system, where WorkCover spends an enormous amount of money. I would like to highlight to you that the way the system in South Australia is structured, since 1996 especially, is that in regard to this so-called deeming provision, my exempt employer has never redeemed any liabilities to me under the act. It says it does not have to—for some unknown reason. In South Australia the government gives people a hard time. Then they have a conciliation conference and people accept, say, $50,000 to redeem their liability for future income maintenance for the rest of their life. That is based on maybe $25 a week. The government says, 'Go to a financial adviser and get advice from him on how you can invest your $50,000 to give you, say, $1,000 a week—which you were earning—for the rest of your life.' It is deemed that this person has got this advice, and he signs a certificate.

They get legal advice, and the lawyer says, 'This is all appropriate; you're happy with what is going on; sign that—it's fine.' Once that poor worker accepts, say, $50,000 as a redemption, he is deemed to be earning a certain amount of money for the rest of his life, and he is deemed to know how to invest that $50,000 and derive an income of, say, $1,000 a week for the rest of his life. WorkCover do not care what happens to the worker after that. If he has made the wrong decision, it is bad financial or legal advice. He is told, 'Sue your lawyer; sue your financial adviser.' These workers ultimately get thrown on the social security scrap heap, and the federal government foots the bill. These workers cannot survive. I did not get paid from 1991, I think it was.

CHAIR—That was a very helpful overview, Mr Kowalski. We will now move to questions.

Mr BEVIS—I want to be clear about the document we received today—I have seen it for the first time today—which has the extract of material that you got with the signature of an officer

of WorkCover dated 30 July 2002. It has the extracts from your former employer. Is that the complete detail?

Mr Kowalski—No, there were about 48 screen dumps. As one of the other people said, they tend to hide information. Unfortunately for WorkCover, I filed an application under the Freedom of Information Act a couple of years ago. Fortunately for me, the FOI officer provided me with a screen dump of all the information on the system. Subsequently, in 2002, I did the same, but they did not know that I had all this information. They play with you; they give you only what they believe they should. Instead of 43 pages, they gave me about 18 or 19 pages. Then they say, 'That's all there is,' and you know it is not. Then you have to file an application for internal review and they have another look it at and then it goes to the Ombudsman. It is like a mind game. Although they should comply with the act—

Mr BEVIS—Is that what happened in your case?

Mr Kowalski—Yes. In my case, I was fortunate that I had all the information. When I said, 'Hang on, I will seek an internal review if you don't provide me with everything,' they said, 'What do you say we haven't provided you with?' It is not for me to tell them how much information they have; it is their legal obligation to provide all the information. Fortunately, when they knew I had everything, they gave me the full history on 14 August 2002.

Mr BEVIS—Without going through the other 40-odd pages, do those two summary sheets fairly and fully represent the state of play for the claim at those two points in time?

Mr Kowalski—The one for the 2001 claim, which is the back injury, is Friday, 26 July 2002. That indicates what the exempt employer reported to WorkCover it had spent on that claim. The concern was about the legal costs compared with the rehabilitation costs, although it is the Workers Rehabilitation and Compensation Act. You will notice that, although my exempt employer will not give me a section 43 payment—this is for the 01 claim—or redeem income maintenance payments or redeem medical costs—

Mr BEVIS—What is section 43?

Mr Kowalski—It is a lump sum payment for permanent disability. I went to the tribunal and said, 'I want an assessment of my legal statutory entitlements.' The full bench of the Workers Compensation Tribunal said, 'We'll make an order; we'll make that assessment for you,' and then they refused to make it. I had to go the High Court to force—use mandamus—the full bench of the Workers Compensation Tribunal to make an assessment of my legal entitlements. Why should all this money be wasted again on legal costs—wasting the High Court's time—to do something that the full bench informed me it would do?

So I think there might have been some political interference for the full bench not to make that assessment. They assess a lot of the claims based on this so-called $50,000, then you get legal and financial advice and are stuck with it. I would have been as well. This is how they circumvent their legal obligations—legally, I suppose, because the legislation has been enacted and proclaimed by the governor. I have written to her, but she does not want to know either; nobody seems to want to know. It is wrong that people like me and the others should be put on the social security scrap heap for the federal government to look after when there are obligations under the act for people to have a proper redemption.

Mr BEVIS—Seven days were lost as a result of the 1988 injury?

Mr Kowalski—Yes.

Mr BEVIS—Can you tell us what the nature of the injury was? I do not want to intrude into your private life, but I am intrigued by a circumstance in which an injury produces seven days lost time but necessitates a week's wages plus $56,000 in legal fees. I am interested to know what the nature of the injury was so that I can put that $56,000 into some kind of context.

Mr Kowalski—I was pulling a crate apart and I pulled my finger. There was some cartilage damage, so there was a minor operation—you can see the scar here—which amounted to three days in hospital. Then I think I was at home for three days, with maybe another day as well—I cannot remember, but I think that was all it was. When I put in a section 43 claim the exempt employer's lawyer disputed it. We spent 18 months in the Workers Compensation Tribunal disputing this, and the entitlement was $282 or something. But this is what happens. It is as other people say: the lawyers take control. It is true about the Burn report: prior to the 1986 act coming into force the politicians said, 'Let's get lawyers out of it because they are costing us a lot of money.' Unfortunately, you cannot keep them out, because then you are penalised.

Mr BEVIS—There is another interesting thing about that 1988 claim: I would love to have an accounting system that allowed me to debit $80,000 against 'other; unspecified'—

CHAIR—I was just thinking that.

Mr BEVIS—out of a total cost of $141,000. Do you have any idea what 'other' is?

Mr Kowalski—You will have to ask them. I sued some lawyers, who represented me back in 1989 in the District Court. Mitsubishi, my exempt employer, are disputing the accuracy of the information.

Mr BEVIS—The accuracy of this data?

Mr Kowalski—Yes, although they provided it to WorkCover. WorkCover's Mr Robin Shaw, the manager for that area, swore on oath that the information was accurate. That was in the district court action. Workers compensation manager Mrs Linda Bogdanov swore on oath that the information was accurate. Now, for ulterior purposes, Mitsubishi's QC is disputing the accuracy of the information because it was obtained from WorkCover. So I took out a non-party application for discovery against Mitsubishi in the District Court to verify the information. I am now being harassed. I am being examined as a debtor in the District Court for non-payment of $2,850 as a result of my unsuccessful application for non-party discovery. I was just asking to verify the information. The District Court said: 'No. Your applications are dismissed, and we will make an order for costs against you.' This is what is happening at the moment: the exempt employer is harassing me with an examination summons—I suppose trying to bankrupt me—over something that was brought under the Workers Compensation Act. The costs have to be paid by the exempt employer or the corporation. That is the system.

Mr BEVIS—That prompts a number of other questions in my mind, but they are not for you, Mr Kowalski; they are for other people.

Mr Kowalski—I tried to keep it simple. I could flood you with 48 pages—

Mr BEVIS—You have answered the questions I needed to put to you. I would like to put the other issues that arise from this to some people who are not here at the moment.

Mr Kowalski—I have a question. I contacted the South Australian government—

CHAIR—May I just interrupt? The secretariat has just brought this to my attention: is this currently in the courts?

Mr Kowalski—I have asked the High Court to determine the assessment. But in regard to what your committee wants to look into, I cannot see why that should interfere with what you are looking at. The terms of reference say:

- the methods used and the costs incurred by workers' compensation schemes to detect and eliminate ... the failure of employers to pay the required ...

And so on. I believe that is within your jurisdiction.

CHAIR—Just before you start again: we plainly do not want to have any involvement in the court case; that is a matter for you. Our interest is purely in the information that you have given us here. You have obtained that apparently quite lawfully and we are interested in this information. So can we be careful to just keep to what is on these sheets without involving ourselves in the basis of your court action?

Mr Kowalski—Yes, that is why I kept it specific. I am not trying to refer to anything that is going on outside of this committee. I thought this would highlight, with a minimum amount of documentation, what does happen. The concern was that, when David Cox and Andrew Southcott were not interested, I actually suggested that I would refer the letters that I sent to them to the committee. I am not going to, but you would think that somebody should be more interested than they are. It is wrong that the federal government should support people who the state governments and the WorkCover systems do not adequately support.

CHAIR—Are these the only injuries that you have had?

Mr Kowalski—No, I had a mental breakdown in 1991 and I have not brought that information along. Then there was the heart attack.

CHAIR—That leads to my next question: do you have a lump sum payout that is supporting you at present?

Mr Kowalski—My wife looks after me. My wife works.

CHAIR—Are you on a federal social security benefit at all?

Mr Kowalski—No. I know the system—if you get onto it, then possibly you have to pay it back if the employer does the right thing and pays you a sum. So my wife has been supporting me.

CHAIR—For the 1989 injury you received income maintenance of $8,232?

Mr Kowalski—Yes.

CHAIR—And medical and hospital expenses and so on?

Mr Kowalski—Yes.

CHAIR—What were the legal expenses for—the $466,000?

Mr Kowalski—I do not know. I asked for a breakdown.

CHAIR—The matter did go to court, did it?

Mr Kowalski—Yes, it went through the Workers Compensation Tribunal and it went to the District Court. That is another issue that this committee should look at. Under the workers compensation scheme, the High Court has said that an employee cannot sue his employer for personal injury at common law as a result of the negligence of the employer. The High Court said that in Spry. There are a couple of decisions on that. However, my lawyers sued my employer in a common law action for personal injury. The legal system has now accepted that as being quite above board, although the High Court has said you cannot do that and section 54 of the act says you cannot and that only thing you can sue for is non-economic loss.

However, although the lawyers did that, the system is now covering up and saying that everything is fine, that the lawyers acted properly and that they were allowed to do what the High Court said they could not do. I have sued my lawyers for doing precisely that. The District Court has now said that a lack of diligence is not negligence. That is how it was put to me, although the High Court said that you cannot sue your employer. This is why it is wrong. With this system, the legal costs just grow. Whether you can or cannot do something under the law, the lawyers will find a way. I had a mental breakdown at the time; I trusted the lawyers. The system allows this to happen instead of saying, 'The statute says you can't do this; let's put a stop to it.' Legal costs escalate like you would not believe. Then you have to appeal and sue your lawyers and go on and on. You would think that the Supreme Court, once it knew what the High Court had said in relation to section 54(1) of the Workers Rehabilitation and Compensation Act 1986—which says you cannot sue your employer for negligence under common law—would put a stop to it all. But it does not; it allows claims to be prosecuted in breach of the act and to incur costs. I am amazed. I read one case where a poor Yugoslav or Croatian guy ended up in the High Court, would you believe, to argue that point: that he was not allowed to sue his employer under the act. His lawyers went from the District Court to the Supreme Court to the High Court, and the High Court said, 'You can't do what you have done.' The guy was lumbered with all these legal costs. It is unnecessary.

CHAIR—Mr Kowalski, we are going to have to finish there. Thank you very much for coming before the committee.

Mr Kowalski—Thanks very much.

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

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

Committee adjourned at 1.56 p.m.