COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Reference: Aspects of workers compensation

WEDNESDAY, 4 DECEMBER 2002

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS

Wednesday, 4 December 2002

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

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

Terms of reference for the inquiry:

To inquire into and report on:

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

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

WITNESSES

Committee met at 11.21 a.m.

POTTER, Mr Michael Edmund, Chief Executive Officer, Council of Small Business Organisations of Australia Ltd

CHAIR—I declare open the public hearing of the inquiry into aspects of workers compensation. I welcome Mr Potter from the Council of Small Business Organisations of Australia. The proceedings here today are formal proceedings of the parliament and warrant the same respect as proceedings in the House. The committee prefers that all evidence be given in public. However, if there is a matter you would like to raise with the committee in private, if you make that request, we will certainly give it consideration. I now invite you to make some preliminary comments before we move to questions.

Mr Potter—I thank the Chair, Mrs Kelly, and the committee for allowing the Council of Small Business Organisations to have this opportunity to appear before you today regarding the inquiry into aspects of workers compensation. I am the CEO of COSBOA. COSBOA made our submission to your committee on 23 August. I would like to add some comments, if I may. I believe the question we will be addressing today is aspects of workers compensation. In our particular case, fraud or the misuse of the Workers Compensation Act can fall into, from our perspective, the following areas: compliance; the underdeclaration of wages; uninsured business; and fraudulent claims.

In reviewing these aspects from a small business perspective, I bring to mind the reason why workers compensation was designed in the first place, which was to compensate an employee for an injury connected to a workplace accident. Since this original intent, workers comp now covers the worker from the time he leaves home until he returns to the workplace. Small business would like to see a tightening in this area so that workers compensation can revert to coverage at work, not to and from. In many instances with minor injuries that would make claims hard to prove and which result in a few days off, the claim is paid by the insurance companies because the cost of trying to prove otherwise is very difficult and costly.

It has been frustrating trying to obtain national statistics that show where injuries occur and compensation is made. The statistics we would like to see details on are travel to work, particularly on what day the injury occurs—for instance, a Monday—travel back to home and instances at work itself, particularly on a Monday. If this statistic were high, it could indicate fraudulent claims.

Small business would like to see under the workers compensation legislation a greater emphasis on duty of care to self. This would support the view that a worker is responsible for getting themselves to work safely. Eliminating the coverage that exists for travel to and from work may reduce the costs, as currently the no-fault system only leads to increased premiums for small business. Fraud or noncompliance can occur when businesses are confused by the rating system that applies to their individual type of business. Premiums should be based on the business as a whole, not on the portion of the business that attracts the highest rating, because this rating has come from a claims history that has often occurred in large business or certain industry types as distinct from what happens in small business. The ratings should be based on real risk that occurs in the small business premises and based on past history. Some states have been applying a no-claim bonus benefit, as I understand.

Some small businesses cannot sustain the cost of increased premiums from a genuine accident because the current system appears to recover the cost of the claim in increased premiums over a short period of time. In the case of this kind of hardship, there needs to be a safety net to protect these small businesses from closure. I understand that in the construction industry the success of the union movement in increasing enterprise agreements is driving employers to employ subcontractors. This is causing the premium pool to be reduced, thus leading to a premium increase later. Often workers compensation coverage is not paid by these subcontractors as they see themselves as self-employed. However, employers not carrying insurance is not a significant problem as injured workers from these employers without workers compensation insurance form less than 0.5 per cent of the total claims by WorkCover New South Wales.

The Council of Small Business Organisations of Australia would like to see a national approach to workers compensation, with uniform laws and guidelines. This should take into account funding, premium levels, with caps for small business, and a simpler method of arbitration because one of the biggest costs is the legal fees involved. I believe in New South Wales over 40 per cent of the payout is for legal costs.

With the work being done nationally on public liability insurance, the committees involved in this area should apply their talents to looking at workers compensation. We believe all employees should have the protection of workers compensation but at a cost to small business that is fair and equitable and rewards small business with no-claims bonuses. Thank you for this opportunity to make these opening remarks. I welcome any questions.

CHAIR—Thank you, Mr Potter. I will turn to my colleague Ms Hall.

Ms HALL—Thank you very much. That was very enlightening and reinforced some of the things that I would have assumed about small business. Listening to what you were saying, I suspect that there are a few issues of concern to small business other than fraud. I think you made a very good point about the ratings system and the risk factors of various small businesses. You might like to comment a little more on that. I thought about your idea where after a worker has an accident there is a premium increase which can, further down the track, lead to a closure of the business. Have you had any creative ideas or looked at any proposals for dealing with that?

Mr Potter—I have been a small business man, so I have gone through the process of setting up companies and understanding and working out the ratings that we must have for a business. I have to say that in all honesty in the 25 years I ran businesses in Australia I think we only had one workers compensation claim. But the difficulty—

Ms HALL—And that was what you would call a genuine claim?

Mr Potter—Genuine. Accidents are going to happen. It does not matter how good your safety record is and the standards you set in companies. Genuine things do happen. So the most important thing when the accident occurs is that it is attended to immediately and that, obviously, if it is an injury, proper medical attention takes place. Some of the concerns are particularly in the area that relates to what we would call minor injuries. It is very hard to prove as an employer if a person says, 'I've hurt my knee. I've hurt my back.' If it is a visible injury

like a broken arm or a cut, it is very visible. So it is the invisible injuries that may not last for a long time that cause concern to the small business.

Often in small business we do not have extra manpower, so when somebody is off work, it does put a squeeze on the rest of the workplace. In that instance the situation is that workers compensation will automatically just approve the claim, unless it is blatantly fraudulent, because they just do not have the resources to chase it. It becomes a cost factor. For $200, $300 or $400, we just cannot afford to argue that case, so they just approve it, whereas the small business person would be aggrieved that that kind of issue is not being investigated.

If we are going to accept the fact that some of these small injuries are going to occur, then the process of taking care of it has to be simpler. For instance, if a person has a cut finger, the solution should be that the person goes straight to a doctor, gets fixed and comes back to the workplace. The employer pays for the cost of it and sends the bill in to the insurance company. It is quite simple and easy, and we could maintain it from that standpoint.

On the other hand, there are instances where the employee has to go to the doctor. There have been cases where he has made the claim for the injury and then forgotten to get a doctor's certificate, so goes to the doctor three or four days later, and the doctor writes it out and gives it to him. Therefore, it is very hard for the doctor to really say whether the injury that he claims really occurred at the time and whether it still exists on that day. From a small business perspective, they say it is unfair. It should be, again, chased. Again, the insurance company says, 'For the cost of it, it's not worth it. We'll just pay the claim.'

Interestingly enough, in looking at the costs and reports, there is not a great deal of current evidence in terms of the costs other than a report that was done in the *Small Business Index 1988* that showed basically from a small business perspective that the cost to small business was about $8.3 billion, which is the costs of workers comp claims and injuries.

So we have to look at it in terms of cutting that back. I am sure over time that has probably escalated. But in terms of the individual small business person, from a ratings standpoint, what really makes them mad is a scenario where you have six in the office, six on the road and one in the warehouse. The warehouse involves basically packing light goods. There is probably no moving equipment that could cause potential injury, yet that institutional establishment would be classed as a warehouse as distinct from being classed as an administrative office, which fundamentally the majority of people would be in. It is that type of change that needs to be looked at.

I will go back to the purpose of workers comp, which is to protect the worker and to look at the environment where the worker is located. We would certainly recognise those employers who are not doing the right thing in having a safe workplace and who get caught. They should have the book thrown at them, as far as we are concerned. We want to have safe workplaces, but we want an insurance system that will work. Certainly in my naivete, when I started my business life, I thought workers comp was just like any other insurance: you pay for it, and you will not get penalised if you have a claim. Now, of course, it has moved because of under-funding and the various jurisdictions in workers comp. I guess the amounts of payouts that are being made have resulted in effectively any business that makes a claim paying for it in increased premiums until that is paid for. That is an additional cost to small business.

It is that kind of statistical information that would be great to be able to get from the various entities. There is not too much, I have to be honest. Most of the entities that I have tried to get information from for this meeting do not seem to have it readily available. Basically, they will refer you back to the principal coverer of workers compensation in the state jurisdictions. For instance, in New South Wales, it is WorkCover. WorkCover basically says, 'Refer to our annual report and in there we'll show you some details.' Certainly in that annual report, which I think you have probably all read, it does show statistics about fraud but not paying up for undeclared wages and the like. There is certainly a difference and a difficulty at times from the perspective of the small business person who says, 'Why is contract labour to be included and wages not?' So, again, clarification there would be helpful.

Ms HALL—This question relates to the occupational health and safety issues. I see that in your submission you identified the need for simpler and clearer guidelines and simpler paperwork when you are looking at OH&S issues and claims. I was wondering if as a council you have put together any guidelines on actions that your members could take to improve OH&S in their individual businesses and, if this is circulated to them, what sort of changes you would like to see in relation to those OH&S guidelines.

Mr Potter—I think the point you have made is well made: we have not as a council created that kind of information. The council fundamentally is an association of associations. Often the individual association which represents their individual businesses would have those kinds of guidelines. But I think it is something that would be worth looking at from a small business perspective. We will take note of it and see what we can do.

Ms HALL—Thank you. My final question is: the two schemes that I am most familiar with are New South Wales WorkCover and Comcare. Part of that legislation that you operate under in those schemes requires employers to offer light or alternative duties. How easy is this for small business? Where it is not appropriate, what options would you like to see put in place?

Mr Potter—That change in New South Wales has certainly been positive in terms of trying to get a worker back to the workplace quicker. It does come back to the nature of the job the person is in. For instance, if a person were working at a warehouse and got injured and it was, say, a back injury of some kind where they could not lift items, then how do you utilise them in the administration side of the business? That comes back to the individual's skills. The difficulty often in small business is that they do not have the spare capacity of tasks to be done. So it becomes a really difficult option.

The only way would be a pooling situation where a group of small businesses could say, 'We have this person who can do these tasks. Do you have the work available?' If a company says, 'Yes, I have the work available, but I don't have the ability to pay them,' it becomes a question of, 'How do we handle that?' This is really the tough one. I have had experience in a major airconditioning manufacturing facility where people who were on workers compensation had come back on light duties. In some instances, they literally could not continue their menial paperwork tasks because physically they could not stand the timeframe. Eventually they just had to be allowed to go home. So there has to be a method by which the person on light duties can be analysed from a standpoint of how much effective time they can give on the light duties. We then need to look at work skill development to see how we can train them in development in other areas.

At some point—I forget the terminology for it—the provider who is looking after that case has to really identify whether this individual is ever going to be able to get back to the original task. If that is assessed in the beginning, it would make sense to stop working right away with that individual to get them retrained into something that they can do. But having got them retrained, the question is: who employs them? If the small business does not, then who do we offer it to?

Ms HALL—Your answer raised another question. I like your idea of pooling. Do you see that as something the Council of Small Business Organisations could coordinate? That is quite a proactive approach.

Mr Potter—Ultimately, it comes back to creating within communities the networks of small business that would say, 'Let's look at how we handle this situation and what happens.' Yes, it is an area that we could examine.

Mr BEVIS—In your submission you made reference to the circumstance of companies that become insolvent. I am not quite sure that I have made a clear connection with the message you are trying to get across. Can you explain that.

Mr Potter—I have to be honest and say that it was one of our members who gave me that information. I agree. In essence, it is saying that if a company that is basically not operating but has a situation where WorkCover is covering that company and the company does not know that it has ceased to exist working, in essence they are billing but they are not getting paid.

Mr BEVIS—The company does not know. Which company?

Mr Potter—The insurance company. The situation is about where the company is basically ceasing to actively trade. The cover is still there. It has not gone broke, so the workers are still there. They are sending out the premium bill, as I understand it.

Mr BEVIS—Why would it have workers on the payroll if it is ceasing to trade and operate?

Mr Potter—I agree. But it moves into the next process, where the workers have gone. From the perspective of the workers compensation company, they still believe this company exists, as was declared. The premiums are not being paid. As I understand it from what was given to us, the employer cannot say to them, 'We have ceased trading,' so they virtually have to wind the company up.

Mr BEVIS—But if you do not have employees, you do not have to pay workers comp.

Mr Potter—Yes.

Mr BEVIS—I do not understand how small business has a problem. If it is not trading—

Mr Potter—If I am the managing director of the company, am I an employee?

Mr BEVIS—That depends on how you and your accountant have structured it.

Ms HALL—Yes. That is right.

Mr Potter—If it is a company that is under ASIC law, you would be an employee. If it is a partnership, it probably would not be.

Mr BEVIS—If that is the case, if a person decides to structure their company in that way, usually for what they might perceive as some tax benefit, then the quid pro quo is that the employees, of which the director might be one, are entitled to certain things, one of which is workers compensation cover. You cannot have it both ways. You cannot say, 'We want to structure the company to minimise our tax and, by the way, because it is a shonky deal and the guy who is doing it happens to be the owner and we're not really trading and we're not really doing anything, we don't want to pay the workers comp for it.'

Mr Potter—What they are saying in essence is that it is about the company that becomes a delinquent non-payer, which then leads to a situation where the business is being closed down and is not trading correctly. They are saying that, in order wind up that company from a workers compensation standpoint, because they have not paid, they go in and get a liquidator to do it. He is just confirming the fact that there is a cost factor there that is a cost to workers compensation.

What they are saying is this: if the company were trading and not paying its normal trade creditors, experience shows that 99 times out of 100 the company is wound up at another creditor's or director's instigation, well before workers compensation commenced action. Sometimes a trading company is wound up by a workers compensation insurer but this is normally typical of a director who has ignored workers compensation paperwork and demands while paying other accounts. That happens to be the exception to the rule. So it is a question of, as I understand it, having an ability for the workers compensation to stop the coverage when they know that company is not trading, without winding it up.

Mr BEVIS—But surely workers comp would stop the cover at the point at which the organisation had no employees.

Mr Potter—Providing they know that.

Mr BEVIS—But isn't it the responsibility of the company to advise the insurer, be it WorkCover or whoever?

Mr Potter—This is the point of the issue. What if they are not doing that?

Mr BEVIS—I am still at a bit of a loss to understand what the outcome is that is suggested to deal with the circumstance. I am not sure I understand the circumstance fully. But what is the policy prescription alternative or suggestion that COSBOA has in relation to that? What should be different? If you would like to take it on notice, please do so.

Mr Potter—I need to come back to you on that one. It was one that was given to me by one of our members.

Mr BEVIS—The only other question I had concerned the suggestion that minor injuries be dealt with at the local GP level on a bulk-bill basis rather than through the workers comp system. Whilst I can understand there may be some benefit in streamlining things, wouldn't the

net effect of that, unless there were some compensating agreements between the state and the Commonwealth, be to shift the cost from the state workers compensation systems and the people who pay those premiums to the taxpayers of Australia and the health budget of the federal government?

Mr Potter—In that context, looking at it from the point of view that you have a federal and a state issue, the downside of that approach probably would be as you have described it, if we were looking at it from that perspective. But I would see a situation where that funding could then be transferred back from the insurance companies, because they would have the bills, to the government. I had not looked at that consequence. I was just purely looking at it from the standpoint of the injured worker and how we get him fixed right now. I was not looking at the—

Mr BEVIS—Two things come to my mind. One is that it would be, as it were, shifting from state to Commonwealth.

Mr Potter—It potentially could have that downside.

Mr BEVIS—The other, which is the subset of that, is actually shifting it from the employer who makes the insurance contribution to every taxpayer of Australia, who provides the revenue for the Commonwealth budget.

Mr Potter—I guess we were not looking at it from that perspective. We were looking at it purely from the standpoint of the speed of resolving the issue and then sending the information straight to the insurance company. I think the situation would be that the portion that was bulk-billed would then be reimbursed by the workers comp insurance company. It was not meant to cause a problem between Commonwealth and state funding. Of course, on the other hand, if we took it as a national issue and took it away from the states, then the problem would not occur. But I am not sure you want that.

CHAIR—We have not decided on our findings yet, Mr Potter.

Mr HARTSUYKER—You mentioned journey claims in your address to the committee. Do you have any figures on what proportion of claims are in fact journey claims? Of those, do you believe a high proportion are fraudulent? What proportion do you believe are fraudulent?

Mr Potter—That is one of our concerns, which I mentioned in my opening remarks. We are not able to get these statistics. That is something we are certainly going to be looking at in the near future. Obviously, the information just is not there. From that point of view, we are saying that if we look at when these injuries are occurring and on what days they are occurring, it may give us an indication. Is the injury being declared really a work injury or something that happened over the weekend and brought back?

CHAIR—Mr Potter, it seems that a division is being called in the House. You will have to excuse us for a few minutes.

Proceedings suspended from 11.46 a.m. to 12.04 p.m.

Mr HARTSUYKER—You indicated that you had no statistical evidence of the proportion of fraud, as you mentioned in your opening remarks. Do you have any anecdotal evidence that journey claims are a substantial source of fraud?

Mr Potter—Just anecdotal evidence from different companies which comment on it.

Mr HARTSUYKER—What types of things do they say?

Mr Potter—It is basically of a minor injury type nature that probably could have occurred on the weekend from a sporting injury or the like. It is hard to prove. Now that I have tried to find out statistical facts and figures, I would like to see whether we can go back to the various jurisdictions and the people who are covering the workers compensation. Let us start looking at research figures and get some facts and figures. Have you as a committee received any additional facts and figures? I know I have gone through some of the submissions you received. There was very little evidence of facts and figures. Even WorkCover New South Wales, which is probably the largest one of all, does not have many facts and figures. So we are going to pursue that further.

Mr HARTSUYKER—I have one more question. I think I am going to get the same answer. It concerns insurers settling claims which the employers might feel were contestable. Do you think that is a major problem? Do you feel that it is in fact increasing premiums?

Mr Potter—There is no doubt it is increasing premiums. Again, one would have to go back and research all the people who had claims to find out whether they were happy with the decision by the insurance company to settle the claim. I have been involved with small business groups for about 10 years. Whenever workers comp comes up, that is always an issue: 'We weren't happy with the decision the insurance company made.' It is taken out of their hands. There may be valid reasons why the insurance company would think that way. I guess from the emotional point of view of the employer who think it is fraud, he does not want it settled. So we have to investigate that further.

CHAIR—Mr Potter, on your last point, to what extent is that occurring? Obviously when you meet with employers you mentioned that they discuss it. Do you have a feeling that it occurs in one out of 100 claims or 10 out of 100? How prevalent is it?

Mr Potter—I could not give you a percentage figure.

CHAIR—But do you have a gut feeling?

Mr Potter—You could probably argue that it may be one in 20.

CHAIR—So one in 20 would be your feel for that?

Mr Potter—Yes.

CHAIR—What approach would you like to see taken? What would be the impact on premiums if some of the insurance companies pursued these small, doubtful claims, or is there a better way to look at whether a claim is doubtful? Does it lie with the medical practitioner, for instance?

Mr Potter—I think we have to analyse what claim will be the one that is going to appear to be fraudulent. Obviously, where it is an injury that is very clear—a broken leg or cut arm—it is

black and white. There would be no argument there other than as to how it happened. But that is not the case any more because even if a worker does not follow proper duty of care, the fact that an injury has taken place in the workplace means that it is a workers comp issue. It is where the person says, 'I have a bad back.' I was aware of a case in a company where the person alleged that he had hurt his knee climbing up a ladder. It turned out that the person who was the witness, when cross-examined, said, 'No, I can't support him because I didn't see it happen.' Then the argument came up that it was the same knee he had hurt playing football in the last year and a bit, but he understood that the company might be closing down and this was a way in which he could get some extra revenue after the company had closed down.

That comment was also made to me from the construction industry. They say it is a similar pattern of events. Suddenly, when there is a concern that jobs are going to be lost because no work is coming up, they seem to get more prevalence in terms of workers comp claims. It is in areas where it is very hard for the medical profession to say yea or nay. So it is a case of back pains and the leg that hurts. It is very difficult to say how they occur. Maybe the solution there is that we get the medical profession to be a little stronger in how they make their determinations.

CHAIR—Another witness with regard to the last point you have made—in fact, WorkCover in Queensland—said that they have a medical team within WorkCover who liaise with general practitioners throughout the state. So there is a relationship. As a result of that, they believe that medical practitioners, including general practitioners, are more thoughtful in assessing claims for workplace injuries. They seem to think that they have minimised those doubtful claims. Do you see that as a model that might work elsewhere?

Mr Potter—You have got dialogue between the workers compensation entities and the medical profession to say, 'This affects all of us, so let's do it properly. Let's really examine whether this is a fair dinkum injury.' We then have to look at ways in which we can bring that to a conclusion at a low cost which minimises the legal issues that go on. That is where maybe adjudication needs to come in. We have to reduce the overall cost of workers comp. If we do that, it benefits small business. It benefits the people as a whole. It will give us more revenue effectively to make the payouts for the genuine people who are injured who need that additional protection. Yes, I would recommend that if it is not happening in other states, it should be. I have a feeling that it is under WorkCover New South Wales that they have a similar type of process.

CHAIR—Most of your submission— correct me if I am wrong—seemed to relate to relatively small claims. Have your members had experience with fairly substantial claims?

Mr Potter—We have never had any specific details of claims histories. I suspect there must be one or two that have had a major injury in a workplace environment. The bulk of our members, other than in the construction area, work in relatively safe environments, so it is going to be the smaller type injury that is going to be occurring. I have to be honest; we do not have detailed statistics on what has happened. It is something we could investigate.

CHAIR—Would you like to look into that and perhaps come back to the committee?

Mr Potter—Yes, I would be happy to.

CHAIR—Thank you. I have no further questions, unless any of my colleagues have a further question for Mr Potter.

Mr BEVIS—I think Mr Potter was going to make a comment.

Mr Potter—I was just going to clarify a question. The question related to insolvency. A registered liquidator effectively did a lot of work as a court-appointed liquidator on behalf of workers compensation companies to close down that entity. By closing it down, then, that ceased the insurance cover. He said:

> The practitioner understands that under the workers compensation legislation the workers compensation insurer cannot cease insuring the company until the company has notified the insurer that it no longer employs. In the absence of notification the workers compensation insurer must continue to cover the company until such time as the company is wound up. Hence with delinquent payers the insurer has no real option other than to liquidate the company at its cost—a cost that is recovered through higher premiums from those who do pay.

So there has to be a method, then, by which a company is not paying. I think you indicated that you thought insurance ceases. He is saying it does not. So what I am suggesting is that possibly that needs to be looked at. Maybe there have to be some time limits, and maybe insurance companies have to investigate. If they find that the company is not operating, there has to be an easier method. In the past, as I recall, in the banking industry the person who took the loan out used to get wound up because the only way the bank could write off the debt was if they wound up the company. That has been changed now. The banks do not have to take the person to bankruptcy to resolve the issue. Maybe there is a similar byline in the Workers Compensation Act.

Mr BEVIS—I thought that all it would have required for workers comp to cease charging premiums and providing cover would have been for the authorised officer of the company to advise the insurer, WorkSafe, that they no longer had employees.

Mr Potter—But that is the problem. It is where they do not do that. This is what is causing the liquidations to take place, because there is nothing coming from the company to the workers compensation insurance company to say, 'We are ceasing to have employees. We are ceasing to operate.'

Mr BEVIS—I would be cautious of a system that allowed, say, the insurer to unilaterally, without advice from an employer, decide that they would cease cover for that company and its employees. I think that might cause a few more headaches than the one we are trying to resolve.

Mr Potter—On a personal note, to be honest, I also have a private company which has workers comp. I got a notification the other day from the insurance company saying, 'Have you ceased to continue your workers comp insurance?' I said, 'That doesn't make sense.' I phoned them and said, 'Why?' He said, 'Well, we got a letter from your broker saying you had ceased.' I said, 'I haven't ceased. I've just renewed the policy.' So there was a case where the insurance company was actually following through to identify from the employer whether I had ceased. That was a positive experience. So I can understand the point that it is important that somebody from the company does it.

Mr BEVIS—I have one other question that I should have asked before. As an association of employers, you have not made any reference to employer fraud, which is part of the terms of reference. Do you have any information you could give the committee on that?

Mr Potter—Yes. The little bit of information I have has come out of the New South Wales information. WorkCover New South Wales says they have been focusing on compliance. As a result of the focus on compliance last year, they actually doubled the amount of revenue coming in—an extra $14.8 million came in. They talked a little about their investigations which showed an underdeclaration of wages, which led to $37.9 million of wages being declared, resulting in $1.3 million in premiums. Following complaints, they found there was an underdeclaration of $17.6 million, which led to additional premiums. They also made 500 site inspections where 13 employers were identified as being uninsured and they had been fined with penalties. So they have certainly picked up fraud.

I would not argue that employers are always completely clean on this issue. It is a pity that we do not have an up-to-date report from Telecom. They say about 95 per cent of all small businesses are insured and try to pay their way. So the only way that fraud will occur from an employer standpoint will be not declaring the correct amount of wages because they are not clear whether this person is a contractor who is actually being covered by the contracting side of the business or their own business. That is kind of a mute point. In the law definition under workers comp, you are supposed to pick up wages from all people in your workplace, including contractors, where I think more than 50 per cent of the labour is in your workplace, unless they have their own insurance coverage.

Ms HALL—One incident I heard of which I tend to think of probably as fraud by employers—I know this has happened in more than one workplace—is where a worker is injured and there had been another worker injured in this workplace within the last fortnight. The employer chose to have the injured worker, who was quite seriously injured, taken to the hospital by someone from the company as opposed to calling an ambulance, when an ambulance could have been called, thereby circumventing the WorkCover reporting process. That is a case that ended up in court.

Mr Potter—I would have to say that that employer would have to make a decision based on what he saw immediately. I know I had a case once where a person had a suspected heart attack. We ended up getting an ambulance right away. It turned out that it was not; it was just indigestion. But for a moment there it looked like this guy was in a really serious situation. But if the employer takes the person for treatment, that is their duty of care. To me, it is not an issue about whether an ambulance came or an ambulance did not come.

Ms HALL—But it was stated in the workplace, 'We cannot have this person go in an ambulance because it will be caught in WorkCover.'

Mr Potter—My argument would be that if they took the person to the hospital, the accident happened at the workplace. Therefore, it has to be reported.

Ms HALL—The reporting standards are slightly different.

Mr Potter—That comes back to clarification. I would hate to think that somebody stayed in the workplace and died because the ambulance did not get there in time.

Ms HALL—No. It was not like that.

Mr Potter—I understand that.

Ms HALL—There is case law to support this one.

Mr Potter—As there are employees who feign and fake their claims, there are obviously going to be employers to some degree who are going to do the same if they are fearful of the rise in premiums. They are going to have to pay in the event of that claim and accident, particularly if it is an employer who has had a number of injuries. That leads to the next question thereafter: when does the capping of premiums rise for business, particularly small business? At what point do you say that that person's premium is going to keep rising, rising, rising? Ultimately, we all have to improve conditions in the workplace so that injuries do not occur.

Ms HALL—That brings me to the occupational health and safety issues.

Mr Potter—That is an educational issue and it is a cultural issue. You have to get people to understand that working in a workplace has to be safe. I think the average small business operator sees themselves working in that place. They want to work in an environment that they feel happy with. Therefore, they want their employees to be in that same environment. So the majority of small businesses—I would dare say the majority of big business too; this time, I will fall on their side as well—are striving to have a safe workplace. There will always be exceptions.

CHAIR—Hear, hear to that. Mr Potter, thank you very much. We are going to have to close there. We appreciate your submission and your time very much.

Mr Potter—Thank you for your time. I might leave this newspaper article with you. I took it out of the *Telegraph* on Sunday.

CHAIR—We will accept this as evidence.

Mr Potter—It is just information about workers comp. That is all. I thought the facts and figures might be of some interest.

CHAIR—Thank you.

[12.22 p.m.]

CAMERON, Mr Charles, Member, Recruitment and Consulting Services Association

MILLS, Ms Julie, Chief Executive Officer, Recruitment and Consulting Services Association

CHAIR—I welcome Ms Julie Mills and Mr Charles Cameron from the Recruitment and Consulting Services Association. Thank you for agreeing to see us today. The proceedings here today are formal proceedings of the parliament and warrant the same respect as proceedings in the House. The committee prefers that all evidence be given in public. However, if there is a matter that you would like to raise privately with the committee, if you make that request, we will certainly give it consideration. I would now like to invite each of you to make a preliminary statement and then we will follow up with questions.

Ms Mills—I think the bulk of the statement today will come from Charles, because this is the area that he focuses on. I am here as the CEO to bring forward any general information in relation to the recruitment industry. I suppose my preliminary statement is that because the industry as a body reflects almost every industry sector in this country, the implications and concepts related to workers compensation are something that we have involvement in at any particular time in any state, territory or region. To that end, the industry as a body has a particular understanding of the complexities of trying to operate in the broad range of industry sectors combined with the various types of legislation across Australia. I think I will leave the bulk of what we are talking about today to Charles. I will give some general background as required, and answer specific questions about the industry association.

Mr Cameron—We would like to thank you for the opportunity to address you this afternoon. In essence, the Recruitment and Consulting Services Association, with over 3,000 members, covers a large range of industry categories: those falling into what we call traditional recruitment categories and those that we define as on-hired services. You may well know those we call on-hire generically as labour hire services in many regards. Of course, that is an industry which is growing at a rapid rate. Certainly in the last 10 years it has done so.

The categories of membership for the RCSA include on-hired employee services, on-hired contractor services and what we call recruitment services, which is more like candidate placement services. I will place to one side, I guess, those recruitment services on the grounds that there is no ongoing employment arrangement beyond the placement. It is simply a facilitation of, I guess, an agency type model whereby the particular member will seek work on behalf of an individual on behalf of a client.

Our area of concern in regard to workers compensation is more in particular in regard to on-hired employee services. In essence, as Julie has already mentioned today, given the growth of the industry and the fact that many RCSA members—small, medium and large—operate across any one state boundary, there are significant compliance issues when it comes to employment relations within our industry. In essence, our industry is every industry because our members can be on-hiring employees and/or contractors in any industry from health, the technical through to the professional through to blue collar and white collar—the whole range. To that

extent, of course, there is also a high level of engagement and termination of these parties, given the fact that many of these assignments are on a short-term basis and in many regards they may well be on-hired casual employees.

This means that our industry, maybe more so than many others, is exposed to the compliance costs associated with the employment relationship more so than some other more traditional industries may be. To that end, I guess, the focus of our submission has to be to try to identify not only some of the problems with the existing state based systems of workers compensation but also some of the opportunities that are lost by not having it more centrally focused, be it by way of legislation or compartmentalising some of it and identifying some standards across Australia. In particular, I guess we identify opportunities. We could have a central database of information or at least a central scheme to develop a more consistent and identifiable database of information so that we can track, to some extent, the trends that might be arising in each of the industries in terms of health and safety and workers compensation management.

We feel that certainly there should be a greater focus upon the health of the individual as opposed to simply focusing upon the safety component. Indeed, as we have outlined, we feel the national scheme is one that could clearly reduce the level of compliance burdens that may well be imposed upon many members. To that end our particular industry is one greatly affected by workers compensation management. We have good and longstanding relationships with one of the major workers compensation insurers, who also reflects our views. To that end, I think we can certainly contribute an insight into those compliance burdens and the opportunities that may arise under a centralised scheme or otherwise.

Mr BEVIS—In the recommendation you refer to the scheme. You have mentioned it in your oral presentation. Where is the rationale for it in the actual submission?

Ms Mills—When we first put this submission together, it really was a suggestion as a result of discussions when we had been working with the Job Network program and with the Jobsearch database. In some discussions, we were looking at starting to build a national database of workers looking for work. There was a suggestion that returning people to work who had been injured and things like that would be much better managed through a larger plan. We had not really put together a full rationale at that point. It was more of a conceptual idea. It does need fleshing out and we have been working on that through our own ends. But we had not actually put it forward together in this. This original submission just gave us an opportunity to put some views forward.

Mr Cameron—Are you looking particularly at the database recommendation, because there are a number of recommendations?

Mr BEVIS—Your submission, which has a number of headings, talks about employee manipulation of the system, health, education, industry information and so on. I cannot see in the body of the submission a rationale for establishing a national scheme. But in the recommendations you say that we should have a national scheme. I am trying to comprehend why you put that recommendation in when I cannot see any evidence in the submission to support it.

Mr Cameron—In many regards, a lot of the information that comes to hand is anecdotal in terms of the membership providing advice and outlines of their compliance burdens that arise

under the state in the state workers compensation system. I appreciate your comments with regard to a lack of detail and substance given the actual recommendations that have been provided. Maybe to some extent that is why—

Mr BEVIS—I cannot even see it mentioned, I am sorry. It is not so much a lack of detail; it is just its absence altogether.

Mr Cameron—I guess that is why we hoped to address some of those issues in particular today. If you would like us to provide some detail rather than further detail, we would be happy to do so.

Mr BEVIS—You could have a national scheme and it might be the New South Wales scheme or the Queensland scheme or the Commonwealth Comcare scheme. Different people would come before us and say about all of them that there are good and bad points. I understand the need for a national database and some consistent measurement tools, but how does a national scheme, as distinct from the state, territory and Commonwealth structure that we currently have, overcome issues of fraud?

Mr Cameron—Certainly there is a greater ability for what we call on-hired employee service providers or certainly members to be far more efficient in their management of claims. To that extent at this point of time you have a member who will commonly operate potentially in up to five states and two territories who is required to identify their compliance obligations, be it return to work, and, as we would more generally say at this stage, general compliance obligations. An opportunity to centralise the system would provide the individual with an ability to spend less time focusing upon the different compliance obligations under the legislation and focus more on the ongoing relationship and management of that relationship with the injured worker once the incident takes place. In many regards, we are talking about taking the focus away from those administrative compliance burdens and focusing more upon the relationship with the injured worker.

Mr BEVIS—I am trying to interpret that in terms of the terms of reference we have, which deal with fraud. You are talking there about compliance. An employer might fail to comply in one state because they thought of rules operating in another state, which they were more familiar with.

Mr Cameron—An example of that would be the difference in what we call the WIC codes. In one state, you will have the industry code being defined quite differently from another state. So in terms of employer compliance and ensuring that there is no fraud at an employer level, in determining, I guess, what category of WIC code they more appropriately fit into, it has to be a lot easier if you have one simple centralised system of WIC codes rather than a whole range that vary. In many regards, our membership have every intention of complying. However, given the variance between the states, it does become quite difficult.

Mr BEVIS—That leads me to one of the questions I was going to ask. Whether it is one scheme or eight schemes, given that a single employer in your industry may cover a whole range of occupations and, in turn, a whole range of industries and given that the members you represent do not have control over the occupational health and safety in those various workplaces—

Mr Cameron—We have limited control. We do have control, of course.

Mr BEVIS—I might ask you to expand on that, because I am not familiar with that interface. How does the system establish a fair ratings system for your employees? As I understand it, you make the payment for the employees, not the company that they might be placed with this week.

Mr Cameron—That is correct.

Mr BEVIS—I am trying to get an idea of how the system can cope with that difficulty of you being required to make the payment yet having limited control over occupational health and safety in the workplace and given that you are employing people who are in all sorts of different industries.

Mr Cameron—I tend to divide up the occupational health and safety side of things and the workers compensation management. One is obviously the pre-incident or the preventative side and the other one is the post-incident side, where we try to mitigate the potential loss arising. We are certainly strong advocates of saying that what we call the on-hired employee service provider is indeed the employer both for the purposes of workers compensation management and for occupational health and safety management. Of course, when we look at occupational health and safety legislation, there is what we might term a joint responsibility of both the host organisation and the actual provider to ensure that a safe work environment is maintained.

You have hit upon one of the topical issues for our members, which is the fact that, when it comes to workers compensation management, our members are certainly lumbered with the bulk of the responsibilities. We would ultimately like to see, if a centralised system were developed, some more responsibility placed upon host organisations to take responsibility for return to work opportunities that may arise.

There is a commonly held misconception that on-hired employee service providers are in a far better position to provide return to work opportunities for on-hired employees when they are injured on the grounds that you have a range of different industries and a range of different positions that you might place them into. However, when I say it is misconceived, it is misconceived on the grounds that it is quite rare for host organisations to want to actively take on what can well be said to be injured employees or those who may well be importing a liability into their work environment. We see great opportunities—certainly it has been found to be very difficult at a state level—to emphasise a joint arrangement for return to work opportunities obviously with regard to the host organisation's workplace and where the actual incident arose. Your comments are very accurate and provide a clear insight into our concerns.

As to why the centralised system will provide a better outcome than the state based one, it is simply the fact that we can really focus upon the issues at hand. At the moment, as I keep coming back to, we are more focused upon just simply complying with the varying state legislation rather than focusing on the ways in which we can improve the relationship. It is a three-party relationship between on-hired employees, the host organisation and the on-hired employee service provider. I guess we have a number of ideas at this point—they simply are ideas—to try to develop that side of it. But it has been extremely difficult to try to get some joint consensus. We were even thinking whether there was a possibility of approaching it at an overarching level, where there is an opportunity at the joint ministers discussions that take place

to say, 'Well, we are missing a whole host of opportunities to improve the return to work opportunities for those on-hired employees.' I am not sure whether I have particularly answered the question. I am trying to provide that insight.

Mr BEVIS—I was particularly interested in some of the points you raised in the health education section of your submission. You say that a worker's health can affect occupational health and safety issues at work and that fatigue plays a part in that. You refer there to hours of work, overtime and the percentage of the work taken as overtime. Does it follow from that that things like family friendly workplaces and reasonable maximum working hours are relevant to occupational health and safety?

Mr Cameron—I believe so. I think they are an important underlying part, as we have tried to identify in this submission, with regard to anybody's not only physical health but also mental health, which is becoming a far more relevant factor in today's working environment. I guess that has to be tempered with the fact that there are also clear business requirements in terms of the flexibility of provision of employees and the like. But certainly we are very much aware of it. In Victoria, we will be working with the Equal Opportunity Commission to try to identify some of those underlying factors. As I say, I guess it is always a bit of a trade-off trying to identify the capacity of the smaller members who would be able to deliver those particular flexibilities or work-life arrangements, as you call them.

Mr BEVIS—The footnote to the hours of work issue is the case that was before the Industrial Relations Commission. I do not know what the official title of it was, but it was about reasonable maximum hours. Is that something that should be looked at in the context of injuries? Is it something that has a material impact on injuries in the workplace?

Mr Cameron—I think that an excessive abuse of working hours can certainly contribute to injuries in the workplace. I think it could be included amongst a whole agenda and raft of items that could be considered in terms of ways in which we could look at a holistic approach to reducing workplace injury. There is no question in this day and age, with the changing work and social environments, that many parties are bringing their lifestyle arrangements and the like to work, which certainly does have an impact. In many regards the recruitment industry has done a fair bit of work into psychological appraisal at least to determine whether people are the best psychological fit as well as the best physical fit for particular positions.

Ms Mills—Added to that, too, as an industry body, we see our role being across all the employment sectors. In our relationship with NRMA Insurance particularly, with whom we are working very closely, we are looking at some of the statistics they are gathering in the workers compensation area to try to put some tracking and statistics together. Obviously we do not get access to the sort of things that the WorkCover authorities have. We have put a large amount of association funds into putting some of those statistics together, particularly in Victoria at the moment, where there is a strong compliance program targeted directly at this industry. There is no intent by this industry at any point to avoid compliance or assistance. We have such a reach and we have many members who have national operations. We therefore look at the impact not only in one state but across 52 sectors. Our largest members would have people working in every type of industry there is in this country. We see a real opportunity to contribute some ideas, concepts and values to this, but we need some stats and resources to back up some of the things we hear from our members. So we have to build relationships or get resources to assist us to do that. I think that is one of the key indicators.

I want to go back to something else that Charles touched on before and which was asked before regarding the concept of fraudulent claims. We now have such a flexible work force; there is much movement of the work force from state to state. There are various ways of complying and various ways of reporting. This means that workers can move from state to state, taking with them all sorts of—this is the wrong term—'concept scams' and ways of getting around these things before they are picked up because there is not a central way of following it, tracking it and tracking this mobile work force.

The flexible work force and the mobile work force are something that is here to stay. Whether people like it or not, it is now part of what you were referring to before in the way people choose to work. So we need to look at ways of ensuring that that does not provide opportunities to cause more problems. There are better ways of making all of these things work together more collectively for the better good of everybody. We just see ourselves, with the growth of this industry, as an association representing so many firms who have so many people involved in this type of work as a way of coming up with solutions. But there is obviously work to be done to put those proposals together.

Mr BEVIS—I have one final question. I refer to page 8 of your submission under the 'no fault system' heading in the third paragraph. I can understand how people are given advice about the safety of machines. However, the submission actually says that these workers deliberately ignore those warnings, causing injury to themselves. Are you really suggesting that someone deliberately goes and puts their hand in a machine?

Mr Cameron—I guess it comes down to a level of proof. But there have certainly been circumstances conveyed to me and I have also found in my dealings where there have been parties—I think it is even referred to later in the submission—who have actually stated to somebody that they needed some time off and subsequently an injury will have arisen and they have had significant time off. I am not saying that that is a common occurrence, but there is the potential for that to occur. Certainly that clearly has been stated to parties, which of course raises concern about those individuals. It makes it very difficult, unless you can actually prove otherwise, to show that they did not do it on purpose. Yes, it does happen. Likewise, on the flipside, there are employers who will also take advantage of a system and may well inflict injury upon their business to attract some level of benefit. I am not saying it is rife, but there are certainly examples of that occurring.

Mr BEVIS—I will withhold the temptation to say something about it. No, I won't; I think it is absurd. I will not say it has never happened, but to suggest that there is a systemic problem, as distinct from some aberration, where people knowingly ignore safety advice and go and put their hand in a machine—

Mr Cameron—From my reading of it, I do not think we have stated that there is a systemic problem in this regard. I think we have stated that the RCSA is aware of cases.

Mr BEVIS—The reason I say 'systemic' is that we are looking at systemic changes and what we can do to change the system to fix problems. As with all systems, there will always be aberrations. No matter what system we are talking about, there will be people who do weird and wonderful things.

Mr Cameron—In many regards, we are trying to provide extremes, of course, to give an extent of one end versus the other. I do not think by any means we are sitting here today suggesting it is a systemic problem. If that has been perceived in that way, it should be clarified.

Mr BEVIS—Thank you.

Ms HALL—I will start with that issue and then move on to a couple of issues that I am particularly interested in. Let me see whether I can look at it from a different point of view. It probably links into the questions I am going to ask about occupational health and safety as well. Over the years, one of the challenges in workplaces has been to have safety information put in terms that workers will understand and actually abide by. That can be a challenge for an employer, given the type of events you have mentioned which link into that. I was recently in a workplace that employed a number of people, none of whom could speak English, or Greek for that matter. The employer was Greek. Not only could they not speak English or Greek; it appeared to be highly unlikely that they could read those languages. But all the safety instructions were written in Greek. I suppose it is a challenge both ways in encouraging employers to actually implement sound occupational health and safety strategies and warnings that are going to be relevant to their employees and, similarly, employees actually processing that information. My question to you is: being the kind of agency that you are and having such a variety of employers, do you place upon them any standards as far as making sure this information is there for their employees? Do you have any programs that you run for those people who would be employed by the companies that come under your umbrella?

Mr Cameron—Certainly it might be something that Julie wants to touch on in terms of the self-regulation query. That is what the RCSA does. Certainly there is a code of conduct which the RCSA adopted. Julie might provide an insight into that. I can address the latter point, if you like.

Ms Mills—In terms of the members of this organisation, the RCSA has a code of professional practice. Part of that is a requirement to observe occupational health and safety guidelines as set out in the legislation. Before they are admitted to the association, they have to give evidence that that is part of their business practice. It is not just a matter of paying a membership fee and joining. To that end, built into our practices, we have central legislation training which occurs with all of our members. They must attend that each year to keep their membership active. Part of that is ensuring that occupational health and safety legislation and basic occupational health and safety understandings are interpreted by the members in the industry. That is presented to them.

Following on from that and as a direct result of that, we just launched last week a generic occupational health and safety induction program which our members are obliged now to use with all of their on-hired employees before they put them into any work site. It is general. Obviously, again, going across all those sectors, it cannot cover everything. At the moment, it is developed in English simply because that is the starting point. But the developer has the capacity to develop it in whatever languages are required. That has been launched last week across Australia and New Zealand and it is in its final stages. I am more than happy to provide an example of that, if you are interested

Ms HALL—If you could do that, that would be helpful.

Ms Mills—It is actually the starting point. Behind that we are building tiers—Charles is across the next stage of it—with all the various industry sectors, such as warehousing and transport, and we will gradually build that up. Now that is the starting point, if you like, of this industry's commitment to at least ensuring basic OH&S induction is undertaken.

Again, going back to points raised earlier, once the employees actually go to the host employer's site, the signs put up in the place and all those sorts of things that actually occur on the site then become a joint opportunity, if you like, between the host employer and what has already gone before when they have been moved into that site. I think Charles that will cover that off, because that is where he is actually developing the education and training program. But our focus is to ensure that the relationship between the worker, our member and the host employer is a relationship where all take responsibility rather than it starting here, finishing here and then the next bit starts. It should be an ongoing thing. We have really made a focus of that in the last couple of years.

Mr Cameron—It is a very interesting area. Of course, the area you raise in terms of providing information and signage and the like in appropriate languages to ensure that there is an understanding of the rules and procedures is one of a raft of compliance obligations under occupational health and safety law. I guess traditionally our industry has been quite a difficult one to deal with, on the grounds that we have raised previously.

The circumstance is a perceived lack of control. We are very much an organisation that encourages the idea that you do have control. Of course, that is limited by the fact that you do not always have an on-site representative to ensure that health and safety procedures and rules are complied with. But in many regards we are trying to grapple with the issue of providing legislation that is appropriate to contemporary work arrangements, especially where there are the three parties we have already identified. We see there a great opportunity for legislation to identify two resources, those being the resources of the provider as well as the host organisation, working collaboratively to provide an even safer outcome and workplace than one where you would not actually have on-hired employees. Our point, however, is that that can only be achieved where the obligations of all those parties are clearly defined.

At the moment, the legislation in many states is quite ambiguous as to who takes one part of responsibility versus another one. We are very much looking forward to going down the path of looking at those opportunities and saying to some extent that if certain resources and the like can be devoted to our industry, in many regards, the representatives of the provider can indeed almost be playing an educative role to organisations that they supply employees to.

So it is about saying that there are certain challenges there, but there are certainly opportunities that really have not been seized upon, given that the legislation is very much focused on that old master-servant relationship rather than the three-party relationship. Personally, I am a strong believer that there needs to be a more focused level of self-regulation specifically in health and safety. We are very much an organisation that feels that our reputation is only as good as those of our members. There are a number of parties within this industry who we feel let the industry down by to some extent not complying with their legal obligations. From our perspective, we think a lot more could be done to advise us as to the clear roles of those three parties in this unique arrangement.

Ms HALL—So you are a big advocate of self-regulation. What about checks, monitoring and seeing whether people actually adhere to what you are proposing? Self-regulation is very commendable, but quite often you find that people will cut corners when it is left to purely self-regulation. Are there any checks or balances that you have in place to look at your member organisations?

Ms Mills—The code of conduct is currently in its final stages of authorisation with the ACCC. Within it we now have a professional practice council. So the checks and balances in terms of OH&S specifically will evolve out of that in the sense that once we have actually got the authority to use that as a model, certainly if members of the association do not comply, their membership is no longer acceptable. Membership of the association now is very highly sought. Because of many government contracts, much of the work that goes out to this industry requires membership of a professional body, and we are it. Without it being a restraint of trade, we are obviously the only organisation that this industry can belong to for those sorts of requirements. So that self-regulation will have an extra level to it.

I also think that if the self-regulation model with the code and the professional practice council comes into being, we will actually have an opportunity to develop much more stringent resources to do the checks and balances ourselves. We will be able to put people like Charles into roles that provide resources, both educative and monitoring, to the industry at large. Yes, all self-regulation requires a commitment by those being regulated. However, in many cases, the self-regulation model also provides a level of professional standing to many people that compliance with the big stick does not. Again, it is a balancing act. At the end of the day, there is always a court of law that will make the final decision. So somewhere between the court of law and self-regulation we need to find that matching balance.

Ms HALL—I have two more questions. One of them relates to what you touched on, which is about how you have so many diverse workplaces and when there is injury how you cannot transfer a person from one to another. Have you looked at any proactive schemes, such as incentive payments or whatever, to members of your organisation to look at developing that a little further? I suppose in the long term it is going to result in positive outcomes. I notice you talked about rehabilitation and training. I cannot quite put my finger on it now, but if a person is injured, you get them back and train them, particularly mature workers. I am sure I read that somewhere.

Ms Mills—Yes, you did.

Ms HALL—You are trying to encourage other members and are working out a scheme whereby if you do that, you could reduce your workers compensation liability.

Ms Mills—Yes.

Mr Cameron—There are certainly opportunities—and we have identified them—for maybe getting together a pool within the industry, where you have workers who have been injured within work environments and you have the difficulty of returning them to work within the host organisation workplace. There has certainly been a lot of discussion about the opportunities that might arise in having almost like a pool of parties where others may well be able to take parties who are appropriately qualified. Of course many of them are on restricted duties, so their ability to work in some industries is quite limited. It is about trying to get parties together to say, ‘Even

though this person is not our employee, we can actually find a placement for this injured worker.' Certainly there are opportunities there. In many regards, it is a lot of—

Ms HALL—In some of the states there are special programs. I think New South Wales WorkCover has a 12-week program where you can put people in and they cover the costs.

Mr Cameron—Yes. It is normally a bit further down the track. In Victoria, I think it is called the WISE scheme and the like. Certainly there are opportunities to retrain and place them into new vocations if they have been so severely injured or their capacity does not lend itself to re-entry back into the original occupation. Of course, again, that is a little bit down the track. It requires, obviously, the devotion of a large level of resources if you are retraining somebody into a totally new vocation. We are probably looking more at the opportunities where maybe in the first six months you might have circumstances where you could place somebody else and the like.

Ms HALL—Yes.

Mr Cameron—Again, it is as much of an educative process to educate the host organisation to say, 'Look, many of these parties, if not all of them, have no real restrictions,' as long as you are accommodating, of course, their incapacity at that point in time. So I guess we are a little hamstrung to that extent, but we would like to do a lot more work in educating them as to the advantages of using these people and the social and moral commitment for doing so. Again, it is a bit of a long road, though.

Ms Mills—It is a resource inroad. It is a membership organisation. We need to get supporters and funding to do those sorts of programs. The templates are all there. Again, we are building relationships with rehab providers now in order to trial some of these things. We cannot use members' money to do that because the money they pay for membership has a specific agenda attached to it. These are additional things.

Ms HALL—Maybe you could include that as part of your agenda..

Ms Mills—Yes. It is one of our five priorities on our whole OH&S workers compensation committee schedule. We have talked to a number of the providers out there already who are keen to work with us to do this. It is kind of where it fits in. At the moment, a lot of our energy is working towards ensuring members understand their compliance arrangements in various states, because there are some heavy compliance programs occurring at the moment. There are only three of us who can actually deliver some of this information out there. So it is a timing and a resource issue.

Ms HALL—My final question is: I looked at your recommendations. You have got the database looking at health and more detailed information on national scheme retraining. It is interesting looking through these things and hearing your presentation today. I get the feeling that there are a lot of issues you think could streamline the workers compensation system, that you think government effort should go into them and that they are more important than actual fraud. What would your comment on that be?

Mr Cameron—I agree. I will be upfront with you. It may be something that you have identified. When we first saw the terms of reference, we were concerned that there was maybe a

little too much focus on fraudulent activity rather than maybe some of the fundamental factors contributing to improved efficiencies of the system. I would not say that we feel there is systematic fraudulent activity on behalf of employers or employees out there. Certainly there are extreme examples of both, and we have identified them today. We certainly feel that, yes, you will always find those examples in any insurance environment, especially one where I guess we are touching upon something like workers compensation, which is very important.

To that end, we see a number of opportunities to improve the efficiency of the system which allows the parties, rather than administering workers compensation, to devote to preventative activities. In many regards, a number of our members are finding it administratively burdensome to comply with workers compensation in each of the jurisdictions. It is all opportunity cost, ultimately, at the end of the day. There are finite resources, of course, and those resources could be far better utilised in preventative activity. That is certainly something we have identified.

Ms Mills—I also think we deliberately avoided the bulk of the fraud discussion simply because we felt the insurance industry would make more than enough comment on that. We could actually comment on other things.

Ms HALL—The bigger issues.

Ms Mills—And on other things which would mean that in some sense, if they were there, maybe the fraud would be lessened anyway. It would be a consequence. I do not know. But that is kind of the assumption. We see ourselves as having a much bigger picture view of what is happening out there.

Ms HALL—Thank you very much.

CHAIR—I notice in your submission you state:

> There are many cases of unsubstantiated claims brought against the host or on-hired employer for injuries that can't be proven.

Can you quantify that?

Mr Cameron—I guess typically many of them are lower back injuries, where even if you speak to the general practitioners there is no objective information or no information that can confirm or deny that that actual injury has occurred. Again, there may well be other examples that do not come to mind at the moment, but circumstances where parties will state that they have suffered an injury.

CHAIR—We know what the circumstances are. I am asking you to quantify it. Do you know what percentage of claims?

Mr Cameron—I could not provide it. We have not done statistical research in regard to that. Again, it is something that we want to try to develop. I would say in terms of quantification it would be made a lot easier if we could have some centralised or certainly nationally consistent definitions in terms of the actual injury types and not only the injury types but the actual categories of employment that they were working in at the time. At the moment, if you try and

access statistical information in Victoria, it certainly does not necessarily read in the same manner as that in other states.

CHAIR—You went on to say this:

> In the on-hire industry employees move from provider to provide and it is recognised that they have been known to claim for old injuries at each new site.

You quote three examples and use them as the basis for proposing a national database. My concern with the national database, though, is that you will instead identify a group of employees that become untouchables—nobody will ever employ them. In the cases here it is not entirely clear. The first case is the gentleman who had a pre-existing back injury. It says he suffered a further back injury. You do not say whether he had been originally advised that he should not continue in labouring type work. He may have been advised that he could. Maybe he was advised he could not. It is not clear whether in fact he went out believing he had been rehabilitated and went back to work—which I have to say is a commendable thing to do, particularly after a payout—and then suffered a further injury. There is no question about whether the injury was in fact a new injury or whether it related to the previous injury. I am sorry, but the example just is not clear. My concern is that somebody like that, who apparently has got back into the work force, would be identified. How would you see this national database working without creating a subclass of untouchable employees who never get into the work force again?

Ms Mills—We have some draft documents in relation to how we see this working, which we have worked on since this submission was first provided. I would feel more comfortable if we went back and resubmitted that documentation to you. That document is sitting there with our board at the moment for consideration. I am not avoiding the question. We have put some work into it. The only thing I will say with those examples is that that is an issue because there is now such flexibility with work. Once that worker would go back to the same workplace with the same employer, so the history would be known. Now that worker could actually go to another workplace through this flexible work force on-hiring arrangement, and none of that history goes with him. Therefore, there is not anywhere where that is transferred. It is not necessarily about wanting to make it public; that is not the point. It is being able to understand what that back injury was in the first instance. Some of the material we need to collect to track those things if people are going to be able to move from employer to employer at a much faster rate than they have historically. Those examples have evolved from the concept of where the industry sees these things happening at the moment.

Mr Cameron—I agree with your comments there. In many regards, I do not think it accurately reflects the matters that have been raised at the RCSA level, at industry level. Many of the frustrations arise where members actively try to encourage parties to disclose capacity limitations prior to commencing work so that the member can actually try to accommodate them. I agree. I do not think the database was ever meant to create a blacklist or anything like that.

CHAIR—But that is what it could well be.

Mr Cameron—Exactly. We would not encourage that.

CHAIR—It would defeat the return to work aims that we quite properly have.

Mr Cameron—Exactly. Because no-one would ever really get back to work.

CHAIR—Following on from there, don't your examples—certainly the first one—indicate a deficiency in retraining? This was a person who got a payout. They may not have had any rehabilitation. Did they? This is a question that must be asked. It would seem to me, though, that the deficiency lies in not identifying that that person's back injury does not lend itself to labouring and ensuring that they are retrained in some way.

Ms Mills—It is part of our health and wellness idea. It is about people understanding their own health and wellness. There is an example that I am happy to share today that I experienced only last week with one of our members placing people in call centres. This person applied, went through all the processes and everything else, had all the qualifications and the rest of it. However, when they had their health test, it had never been indicated to them that unless they had 100 per cent hearing—this person had an artificial ear drum—doing call centre work with that sort of deficiency could end up being a liability because it creates all sorts of problems with that strain. We do not want that person untouchable or disadvantaged, but I also do not want to put them into a position where another level of problems occurs. I suppose it is the concept of nationally or somehow collectively being able to recognise those things to ensure that workers are placed in the best role for them. Again, if they have had a payout and not really gone through retraining or have an understanding of what they should be doing, all those things I think are something that is the next level of where we need to go. A lot of this is philosophical discussion rather than practical at the moment. But we have a broad range of understanding of industry to be able to contribute to that. I think that is where we are coming from.

CHAIR—My concern with your suggestion is that it will move a responsibility from the state compensation system to properly ensure that people are rehabilitated and/or retrained, if that is necessary, to a situation where people who will not be employed by anybody else end up on the disability support pension. Effectively, we will be back to the de facto Commonwealth system, and that is not fair to anyone—the taxpayer or the employee.

Mr Cameron—We are trying to grapple with a situation where a number of employees or participants will move from one agency to another agency. Of course the information you obtain, like in a traditional employment arrangement, in terms of their capacities or incapacities arising from their injury is not transported through to the next organisation. We are trying to grapple with the fact that because of the common occurrence they will have some way of centralising that information not for the purpose of discriminating but for the purposes of—

CHAIR—But it will be used for that purpose, will it not?

Mr Cameron—We appreciate that. To some extent, it requires debate and discussion, yes. Like in good eye test terms, the removal of one hazard can create another one. To that extent, this may be an example of that as well. So I guess we are trying to float ways of—

CHAIR—I can see from the point of view of your members that they would be able to avoid employing people who may be susceptible to a subsequent injury. From the point of the taxpayer, though, it is going to mean that there are a lot of people who will not be able to find

work. Unfortunately, time has run out. Thank you very much for your thought provoking submission.

Ms Mills—Thank you very much.

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

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 1.13 p.m.