COMMONWEALTH OF AUSTRALIA

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Reference: Aspects of workers compensation

FRIDAY, 22 NOVEMBER 2002

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Friday, 22 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 Dutton, Mr Hartsuyker, Mrs De-Anne Kelly and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

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

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

WITNESSES

Committee met at 9.28 a.m.

GOLDSBROUGH, Mr Paul, Acting Director, Workers Compensation Policy, Division of Workplace Health and Safety, Queensland Department of Industrial Relations

LAWSON, Mr Gordon, General Manager Insurance Services, WorkCover Queensland

McMAHON, Ms Evron, General Manager Statutory Claims, WorkCover Queensland

CHAIR—Welcome. Thank you for joining us today. The proceedings here today are formal proceedings of the parliament and therefore warrant the same respect as proceedings in the House. In providing your evidence today, we would ask you please not to name any individuals or companies or provide information that adversely identifies individuals or companies. The committee is interested in the broader principles and the issues that you wish to raise in regard to that. The committee is not prepared to provide the protection of parliamentary privilege to allegations about particular individuals. I now invite you to make some preliminary remarks and then we will move to questions.

Mr Goldsbrough—I have no preliminary remarks.

Mr Lawson—I have no preliminary remarks.

Ms McMahon—Neither do I.

CHAIR—In that case, we will get right down to it.

Mr WILKIE—We received evidence from people yesterday suggesting that in some jurisdictions 95 per cent of claims for workers compensation are rejected out of hand in the first instance. Does that sort of thing happen here in Queensland?

Ms McMahon—No. Our rejection rate is about three per cent. We have processes in place and certain categories of our claims are what we call 'fast-tracked' and other categories require further investigation. When you sum those two concepts together, our rejection rate is around three per cent.

Mr WILKIE—Thank you.

Mr BEVIS—If the rejection rate of claims is three per cent, I assume it follows that the other 97 per cent are accepted as having validity.

Ms McMahon—That is correct.

Mr BEVIS—Of the three per cent there is some dispute about, we have been directed by the minister to look at the issue of fraud. Presumably, therefore, we are talking about less than three per cent because the rest are, in fact, approved.

Ms McMahon—Not necessarily. At the stage that we make a decision on a claim, we base it on the evidence that we have to hand. The most common form of fraud that we prosecute is

quite simply, unfortunately, someone's return to a calling or they have returned to work and have not advised us. So the three per cent that we are talking about is a different part of the equation. In terms of the decision making criteria, the claim does not actually get through those hurdles.

Mr BEVIS—I am not sure that anyone has given us advice before that a significant part of the fraud is not someone putting in a claim that is fraudulent per se, but having had a claim approved and then failing to advise of their return to employment. Do I understand you correctly that that is a significant proportion?

Ms McMahon—That is correct. Certainly, to a lesser extent, there are some claims at the point of lodgment that we have some issues with. We have not had a lot of prosecutions, but the ones that get referred to our compliance area are, more than anything, about returning to work.

Mr BEVIS—I guess that the restrictions on the tax office for privacy purposes do not allow you to do data matching?

Ms McMahon—That is correct.

Mr BEVIS—Is that an issue that administrators of workers compensation have looked at? If there were to be a data matching provision for taxation purposes, would that do something to address the area of fraud that you just mentioned?

Ms McMahon—It would assist us greatly. We do have arrangements through some other agencies which help us, but it would be far better if we had those arrangements with the Australian Taxation Office.

Mr Lawson—We have an arrangement with the tax office with regard to employers, where we do data matching on that side of the equation, but we have not carried that through to the injured workers at this stage.

Mr BEVIS—I know we do things much better in Queensland across the board, but with regard to workers compensation it is a pretty impressive tale that you tell about premiums and the financial stability and strength of the scheme and, by interstate comparisons, it is quite impressive. I recall that some years ago a review was conducted by—I am trying to remember whether it was the current state government when it was first elected or the former Goss government.

Mr Goldsbrough—It was former. It was the Kennedy review.

Mr BEVIS—Can you give us any broad information now, or maybe later, that tells us what key changes were made? I remember at that earlier stage that there was a lot of concern about the Queensland fund, not dissimilar to the sorts of things that you hear in other states of Australia. Sometime over the last decade, Queensland has done something different to produce a different outcome. I wonder if you could put your finger on that.

Mr Goldsbrough—In 1998 the state government brought in a range of reforms following the changes that were introduced with the WorkCover Queensland Act 1996. I can table for your information a document called *Restoring the Balance: Delivering a fair and equitable system of*

Workers' Compensation in Queensland. This outlines the major changes that were introduced to the Queensland legislation. Subsequently, there has been a range of other changes, but they are the primary ones that have been introduced since the 1996 act was enacted.

Mr BEVIS—Can you paraphrase what the major changes were?

Mr Goldsbrough—There have been changes to the definition of 'worker' so that there are now deeming provisions. When the 1996 act was introduced it only picked up PAYE taxpayers. The new changes allow for a much broader scope of workers under a whole range of different employment relationships to be included. That provided protection for employers, too, because they were then not exposed to the potential to be sued under common law given that the WorkCover scheme was providing protection for them.

There were changes to the definition of injury that allowed for things like the aggravation of pre-existing conditions to be picked up, and so on. Changes were also made to the arrangements for self-insurance. This further protects the scheme by restricting self-insurance to large employers with more than 2,000 employees and introduced Occupational Health and Safety systems. They are probably the main changes that were made.

Mr BEVIS—There is a table on page 4 of your submission that identifies statutory claims and common law claims and prosecutions. We are talking here about worker claims for benefit. How many claims were made in the year 2001-02? There are 414 referrals and 10 prosecutions. Do you know how many actual claims there were?

Ms McMahon—On average over the last few years we have been getting about 73,000 claims.

Mr BEVIS—So, out of 73,000 claims there were 10 that went to prosecution?

Ms McMahon—That is correct.

Mr BEVIS—What is the common law component?

Ms McMahon—What happens with the common law component is that, if there are some compliance issues, they get washed up in the negotiations in relation to the settlement of the claim. In other words, there is a reduction in the agreed payout from the scheme. This is negotiated between the defendant lawyers and the plaintiff lawyers.

In the statutory arena I just want to explain that, yes, there have been 10 prosecutions, but there were a significant number of other cases included in the 414 that we may have taken other action on. They may not have gone the whole way through to prosecution. In other words, we would have suspended or ceased benefits. Whether or not we choose to go to prosecution depends on the degree of the infringement.

Mr BEVIS—Are they 10 prosecutions that were initiated or 10 prosecutions that were successful?

Ms McMahon—They were 10 prosecutions that have been successfully finalised in that year. We also have a number of rolling matters that are waiting to go before the court.

Mr BEVIS—Is there a similar table in respect of the employer payment problems?

Mr Lawson—Not in regard to prosecutions, as such. However, there were some figures tabled in regard to penalties and so forth. In regard to employers, it is either negotiated before it gets to the prosecution stage or when the employer has gone into receivership or liquidation.

Mr BEVIS—The Queensland act provides a penalty, does it not, for employers who fail to make the required payment?

Mr Lawson—Yes, it does.

Mr BEVIS—Have any employers ever been prosecuted over that?

Mr Lawson—Yes. I cannot quote you the numbers, but every year the number of employers we impose penalties on would be in the hundreds, either for late lodgment of their wages declaration or for late payment of the—

Mr BEVIS—So the act authorises that, much like the Australian Taxation Office imposes a penalty, you are entitled to impose a penalty.

Mr Lawson—That is correct.

Mr BEVIS—Presumably, if they think you are wrong, they can go to court and argue the toss?

Mr Lawson—Yes. They can go directly to Q-COMP and, if Q-COMP upholds our decision, they can go to the magistrate's court.

Mr BEVIS—I have a question about self-insurers. How do you satisfy yourself about transparency and accountability to ensure that those people are behaving in a way that the act would want them to?

Ms McMahon—That is probably not an appropriate question for Gordon or myself to answer because we are from the insurer, and there is not anyone here this morning from the regulator, Q-COMP, which actually regulates the self-insurers—unless Paul would like to make a comment.

Mr Goldsbrough—As I said before, we have occupational health and safety requirements for self-insurers. Within the Department of Industrial Relations we have people who make an assessment of the reports of their health and safety practices. Q-COMP, which is the regulatory unit within WorkCover, also audit self-insurers in terms of their performance.

Mr BEVIS—One issue that has been drawn out by a couple of witnesses is rising legal costs to insurers, administrators and, at the end of the day, to the people who pay the premiums. Indeed, we were given some evidence yesterday in Adelaide of a case that cost about $494,000.

The rehabilitation payment for the injured employee was, I think, $35 and there was only small change left out of the $494,000 after the legal fees were paid. What percentage of the costs go to lawyers? How do you make judgments about when it is a smart time to engage lawyers and when it is not?

Mr Lawson—We often do not have a lot of control over that, in that the lawyers contract with the injured worker in relation to their fees. At the time of settlement when we make the agreed payout, we are not always aware of what fees are being charged to the injured worker. We are aware that similar things do happen in Queensland—where a payout may be $100,000 and the injured party gets very little of that. But I cannot quote any specific examples.

Mr BEVIS—As I understand it, these were not the costs associated with the worker engaging lawyers and necessitating other things. This was the insurer apparently deciding to engage lawyers to argue the toss on a matter.

Ms McMahon—I used to run the common law division, so I will explain that first. We have actually segregated our submission because it was so large. There are actually two general managers. I run the statutory part of the business and another general manager, Paul O'Connor, runs the common law part of the business. I can comment with respect to when I was running that part of the business. We have a philosophy that we would prefer, if possible, to settle rather than to run matters to court. So we do not have a lot of matters before the courts. The ones that are before the courts are ones that have been carefully decided for a number of valid reasons—sometimes points of law—as to why they should go to there. So, in the relative scheme of things, the vast majority of our cases—again, I do not have the numbers with me today—go through a process called the early settlement conference instead of going to court.

Mr BEVIS—Kim Wilkie is better organised than I am—he has the document from yesterday. If I give you the figures, can you interpret them for me? I had trouble understanding how all this could come to be. Income maintenance was $8,000; medical costs were $6,000; hospital was $800; rehab was $35; common law was $9,000; legal expenses were $466,000; investigation was $1,700; and, other was $1,000.

Ms McMahon—These are the legal costs of WorkCover in South Australia—is that what you are saying the four hundred and something thousand is?

Mr BEVIS—These are the details a self-insurer provided to the regulatory authority in South Australia, identifying a particular case that was brought to our attention. The total bill ended up at $494,000, of which $466,000 was legals—as distinct from common law, which was $9,000.

Ms McMahon—To the best of my knowledge, when I was running the common law division we did not have any cases that looked like that. Obviously, what you are pointing out is that there is a skewing in respect of the amount of legal fees incurred to defend something, yet very little has been spent on rehabilitation, medical expenses and whatnot. All I can say is that that does not fit the profile of WorkCover Queensland's common law cases.

Mr HARTSUYKER—You mentioned earlier that a source of fraud was people going back to work early. A number of other witnesses have talked about rehab and the focus on getting people back to work as an important part of the system working in an optimal way. How is it

that there is no interface between either the employer or the insurer or whatever to allow people to be back at work yet for the payments to keep flowing?

Ms McMahon—The people I am referring to are working elsewhere. A number of them, unfortunately, are also in receipt of social security benefits. Of those 10 cases in the table, a significant number have actually been prosecuted both ways—for social security fraud and for returning to employment and not advising us.

CHAIR—Ms McMahon, I thank you for a very comprehensive submission. It was full of information, which is good. You mentioned that three per cent of initial claims are rejected, so obviously there is some sort of flag that says that these do not meet your basic criteria. What sorts of issues would flag the attention?

Ms McMahon—For the three per cent?

CHAIR—Yes. What sorts of things would you be looking for?

Ms McMahon—Fundamentally, there are two issues: is the person a worker and is it a work related injury? If it is a psychological claim, an extra element comes in—that is, the element of reasonable management action. Those are the fundamental criteria that we use to decide a claim.

CHAIR—So you ask, 'Are they a worker?' Do people actually make claims when they are not working?

Ms McMahon—In this day and age there are some very complex work arrangements in place and it is sometimes difficult to ascertain at a glance whether or not a person is a worker. With some of the injuries that are claimed for—again it gets back to this compliance issue that you have been interested in—sometimes we discover up front that a Monday morning injury, for example, may have in fact occurred on the football field on the weekend. Some of that three per cent will capture those sorts of circumstances.

CHAIR—So you look at the time of the injury, and perhaps an injury early on Monday morning would be something that—

Ms McMahon—It is a flag.

CHAIR—Psychological: does that always raise a flag?

Ms McMahon—No, but they are very complex claims. They are normally very difficult to determine, and as a direct consequence of that we have a different process to physically assess whether we will accept liability. That process involves a psychologist, factual investigations with the witnesses that the injured worker has asked us to talk to and, obviously, with the employer and the witnesses that the employer asks us to speak with as well.

CHAIR—Does every psychological claim get that special measure of—

Ms McMahon—Yes.

CHAIR—I will not take time from my colleague, although I have more questions.

Mr DUTTON—Ms McMahon, could you tease out in a little more detail the 609 referrals over 2001-02? Obviously, it is an area in which it is very difficult to prove fraud as such. Hence there have only been 10 prosecutions in that period. You spoke before about some other action that takes place. Can you tell me what happened in, say, the remainder of those 404 cases? What action would you have taken? Would you have suspected fraud in each of those cases or is there an element of malicious complaint there?

Ms McMahon—We receive referrals to the compliance area from what we call the hotline, which is when people call our regulator and our regulator passes those calls on to us. With each one of those calls, the files are called for by the compliance area and read. They are flagged in relation to whether they think this is a red, green or a yellow flag—we come back to the flags again. One of the issues is obviously quantum—how much they have paid on the claim and the nature of the particular injury. Other referrals also come from our staff. Obviously from the name, assessors are involved in the decision making process. We have other staff members called case managers working with injured workers who have a longer duration claim. These two groups of people have been trained in some rudimentary compliance flags or principles. If they suspect that something is not quite right—particularly the case managers because they have a lot of face-to-face and telephone contact with injured workers—they might say to the compliance people, 'Look, I am just not really sure. This person is saying that they've got a bad back and they can't do all these things. Yet, they are coming in with dirt under their fingernails or grease on their hands.' In those cases, we tend to send out another group called area service officers to make a courtesy call. This is to see how the injured worker is going and if there is any sort of validation in respect of what the case manager suspects. If it becomes a bit more serious than that, the compliance people will get involved and surveillance and those sorts of tools are used.

There is a filtering process. As a consequence of that process, we may need to follow the financial trail of some of the claims. We have arrangements with some of the financial institutions to enable us to do that. That assists us but it would be much better if we had a close liaison with the Australian Taxation Office. It assists us to know if a person has gone back to work somewhere else.

Equally, from surveillance and the courtesy call tools, it may be necessary to have a chat with the injured worker or conversely, have a chat to the injured worker's treating medical practitioner. I alluded to this before where the doctor may look at the video tape, talk with us and may talk to their patient and will then write to us and say that this person is now fit and able to return to work. You will not see those types of cases reflected in the prosecution. Nonetheless, the claim is actually finalised.

Mr DUTTON—The point that I am trying to make is that there is some suspicion of not so much fraud but perhaps—

Ms McMahon—Exaggeration.

Mr DUTTON—questionable behaviour or impropriety of some description out of that 414.

Ms McMahon—Yes.

Mr DUTTON—How is your compliance section staffed? What is the structure of it? Also, are your courtesy calls announced or impromptu?

Ms McMahon—I am speaking now for statutory claims compliance—there is also common law compliance—I have eight staff members and common law has around eight or nine as well. They are experts who are able to read files. They match information, employment history and medical history. Sometimes they go looking for previous claims history in other jurisdictions and sometimes in other countries. We have claims—unfortunately back is one—where maybe the person came from another state or country and has already claimed for the same thing and there has been a payout. These experts are very much looking for clues and following trails to establish the truth of the matter. We always have a record of interview, particularly if we are going to a prosecution stage. We follow the standard processes to make sure that it is robust. What was the second part of the question?

Mr DUTTON—Whether or not the courtesy call is announced.

Ms McMahon—The courtesy call is not announced. We turn up and say, 'We're the area service officer' and whatnot. That in itself, being honest with you, has caused a number of injured workers to say to the gentleman or lady who calls, 'I'm feeling much better. I'm going back to work next week.' We have had a number of those instances.

Mr DUTTON—What sort of case load would those eight people have?

Ms McMahon—At the moment, I have about 176 files in that work area.

Mr DUTTON—In relation to non-payment, the flip side of the coin, if you are talking about employers and fraud and non-compliance—I have not been able to see figures yet in relation to employers—how many were prosecuted, say, over that same period?

Ms McMahon—I will pass to Gordon, as that is his area of expertise.

Mr Lawson—As I said before, very few employers actually go to prosecution. I cannot quote the number. It is normally a case of either not lodging the wages declaration or not paying a premium. If they do not lodge a wages declaration, under the act we can default assess them. Then we go to the next step of trying to collect that default assessment. In a lot of cases, once we have done a default assessment, we get payment or it is renegotiated. If you default assess an employer, very heavy penalties are involved as well, so normally they come to the negotiating table and you work out the premium. If they do not pay their premium, it is normally a case of receivership, liquidation or some form of insolvency.

Mr DUTTON—So there is a distinction between a fraudulent act and perhaps a cash flow problem for non-payment as opposed to an intentional fraud.

Mr Lawson—Yes. We tend not to prosecute unless the fraud is intentional and obvious. We find in most cases that that is not the case; it is normally a case of ignorance. In those circumstances, we tend to reduce the penalties and get the employers back to having a policy. Because it is compulsory to pay the premium, if you do not pay the premium you are uninsured. So any employer takes an enormous risk if they do not pay their premium.

Mr DUTTON—Does a national database exist or do you have any figures on the number of repeat claimants—that is, people either in their current workplace or in a previous workplace who have lodged a complaint or workers compensation claim?

Ms McMahon—To the best of my knowledge, no, there is not a national database. We have one here for Queensland. What I say to my compliance people, if they suspect that someone has had the same injury in another state—maybe they were living in that other state and we are chasing some employment details—is that we will go to that state and they will share their information with us, but we have reasonably loose arrangements in place. No, to the best of my knowledge, there is not a national database.

Mr DUTTON—Do you have a good relationship with each of the states?

Ms McMahon—Yes, but one has to work hard to get them to share information. I can understand that in this day and age of privacy. It would help if we had the doors opened a bit more.

Mr DUTTON—Do you mean to a national database, if it were available?

Ms McMahon—Yes.

Mr DUTTON—Do you think that would have the outcome of reducing some of these exaggerated claims, for argument's sake?

Ms McMahon—Yes. I will be as bold to say that we should also include New Zealand, because we are very close to New Zealand.

Mr DUTTON—That is a good point.

Ms McMahon—We have had a number of claimants claiming in New Zealand and claiming here, and we have become aware of it.

CHAIR—These cases of people going back to work and neglecting or forgetting to advise are not strictly fraud. What would you term them?

Ms McMahon—These 10 here really are fraud because the people have been working for a long period of time and collecting workers compensation benefits as well. As I said, a lot of them have been getting social security benefits. We have others that fall into a different category where maybe they have not advised us and they have been back at work only a few weeks. We have other arrangements that are softer. We enter into an agreement whereby they pay back the money as a debt. Definitely these ones here are very blatant. Some of these people have been double dipping for a year or two.

CHAIR—It is not really fraud. What is it?

Ms McMahon—I do not know.

CHAIR—You do not have a word in the office for it?

Ms McMahon—No. We call it fraud.

Mr Goldsbrough— It is certainly an offence under the WorkCover act.

Ms McMahon—That is why we call it fraud.

CHAIR—What percentage of return-to-work cases would fall into that category—forgetting the 10 that really are guilty of intent to defraud, but those who for whatever reason have simply not advised you? What percentage of the overall claims are they?

Ms McMahon—It would be a very low percentage. Of the ones that we have detected—there may be others that we have not detected—it would not be much more than one per cent.

CHAIR—Your figures are very comprehensive, which is very helpful. In the financial year ending June 2002 you recovered $1.5 million in additional premiums. These were employers who had not paid their premiums.

Mr Lawson—They had not paid their premium, had underdeclared the wages that they paid to workers or had made an error in deciding whether a person was a worker or not. A number of people contract with companies to do work and sometimes it is difficult to determine whether they fall into the definition of worker or not. We normally go out and do a compliance audit with employers and look at that sort of information.

CHAIR—What percentage of them were misunderstandings, lack of knowledge or confusion about whether somebody was a worker and what percentage were deliberate attempts to evade the premiums?

Mr Lawson—I cannot give you those figures. I do not know whether we have analysed them to that extent. My gut feeling is that a very low percentage are deliberate evasion, but there are certainly employers who take the step to try to make sure they get people who are working for them outside the definition of 'worker'. For instance, we recently came across an organisation that, because directors are specifically excluded from the definition of 'worker', forced a number of their workers to become directors of the company. We do not have at this time a provision in the act like there is in the taxation act for deliberate avoidance, but we are looking at that at the moment.

CHAIR—You said that in looking at compliance you targeted specific companies. What factors prompted you to target? Did you pick particular industries or particular profiles of companies?

Mr Lawson—We have a number of indicators of companies that we target. It might be in their wages declaration where they might put in $100,000 as a round figure. That certainly gives an indication that we need to go out and have a look at them. We have about 35,000 employers who pay what we call a minimum premium. They may have a policy in hand in case they do employ, so they may declare a $1 wages figure. We pay a visit to a random selection of those 35,000. Our main source is with our data matching. We data match with other organisations and the Australian Taxation Office. We have recently identified about 4,000 organisations that have indicated to the ATO that they are employing, but we do not have a record of them within WorkCover. So we are able to individually target those organisations.

Mr WILKIE—What is that figure again?

Mr Lawson—We have identified about 4,000 at this stage.

CHAIR—Was that the number of companies that you looked at in that particular compliance activity?

Mr Lawson—Yes. The actual number of companies identified by data matching was 4,336.

CHAIR—You also indicate that that is not considered to be reflective of the level of noncompliance across the scheme. Do you think that it is higher? Because of your targeting, do you particularly pick those that were fairly high risk for avoiding premiums?

Mr Lawson—No. These are mainly small employers or potentially small employers. At this point we have done 4,300-odd. We have written to 1,000 of them in the last couple of weeks. We did an initial target of, I think, 40, and we found that about 10 per cent of those people needed policies. They might indicate that they are employers to the Australian Taxation Office, but they may be directors of a company, for instance, or they may be out of business since that indication. It is a matching of the Australian business number. When they lodge that number with the Australian Business Register, they have to indicate whether they are employing. So it is a very good data matching process. I think that we are the only state that does that at this stage, but I know that the others are looking at it.

CHAIR—We have been given a list of your benefits, but could you briefly run through them for us? What benefits can injured or ill workers expect? I know that it is a big ask.

Mr Goldsbrough—I do not have those in front of me. You would be aware from the comparative performance monitoring document that they are benchmarked in Australia. Basically, workers are entitled to, I think, 85 per cent of their preinjury earnings. They are also entitled to rehabilitation.

CHAIR—What period of time is that for? Is there a cut-off on that?

Mr Goldsbrough—That is for 26 weeks, then it drops down to 60 per cent.

CHAIR—Then there is a period of time of 104 weeks to five years, regarding workers with WRI. What is WRI?

Mr Goldsbrough—It is 'work related injury'.

CHAIR—From 104 weeks to five years, less than 15 per cent of workers with a work related injury get a social security pension. Is that correct?

Mr Goldsbrough—I am not sure if Social Security pay them.

CHAIR—It says that it is equal to the social security pension. Would that be correct?

Ms McMahon—If we have a long-term claimant, yes, we would pay that. In practice, I really do not have any cases that are that length in time, because of the common law provisions which exist within our scheme. What tends to happen is that a person reaches a level of medical certainty in respect of being stable and stationary. They may not be as they were pre-injury but, unfortunately, they are not going to get any better. What tends to happen, so the person can move on with their life, is that their claim is escalated through their lawyer and goes through the common law arena.

CHAIR—So they get perhaps a lump sump.

Ms McMahon—Correct.

Mr Goldsbrough—Then they are out of the scheme, so to speak.

Ms McMahon—Which is different to some of the other schemes interstate.

CHAIR—Is there follow-up on that? What is the outcome? I am asking too many questions at once—I guess my first question is what percentage of your claimants end up seeking that lump sum outcome.

Ms McMahon—In common law? I think it is probably about—

Mr Lawson—Three per cent.

Ms McMahon—Yes. I was going to say three per cent to five per cent of all claims.

Mr Goldsbrough—One of the things that the Queensland government has just done is introduce amendments into parliament that allow for structured settlements so that, where there is agreement, an annuity can be purchased for a person who receives a common law payout. This will give them some certainty of income over the long term, which we hope would be used in cases where people have significant injuries that are not going to improve and their ability to work may be significantly restricted.

CHAIR—Are they compelled to take an annuity?

Mr Goldsbrough—No, it is done by agreement. The difficulty at the moment is that, under the federal tax laws, there is no capacity for that to be treated in the same way as I understand other sorts of payouts are—in terms of public liability and so on. So people do have to pay tax in that instance.

CHAIR—I thought we had a bill go through to change that.

Mr HARTSUYKER—Certainly for public liability, it has gone through—

Mr Goldsbrough—It did not include workers compensation. Unfortunately, at the moment there is a situation where there is no real incentive for workers to take this option.

CHAIR—That is a valid point. Regarding your rehabilitation and return-to-work programs, what is the discontinuance rate in Queensland—that is, the number of closed claims in a period?

Ms McMahon—Sorry, I just need to understand the question. What did you mean by 'the number of closed claims'? Did you mean how many people go through rehabilitation?

CHAIR—Yes, and how many are closed—in other words, they have gone back to work or they have no more attachment to the scheme, because their benefits and their medical rehabilitation entitlements have ceased?

Ms McMahon—It is an ongoing continuum. To answer the first question, of our 73,000 claims, approximately 33 per cent find their way into case management. These are our more serious claims and, as a direct consequence of that, are assigned to a case manager and will undergo rehabilitation. We have the usual thing where we have some outsourced providers who may provide some assistance, but, over and above that, we establish very early on in the piece whether the person faces a possibility of job loss. That is particularly important with your smaller to medium sized employer. So our case managers have regular dialogue not only with the injured worker and their treating doctors but also the employer.

If there is a potential for this job loss or, conversely, the injured worker—because of the nature of their injuries—cannot return to that place of employment on suitable duties because they do not have anything suitable for them, we have a host employment program. It is relatively recent; we have only been running with the program over the last four months. We now have over 1,100 host employers in the state, but it is only early days. In respect of September, I have about 347 workers whom we have identified for participation in the program. Of that, a smaller number was for work-hardening purposes and the other was for a jobs in jeopardy program.

What we are endeavouring to do at all costs is to return the injured worker to the place of employment. If that is not possible, we are using the host employment program for two reasons. One is to get work hardening so that the person can return to their original employer, and the other is, if unfortunately they cannot for whatever reason return to the original employer, to use this host employment program. We have had 10 people so far—as I said, it has only been going for four months—who have gone through the whole program and have been offered a job with their host employer. So it is very much a holistic approach which we are trying to insert in respect of rehab. So it is not just the medical component, it is very much the work component, physio and all those sorts of things. Your other question was to do with the closure rate. Is that right?

CHAIR—You mentioned that people who go through common law would be about three to five per cent. On your statutory claims, you are looking at about 4,200 people per year from the percentages you have given me. Is that correct?

Ms McMahon—Yes.

CHAIR—Once they receive their lump sum payout, your involvement with them would cease.

Ms McMahon—Correct. But we have a gap between when the statutory claim ceases and when the common law claim is physically finalised, so within the common law arena there are also some people—they are called rehabilitation advisers, I think—and they look at assisting the injured worker through their lawyer with maybe some retraining. Of course, they are not able to do this with all claimants for a number of reasons; however, we are finding that that is actually helping people so that there is life after the lump sum—which is the question that you are really asking, I think.

CHAIR—Do you know how many of those people, after they get the lump sum, would be forced onto social security benefits eventually?

Ms McMahon—I do not know, I am sorry. I really could not hazard a guess. After the completion of that common law claim, the organisation really does not have contact with the individuals.

CHAIR—You have no idea or feeling about what it might be?

Ms McMahon—No, I would not like to hazard a guess. Sorry.

CHAIR—That is all right. Looking at your results, in the construction industry—this is just in 2000-01—you have similar results for those who have compensatable injuries resulting in a week or more off work, and yet it drops down substantially for 12 weeks or more. It is likewise in health and community services, so it is across a number of sectors. It has varied a bit for construction in the last year. Why is it that generally Queensland matches states like Victoria, but in terms of longer periods of time for compensatable injuries, it is much less. What factor feeds in there?

Mr Goldsbrough—What page are you referring to?

CHAIR—It is page 36, paragraph 6.2.3. Our pages may not be the same as yours. It is figures 4 and 5. This is our federal department's submission, so it may not be the same.

Mr Goldsbrough—I have not seen that data.

CHAIR—It shows that for short-term periods of time for compensatable injuries Queensland is pretty much the same as the other states—certainly less than New South Wales and Western Australia—but when you look at periods greater than 12 weeks, Queensland is substantially less. What do you think you do which gives you such a good result in comparison with the other states?

Mr Goldsbrough—I would be speaking off gut feel there. The system is designed so that workers and employers still maintain contact and so on. But I really could not say. The concept of the rehabilitation coordinator may have impact there. When companies have over 30 employees, they have someone in the workplace that has a relationship with those workers and who would follow through. That may be a factor, but that is purely a gut feeling.

CHAIR—You think the rehabilitation coordinator may contribute to that?

Mr Goldsbrough—That is one of the differences between us and the other states. Again, I have not had time to look at that data and analyse it. That is probably the only thing that is really atypical in our scheme.

Ms McMahon—We are in the process of finalising a new initiative. We have some industry based rehabilitation models. We have involved the respective unions and employer associations and some of the larger employers in Queensland. There is an industry based rehab model for building and construction which was agreed to late last week. We also have one for health. The last one, which should be finalised next week, is for mining. We will be having a collective approach involving the union movement, the employers, the injured workers and ourselves to do even better with respect to return to work.

CHAIR—Your premiums are 1.55 per cent, which is the lowest in Australia, yet the results appear to be very sound. What advice would you give the other states?

Mr Lawson—We try to get the balance between benefits to injured workers and the premium employers pay as fair as we can. It is a combination of our benefit structure and getting employers to pay their fair share. Our experience based rating system contributes to that, but they have that in New South Wales and Victoria as well. A very definite advantage that Queensland has is that we do it all within WorkCover. It is a centralised system. Because of the vast area of the state—we cover the whole state starting from Cairns right down—we have 14 suboffices that look after the injured worker, and in 10 of those we have direct contact with employers in the area. Coming from commerce myself and being very much a free enterprise person, before I got into the Queensland WorkCover system I would have said that that was not the right way to go. I believe very firmly now that it is our main advantage over the other states.

Mr Goldsbrough—The WorkCover scheme allows for consistency and surety in services throughout the state. As you would be aware, we have people over a stretch of 2,000 kilometres. Having WorkCover offices and skilled staff throughout the state is a real advantage in ensuring that there are both return-to-work options and systems in place to support people, including the necessary staff to operate in every environment.

Mr HARTSUYKER—In relation to common law claims, the benefits taper fairly quickly with time. Does the common law claim that is struck tend to reflect an annuity more in keeping with the benefits payable under the scheme or does it reflect an annuity which reflects the worker's full earning capacity plus pain and suffering and those types of things?

Ms McMahon—You are right. Future economic loss and future medical care are two of the basic principles.

Mr HARTSUYKER—Thank you.

CHAIR—New South Wales has a new system whereby virtually every claim is accepted.

Ms McMahon—Yes.

CHAIR—With the knowledge that you have and the way in which your scheme works, do you think that that scheme would enable them to emulate the results that you have had?

Ms McMahon—Since being in this position at WorkCover, I have found that you have to be careful. Sometimes you may make a change, you work out the mathematics and you think that it will have an effect of X dollars on the scheme, but I have learned from talking to the actuary that sometimes custom and practice drive those costs up quite dramatically. I suppose I am trying to share with you my own opinion, not necessarily that of the government or the department.

CHAIR—That is what we want to hear.

Ms McMahon—But I have a concern that that might drive claimant behaviour and you may find that you have a lot more claims and a lot more non-legitimate claims. Once you have non-legitimate claims in the system, it is very hard to establish the appropriate proofs to finalise those claims. That is my concern.

CHAIR—Thank you.

Mr WILKIE—I want to first touch on contract workers. With contract workers and labour hire companies, I imagine that the premium for compensation is paid by the labour hire company to WorkCover?

Mr Lawson—In most circumstances, yes.

Mr WILKIE—I imagine they would also have a very high turnover of workers.

Mr Lawson—Yes.

Mr WILKIE—How do you regulate that so that you know exactly how many they have and that they are paying the right amount?

Mr Lawson—We have not done any compliance work as such on labour hire companies at this stage, although that is part of our program. There are a couple of reasons for that. It is an enormous task. They may employ thousands of people in all sorts of different categories. We have in Queensland, as in other states, what we call a worker identification code or WIC. That particular code governs to a certain extent the rate that companies pay. Labour hire companies can have in excess of 400 different WICs. It is very difficult for us to go in and audit that. If we were to do one of the larger labour hire companies, I would say it would be probably a year's work for one person. So, at this stage, we take their declarations on face value.

Mr WILKIE—That is interesting. I note that a lot of industries are going into that use of labour now. It is going to be a problem in the future until it is addressed.

Mr Lawson—It is going to be a problem; there is no doubt of that.

Mr WILKIE—The other issue I would like to touch on might not be your area. I imagine Queensland has a fund to cover people who are not covered by workers compensation when they are injured and when the employer should have compensation but does not. Do you have any idea of what sorts of claims are made, in dollar figures, to that fund?

Mr Lawson—I do not have those figures in front of me. The worker is covered whether the employers pay the premium or not, so that is one very strong distinction that we have. I think there are around 36 employers that we are currently taking legal action against because a worker has been injured and we have identified that the employer has not had a policy. They are the employers that we prosecute, and we take them right through.

Mr WILKIE—So there are 36 of them, but you are not sure of the sums involved at the moment. Would it be possible for you to take that on notice?

Mr Lawson—I think about $2 million is involved in that. It is a long process because you have to take it all the way through the legal system.

Mr WILKIE—I had a number of other questions but they are really summed up in the submission put in to us by the National Meat Association. They have been quite scathing in their attack on WorkCover. I am not sure if you have seen their submission. There probably is not time to go through all the issues that they have raised. If you could, I would like you to take it away and address those issues that they have raised in relation to WorkCover and put in a written response so that we can consider your version of events as opposed to the version of events that they have given us. One of the things that they have claimed happens is that often employers will make a complaint to WorkCover and WorkCover will not follow up those complaints. Has that been your experience?

Ms McMahon—No. The meat industry, probably more than any other industry, is very zealous in defending claims and asserting they are not legitimate. There are a few particular meatworks where we have put in place special arrangements, particularly one which I will not name. We sent an area service officer out there, and for the last two or three years they have been picking up any claims and talking to the owners of the meatworks every week. I have another meatworks in another geographical location where compliance is a big issue when claims are physically lodged. Again, I actually have one of my compliance people who personally gets involved in those claims when they come in because we find that they have a tendency to want us to place the majority of people who claim under surveillance. But, of course, that is not our policy, because we need to have grounds. It is very important to us that we have appropriate grounds, so often we are involved in dialogue with them to explain our position. In every case that I am aware of they have accepted our position. It is interesting. But I think we have heard similar things before, have we not, Paul?

Mr Goldsbrough—I think the premium rate in the meat industry is very high because of the risk factor in that industry. We have found within the industry that, for those employers who initially paid very high premiums and then addressed their workplace health and safety issues, their premiums reduced substantially. Those that have not addressed those issues properly are still paying high premiums. Some of them in fact are paying premiums well below what they should be paying under the experience based rating system because their premiums are capped. I will be interested to read the submission.

Mr WILKIE—It is interesting that you make that observation that, where they have introduced good workplace occ health and safety procedures generally, the number of claims have fallen and their premiums have fallen accordingly.

Mr Goldsbrough—Yes.

Mr WILKIE—It is interesting because I do not think they provided us with that evidence when they came before the committee. I realise time is running out here, but there are a lot of issues they have raised and we are very interested in getting your response to those. The secretariat will organise a copy for you. Thank you very much.

Mr BEVIS—I would like to reinforce what Mr Wilkie said. I would like to have the next hour to talk to you about the issues they raised; we do not have the time. But I would very much appreciate your response to the range of, in some cases, general comment about the legislation and their view of bias in the legislation and in the operations of WorkCover and, in other cases, specific examples they raise, such as the estimate of 550 fraudulent claims in their industry in the last five years that you guys have ignored. If you could look at that and tell us later what your thoughts on it are, that would probably save us time which we are fast running out of at the moment. But there are a couple of other matters I would like to raise. Did I hear you correctly before, Mr Lawson, that cash flow problems of employers are taken into account in you exercising your discretion as to whether or not penalties and prosecutions follow from breaches by employers?

Mr Lawson—We certainly are happy to talk to any employers who are having cash flow problems. We have a system whereby they can pay their premium off over a period of time.

Mr BEVIS—I know that the tax office operates a system where they will allow people to pay things off over time. What I am getting to is whether someone is prosecuted, a penalty is applied or the extent of the penalty is somehow reduced in favour of the employer if they happen to have had cash flow problems. I may have misunderstood what you said before but I just want to be clear in my mind about that.

Mr Lawson—I do not think that it is necessarily reduced because they have cash flow problems. We try to look at every circumstance in isolation and we will apply the penalties if we feel there has been a deliberate attempt to avoid payment of the premium. In other circumstances we may waive the premium. Unless it is a very substantial amount, it is often at the discretion of the underwriter.

Mr BEVIS—Does the same application of that discretion apply to workers when you are considering whether they have made a wrongful claim or omitted to advise of new employment or income?

Ms McMahon—Yes. That is what I was alluding to before, and where we enter into an agreement of repayment.

Mr BEVIS—One issue that has not been raised here but has been raised in other evidence is the problem of interstate workers—that is, people who move across jurisdictions. What can you tell us about that from your point of view? There does seem to be a hole in the net as you look around the country where some workers can actually fall through.

Mr Goldsbrough—On 7 November the Queensland government introduced into parliament a cross-border agreement that has been put in place with Victoria and New South Wales. New South Wales, I understand, introduced the legislation into their parliament on 14 November. Victoria is currently in an election period so it is not in a position to do so. If you like, I can quickly take you through the central tenets of that agreement. It reads:

- To eliminate the need for employers to obtain workers' compensation coverage for a worker or deemed worker in more than one jurisdiction and enable employers to readily determine the state in which to obtain that insurance ...

What we have endeavoured to do, particularly in areas around the Gold Coast, is have it so that employers are not required to have two workers compensation policies. The agreement further reads:

- To ensure that workers and deemed workers temporarily working in another jurisdiction only have access to the workers' compensation entitlements available in their "home" jurisdiction (including arrangements applying in relation to common law) ...

For example, I know it is, but if common law was not available in New South Wales and the worker was from New South Wales and working in Queensland, they would not be entitled. The agreement further reads:

- To ensure that each worker is connected to one jurisdiction or another.

It tends to overcome the problems you are raising there of making sure that workers are covered as they move around the country. As an increasing number of workers are moving around, we have quite a series of tests to determine that. I am happy to leave a copy of that with the secretariat.

Mr BEVIS—Yes, I would appreciate that. I was going to ask what the residency or other tests were to decide where people go so, if you have got that, that would be good. That is all I have. I look forward to your thoughts on the meat industry employers' comments.

Mr DUTTON—I would like to ask a question in relation to self-insurers. We took some evidence in Perth recently detailing the experience of a major national retailer and the fact that they had run a fairly efficient scheme as a self-insurer. Can I get your broad views on the direction of self-insurance and whether or not it is a model that does work effectively?

Mr WILKIE—It is probably worth pointing out that they were operating here at one stage even though the evidence was taken in Perth.

Mr Lawson—That is self-insurers in Queensland, as well?

Mr DUTTON—Yes—this particular corporation we spoke with.

Mr Goldsbrough—We recognise self-insurance. There are approximately 24 self-insurers currently operating under the Queensland scheme. I think it is fair to say that the government wanted to ensure that it was really the best performers that were operating in self-insurance and that those businesses have the capacity to manage their workers compensation. As a result, they have put it so that to enter into self-insurance you need a minimum of 2,000 employees and you have to meet certain occupational health and safety requirements.

Mr DUTTON—Do you think there is an argument there to lower that criteria?

Mr Goldsbrough—That is not a question for me; that is really one for the elected politicians.

Mr DUTTON—But as a matter of good public policy, though, if you take out the politics—I am not asking for a political answer—

Mr Goldsbrough—My understanding is that the government, when it put in the minimum of 2,000 employees, wanted to ensure that it really was the larger companies with the necessary

infrastructure and systems to operate it properly. That was the reasoning, as I understand it, behind its decision for that 2,000 figure.

Mr DUTTON—But would you say the experience to this point in time has been successful?

Mr Goldsbrough—The experience, in terms of Queensland and offering it to large employers, appears to be so.

Mr DUTTON—Is the cost a lot less to those 24 than if they had operated under, say, your scheme?

Mr Goldsbrough—That is something I would have to come back to you on. I do not have that information here.

Mr DUTTON—If you could, that would be good.

Mr Goldsbrough—Yes.

Mr DUTTON—Mr Lawson, did you have any comments to add? You are an advocate of good, free enterprise.

Mr Lawson—I think the costs would have to be very closely aligned. We have had a number of self-insurers this year make inquiries to come back into the scheme. The very large organisations obviously think they can run it better than us, or at least as well as us.

Mr DUTTON—That is certainly the evidence we took: that their cost base was significantly reduced compared to if they have been operating under the WorkCover Queensland scheme. It was interesting to hear that.

Mr Lawson—I think, for a large employer, that is probably a fair argument.

Mr DUTTON—They also said that their claim rates were way down. As I say, it was very interesting evidence.

CHAIR—Of that three per cent that raise a flag, presumably a doctor has signed their certificate.

Ms McMahon—Do you mean the three per cent rejection rate?

CHAIR—Yes. Presumably a doctor has signed their certificate.

Ms McMahon—A medical certificate, yes; because they do have a medical injury.

CHAIR—In other areas we have visited, there has been concern expressed about the role of medical practitioners—not all medical practitioners. The concern is that there is a relationship between the doctor and the patient whereby the doctor naturally takes what the patient says as the true situation. There is a certain amount of trust and obligation. It is very difficult for a doctor to disbelieve or question what the patient says, and that is quite understandable in many

ways. It has been suggested that having medical assessment panels or having accredited doctors in areas rather than just having your own GP are possible solutions to that. How do you see that? Is there any merit in it?

Ms McMahon—In our current system, the injured workers like to deal with their own doctor. We do not tend to find it a difficulty, in respect of the question which you raised. Sure, they are advocates for their patients. I have on staff a little medical unit and a qualified doctor, so if we have difficulties with a treating doctor then my doctor will make arrangements to chat about that claim. He is involved in complaints resolution on my behalf. We have a lot of telephone contact with the doctors. Because of the infrastructure within Queensland—with all of our different offices—our doctor visits those respective geographic locations. Of course, it is much easier in the rural towns to try to develop relationships with the doctors.

One of the things we are doing at the moment—and it is in the formative stage—is looking across the state to see, in respect of GPs and specialists, whose services we use the most. We can then examine what we are actually getting in those services and develop good relationships with them through our regulator, Q-COMP. They have a GP education program that we have participated in. We are actually the insurer overlapping that program. We feel it is important for our case managers to talk to doctors and develop that face-to-face relationship. We are very excited about this and have made some inroads in the last 12 months. We have found that it becomes a lot easier to talk about difficulties when we actually reach them if we already have a relationship. The same applies too when we talk about physiological injuries, as we mentioned before. Case conferencing with the doctor up front is part of our overall strategy. From our perspective, what we have in place at the moment works quite well because we endeavour to develop the relationship with doctors.

CHAIR—Do you have some further details on that medical unit within your department and on how it works?

Ms McMahon—You mean in terms of structure?

CHAIR—Yes. Would you mind making those available to our secretary?

Ms McMahon—Of course. Are you interested in their duties—what they do?

CHAIR—Yes. They cover the whole state, don't they?

Ms McMahon—Yes.

CHAIR—Thank you. You have been most helpful.

[10.50 a.m.]

GREEN, Mrs Leonie, Managing Director, MAXNetwork Pty Ltd

STOKES, Mr Paul, National Manager, Rehabilitation Services, MAXNetwork Pty Ltd

CHAIR—The proceedings here today are formal proceedings of the parliament and warrant the same respect as proceedings of the House. In providing your evidence today, we ask that you do not name individuals or companies or provide information that would identify individuals or companies adversely. The committee is interested in the broader principles relating to its terms of reference and any advice and information you can raise with regard to 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 a private sitting of the committee and make such a request, we would be happy to consider it. I invite each of you to make some preliminary remarks and then we will move to questions.

Mrs Green—We will follow the lead set by the state representatives and keep our opening remarks fairly short so we have more time to answer your specific questions. Our organisation now operates over many sites around Australia, 29 of those being in Victoria and another 29 being in Queensland. Our head office is in Queensland—I support the Queensland theme. We offer a continuum of rehabilitative client services from acute to immediately post injury. Because it is across a long continuum we have a great deal of experience and expertise in the area of employment services and in addressing the sorts of issues which you raised in the previous session with the sorts of clients who have been through a state based workers compensation system and end up on welfare programs funded by the Commonwealth. We work for WorkCover and provide services to the state based agency, and we have great positive relationships with everyone. We are in the unique position of seeing the complete continuum and the clients' involvement.

Mr BEVIS—To what extent is your organisation involved in rehab issues?

Mrs Green—The largest part of our practical day-to-day business is for Commonwealth employment programs. Paul's area of expertise is in the health area. We provide acute physiotherapy, psychology services, occupational therapy, massage therapy and fitness training. We provide those to public fee-paying private patients, people under the WorkCover system and to the Department of Veterans' Affairs et cetera. We do return-to-work programs and assessment of the capacity to return to work. In that capacity we serve as a subcontractor to WorkCover. We are also probably one of the larger providers, particularly in Queensland, of medico legal assessments for determining people's work capacity and making recommendations about their rehabilitation, as well as delivering them. We started out doing more of the assessment operations some years ago but have moved into the provision of acute things more recently. Does that answer your question?

Mr BEVIS—Yes, it does. I was interested in your thoughts on rehabilitation. I was not sure of your involvement at first but, given your answer, I am interested in your thoughts on the rehabilitation system and how we can better get injured workers back into their former

employment, which I am sure would be the most desirable outcome for them and probably their former employer, or, if the injury is such that that is not an option, seek to have them engaged profitably.

Mrs Green—My viewpoint has come from the experience of working at both ends of that. We were thinking we needed a more appropriate term than front end and rear end. The process of returning injured workers to their existing employer is being well addressed by the relevant state bodies. They have particular expertise and skills in the more medical model assessment and treatment and they have some good processes, which we have heard about this morning. I think that works well. In our employment services operation I see when that has not been effective, and my real passion lies in whether there are people who fall through the cracks who take lump sums—and I think the chair raised her interest in questions about what happens to them and what do workers comp know.

My experience would be, anecdotally, that they do not know very well what happens to them after that, but we see them in our other streams of business. I mentioned in my paper committing fraud by legal definitions but I was thinking, in response to the chair's question, that it is more maladaptive fraud. They are coping as best they can in their circumstances but it is apparent that the system is not quite matching their needs, so they do other things to cope, without deliberate fraud as their objective.

So I think they do it well up front. What happens is that they fall into the gaps. Having been in the industry for several years, my experience is that it is not the same person who is accountable for the management of that front end claim as has to deal with Senate estimates questions about the cost of unemployment. There is not that link. They work in a fairly repetitive loop. People are injured, they go through to that lump sum payment and then the emphasis of the insurance company goes back to the new client, and it becomes a federal responsibility for those other people. I do not know that insurers have demonstrated a good insight into that, other than we had recent discussions with Allianz in Sydney and the changes in the New South Wales legislation about how they do not exit their books at a period of time and how that has made a difference to how people like Allianz are looking at that.

The short answer is I think they do it really well up front, and my interest and participation in this program is about seeing if there is not a better way they can match the skills that the Commonwealth government have developed.

Mr BEVIS—Other people have suggested to us that there are links between the rehabilitation providers and, I guess if we extend it, those who might assist after rehabilitation with job training and placement. There are links between those providers and the insurers in the industry, and it has been suggested to us—and I have not had a chance to check the details—that there are ownership arrangements in some cases in some states where insurance companies actually own rehab providers. That produces a conflict of interest or, at the least, a perception of a conflict of interest. I have no idea what the circumstance of your organisation is.

Mrs Green—We are not owned by an insurance company.

Mr BEVIS—What are your thoughts about that observation that others have put to us?

Mrs Green—We are certainly aware that there are companies like Allianz, whom we have recently had discussions with, who have their own rehabilitation arm. There are varying degrees of effectiveness and relationships within companies. They were carefully comparing their success rate for in-house services and outsourced services. So there is a range of effectiveness and conflict of interest issues, and there would be internal policies about the bean counters and about how they run their services. Insurance companies are getting wiser about looking at whether they really make a difference to the bottom line and to the impact on the client.

Mr Stokes—I think in principle a close relationship between all the key stakeholders—the relative rehabilitation provider, the insurers and the employer—is a positive thing, but I do agree that those conflict of interest issues would need to be addressed. I cannot comment on whether they can be addressed or not, because it is an internal policy thing. It is a possibility and the internal policies of those companies would need to be looked at. Overall, I think the closer relationship between each of the stakeholders is very important. I can see some positive of that sort of relationship. If it were not an in house relationship that close relationship with the insurance case managers et cetera would need to be developed and nurtured with a provider anyway.

Mr BEVIS—You can see potential benefits in having a system where you can streamline things. There is the issue of who they are working for at that point in time, but one suggestion put to us was that if you have vertical integration in the system then you can manipulate the market. I am referring to vertical integration in a system where there is a legislative market, which is guaranteed and where there is no flexibility in the demand for the product. You can manipulate the price points in that part of the system where you have vertical integration. You can inflate the costs that inflate the premiums and that increases the profit margin for the entity that has the vertical control. It means that employers end up paying more than they otherwise might have. I have not had an opportunity to look at it, but in evidence it was a point raised with us by someone and you are one of the few people that has come before us who is at arm's length from the direct activity. I am interested in your assessment.

Mrs Green—I think that our recent discussions with Allianz have contributed to them being quite committed to delivering the best services for the injured worker. They have considerable fear of retribution from WorkCover on their performance. Correct me if you disagree, but we got the message that they were committed to providing the best service for their injured worker and consequently reducing the costs. This way they would get a better report card from WorkCover. However it may be structured, my simple understanding of it is that it was worked for the right objectives and I have not seen evidence of what you mentioned. Over many years there has probably been some sense of the potential—or the perceived potential, as you said—for there to be a conflict where they provide certain services. If the overarching insurer has a commitment and a responsibility to answer to people like WorkCover, then I think that that will take precedence.

Mr BEVIS—Thank you.

CHAIR—Mrs Green, we spoke about gut feel before as being something that you probably cannot quantify. What sort of mentality is out there amongst the claimants who see a cash cow in these lump sum payments and in the fact that they could end up with a disability pension for the rest of their life? How attractive is that to some people and how does it motivate them? What proportion of people might have that negative influence upon them?

Mrs Green—I think that it is a large number. I will talk about it in terms of maladaptive fraud, which is my own expression. One of the areas that the state based insurers are not as skilled in is helping people to see other options. It becomes a fall back position and people are motivated by the safety aspect that causes them not to re-engage in employment. If they cannot go back to their original employer then they do not work at all because they are scared of being reinjured. They have issues of self-esteem and self-efficacy. They do not have access to other options until they get into a federal system. Sometimes it is years later and after they have adopted indoctrinated negative behaviours that other options become apparent. They are very strongly motivated by the lump sum and, in particular, by the absence of an alternative. They ask: how can I improve my circumstances?

We see people all the time who cannot return to their work, for instance, as a concreter because they have back pain when they do that work. They are symptom free, but they are of the mindset that they cannot work. Work being all-important, they think that: because I cannot work as a concreter I cannot do any work. We have been—and I think that the federal government programs have been—of great benefit to these people by telling them that they can do something else. It is only when this positive input is introduced that you start to detract from the appeal of the lump sum payment. DSP is not so motivating.

Mr DUTTON—They might see it as an income supplement, though, to their investment, the lump sum payout, do you think?

Mrs Green—We, as a member of APLA, see a range of legal professionals and some of these are very insightful and realise that it is in the best interests of their clients and their business to help people achieve positive outcomes. Some others would be encouraging of a more passive approach by telling people not to get rehabilitated immediately but to wait until the lump sum is received.

Mr DUTTON—You and other witnesses have raised today the necessity of re-engaging these people in some form of work as soon as possible. What impediments to that exist? What impediments would come between the relationship between employee and employer? What deterrents do they have? What role do unions play there?

Mrs Green—I think there are often very successful returns to work where the WorkCover system works and people get back to their original job. I am not sure that the state systems have been successful where the employee is not able to go back to their original job. It involves a different set of skills, as I explained in the paper. The people who do the immediate return-to-work programs are very medically and ergonomically orientated and do those things exceptionally well. A different set of professional skills are needed to help people change their mindset from focusing on the lump sum to seeing that it is in their long-term benefit to get another option. I do not see it as a real issue with the employer because most times that is addressed by WorkCover. I think the issue is getting people to consider other options when returning to their original job is not an option because of the discrepancy between their physical abilities now and what they used to do.

Mr DUTTON—You gave the example of a concreter who was not able to go back to work because of a bad back but may have had some introduction to another industry.

Mrs Green—They often have not had that, and that is the impediment—they cannot think outside of what they have done for the last 10, 15 or 20 years.

Mr DUTTON—Do you see that culture changing?

Mrs Green—Not in the way that the WorkCover system has operated until now. I guess with the changing legislation, for example, in New South Wales, where insurers have to start considering, 'What are we going to do with these people? It is not good enough to just pay them out and forget about them; they remain on our books,' may change the culture.

CHAIR—Is it correct that you generally see people who have gone through the lump sum payout?

Mrs Green—We see people right across the spectrum. We see people in our rehabilitative services, in acute treatment phase, in that 39 weeks of workers compensation management—

CHAIR—Are they referred to you by WorkCover?

Mrs Green—Yes. We see them when they are referred to us by their solicitors for assessment for legal purposes. We conduct an objective assessment of their work capacity and advise on their potential and any rehabilitative needs that they have. Our other area of work includes welfare programs. We provide services when people go on to something like the personal support program or DSP. We also provide Job Network and employment services. We have specialised in addressing those attitudinal changes and getting people to think, 'Okay, so I can't be a concreter; I can do something else.' I often feel that that is where my personal expertise has been developed. Rather than working at the front end where many of my colleagues worked when they graduated, this is working with the people who are at the end of that spectrum. We see people right across the spectrum, but a lot of our work is with the people for whom everything else has not quite worked.

CHAIR—In your submission you make the point that the person initially managing the workers compensation individual case—in other words, the case manager—is not necessarily responsible for the long-term outcomes of the inability to go back to work. How do we break that nexus? How many people are we talking about? I guess you are not the only firm in this field in Queensland?

Mrs Green—No.

CHAIR—I notice you cover most of—

Mrs Green—We are the largest private provider nationally.

CHAIR—But you do not cover Western Australia, do you?

Mr Stokes—No.

Mrs Green—It is difficult to determine because people do not come in with a classification that readily identifies them as having gone through that system. So it is not something that would be on our database with DEWR.

CHAIR—Let me ask you in a different way. The WorkCover people from Queensland who came in earlier seemed to believe that it was between three and five per cent of people who had a lump sum payout and their future could not be followed up. That equates to about 4,200 people a year.

Mrs Green—I have a greater sense that, once they get a lump sum settlement after that period of not being able to access Commonwealth benefits, they would end up back in the Commonwealth pool of welfare recipients again.

CHAIR—No, that is three to five per cent of all claims end up there. They could not really identify how many because there was no follow-up. Your feeling is that, regrettably, a lot of those people who get a lump sum payout eventually come back onto social security and a great deal of time has passed by then.

Mrs Green—The terrible negative behaviours and patterns and well adapted nonworking lifestyles have been found.

CHAIR—How do we break that nexus? What would you suggest? You are saying that people who are initially managing that worker's case are not the ones responsible ultimately for their work or career outcomes or lack of, as the case may be.

Mr Stokes—It was mentioned previously that one of the problems is there is no data. We do not know those numbers. Once they are off the workers compensation's books, that is a good outcome and we do not follow those people up. We need some way of measuring the sustainable return-to-work outcomes. It is not enough to get somebody a job; it is about how long they are in that job for. Often they might get the job but six, 12, 18 weeks later they hit the social welfare system. Perhaps a little more longitudinal monitoring of return-to-work outcomes is needed.

As Leonie mentioned earlier—perhaps it goes back to your question earlier also—in the rehab model, there are different skill sets at the front end as opposed to the back end. Earlier identification of those people, even though it might be three to five per cent, is needed. We need some way of identifying those people with flags et cetera and we need to put in place a different model of rehabilitation. The acute rehabilitation is great for those 95 per cent of people who are going to go back to their jobs, but it is that five per cent who tend to be the longer term, more difficult, more costly cases. They are the people who need to be identified and perhaps rehabilitated, if that is the word, in a different way, before those feelings of negativity et cetera are entrenched. It is important to offer them the options, the self-efficacy and the skills early on so the Job Network members or social welfare system is not picking them up, six or 12 months down the track. The intervention needs to be earlier. The interventions are right in both places. They are just timed wrong. They are not married together.

Mrs Green—They are not matched. The mindset of the workers comp system is very focused, and rightfully so, about going back to the same job and the same employer. Their ability to do alternate jobs is only at a beginning stage. The people prior to us were talking

about 10 people being successful in that. That is starting point of what we are talking about. Allianz's experience was setting up a 12-month program to address these tail end people, but they used front end staff. The results were really disappointing. In fact, one provider, who had been given an allocation of cases that needed the tail end type work that we are talking about, did literally nothing, made no claims for payment and had no intervention with the clients over a 12-month period. That really is an extreme example of front end people not knowing what to do when people cannot go back to work as concreters.

CHAIR—You referred to maladaptive fraud. We have had another submission that refers to it as 'imposed disability'. People assume that they have a disability because other factors in their life are not right.

Mrs Green—Their coping strategies are diminished. Several years ago an American rehabilitative expert said that all of the medico legal assessments he saw started out with somebody having a real injury and they then split into different percentages of those who were genuine and those who were exaggerating. Probably all claims start out with a genuine issue and it is about people's ability to adapt and cope in relation to their personality. It can also be influenced by the sorts of skills that the government provides and the opportunities so that they see alternatives.

CHAIR—They have options.

Mrs Green—They do not need to exaggerate their illness, because they are not going to be forced into a job that they cannot do. They will be given the assistance that they need. When people see that, they respond and those impediments disappear.

CHAIR—That has been very helpful.

Mr WILKIE—I am curious, because your company has had labour hire companies—how do you calculate your workers compensation payments for those?

Mrs Green—We do not have labour hire companies anymore. It was an initiative that we thought served the very disadvantaged and it got some bad media, so we stayed away. It was exactly as you said; it was paid under PICs.

Mr WILKIE—In your submission on page 3, I wanted to explore a comment that you made where you said that sometimes individuals participate in what you call 'fraudulent activities' by 'supplementing their income with cash in hand work'. Why would they do that?

Mrs Green—This is anecdotal, but the sorts of typical scenarios that we see are people who have been working in a position where they have access to considerable overtime payments, so their lifestyles are structured around their ability to earn increased amounts compared to the WorkCover payments.

Mr WILKIE—Because WorkCover only pays 85 per cent of their base salary and drops down to 60 per cent, has it been your experience that it places an enormous burden on individuals who have to pay their mortgage and other loans?

Mrs Green—I think so, in the absence of other options. I am not sure I am saying, 'Go and pay them 100 per cent and then that will encourage lots of people to see it as the option.' I think that provides a good motivational base, but what is lacking is the option for them to say, 'Instead of doing cash in hand work, let's link in with the services to see what other work I could get back to.' This could reassure them that they would not be harmed. The issue raised before was that medical practitioners can be overly cautious and protective of their patients, which keeps them out of work. I do not have an issue so much with the pay scale but with individuals seeing that there are other options.

Mr WILKIE—For example, if they were not able to do their normal work and there was not an option at that workplace for different work or part-time work until they could get back to a job they were capable of—are you saying they should be allowed to work elsewhere to supplement their income?

Mrs Green—I think they should be encouraged perhaps not to supplement their income but to return to the most suitable employment and the greatest number of hours that they can. I have not considered doing it while they are on benefits. It might be interesting to see where Queensland WorkCover get to with their host employers and whether that happens while they are still on benefits so that they do not become entrenched and do not struggle with the financial responsibilities. Our empathy is extended to the people who are in dire straits. I have had people telling me how they had to sell their children's toys and that they have lost their homes and their marriages break up. I see that, apart from the direct costs in terms of welfare payments, the failure of some of these systems to articulate very effectively has an enormous socioeconomic impact on the community in terms of hospitalisations and increased health costs. That motivates our interest in it. I do not know that the answer would be to increase the payments to relieve that pressure. I think we should offer something more constructive.

Mr BEVIS—When you come across those you describe as the few injured workers who deliberately commit fraud, do you report them?

Mrs Green—We have not had any who have come through our WorkCover system. We certainly have people who have come for medico-legal assessments who are misrepresenting. These are a really small minority who have severe psychological issues of very poor memory or cognitive difficulties. They present with really unbelievable scenarios—talk of being able to carry seven or nine bales of hay but are unable to work in a clerical position. You can see the holes, and I guess that is the expertise we bring to that assessment: being able to see if there is a valid and reliable presentation in their condition. If we spot that, we ring the referring solicitor straight away and tell them. Part of our integrity and our reputation in the medico-legal arena is about being very honest and objective about our findings.

Mr BEVIS—How many people in the last year, for example, would you have reported as being, in your view, on the face of it, guilty of fraud in the workers compensation system?

Mr Stokes—We do not comment on whether they are conducting fraud or not. We report on what is reported to us.

Mrs Green—What is measured and assessed.

Mr BEVIS—I am only going on the basis of your submission, which says you have found a few injured workers. I understand that we are not talking about large numbers but, nevertheless, we are talking about some. I am keen to know how many you have come across in the last year that you have reported?

Mr Stokes—I do not have those numbers, but I can tell you about what we have been anecdotally told. Answers to routine questions, for instance, 'What routine activities are you undertaking?' are recorded in our clinical notes and in our report to the referring party. Under the privacy legislation there is a consent given by the patient to release that information. In terms of numbers and reporting fraud, we are not actually reporting on fraud per se.

Mrs Green—We are reporting on the activities.

Mr Stokes—We are reporting what is actually told to us by the patient, and we make no comment about fraud because it is not really our place.

Mrs Green—From personal experience over five years, I might see one client per year on average who would have such problems.

Mr BEVIS—How many clients would you see?

Mrs Green—In a five-year period—and I am now not doing the clinical assessments, so I am speaking a little retrospectively—I would probably see between 300 and 500 clients for medico-legal assessments. There are others—as I was saying a little in jest—who have other issues such as psychiatric and psychological difficulties. Some of those people might not understand that what they are doing is fraud and might think it is right and, some may be very blatantly contravening the law in either working or misrepresenting their injuries.

Mr BEVIS—Are you talking about the behaviour associated with the psychological difficulty?

Mrs Green—Lack of insight and sometimes psychiatric conditions.

CHAIR—Thank you very much for appearing today. Thank you for your time; we appreciate it very much.

Mrs Green—Good luck with your work.

Proceedings suspended from 11.24 a.m. to 11.39 a.m.

CATCHPOLE, Dr Sherryl Lorraine, Medical Officer, Workers Medical Centre

KENNEDY, Ms Judith Ann, Practice Manager, Workers Medical Centre

CHAIR—I welcome witnesses from the Workers Medical Centre. Thank you very much for coming today. Are there any comments you would like to make on the capacity in which you appear?

Dr Catchpole—Some of the things I will say bear on my experience other than at the Workers Medical Centre.

CHAIR—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 not to name individuals or companies or provide information that would adversely identify individuals or companies. The committee is interested in the broader principles relating to our terms of reference and in any information you can give in relation to those. The committee is not prepared to provide parliamentary privilege for allegations about particular individuals. We prefer that all evidence be given in public, but if you would like to raise a matter in private you can request that of the committee and we will be happy to consider your request. I would now like to invite you make some preliminary comments, and then we will move to questions.

Ms Kennedy—I will go first because the submission I have put together was not handed in beforehand. There are just a few comments I would like to make. Those of you who have had a chance to read the submission will have noted that my comments are of course from the workers' point of view because I represent trade unions. I wish to talk about the problem with the conception that workers are committing fraud; in my opinion, very few workers commit fraud. My experience is drawn from 15 years working in the Workers Health Centre and from before we established that centre. I interview people who want to put in workers compensation claims, and they all believe that they have been injured at work and all expect to have their claims accepted. The problem is that a lot of them cannot understand why their claim is not accepted when their doctor has given them a certificate saying that they believe their claim has been accepted at work. They become very stressed by this. My main problems with aspects of fraud are with the legislation and with WorkCover management's history of bringing in their own medical practitioners in order to discredit claims. In my opinion workers perceive that as a kind of fraud against themselves. I have quoted a couple of examples of that in the submission. You said that personalities were not to be mentioned, but over the years—

CHAIR—I will just clarify that. What we mean by that is saying something very subjective; for instance: 'Mr X lied.'

Ms Kennedy—Yes, I thought that might be the case.

CHAIR—If you want to use a christian name to specifically name an example of a broader point you are making you are not making an adverse statement about that person, so that is perfectly acceptable.

Ms Kennedy—My specifics are those back in the eighties during the RSI epidemic. The compensation board brought in a psychiatrist to intimate that everybody who had this injury had some mental disease called conversion syndrome. Those sorts of things are not helpful in determining whether workers are genuinely injured. Also, constant changes to the legislation make it difficult—or attempt to make it difficult—for workers to have claims accepted, by changing wording backwards and forwards. It has been my experience over the years that as soon as certain kinds of claims become too many, such as those for stress, the legislation is changed so that it is difficult or impossible to make those claims succeed. Those are the main things I want to talk about.

Dr Catchpole—I work as a general practitioner in the field of occupational medicine. I have considerable experience with patients and workers compensation claims. For seven years I held the position of occupational medical officer for a Public Service employer with 3,500 staff. During that period I nearly always had about 25 open workers compensation claims each month. I think that actually represents about 100 workers compensation claims per year because you will understand that some went from one month to the next.

Since 2000, I have worked at the Workers Medical Centre. Here a large part of my work is dealing with workers compensation claims that have met with difficulties or where the union representative has said to the patient, 'You're going to meet with difficulties. Go to the experts first.' I want to address only two of the questions in your advertisement: first, the incidence and cost of fraudulent claims and, second, factors that lead to different safety records. I have no experience whatsoever in the investigation of fraud. In my work in occupational medicine I have met with only one claim that was an elaborate fraud. It involved a worker assuming two identities and opening two similar claims with two different employers at the same time. I have knowledge of only one patient who stated a false causation for a real injury at the first consultation, but the patient did not go on to submit a claim.

A significant number of patients are certain that an illness or injury is caused by work when I am uncertain as to the cause, from a medical perspective, based on what is written in the literature as to what is accepted as causation. I have often advised patients that their diagnosis is one that is not usually accepted as related to work but I have completed a certificate for them. I need you to understand that in Queensland, the workers compensation form has a section which says: 'This is the illness which the claimant states was caused by …'. In other words, the doctor is writing down a precis of what the worker is saying was the cause of the claim. The doctor is not the gatekeeper; the person who accepts the claim is the gatekeeper. That is the way it works. Trying to educate general practitioners to reject claims will not work. Telling workers compensation doctors how to educate patients as to what claims are likely to be accepted may work. But the gatekeeper role is different. The insurer makes the decision on claim acceptance. These patients have a genuine belief in their theory of causation and are therefore not attempting fraud.

There have been many instances where the employer has disputed work as the cause of injury or illness. In some cases, in my opinion, the employer is correct about this. Often in these cases, however, an employer decides that the worker is wrong about being ill and acts on that decision. I have actually intervened in a situation when an employer was about to take punitive action against a worker when the condition of that worker was terminal within a few weeks. When there is a poor relationship between employer and employee, the injured worker is reluctant to return to the workplace. There is a psychological component to all illness and, if negative, this

may impede recovery. The perception by the employer that the worker is malingering will, if communicated to the injured worker, significantly erode any remaining trust and ensure that the worker remains focused on being ill.

Making a workers compensation claim is stressful for a patient who is ill, who often is unfamiliar with bureaucracy and who is going through a time of reduced income. It is my observation that when patients perceive that they are not being treated with dignity they become resentful. Recovery and rehabilitation then become more difficult. If the illness is prolonged beyond the expectation of the employer, the situation deteriorates. It sometimes becomes my role to educate an employer about the expected length of an illness and to correct misconceptions. In situations where there are poor relations between employer and employee, recovery and rehabilitation are more difficult and more prolonged. This occurs relatively commonly with the commencement of poor relations at the start of the workers compensation claim. When poor relations exist prior to the claim there are even more difficulties, but that is a rarer circumstance. It is my observation that these situations are likely to engender perceptions in the employer that the patient is committing fraud both with the claim and with the slow recovery.

A number of patients in the above situations become stuck and no improvement occurs until prolonged legal action is completed. The likelihood that there will be significant improvement in the medical condition diminishes with time. In fact, work that has been done suggests that, if an injured worker is not rehabilitated within six months, there is a minimal chance of getting that person back to work.

Fraud by employers has also been encountered. A recent example relates to a situation in which a patient with English as a second language worked for a tiler and received a weekly cheque. When he sustained an injury, he was told he was a subcontractor and should have paid his own workers compensation or other disability insurance premium. Another situation of fraud by employers, encountered fairly commonly, is the denial of the possibility of a rehabilitation light duties program because no such duties exist. On further investigation it is discovered that such a short-term position is possible and even that such a position has been used for rehabilitation in the recent past.

I am not familiar with the calculation of a monetary cost of fraud by employer or employee. In any case, it could only be accurately calculated for proven cases. However, I am aware that in work environments where fraud occurs or an employee is alleged to have committed fraud, then the morale of everyone in that workplace is significantly diminished. This will obviously affect the conduct of the business.

A structural factor that may contribute to a worker becoming reluctant to return to work can relate to the worker's perception of the separation or non-separation of power between the employer and the insurer. It is my observation that patients who are covered by a self-insured employer and are having a bad time with recovery have great difficulty identifying a difference between the insurer's decision making and that of the employer. Very often the person who manages the rehabilitation program is also perceived to be a manager for the employer. The worker feels that natural justice is not being observed and becomes angry. The self-insurer's aim, by effective case management, is to return injured workers to the workplace and to close cases as soon as possible, thereby cutting costs. The worker may perceive active case management to be harassment from the employer. A patient making a workers compensation

claim signs an agreement with the insurer that the insurer has access to details of the medical condition. This also gives the employer the right to access this information, and this can be resented by the patient.

I will now go on to talk about some of the issues regarding factors that lead to different safety records and rehabilitation programs. Industry to industry differences in safety records and claims profiles are to be expected, and this is well known to professionals in the field. Attention is still given to reducing accidents and claims on an industry-wide basis. My previous employment was with a hospital. You can compare a whole hospital with another whole hospital, but for instances of body fluid exposure by needle stick, sharps or splash injury there are workplaces within a hospital that have a much higher incidence. I have done research in this field. The risk to a registered theatre nurse who assists in a cardio-thoracic theatre is obviously much higher than that to an administrative officer who enrols people in the casualty department. But I would expect that that administrative officer would have a higher risk than a member of the general public. The preventative issues would be focused on the areas where a professional had decided that some intervention could be exercised.

Valid comparisons can be made between companies working in the same industry. I get a bit personal here. If the Health Insurance Commission can perform a profile of billing and prescribing for my medical practice and they can do it for all medical practices, another arm of government should be able to measure a company's performance with regard to safety and claims. This may in fact form the basis for counselling of a company. It is a thought that needs exploring.

I have encountered numerous organisations providing rehabilitation programs. Professionals, mainly from the disciplines of physiotherapy, occupational therapy and psychology, have provided competent assessment and management, and I have no complaints in those areas. On occasion, in companies with more than 30 employees, the company-appointed workplace rehabilitation person who takes on this responsibility in addition to other duties is not experienced in the role and has no background in rehabilitation on which to make decisions. When this is encountered, considerable medical officer time can be taken up in the education of this person.

I will summarise by saying fraud is rare, workers who are treated with dignity get well quicker, and there is a perception of less natural justice in the decision making of self-insurers. I refer the inquiry to documentation produced by the Australasian Faculty of Occupational Medicine relating to workers compensation. There has been a recent survey by Ian Gardner, a past president of the faculty, which will be pertinent to your inquiry.

Mr BEVIS—I notice that your letterhead identifies you as a certified independent medical examiner. What is that?

Dr Catchpole—The qualification is acquired at the moment, in Australia and worldwide, from the American Board of Independent Medical Examiners, who are a subcommittee—that may not be the right term—of the American Medical Association. They run a course which costs about $3,000 to attend, and by examination that qualification can be achieved. This is the qualification that would be expected of someone who was making an assessment of percentage disability.

Mr HARTSUYKER—You raised the issue of claims being rejected by the gatekeeper. What typically in your experience has been the proportion of claims that has been rejected? Also, can you give some typical examples of those where the worker believes he has a valid claim but it has been rejected?

Dr Catchpole—An example is osteoarthritis. I need to say that there are differences between the cause of the principal injury, aggravation and exacerbation. Let us start with an example I use for patients. Two people slip in the same pool of water in the employer's workplace and they injure their knees in approximately the same way. The 17-year-old takes six weeks to recover after physiotherapy and the injury does not involve a surgical need for correction. The 50-year-old who slips in the same pool of water may well have an X-ray that shows pre-existing osteoarthritis, even though that person was not aware of that condition beforehand. However, recovery for that person is prolonged.

In Queensland, what workers compensation is inclined to do is say, a little time after the six weeks that the 17-year-old would take to recover, that this is actually an aggravation of a pre-existing injury, even though it was unknown to the worker, and therefore the aggravation has now ceased at about three months. They may accept claims up-front as an aggravation when from the initiation of the claim it is known that there is a pre-existing condition. These claims do not last as long. But often a worker will say, 'I didn't know I had osteoarthritis. I have worked in this industry for 20 years, and it is the hard work of lifting in this industry that has caused it to begin with.' That is the sort of claim that is often debated. Educating the patient as to what WorkCover is likely to do will give them an idea of how much effort they are going to put into being angry about all of this.

The other situation where this happens is with stress claims. People make stress claims, and in Queensland the determination time for acceptance or rejection of that type of claim is up to three months and often longer. WorkCover tries to get all its claims decided within three months but these claims have increased in volume and complexity as well. The investigation of a claim requires the person to go and see an investigating psychologist, as opposed to a treating psychologist, and an investigating psychiatrist. There is often a delay in getting in there. The investigating psychologist investigates the workplace by interview as well, and then prepares the report before the psychiatrist makes a decision. There needs to be a decision that the person has actually got an illness. Though the GP can write stress as the illness at the beginning, there has to be an identifiable psychiatrist illness under the International Classification of Disease framework, so claims are sometimes rejected in that there is a personality difficulty, there is not an illness. The causation has to be work; no other factor in the patient's life history can be the major factor in there. By the time a patient gets to determination of that sort of claim, someone who is already stressed is mega-stressed by the process. They may not be guaranteed access to treatment for the condition that will be paid for by WorkCover because the claim is likely to go on to rejection. A high percentage of these claims are rejected.

Mr HARTSUYKER—Pardon my ignorance of the Queensland system, but during the rather extended time that it is being assessed, is the worker entitled to any payment?

Dr Catchpole—No, they are not. They run through their sick leave, they often access their long service and holiday leave. If none of that is available, and we are assuming the person is incapacitated, which is usually the case, then access to social security is made for a sickness

benefit. If WorkCover eventually says that the claim is compensable, there will be a return of funds from the back payment into the Centrelink system.

Mr HARTSUYKER—What proportion of those claims are rejected? Have you got the figures?

Dr Catchpole—A very high percentage of claims for stress. I do not have accurate numbers.

Mr HARTSUYKER—What about the other type of non-stress claims; the gentleman who slipped over who is 50?

Dr Catchpole—The gentleman who slipped over who is 50, his claim will be accepted, but only for a short period of time.

Mr HARTSUYKER—What is the total proportion of claims that are rejected? If there are 1,000 claims that go in, what proportion of them are rejected where that person might reasonably expect it to be accepted?

Dr Catchpole—I do not have the figures for that, but my feeling is that for stress claims a very high proportion is rejected.

Mr HARTSUYKER—What is your view on medical assessment panels and their effectiveness in the area of workers compensation?

Dr Catchpole—I will answer the question in a different way. I actually think the general practitioner is the effective person. You heard from the rehabilitation people who were talking before about front end and hind end. The general practitioner can see a patient all the way through and can access the various services from time to time. Keeping that person in the loop with the insurer at all times is a much better system. Use panels for advice, perhaps, but not to manage the claim.

Mr DUTTON—I am aware of the community work that you do, and I thank you for your contribution today. In your submission you say that you have often advised patients that their diagnosis is one that is not usually accepted as related to work, but completed a certificate for them. Can you clarify that for me? Is there provision on the certificate that you would make that known to the gatekeeper, as you call it?

Dr Catchpole—Yes, there is. As I said before, the certificate states what the worker states to you is the cause. Often you cannot go into the workplace and see that, for instance, it is a very noisy workplace. If they tell you they have worked in the construction industry, you can assume that that is correct, but it is only an assumption based on the statement made by the worker. Underneath that on the Queensland workers compensation form is a little tick box for two things. The wording may be incorrect, but it says something like: 'I, the medical practitioner, am certain that the cause as stated by the worker has led to the injury' or 'I am uncertain'. So there is the possibility of ticking either box. Then there is another section which says: 'Other factors which may relate to this claim'. You can tell the compensation people—they will know, anyhow, in the long run—that there has been a previous claim for the same injury or that a similar injury has happened in the past and that, when it comes to incapacity, this is the straw that has broken the camel's back.

Mr DUTTON—I appreciate what you say, but—following on from what Mr Hartsuyker said before—does the GP have the ability to make that distinction at that first point of contact, when it would normally be a general medical certificate? Would the GP be able to express a reservation or concern that it may not be work related?

Dr Catchpole—They may well be able to do that. There is an education system developed by Q-COMP, which is the regulatory body of WorkCover, that attempts to educate GPs about filling in forms. I think that I have greater proficiency than the average general practitioner in this.

Mr DUTTON—Thank you.

Mr WILKIE—On page 2 of your submission you touched on employer fraud, where people may be able to go back to work on light duties but the employer will often say that no such duties exist. I had not thought of that, but I suppose, in the case of them going back to work, they would come off WorkCover and would have to be paid by the employer.

Dr Catchpole—Not necessarily. In Queensland, the scheme is that you remain on WorkCover. If you are having a graduated return to work—that is, returning for four hours, for three days per week—the employer pays for the hours that the worker is on the premises and WorkCover supplements the payment up to the 85 per cent that the person is entitled to. The system runs into problems when you have a worker coming in for somewhere between 30 and 40 hours—that is, a worker is doing full duties at work but the payment is no longer beneficial.

Mr WILKIE—I suppose that is what I was wondering. If someone returns to work full time on light duties, the employer is paying them—

Dr Catchpole—They are.

Mr WILKIE—but they also have to pay someone else to do the job that the person would have previously been doing. Therefore, they would be very loath to take them on.

Dr Catchpole—Perhaps, but often in this situation coworkers will agree to give up the lighter parts of their jobs for a short period of time. This works well in workplaces where it is understood that this is not going to be a permanent arrangement, that the injured person is not going to slot into light duties forever. The arrangement is signed off as a rehabilitation program lasting six to eight weeks or whatever, and the attempt is made to get the person back to their original, full duties. Coworkers will often change their duties to each give up a segment of their duties which does not require the thing that the individual worker has difficulty with. If it is a shoulder injury and the work requires above the shoulder work for part of the time, other workers may well take over the duties that require that sort of manoeuvre, and the worker continues to do everything that is below shoulder height.

Mr WILKIE—Thank you.

CHAIR—Dr Catchpole and Ms Kennedy, thank you very much for your submission today.

Dr Catchpole—Thank you very much.

[12.12 p.m.]

DEKKER, Ms Muriel Valmai, Founder, Workers Compensation Support Network

McLEAN, Ms Heather Elizabeth (Private capacity)

CHAIR—I welcome the witnesses, and I thank them for joining us today. Do you have any comments to make on the capacity in which you appear?

Ms Dekker—I do some lobbying, and I have done 30 years of investigation to try to find out why injured workers are getting injustice; 200 or more people have contacted me. A Mrs Forde has had 15,000 complaints. Some people were eventually compensated, including herself.

CHAIR—Ms Dekker, we have not quite started yet, but that is most interesting background.

Ms McLean—I am associated with Val through the organisation. I am an injured worker and, as Sherryl Catchpole described, I am very puzzled about why I have been rejected.

CHAIR—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 would ask you to please not name any individuals or companies or provide information that would identify those individuals or companies. That is not to say that you cannot refer to individuals, but only in a factual way. The committee is interested in the broader principles related to our terms of reference. The committee is not prepared to provide the protection of parliamentary privilege to allegations about particular individuals. That is not to say that you cannot mention them in some factual sense. We prefer that all evidence is given in public but, if you would like to raise a matter in private, you can make that request and we will certainly give it consideration. I now invite each of you to make a preliminary statement, and then we will move to questions.

Ms Dekker—In my investigation, as I have mentioned, Helen Forde found 15,000 complaints, and I have had 200 or more people contact me over the years. I asked WorkCover how many people had been jailed for actual fraud—this was a couple of years back—and they told me two per cent. I think that is pretty low. My investigation—and I have some documents to support this—shows that there are three or four methods that employers use to make genuine injured workers appear to be non-genuine or fraudulent. Firstly, they do not keep the records of your accidents, your injuries or your reports of adverse work effects. Secondly, they fail to inform WorkCover when, perhaps in writing, you report your work injury, and that is actually a breach of the law. I have proof of an employer writing a false report for WorkCover saying that he knew nothing about an injury or a report of it. So laws are breached.

To me, it seems like endemic, systemic collusion, which seems a rather harsh thing to say, because now I proceed to WorkCover. WorkCover does not always follow its statutory claims procedures. Very few people know these exist. Union officers cannot get hold of them, as a rule. The statutory claims procedures are that when others contradict what the injured worker has said—and I have just run through the things that can cause that—WorkCover is supposed to give natural justice and inform the injured worker. It is also—I read in the Supreme Court—WorkCover's job to ensure they not only get the evidence but that it is correct. So WorkCover is

denying natural justice by not applying its procedures. Certainly not in all cases: I cannot speak for every case that has ever been on the record. Injured workers, I feel, are being robbed when they have genuine work injuries.

I want to read a few lines written by a barrister. WorkCover often sends you to medical panels. When things such as I mentioned earlier occur—the employer not telling the truth and WorkCover not following the procedures—then you are sent to a panel which has been misled, because WorkCover has not in fact got the truth in the first place and has not followed its procedures, which could perhaps get the truth out into the open. This barrister, in the *Australian Medical Journal*, 1969, wrote that medical tribunals are a lawyer's nightmare. The barrister also wrote:

> This is not unlike a Kafka-like nightmare of a criminal trial without court and without prosecutor, in which the accused has to prove his innocence of a crime he may not have committed.

In a democracy, should we have people not being seen as innocent unless proven guilty? I am quite happy if two per cent are jailed because that clears the way for the ones that are more genuine, but we have these other issues going on that are not being addressed.

Injured workers often feel they are being harassed by certain things done by WorkCover and the employer. Sometimes witnesses at work do not want to tell the truth because they do not want to lose their job. Harassment under the Crimes Act in Queensland is a crime. Injured workers feel they are being defamed when they are told they are fraudulent. Some are told to their face that they are fraudulent; some are told a little more implicitly, but they are still aware of it. I do not think other Australians should be treating injured Australians like this. But when you think of Maralinga and the Vietnam soldiers, it seems to be part of our culture that we might have to address.

What I have found in my own case and others is that if you are not compensated you therefore miss out on rehab. That is very distressing to a lot of people, because most people, in my opinion, want to get back to work—including me. I missed out on training to try to go to uni to do something because, being in children's homes, I did not have the educational background to pass those simple little tests. So I could not pull myself up that way and I never got back to work. The facts were not known about my case. It was not known that I was in contact with dangerous chemicals which gave me shocks when water hit acids. I will not go through the lot, but mine is just one example of them not always knowing the work you do, and then they say that work did not cause the injury.

I have looked at some of the follow-up of other injured workers. They mentioned that nobody has done any follow up. I have done a little. A man died and his wife became a widow because the doctors did not want to treat him once they knew it was a work injury. Finally, he was operated on by another doctor and he said, 'If they hadn't delayed, this man would've lived.' As it happened, he died. Another person has a carer on the Gold Coast; he cannot work again. He had a five-year struggle for compensation—a terrible struggle, with a crushed back. He was taken to work in an ambulance, and WorkCover said, 'No, it was a car accident.' They did compensate him at first, but they claimed it was a car accident at the point of the lump sum coming up. He tried to work, as they wanted him to do, and it was not possible. They claimed it was a car accident, and finally it was rectified by a senior officer of the minister. I will make my final point here. One of the things that WorkCover do is they take out the evidence supporting

an injured worker—some of the time, at least. I got a call this morning about a girl who was told not to bring any evidence to a preliminary hearing. WorkCover turned up with some evidence but she noticed that it was totally incomplete; the material supporting her was not there. Then they said, 'That's the end of you. You get nothing.' It was supposed to be a preliminary hearing; they told her not to bring any evidence. That is heartbreaking.

Ms McLean—I was not called to give any evidence today, so I am completely unprepared. It is an emotional business so it is hard to enunciate.

CHAIR—Would you prefer to move to questions rather than make a statement?

Ms McLean—Yes, that might be easier.

Mr WILKIE—You describe issues regarding Medicare professionals that suggest that people should be able to get access to Medicare to have some of their injuries dealt with. How would that assist workers?

Ms Dekker—When you are injured, you do not always have $44 ready to go in and pay the doctor. One doctor has a notice on the wall—and I have taken a photo of this—saying: 'No injured workers treated without the money up front'. If the worker is not compensated for the time he was injured the doctor might not get any money because the worker does not have the money to pay him. It would assist if they went through Medicare. Then, if they are compensated, the payment can go to the doctor—it can go back to the federal government at that point.

Mr WILKIE—Are there many instances of that occurring?

Ms Dekker—There are only a few, and I have seen that doctor's sign on the wall—I have a photograph of that.

Mr WILKIE—Can you elaborate on the suggestion of a separate workers compensation court and why that might be more independent than the current system?

Ms Dekker—I will preface that by saying that the administration review commission—which was run in Queensland in 1999, I think—recommended the disbanding of the medical tribunals as being unjust. I feel that, instead of having three doctors—it is rather off-putting to go before three doctors behind a huge table—there could be a special workers comp court, like a small claims court. You could use your own medical evidence, unless it can proven wrong or is incompetent. It is quite fair if that can be done, but then it can be pushed aside. We are finding that the medical tribunals are overriding the injured workers' own doctors. A barrister acquaintance—this is not an area I usually move in—said that the medical tribunals are supposed to take notice of their evidence. But the unempowered injured workers are not going to know half the time and, if they did, they would have very little power to do something about it. I must mention that a doctor has recently been debarred, by another doctor getting the evidence, for writing false reports saying that injured workers are not injured, are lying or that it is only in their heads, despite it being a physical injury. He may work on getting other people debarred, I hope. What is happening out here is like a war for us.

Mr WILKIE—What sorts of services does your organisation provide to injured workers?

Ms Dekker—We provide counselling—by phone a lot of the time—to talk over the options. I have done a number of submissions and put them into parliament. I did it, for example, when they had the Kennedy inquiry—a Clayton's inquiry, I am sorry to say. I am just trying to get the issues out in the open. I do not have the power to correct them, but I do have the power to try to get them into the open. Hopefully, somebody with a conscience and compassion will deal with these issues.

Mr WILKIE—How many clients would you have on your books?

Ms Dekker—I have 200 or so but, as I said, Mrs Forde says she has 15,000. They ran a group a while back, and she had a daughter in welfare so they were able to organise the publicity to pull them in. I have not pulled in so many; I have not done as well as her. They are all there; it is just that I do not have the means of getting to them. We have a new injured workers action group starting in Ipswich, and they are lying on the floor at the meetings because they are so injured. They go to the meetings because they are trying to do something to get justice. I do not want to exaggerate—there is one who lies on the floor.

CHAIR—Ms Dekker, you suggest—and I am picking up on what my colleague Mr Wilkie said—that Medicare should be allowed to pay for work injuries. Do you mean the ongoing compensation? Is that what you are suggesting?

Ms Dekker—No. As I see it, the initial problem—if you are injured—is that, as a working person, you cannot always have $44. Some doctors will not treat people because they know that if they do not get paid their compensation they are not going to get it out of WorkCover either. This notice on the wall, as I mentioned, says that, if you do not pay up front, as an injured worker—

CHAIR—Are you suggesting that, if you go to a doctor with an injury or illness that you assert is work related, there is a separate payment that is not paid for under Medicare? You cannot claim it?

Ms Dekker—No. As far as I know, it is not.

CHAIR—I would have thought that, if the circumstance came about that it was not seen as work related—and we are not arguing the merits of any particular case here—then plainly you are still consulting a GP on a medical matter and Medicare would at least pay the basic scheduled fee.

Ms Dekker—In my case, that is how it happened, but that doctor has that notice on the wall, and other injured workers have rung me and said, 'I don't have the money to pay the doctor.' I thought the best way would be for it to be paid by Medicare, and if the person is compensated it can then be taken out of WorkCover. But to make the injured worker pay it up front—he is injured; he may not have the money; he may have just paid for a sick child—is giving him problems. Those are the complaints I am getting.

CHAIR—I am just trying to work out how that happens. But there are doctors that bulk-bill, aren't there?

Ms Dekker—Yes, there are.

CHAIR—One would presume that someone who is injured or ill could go to them.

Ms Dekker—Some of them will, but there are others who are saying that they are having problems with some doctors.

CHAIR—In particular areas?

Ms Dekker—You mean suburbs?

CHAIR—Yes.

Ms Dekker—No. All I know is Brisbane. I have not heard about it anywhere else.

CHAIR—You have made the suggestion that workers should be able to choose their own doctors and specialists. Can you explain why you think that is a sound arrangement?

Ms Dekker—It goes on the basis of independence. They put the medical tribunals up because they said that they are not independent if the injured worker pays them. But it is still a vested interest when WorkCover pays them. I have records of where the medical panels have in fact absolutely misrepresented an injury and so on, and they are paid by WorkCover; they are not independent. We would like an independent way. If they say, 'You need a specialist,' what is wrong with choosing your own specialist instead of WorkCover choosing?

CHAIR—This takes place, as I understand it, in the determination of whether it will be 26 weeks or whatever. Is that what you are saying? Is that the point at which there is a medical tribunal?

Ms Dekker—No, tribunals can be brought in at any time. Sometimes they are compensated, as you say, for 26 weeks. It would be a lump sum, because they only pay up to 26 weeks these days. They can at that point be sent to the tribunal. The tribunals will say, 'We wouldn't lie—we are eminent doctors,' and so on and so forth, but injured workers are saying that the truth is not always being told. And there is a vested interest: they are not independent.

CHAIR—I see the point you are making.

Ms Dekker—When the wrong evidence is put before them by WorkCover—as I mentioned before, if the employer does not tell the truth, if WorkCover does not follow its procedures, which may have perhaps corrected that—because WorkCover has not done its job correctly, you have a very unjust system. And they pay them to put the evidence before them. They are not independent when there is a vested interest.

CHAIR—Are most of the cases you see, Ms Dekker, physical injuries or are they psychological injuries.

Ms Dekker—They are both. Quite often what was only a physical injury does get an overlay of psychological damage. Some people become suicidal. Police had to go to one man who had a sabre on the wall and say, 'We'd better get that off the wall.' This man had been compensated; it was just that he could not work again that upset him so much. He also could not relate to his

teenage son, when he had had a wonderful relationship with him. Finally, that family broke up after three years. In other cases, people are losing their homes when they are not paid. Even if they are paid, the families can still break up. Suicidal feelings come into it at times. Mrs Forde said some have suicided. I do not know of any who have suicided, but I know of some who said they were suicidal and that speaking to me had helped them to get past that point.

CHAIR—That has been a very helpful insight, Ms Dekker. Thank you very much for appearing today. Ms McLean, I know you have not got any questions, but we appreciate very much you being here.

Ms McLean—Can I make one comment?

CHAIR—Of course you may.

Ms McLean—I came today because I have been so astonished by the process that I have had with WorkCover—the dishonesty that I have encountered and the blatancy of that dishonesty. I find myself now, two years after making a claim, so involved in just trying to find out how the decision against me could possibly be justified. I feel as if WorkCover, a government agency, is an alien entity which has nothing to do with me, and it concerns me immensely, because it is the second government agency—my employer is, and was, a university and has locked me out—that has behaved in what can only be called a dishonest way with me. I find myself in this track where I just feel I need to find out some answers or to make some sense of the whole process. I feel fearful that a government's agencies could be dishonest and nothing be done about it. I have got a huge tale to tell about it, which will not be able to be done today.

CHAIR—Ms McLean, thank you for that and for having the courage to come today. We are not empowered to follow up individual cases, as you probably appreciate. Have you thought of appealing to perhaps your state or federal member of parliament?

Ms McLean—I wrote to the Premier, Peter Beattie—

CHAIR—I did not want you to go into the details of who you had written to. It is not appropriate that we follow that up today. Sorry, please do not be offended by that. But perhaps if you follow up with your local representatives, federal and state, they may be able to progress the matter for you. I do appreciate you coming today, as I know it has not been easy, and it is very good of you to come before the committee. Thank you, and thank you, Ms Dekker.

Ms Dekker—Thank you for listening to us.

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

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

Committee adjourned at 12.35 p.m.