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## Incidence and cost of fraudulent claims

- 3.1 The incidence and cost of fraud or fraudulent behaviour by employees, employers, service providers, insurance companies and workers' compensation schemes are difficult to quantify. While there is a general acceptance that there may be some fraud, intentional or unintentional, in all of these sectors, the perceptions of the frequency and quantity of fraud within the system reflects the individual's past experiences and roles within the industry rather than an analysis of data. This chapter outlines the reports of perceived incidence levels.

### Incidence of fraud

- 3.2 The Department of Employment and Workplace Relations (DEWR) believes that the incidence and cost of fraud and non-compliance is a problem in all Australian workers' compensation schemes.<sup>1</sup> The Australian Industry Group stated that while the incidence of fraud may not be high, when fraud does happen in workers' compensation schemes it can have significant costs.<sup>2</sup> Mr Kim Mettam also believes that it can be very expensive where it does occur.<sup>3</sup>
- 3.3 Essentially, fraud is a person attempting to get more out of the system than he or she is entitled to, and there are a number of participants and contributing factors. The National Meat Association of Australia summarised the situation as a general attitude that workers' compensation is fair game as an extra source of income, with some doctors appearing to assist employees in maintaining an injury in the system. The Association

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1 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 14.

2 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 53.

3 Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 245.

also cited legislation providing easy access to workers' compensation, insurers who tend to favour the claimant, WorkCover not doing anything about a suspicious claim and the legal system promoting claims as contributory factors. The NMAA maintain that:

All of the parties have a vested interest in maintaining a high level of claims; they all have something to gain. There is no incentive or deterrent in there to reduce claims, and unfortunately this is a case where the buck does not stop with the employer because the employer is always the one who is paying it out to someone else.<sup>4</sup>

## Employee fraud

- 3.4 The majority of submissions argued that the level of employee fraud was low or minimal, although it is difficult to quantify.<sup>5</sup> The Australian Plaintiff Lawyers Association pointed out that all official inquiries over the last two decades have been unable to identify cogent evidence that there is widespread claimant fraud.<sup>6</sup>
- 3.5 The Queensland Government stated that the incidence and associated cost of fraud is difficult to quantify but estimated to be relatively low.<sup>7</sup> The most common form of prosecution of claimants in that State is for the failure to notify WorkCover when the injured worker returns to work.<sup>8</sup>
- 3.6 The Western Australian Government, the Injured Persons Action and Support Association and Mr Paul O'Halloran all concluded that the incidence of fraud in that jurisdiction is negligible.<sup>9</sup>

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4 Mr Ross Wotherspoon, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 149.

5 Media Entertainment and Arts Alliance, Submission No. 43, p. 1; Labor Council of NSW, Submission No. 52, p. 4; Dr Paul Pers and Ms Anita Grindlay, Submission No. 60, p. 2; Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 245; Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, p. 402; Queensland Government, Submission No. 30, p. 1; Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 320; Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14, p. 1; Mr Paul O'Halloran, O'Halloran & Associates, Transcript of Evidence, 20 November 2002, p. 221 and Submission No. 62, p. 1; Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 442.

6 Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, p. 402 and Submission No. 39, p. 6.

7 Queensland Government, Submission No. 30, p. 1.

8 Ms Evron McMahon. WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 320.

9 Western Australian Government, Submission No. 36, p. 2; Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p. 178; Mr Paul O'Halloran, O'Halloran & Associates, Transcript of Evidence, 20 November 2002, p. 221 and Submission

- 3.7 Mr Barry Leahy from Comcare stated that in the context of the total Comcare scheme, fraud is not a very significant issue as Comcare tries to eliminate claims without merit at the front end of the process.<sup>10</sup>
- 3.8 The ACT Government also does not believe that fraud is widespread and is of the view that:
- If there is a belief in the community that workers' compensation fraud is widespread, this may simply be due to a lack of awareness and understanding of the workers' compensation system, and sensationalist reporting in the media.<sup>11</sup>
- 3.9 Mr Kim Mettam of Charles Taylor Consulting did not think there was large scale fraud in workers' compensation.<sup>12</sup> The Workers' Medical Centre and the Queensland Workers' Health Centre agreed that there were only very rarely claims made with a prior fraudulent intent.<sup>13</sup> The National Farmers' Federation found that workers' compensation fraud was not a major issue with their member organisations.<sup>14</sup>
- 3.10 Mr Robert Guthrie from Curtin University told the Committee that while it is poorly documented, the incidence of employee fraud is low:
- The frequently quoted statistic is something like one or two per cent, which I think is a fairly insignificant rate, given the complexities of the system and the number of people involved in it.<sup>15</sup>
- 3.11 The Media Entertainment and Arts Alliance, Labor Council of NSW and Australian Manufacturing Workers' Union believe that employee fraud is low because it is easily detected, as the evidence is available and can be tested and is subject to regulation.<sup>16</sup>
- 3.12 The experience of Dr Paul Pers and Ms Anita Grindlay was there was only a very small amount of true workers' compensation fraud.<sup>17</sup> There was a general perception, however, that fraud by exaggeration was more prevalent than deliberate initiation of a claim in order to commit fraud.

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No. 62, p. 1; Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 442.

10 Mr Barry Leahy, Comcare, Transcript of Evidence, 18 September 2002, p. 8.

11 Australian Capital Territory Government, Submission No. 45, p. 1.

12 Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 245

13 Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14, p. 1

14 Ms Denita Harris, National Farmers' Federation, Transcript of Evidence, 23 October 2002, p. 138.

15 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 188.

16 Media Entertainment and Arts Alliance, Submission No. 43, p. 2; Labor Council of NSW, Submission No. 52, p. 4; Australian Manufacturing Workers' Union, Submission 35, p.10.

17 Dr Paul Pers and Ms Anita Grindlay, Submission No. 60, p. 2.

- 3.13 Mr Andrew Hemming of HEMSEM Consulting believes that in Tasmania: the incidence of fraudulent workers compensation claims is relatively low. What is more apposite, I think, is the development of fraudulent behaviour, and that tends to revolve around the question of the system and the scheme itself permitting such behaviour to continue.<sup>18</sup>
- 3.14 Mr Hemming stressed that fraudulent conduct and fraudulent behaviour are different. Fraudulent behaviour is learned and encouraged and that this is more common as people get into bad behaviour because of the way the system is structured.<sup>19</sup>
- 3.15 The RiskNet Group described the common perception as: that 'hard' fraud is not very prevalent - that is where people stage accidents in order to gain benefits. However, the prevalence of 'soft' fraud, which is fraud by exaggeration, is considered to be widespread. In the New South Wales environment, fraud by exaggeration is considered to be anything up to 20 or 30 per cent of claims costs. Underlying that is something that I do not believe has yet been dealt with by any of the regulatory bodies in Australia: the aiding and abetting of fraud by the medical profession and other providers who are, for want of a better term, allowing claimants to obtain benefits when they are not entitled to them.<sup>20</sup>
- 3.16 The Recruitment and Consulting Services Association also concluded that while there are incidences of fraud, the misrepresentation, dishonest behaviour and 'pushing the limits' of the legislation to one's own advantage is more common.<sup>21</sup> The RiskNet Group also commented that: People who are normally honest citizens are quite happy to exaggerate a medical condition if it means that they can stay at home on workers comp benefits a bit longer, and they are quite happy to exaggerate other forms of insurance claim.<sup>22</sup>
- 3.17 A few submissions argued that there were significant levels of employee fraud.<sup>23</sup> The Department of Employment and Workplace Relations and the

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18 Mr Andrew Hemming, HEMSEM, Transcript of Evidence, 13 November 2002, p. 172.

19 HEMSEM, Submission No. 28, p. 4.

20 Mr Richard Gilley, The RiskNet Group, Transcript of Evidence, 18 October 2002, p. 131.

21 Recruitment and Consulting Services Association, Submission No. 20, p. 12.

22 Mr Richard Gilley, The RiskNet Group, Transcript of Evidence, 18 October 2002, p. 132.

23 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 14; Australian Industry Group, Submission No. 53, pp. 3-4; Mr Garry Johnston, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 170; Mr Michael Potter, Council of Small Business Organisations of Australia Ltd, Transcript of Evidence, 4 December 2002, p. 423.

Australian Industry Group believe that the incidence of fraudulent or potentially dubious claims is a significant problem.<sup>24</sup> The National Meat Association of Australia and the Council of Small Business Organisations of Australia Ltd agreed that in particular, there is an increased prevalence of workers' compensation claims when there is a concern that jobs will be lost.<sup>25</sup>

### Quantifying the level of fraud

- 3.18 In 1998, the Insurance Council of Australia stated that in relation to insurance fraud, it had been considered better for the industry to say nothing because in complaining about the size of insurance fraud, this may encourage people to try it.<sup>26</sup> The Insurance Australia Group stated that it is difficult to establish the incidence of fraud by employees as the current reporting mechanisms are not able to determine this.<sup>27</sup>
- 3.19 The Committee was provided with very few figures quantifying the level of fraud. The IAG believes that the instance of fraud is a systemic problem and estimated that between 5 and 20 per cent of workers' compensation claims are fraudulent but have no method of validation of this estimate.<sup>28</sup> The Department of Employment and Workplace Relations cited an estimate of \$320 million for the cost of workers' compensation fraud for employees, including the fraud committed by service providers in the schemes, which represent 20 per cent of the coverage.<sup>29</sup> These figures exclude workers' compensation underwritten by State Governments and include the fraud committed by service providers in the schemes.<sup>30</sup> DEWR argued that if this trend applies to the remaining 80 per cent, then the cost of employee and service provider fraud is significant.<sup>31</sup> The Risknet Group

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24 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 14; Australian Industry Group, Submission No. 53, p. 3.

25 Mr Garry Johnston, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 170; Mr Michael Potter, Council of Small Business Organisations of Australia Ltd, Transcript of Evidence, 4 December 2002, p. 423.

26 Mr Mark Sheehan, *The ICA Fraud Report*, Insurance Council of Australia, Paper presented at the Conference Crime Against Business, Australian Institute of Criminology, Melbourne, 18-19 June 1998.

27 Insurance Australia Group, Submission No. 47, p. 3.

28 Insurance Australia Group, Submission No. 47, p. 3.

29 Department of Employment and Workplace Relations, Submission No. 48, p. 14 citing the *ICA Fraud Report*, Crime Against Business Conference, Melbourne, 18-19 June 1998, p. 7.

30 Mr Mark Sheehan, *The ICA Fraud Report*, Insurance Council of Australia, Paper presented at the Conference Crime Against Business, Australian Institute of Criminology, Melbourne, 18-19 June 1998, p. 7.

31 Department of Employment and Workplace Relations, Submission No. 48, p. 15.

provides an estimate of claimant and employer fraud at a cost to NSW of \$400 million each year.<sup>32</sup>

- 3.20 An issue raised was the inadequacy of available data, lack of access to the data or the fact that the data is collected differently in the various jurisdictions.<sup>33</sup> The Chamber of Commerce and Industry of Western Australia also commented on the difficulty in accurately measuring fraud by employees, employers or service providers and added that the relevant authorities appear reluctant to pursue fraud except in the most blatant cases.<sup>34</sup>
- 3.21 The Risknet Group stated that while there are very few prosecutions for fraud in NSW, exaggeration of injury is estimated to be at least 10 per cent of claims costs, and that this would amount to \$200 million each year.<sup>35</sup>
- 3.22 The National Meat Association of Australia reported that a large number of its members have estimated that doubtful and fraudulent claims have cost each company between \$200 000 and \$1 million over the last five years.<sup>36</sup> In response to a survey conducted by the NMAA, members stated that they believed that 20 per cent of claims in Queensland and Victoria and 10 per cent in NSW over the last five years were fraudulent.<sup>37</sup> The NMAA attributed the closure of some enterprises to the cost of compensation premiums and claims.<sup>38</sup>

### Number of prosecutions

- 3.23 A number of submissions referred to the small number of prosecutions of various participants in the workers' compensation industry as indicative of the low level of fraud. While this may be indicative that there is a low level of fraud, there are a number of other strategies used when the severity of the infringement does not warrant the cost of prosecution.
- 3.24 The number of prosecutions may reflect a number of factors such as budgetary constraints, priorities within the office of the Director of Public Prosecutions, difficulty in proving cases, the strength of the evidence,

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32 The Risknet Group, Submission No. 10, p. 2.

33 Media Entertainment and Arts Alliance, Submission No. 43, pp. 1-2; Insurance Australia Group, Submission No. 47, p. 3; See also Mr Mark Sheehan, *The ICA Fraud Report*, Insurance Council of Australia, Paper presented at the Conference Crime Against Business, Australian Institute of Criminology, Melbourne, 18-19 June 1998.

34 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 1.

35 The Risknet Group, Submission No. 10, p. 8.

36 Mr Garry Johnston, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 155.

37 National Meat Association of Australia, Submission No. 41, pp. 43, 48, and 51.

38 National Meat Association of Australia, Submission No. 41, p. 3.

whether the matter is a first offence, the seriousness of the offence, whether the breach is clear cut and the actions of the person since commission of the alleged offence.<sup>39</sup>

- 3.25 While the number of prosecutions is low, the recovery of monies and the savings are significant. For example, in Victoria in 2000-01 there were 429 complaints of possible fraud and twenty six prosecutions finalised. In relation to benefit fraud, \$286 578 was recovered as restitution or compensation, not including the impact on liabilities of reducing benefit fraud.<sup>40</sup>
- 3.26 In Queensland there were 609 referrals concerning suspect activity and 10 successful prosecutions from 73 000 claims. In 414 referrals involving statutory claims there were a significant number of other actions such as suspending or ceasing benefits, resulting in a total cost containment of \$4.5 million in the last financial year.<sup>41</sup>
- 3.27 The National Meat Association of Australia believes that fraud should be clearly defined in any workers' compensation legislative scheme and that claimants should be required to repay any benefits falsely obtained.<sup>42</sup>
- 3.28 The Committee does not believe that the level of prosecutions accurately reflects the level of fraud. An attempt to quantify the level of fraud would require information on:
- the number of claims withdrawn or closed by the claimant or the insurer when evidence showed the claim to be fraudulent;
  - how often the matter was not pursued because of the small amount of money involved; or
  - how often another penalty such as a fine was imposed or the money repaid.
- 3.29 There are potentially greater savings from other actions taken instead of prosecution, such as ceasing benefits, imposing penalties and the recovery of money.

### **Understatement or non-reporting of injury**

- 3.30 There is also considerable evidence of employees not making claims even though they may be entitled to compensation. Research by the Australian Bureau of Statistics has found that 50 per cent of workers do not claim

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39 HEMSEM, Submission No. 28, p. 6; Department of Employment and Workplace Relations, Submission No. 48, p. 9.

40 Victorian Government, Submission No. 37, p. 3.

41 Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 313; Queensland Government, Submission No. 30, pp. 2, 4.

42 National Meat Association of Australia, Submission No. 41a, p. 12.

workers' compensation for work related injury and disease. Accurate figures are not available as Australia does not collect comprehensive data on disease.<sup>43</sup>

3.31 The reasons why employees do not lodge claims include:

- having to take time off work, not wanting to be a burden, having to work harder when return to work as the work would pile up, a belief that if managed properly the injury would go away, the possible effect on career prospects, would have to work harder when return to work, loss of respect of supervisor, loss of respect of colleagues, not wanting a court case, loss of money, possible loss of job, or creating a poor impression in a new job;<sup>44</sup>
- did not want to prejudice future employment opportunities;<sup>45</sup> or
- did not want to make a fuss.<sup>46</sup>

3.32 Workers may feel that by making a work related claim they may be causing financial problems for the employer.<sup>47</sup> It has been found that people who are permanently impaired often do not lodge claims until they retire because they believe that employers may not like them lodging a claim.<sup>48</sup>

3.33 Stress claims are an example where people do not bother applying because of the difficulties in succeeding and because dealing with the system exacerbates the condition.<sup>49</sup> There are also many nurses who do not report incidences, and many others do not lodge compensation claims for work related illness or injuries.<sup>50</sup>

### Impact on injured workers accused of fraud

3.34 There was a general perception that injured workers are automatically suspected of fraud. The Australian Plaintiff Lawyers Association expressed the view that:

it is a damning indictment on society that workers when injured not only have to suffer the physical, emotional and financial burden of

43 Dr Deborah Vallance, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 374.

44 Comcare Australia, *Occupational Overuse Syndrome Stressors and the Workplace Project*, Safety, Rehabilitation and Compensation Commission, 1999, p. 6.

45 Ms Vicky Behrakis, Submission No. 23, p. 4.

46 O'Halloran and Associates, Submission No. 62, p. 1.

47 Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14, p. 1.

48 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 376.

49 Mr Simon Cocker, Community and Public Sector Union, Transcript of Evidence, 26 November 2002, p. 365.

50 Australian Nursing Federation, Submission No. 67, p. 3.



their injuries but are also tainted with the suspicion that they are feigning or being fraudulent and carry the stigma of that whilst on the system.<sup>51</sup>

3.35 The Australian Nursing Federation questioned the disproportionate amount of resources allocated to the detection of employee fraud when there is already a vigorous set of procedures and medical tests both before and after a claim is accepted.<sup>52</sup> It was suggested that every employee who lodges a claim is treated as if the claim is fraudulent.<sup>53</sup> The RSI and Overuse Injury Association argued that in cases where there are no clear markers of a fraudulent claim, then the claim should not be treated as possibly fraudulent.<sup>54</sup>

3.36 While verification of a claim is an important part of the workers' compensation system, the adversarial system is damaging to claimants who have to endure attacks on their integrity and the reality of the injury, as well as intimidation, pressure and a lack of control over many aspects of their life.<sup>55</sup> While assessments are being made claimants use their sick leave, long service and recreation leave and then sickness benefits from social security, but the latter needs to be paid back.<sup>56</sup>

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.<sup>57</sup>

3.37 The Injured Persons Action and Support Association commented that some people are forced to sell their homes and cars, to live off the Salvation Army and go to soup kitchens, and can sometimes get money from Anglicare while waiting for insurers to accept claims.<sup>58</sup>

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51 Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, p. 402.

52 Australian Nursing Federation, Submission No. 67, p. 4. See also Mrs Lorraine Briggs, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 446, whose daughter attended 92 medical examinations in 32 months.

53 The RSI and Overuse Injury Association of the ACT, Submission No. 24, p. 1.

54 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 37.

55 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 29.

56 Dr Sherryl Catchpole, Workers' Medical Centre, Transcript of Evidence, 22 November 2002, pp. 345-6.

57 Dr Sherryl Catchpole, Workers' Medical Centre, Transcript of Evidence, 22 November 2002, p. 344.

58 Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 455.

3.38 The RSI and Overuse Injury Association of the ACT added that if the injury is treated as real by the workplace rather than as a fraudulent claim, then there are much better outcomes, and that attacks on people's integrity are not very productive.<sup>59</sup> The pressures of being suspected of fraud do not assist recovery.<sup>60</sup> Dr Christine Roberts-Yates referred to:

the lack of acknowledgment and the idea that people did not believe that they were genuine. The residual impact of their injury is this psychological distrust of organisations and the people in them.<sup>61</sup>

3.39 There are a number of factors outside the injured worker's control that can impact on the duration of claims, and it should not be assumed that the injured worker is malingering. There are delays, the attitude of the employer may worsen a situation and the process of dealing with the injury may cause further injury.<sup>62</sup> The adversarial system currently in place means that the injured worker is 'effectively doubly injured'.<sup>63</sup> These issues are discussed in more detail in Chapter 7.

3.40 Dr Roberts-Yates emphasised that injured workers want respect, as they feel guilt, a sense of shame and dislocation and fear. In particular, males who are the main providers and for whom work is an important part of their identity can feel that that role has been destroyed. They experience a sense of panic and feel they must get back to work sooner but this may re-aggravate the injury. It could be argued that exceeding their return to work plan is negligent behaviour.<sup>64</sup>

3.41 Dr Roberts-Yates added that workers need to feel that they are genuinely believed, and to know that their injury is acknowledged:

They need to believe and know that the employer is doing something about it with an investigation report and that something is being done. So many times workers have said that the machine or whatever it was is still operating as it was, just waiting for somebody else to come along. They need to feel more respect.<sup>65</sup>

3.42 Other injured workers told the Committee that they are made to feel like 'dirt', like they 'did not exist', like criminals, like a dog, and that they feel

59 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 31, 34.

60 Australian Plaintiff Lawyers Association, Submission No. 39, p. 3.

61 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 267.

62 Mr Graham Rodda, Community and Public Sector Union, Transcript of Evidence, 26 November 2002, p. 371.

63 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 29.

64 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 263.

65 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 265.

defamed and suffer a loss of self esteem when accused of fraud.<sup>66</sup> Employers who do not offer to reinstate rehabilitated workers to suitable positions may make injured workers feel rejected and not wanted.<sup>67</sup> It was alleged that in contrast people injured in motor vehicle accidents are treated without hostility.<sup>68</sup>

Eventually, you get to the point where it all stops. You either give up or you choose to accept the payout from WorkCover. And then they pay you out and generally there is a preclusion period when you cannot get any social security. If you are permanently incapacitated, there is a real problem in getting a job. There are not enough jobs around now for people who are fit and well, so being incapacitated makes it even harder ... There is no ability to keep any money aside for further medical treatment if you need it, because Centrelink does not like you having any money either.<sup>69</sup>

- 3.43 In the vast majority of cases injured workers find workers' compensation a very difficult process and do not want to be in that process.<sup>70</sup> It often gets to the point that an injured person signs a release simply to put an end to the prolonged stress, and there is enormous emotional damage.<sup>71</sup>

### Appropriate support and direction

- 3.44 MAXNetwork Pty Ltd argued that some individuals may undertake fraudulent activities in response to a lack of more appropriate support and direction.<sup>72</sup> The Australian Manufacturing Workers' Union commented that in situations where claims are rejected on the unsubstantiated evidence of the employer, the injured workers may suffer disadvantage while these are being challenged.<sup>73</sup>
- 3.45 Dr Sherryl Catchpole suggested that patients may be certain that an injury or illness is caused by work, and because this is a genuine belief they are not attempting fraud even though the diagnosis is one that is not usually

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66 Injured Persons Action & Support Association, Submission No. 69, Appendix 1; Ms Muriel Dekker, Workers' Compensation Support Network, Transcript of Evidence, 22 November 2002, p. 349; Mr George Smit, Submission No. 61, pp. 1-7.

67 Injured Workers Association, Submission No. 29, p. 5.

68 Injured Workers Association, Submission No. 29, p. 5.

69 Mr Ian Trinne, Injured Workers Association, Transcript of Evidence, 21 November 2002, p. 277.

70 Mr Paul O'Halloran, O'Halloran and Associates, Transcript of Evidence, 20 November 2002, p. 230.

71 Name not released, Submission No. 1, p. 1.

72 MAXNetwork Pty Ltd, Submission No. 4, p. 3.

73 Australian Manufacturing Workers' Union, Submission No. 35, p. 10.

accepted as related to work.<sup>74</sup> The manner in which this is handled can add to the stress rather than support the person to return to work.

- 3.46 Particularly in relation to invisible injuries, Dr Robert-Yates told the Committee that:

fraud is very difficult to determine in terms of invisible injuries. It is like pain management ... It is the job of the rehabilitation provider, the doctor, the stakeholders and the employer to bring optimism into that person's view of moving on and to coach them into the next step. I think it is exceedingly difficult to deem or prove that person fraudulent in still adopting the sick role when, for them, the pain is a fact.<sup>75</sup>

- 3.47 It may be more cost effective and efficient to provide these cases with greater support rather than making a significant effort in attempting to prove that the behaviour is fraudulent. In relation to detecting employee fraud, Mr Robert Guthrie added that:

There are more difficult instances where a worker has a genuine claim and does not make their best efforts to return to work—either because of a psychological overlay issue, which in fact may be quite genuine, or because they are malingering. Those things are very hard to detect.<sup>76</sup>

### Perceptions of injured workers

- 3.48 Injuries Australia stated that injured workers are at the bottom of the pecking order and are easily blamed for the ills of the system. The group suggested that injured workers are powerless and have no say in how workers' compensation is conducted.<sup>77</sup> Research by Dr Roberts-Yates found the key issues from the injured workers' perspective to be that:

the majority of injured workers are generally committed to an early and successful return to work; some workers are frequently driven by economic factors; workers rarely have access to information explaining the compensation process from the onset of injury; and workplace injury is considered by claimants to be the modern equivalent of leprosy - that metaphor came up several times. In addition, injured workers may be described as having experiences involving loss of self-esteem, self-worth and identity, traumatic

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74 Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14a, p. 1.

75 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 259.

76 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 189.

77 Injuries Australia Ltd, Submission No. 27, pp. 3-4.

separation from the workplace, financial loss, exposure to an overwhelming range of professional strangers, introduction to a process perceived as alien and threatening, loss of control, grief and feelings of shame, diminished organisational trust, anger, stress, guilt, anxiety, self-blame and depression, inability to manage emotions, alienation, disenfranchisement, loss and change in many areas, familial and personal adjustment to the rehab process, imposed redeployment and life transition, and a process with a focus on compensation rather than return-to-work outcomes and new learning.<sup>78</sup>

- 3.49 The Injured Workers Association of South Australia argued that injured workers have to fight continually for their basic legislated rights against ‘corporate bullies and ten cent tyrants’, which is draining on the health and resources available to the injured worker.<sup>79</sup> The Association believes that the WorkCover system, including the agents, rehabilitation providers, private detectives and other parties, has the power over an injured worker. Mr Ian Trinne stated that those managing the workers’ compensation system know that there is immunity from prosecution. He said that injured workers face a life of misery through continued poor health, no rehabilitation and no money. There is no equality in the process and there is no power.<sup>80</sup>
- 3.50 In relation to the 20 per cent of claims that insurers regard as ‘challenging’, Dr Roberts-Yates concluded that injured workers should be treated less like numbers and more like people, and said that one worker commented that they feel like ‘a number with skin on’.<sup>81</sup>

## Employer fraud

- 3.51 Employers bear a significant proportion of the costs of workers’ compensation through premiums for the cover. It was generally acknowledged that there is a significant burden on the workers’ compensation system if employers do not obtain cover. Non-compliance by employers can result in increased costs to other employers and possibly to the injured worker and the community. In a number of jurisdictions there are now significant investigation strategies in place to detect employer non-compliance.

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78 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 253.

79 Mr Ian Trinne, Injured Workers Association, Transcript of Evidence, 21 November 2002, p. 269.

80 Mr Ian Trinne, Injured Workers Association, Transcript of Evidence, 21 November 2002, pp. 270, 276.

81 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, pp. 262-3.

- 3.52 The Chamber of Commerce and Industry of Western Australia believes that employer non-compliance is more rigorously investigated than employee fraud.<sup>82</sup> The CCI stated that:
- We have 80,000-odd employers, and many of those employers are going in and coming out of business frequently. The difference between employer fraud and employee fraud is that employer fraud, or the non-payment of premiums, is actively investigated, whereas the lodgement of claims that could be fraudulent is very rarely investigated. If there is no investigation, there is no identification.<sup>83</sup>
- 3.53 Premium avoidance varies across industry sectors and is influenced by the levels of contracting and subcontracting, and by taxation arrangements. WorkCover Queensland recently recovered \$1.89 million in additional premiums (\$545 million premium base) but did not consider this indicative of the level of non-compliance.<sup>84</sup> WorkCover Queensland visits employers at random but also targets employers from taxation data matching and the Australian Business Register. WorkCover Queensland, however, has not conducted any compliance work on labour hire companies but believes that this is going to be a problem.<sup>85</sup>
- 3.54 During 2001-02 WorkCover WA undertook 22 288 inspections, 11 966 of these were lapsed workers' compensation policies and new businesses, which identified 166 businesses not having current workers' compensation cover.<sup>86</sup>
- 3.55 The Victorian Government reported that in the years from 1994 to 1998, \$45 million in unpaid premiums was recovered, approximately one percent of the total premium.<sup>87</sup>
- 3.56 The NSW Government provided an amnesty on underpayment in 1996, which resulted in a \$15 million improvement in compliance.<sup>88</sup> Estimates as

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82 Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia, Transcript of Evidence, 20 November 2002, p. 207. WorkCover Western Australia stated that the opportunity for fraud by employees is very minimal because of the filtering mechanism (Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p. 178).

83 Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia, Transcript of Evidence, 20 November 2002, p. 207.

84 Queensland Government, Submission No. 30, p. 3.

85 Mr Gordon Lawson, WorkCover Queensland, Transcript of Evidence, 22 November 2002, pp. 321, 326.

86 Western Australian Government, Submission No. 36, p. 2.

87 Victorian Government, Submission No. 37, p. 3.

88 Australian Plaintiff Lawyers Association, Submission No. 39, p. 9 citing Graham Turner, "Fraud Wars: Workers Compensation Rip Offs" *Safety News*, Issue 4, April 1998.

high as 60 per cent for non-compliance were given after CFMEU investigations on building sites.<sup>89</sup>

- 3.57 The Australian Plaintiff Lawyers Association provided the following estimates of employer fraud.

Recovery of unpaid/avoided Premium:

NSW: 1996: \$15m, 97/8: \$4.9m, 99/00: \$7.4m, 00/01: \$14.8m

Vic: 1995-9: \$41-5m

Qld: 1995-9: approx \$15m

WA: 1995/6 18% of business who should have did not have an insurance policy and in 2001/2 166/22288 had no policy.<sup>90</sup>

- 3.58 The Australian Manufacturing Workers' Union commented that when employers do not pay their full workers' compensation premiums this not only denies employees their rights but also adversely affects other employers.<sup>91</sup> Employer non-compliance is important because it impacts on employees when they are most vulnerable, increases the costs of the schemes and results in a shift of financial responsibility to the public sector.<sup>92</sup>

### Reasons for non-compliance

- 3.59 A range of views was provided to the Committee on reasons for employers not having workers' compensation coverage. Small businesses failing to pay the correct premiums may do so because they do not understand workers' compensation law.<sup>93</sup> The NMAA also attributed this to the complexity of the system.<sup>94</sup> In particular, Queensland WorkCover's definition of worker is extremely broad and is being misinterpreted within the construction industry.<sup>95</sup>
- 3.60 The Victorian Automobile Chamber of Commerce (VACC) argued that the failure of employers to meet their legislative obligations reflects the complex nature of the framework and the ineffective workers'

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89 Australian Plaintiff Lawyers Association, Submission No. 39, p. 9 citing Graham Turner, "Fraud Wars: Workers Compensation Rip Offs" *Safety News*, Issue 4, April 1998.

90 Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, p. 403.

91 Australian Manufacturing Workers' Union, Submission No. 35, p. 7.

92 Media Entertainment and Arts Alliance, Submission No. 43, p. 3.

93 Mr Andrew Hemming, HEMSEM, Transcript of Evidence, 13 November 2002, p. 173.

94 Mr Ross Wotherspoon, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 168.

95 Mr Danny and Mrs Jeanette Garvey, Submission No. 6, p. 1.

compensation scheme. VACC also suggested a review of the complex legislation to simplify the obligations employers are required to meet.<sup>96</sup>

3.61 Small businesses may also be confused in relation to the application of the rating system to a particular 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.<sup>97</sup>

### **Impact of fraud within the workers' compensation system on employer premiums**

3.62 The Council of Small Business Organisations of Australia expressed concern over the small businesses that have to sustain the cost of increased premiums from a genuine accident over a short period of time, and argued that there needs to be a safety net to protect these businesses from closure.<sup>98</sup> Smaller employers cannot negotiate discounts but if they had a major catastrophe they would pay a significant excess.<sup>99</sup>

3.63 While most compensation claims are not considered a problem, the ones that are of most concern to employers are those that have a significant impact on premium levels. While major companies may take this into account, small business owners may take making a claim against them personally.<sup>100</sup>

3.64 In Queensland the cost of compliance activities are operational costs to the government and the costs of pursuing individual claims does not impact on the employer's premium. Any restitution from a successful prosecution is offset against the specific claim costs and ultimately the premium payable.<sup>101</sup> However, in some jurisdictions the cost of claim's investigation can impact on the premium levels for a number of years.

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96 Victorian Automobile Chamber of Commerce, Submission No. 65, p. 9.

97 Mr Michael Potter, Council of Small Business Organisations of Australia Ltd, Transcript of Evidence, 4 December 2002, p. 415.

98 Mr Michael Potter, Council of Small Business Organisations of Australia Ltd, Transcript of Evidence, 4 December 2002, p. 416.

99 Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p. 184.

100 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 56.

101 Queensland Government, Submission No. 30, p. 4.



## Premium avoidance

### No workers' compensation coverage

- 3.65 All Australian schemes have in place a nominal fund to meet the costs of injured workers where employers are uninsured.<sup>102</sup> WorkCover Queensland reassured the Committee that injured workers are covered whether or not the employer takes out cover, but if a worker is injured it is the employers without cover that WorkCover prosecute. If an employer is having a cash flow problem then the premium can be paid off over time.<sup>103</sup>
- 3.66 The Media Entertainment and Arts Alliance provided a number of examples of employers without workers' compensation, and believes that this practice is most common among small businesses.<sup>104</sup> The Master Cleaners Guild of Western Australia estimates that the percentage of companies operating nationally without public liability and workers' compensation cover is about 25 per cent.<sup>105</sup> The Alliance made the point that the low level of prosecutions for non-compliance means that those less scrupulous in the business sector will continue to avoid their responsibilities in taking out coverage, at a cost to the taxpayer and the injured workers.<sup>106</sup>

### Understating payroll

- 3.67 Some employers avoid full premiums by under-declaring the wages paid to employees.<sup>107</sup> In the construction industry alone, under-declaration is admitted by peak industry bodies to be at least 30 per cent. In the wider community fraud by under declaration is believed to be at least 10 per cent of the total premium, i.e. \$200 million each year.<sup>108</sup>
- 3.68 There has been a significant increase in the extent to which labour hire and contractors are used within manufacturing.<sup>109</sup> As this trend also applies to other industries, this may lead to the deliberate or inadvertent

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102 Department of Employment and Workplace Relations, Submission No. 48, p. 12.

103 Mr Gordon Lawson, WorkCover Queensland, Transcript of Evidence, 22 November 2002, pp. 327-8.

104 Media Entertainment and Arts Alliance, Submission No. 43, p. 3.

105 Mr Ian Westoby, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002, p. 212.

106 Media Entertainment and Arts Alliance, Submission No. 43, p. 4.

107 The RiskNet Group, Submission No. 10, p. 9; Media Entertainment and Arts Alliance, Submission No. 43, p. 4.

108 The RiskNet Group, Submission No. 10, p. 9.

109 Dr Deborah Vallance, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 375.

understating of wages, given the confusion of the current contractor and labour hire situation.

- 3.69 In relation to the definition of worker in the Western Australia legislation, the Chamber of Commerce and Industry of Western Australia states that the complexity of definition does not provide clear direction to employers on what is included in workers' remuneration, nor does it support more contemporary labour market arrangements, and may require both the employer and the contractor to obtain workers' compensation insurance cover. The CCI added that a structure that supports a double payment to the insurer creates 'a considerable disincentive on employers to meet inequitable requirements'.<sup>110</sup>

### Business arrangements to avoid/reduce premiums

- 3.70 The recent review of employer compliance in New South Wales identified a number of businesses that were able to fragment their arrangements in order to reduce their overall workers' compensation liabilities by reducing the impact of their bad claims experience on premiums. Insurance Australia Group also commented on the capacity under the legislation to change company structures in order to adjust the amount of premium payable.<sup>111</sup> In NSW, for example, if an organisation pays an annual premium below \$3000, the safety experience does not impact on the premium.<sup>112</sup> Also, by splitting into a number of smaller companies, employers can take advantage of the Two Times Rule.<sup>113</sup> In addition, the establishment of unrelated employment trusts can be used to take advantage of legislative loopholes in NSW.<sup>114</sup>
- 3.71 It could be argued that under the current system these activities are neither non-compliance nor fraud. While these opportunities are available, it is not surprising that as businesses face increasing premiums, that employers engage in premium minimisation.<sup>115</sup>

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110 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 6. See also Mr Danny and Mrs Jeanette Garvey, Submission No. 6.

111 Ms Carolyn Ingram, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 74.

112 *Review of Employer Compliance with Workers' Compensation Premiums and Pay-roll Tax in NSW – Interim Report*, 22 March 2002, p. 28.

113 The RiskNet Group, Submission No. 10, p. 10. The Two Times Rule: for example in NSW Employers whose basic tariff premium does not exceed \$112,000 have their experience adjusted premium capped at twice the amount of their basic tariff premium: NSW WorkCover, *Outline of the NSW Workers' Compensation Premium Scheme 2001/02*.

114 The RiskNet Group, Submission No. 10, p. 10.

115 Department of Employment and Workplace Relations, Submission No. 48, p. 21.

## Penalties for employer non-compliance

3.72 There is a perception among some injured workers that employers are not penalised for non-compliance even though penalties are available.<sup>116</sup> It was suggested that there is a low rate of prosecution, with inconsequential fines, and that the premiums avoided may be much higher than the penalties imposed.<sup>117</sup> It was also argued that the legislative framework does not support the audits conducted by insurers in relation to wages declaration.<sup>118</sup>

3.73 The Insurance Australia Group conducts payroll audits on behalf of WorkCover New South Wales and recovers eight to ten times the cost of recovery, so this is a highly efficient process.<sup>119</sup> IAG pointed out that in some cases the employers receive reimbursements because of overpayment through misinterpretation.<sup>120</sup>

3.74 In Queensland, hundreds of penalties are imposed every year.<sup>121</sup> Also, in South Australia, an employer who breaches compliance requirements is dealt with by administrative sanctions through increased or supplementary premiums:

This enables breaches to be dealt with more expeditiously than through the courts. Each supplementary premium on non-complying employers covers ongoing costs of workers' claims until compliance is forthcoming.<sup>122</sup>

3.75 These penalties are not always perceived to be rigidly enforced in all jurisdictions. For South Australia, Dr Robert-Yates made the point that:

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

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116 Mr Markham Moore-McQuillan, Submission No. 16, p. 3 and Transcript of Evidence, 21 November 2002, p. 297; Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 442.

117 The RiskNet Group, Submission No. 10, p. 10.

118 The RiskNet Group, Submission No. 10, p. 10.

119 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 73.

120 Ms Carolyn Ingram, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 74.

121 Mr Gordon Lawson, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 314.

122 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 255.

whereas failure on their part to comply results in suspension, if not termination, of income maintenance payments.<sup>123</sup>

## Employers' perspective

3.76 Employers' are concerned about doctors' self-justification, case managers who are too preoccupied with compliance with WorkCover standards to manage the case efficiently, the fact that the resultant costs are met by small to medium employers and that the premium liability for life has tremendous consequences for the employer.<sup>124</sup> Some employers believe that workers in the meat industry see workers' compensation as another form of paid leave.<sup>125</sup>

3.77 The Australian Industry Group expressed its concern about the extent to which employers' efforts to create a safer workplace are undermined by a lack of credibility of the workers' compensation schemes:

That creates risks for injury management. Employers have a very profound responsibility in relation to workers compensation to make sure that they contribute what they can to an injured worker's recovery through offering them alternative duties where they are available to offering a supportive environment et cetera. To the extent that there is fraud in a scheme, that jaundices or prejudices employers' views about the legitimacy of that role, and I think that should not be underestimated.<sup>126</sup>

## Service providers

3.78 The Risknet Group described the over-servicing by provider organisations as 'rife and seemingly uncontrolled'.<sup>127</sup> The Australian Industry Group also commented on the lack of checks and balances on over-servicing by rehabilitation providers and lack of financial incentives for employees to rehabilitate to the level where they can either reduce or cease treatment.<sup>128</sup>

3.79 The Victorian Automobile Chamber of Commerce believes that the inadequate monitoring and review periods in the current system allow for

123 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, pp. 255-6. See also the NSW *Review of Employer compliance with workers' compensation premiums and pay-roll tax in New South Wales*; Industry Commission, *Workers' compensation in Australia*, pp. 186-189.

124 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 256.

125 National Meat Association of Australia, Submission No. 41, p. 3.

126 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 54.

127 The RiskNet Group, Submission No. 10, p. 2.

128 Australian Industry Group, Submission No. 53, p. 12.

over servicing. VACC suggested that the billing hours for rehabilitation should be actively monitored, the current financial incentives that impede return to work be reviewed, that there should be regular reviews of cases where there are unsatisfactory delays in the early return to work and generally, a change of rehabilitation providers who do not achieve a return to work in thirteen weeks.<sup>129</sup>

- 3.80 The point was made that the overuse of allied health professionals with no demonstrable improvement does not benefit the injured worker, as it reinforces the sick role and increases frustration. On the other hand AIG members believed there is a tendency to accept rehabilitation treatment as a substitute for a return to work and that some employees seem to perceive that rehabilitation is an end in itself.<sup>130</sup> These issues are dealt with in Chapter 7.

### Evidence based treatment

- 3.81 Evidence based treatment is the type of treatment that has been demonstrated in the international literature as the best for a particular condition. Dr Paul Pers stated to the Committee that:

Unfortunately, in Australia - as in many Western countries - there is very poor access to evidence based treatment, and injured workers unfortunately receive passive treatments, are encouraged to rest and therefore develop chronic pain and other negative pains and behaviours which result in long periods off work. This is costing the system not millions of dollars but probably billions of dollars, and that is reflected in the premiums and in the outstanding liabilities of all the workers' compensation schemes in Australia.<sup>131</sup>

- 3.82 There was evidence that many rehabilitation programs reinforce the sick role and that this delays any improvements. Dr Paul Pers and Ms Anita Grindlay explained that the over servicing by some service providers may be due to a lack of understanding of evidence based treatment although there were rare cases of opportunism:

Providers are almost never engaged by or challenged by those responsible for administration of the Act in any jurisdiction.

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129 Victorian Automobile Chamber of Commerce, Submission No. 65, p. 8.

130 Australian Industry Group, Submission No. 53, p. 12; Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 65.

131 Dr Paul Pers, Transcript of Evidence, 26 November 2002, p. 356; See also Dr Paul Pers and Ms Anita Grindlay, Submission No. 60, p. 2.

Treatment provided that is paid for at an hourly rate or per consultation instead of based upon outcomes fuels this problem.<sup>132</sup>

3.83 The Committee is concerned, however, that if a system were implemented that was based primarily on outcomes, this would provide an incentive for service providers to treat the less injured and avoid clients with the most serious injuries that would take longer to reach a satisfactory outcome. Ms Anita Grindlay made the point that there are payment systems that could ensure that this did not occur.<sup>133</sup>

3.84 The Chamber of Commerce and Industry of Western Australia stated that:

We have taken the hardest stand with externally provided services. We believe that there are some cases where those services are used as a claims management tool. They could be used by either party. When they are used as a claims management tool, it provides great discouragement to the whole principle of return to work. It is not about return to work: on the part of the insurer, it is about showing a capacity or, on the part of an employee, showing an inability to work, because that may well benefit them in a common law claim.<sup>134</sup>

3.85 In 1995 the Victorian WorkCover Authority initiated a peer review process which has led to a change in servicing patterns for some providers. The Australian Plaintiff Lawyers Association stated that the dubious practices of some service providers resulted in changes to the *Accident Compensation (Further Amendment) Act 1996*.<sup>135</sup> There were four providers prosecuted over the period 1996-1998.

### Medical practitioners

3.86 There were allegations from all sectors of the workers' compensation system that medical practitioners are biased in favour of the opposing sector and that doctor shopping is widespread.

3.87 It was suggested that some doctors were aiding and abetting fraud through exaggeration in order to maintain their business relationships with injured workers, or that doctors only have the client's version of events, especially in cases where the injury does not have visible symptoms.<sup>136</sup> It was also suggested that doctors may allow enormous

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132 Dr Paul Pers and Ms Anita Grindlay, Submission No. 60, p. 2.

133 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 358.

134 Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia, Transcript of Evidence, 20 November 2002, p. 204.

135 Australian Plaintiff Lawyers Association, Submission No. 39, p. 14.

136 The RiskNet Group, Submission No. 10, p. 8.

leeway, giving the employee the benefit of the doubt, and that they are trained to accept what is relayed.

The other area is the lack of knowledge amongst the medical profession of our particular industry. You can understand the relationship that has built up between a person and their physician over a period of time and this often clouds the issue. If a person goes to their local doctor and requests time off, that is virtually the only information the doctor seeks. They never balance the equation by contacting the employer to hear the other side of the story.<sup>137</sup>

- 3.88 It was argued that currently the workers' compensation system does not hold doctors accountable.<sup>138</sup> A& B Industries provided a case study of an employee who was able to obtain medical certificates for five months off work from a doctor with a reputation for supporting injured workers, and stated that the employee's mother and aunt were also on WorkCover with same doctor.<sup>139</sup>
- 3.89 It was also alleged that workers opt for a change of medical practitioners and/or rehabilitation providers if the doctor decides that the worker has work capacity, and that workers can easily manipulate the claim through exercising the right of choice and change.<sup>140</sup>
- 3.90 Mr Robert Guthrie commented that in relation to allegations made about doctors siding with the claimant :
- I think these allegations are very easy to make but very hard to substantiate and frequently untrue. It is certainly the case that a medical practitioner will have a particular perspective on how a person should be going back to work and what their progress should be, but in most instances those opinions are fairly validly sustained, whether they fall on behalf of the employer or the employee.<sup>141</sup>
- 3.91 From a practitioner's perspective, Dr Sherryl Catchpole stated that on occasions she has advised patients that their diagnosis is one that is not usually accepted as work related but she completed the certificate for them. In Queensland there is a section on the form for the doctor to state

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137 Mr Terry Nolan, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 152.

138 The RiskNet Group, Submission No. 10, p. 8.

139 A& B Industries, Submission No. 2, p. 1.

140 Mr Kerry Jones, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002, p. 215.

141 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 194.

that they are not certain that the injury is work related. Q-COMP also provides education for general practitioners.<sup>142</sup>

The doctor is not the gatekeeper; the person who accepts the claim is the gatekeeper. That is the way it works ... 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.<sup>143</sup>

3.92 On the other hand, the Australian Manufacturing Workers' Union believes that the treating doctor is often placed under pressure to ensure that the injured worker has a rapid return to work.<sup>144</sup> The AMWU stated that doctors engaged by employers may claim that an injury is not work related or that there is a degenerative component which will result in the claim not being substantiated.<sup>145</sup> It is also almost impossible to separate coexistent medical conditions such as arthritis and degenerative conditions from an injury.

3.93 An area of particular concern for a number of witnesses was that of the competence of medical practitioners. A number of injured workers were able to provide proof to the Committee of mistakes in their doctors' reports, of doctors refusing to amend incorrect reports, and the ignoring or cover-up of facts between doctors, lawyers and investigators. There were also allegations of rudeness on the part of practitioners.<sup>146</sup> Injuries Australia noted that many injured workers get the same letter from doctors with only the name changed at the top.<sup>147</sup> It was alleged that doctors do not read the material they have before them and that nearly every report contains inaccuracies.<sup>148</sup> The Committee was also told that a medical professional in Queensland and one in Perth have been disciplined in relation to inappropriate dealings with workers' compensation cases.<sup>149</sup>

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142 Dr Sherryl Catchpole, Workers' Medical Centre, Transcript of Evidence, 22 November 2002, pp. 342, 347.

143 Dr Sherryl Catchpole, Workers' Medical Centre, Transcript of Evidence, 22 November 2002, p. 342.

144 Australian Manufacturing Workers' Union, Submission No. 35, p. 11.

145 Australian Manufacturing Workers' Union, Submission No. 35, p. 10.

146 For example, Mr George Smit, Submission No. 61, pp. 1-7; Mr Peter Reynolds, Submission No. 9, p. 1.

147 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 92.

148 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 41.

149 Ms Muriel Dekker, Workers' Compensation Support Network, Transcript of Evidence, 22 November 2002, p. 350; Mr Evald Orrman, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 445.



3.94 In relation to the independence of medical practitioners, it was reported that there were errors in doctors' reports which are misleading or are perceived as biased in favour of the insurers and are fraudulent. When these errors are not corrected the settlement of the claim is on the basis of the deception.<sup>150</sup>

Indeed, great cost is added to the system at large, not only from a monetary point of view, but more importantly from a social aspect. I believe that there is perhaps greater burden placed upon the individual injured person and their family than what was initially caused by the injury itself.<sup>151</sup>

3.95 The RSI and Overuse Injury Association of the ACT also believes that conflicting medico-legal reports may be poorly informed differences of opinion.<sup>152</sup> The Association also stated that doctors are paid up to \$3000 for reports which are reproducible on a word processor:

There is undoubted fraud; some doctors have been found to have included references to male pregnancies, so they have been reproduced inappropriately. There is undoubtedly fraud, yes, and there is a lot of very carefully maintained ignorance.<sup>153</sup>

3.96 Mr Stig Hellsing believes that the methods used in obtaining medico-legal reports are 'absolutely appalling'. He alleged that the use of unscrupulous health professionals who are prepared to provide the insurer with favourable reports brings the system into disrepute.<sup>154</sup>

### Medical panels

3.97 Some injured workers also expressed a significant level of disquiet about the operation of the medical panels. The Workers' Compensation Support Network stated that the truth is not always being told and that medical panels are not independent.<sup>155</sup>

3.98 It was suggested that fraudulent activity by medical panels includes:

- denying natural justice through failure to provide contradictory comments to injured worker; lack of independence from workers' compensation offices; Workers' compensation offices fund tribunals

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150 Mr Peter Reynolds, Transcript of Evidence, 21 November 2002, pp. 281, 284-5.

151 Mr Peter Reynolds, Transcript of Evidence, 21 November 2002, p. 281.

152 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 40.

153 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 41.

154 Mr Stig Hellsing, Transcript of Evidence, 16 October 2002, p. 44.

155 Ms Muriel Dekker, Workers' Compensation Support Network, Transcript of Evidence, 22 November 2002, p. 352.

and receive evidence from WorkCover officers which may be inaccurate; acting *ultra vires* in consideration of personality; if there is a pre-existing injury the refusal of compensation; or lack of accountability in ensuring panels have all relevant facts;<sup>156</sup> or

- a decision being *fait accompli* as the chairman of a panel comes from the insurance side of the industry.<sup>157</sup>

3.99 Medical panels can be misled by the information provided by the employer and/or WorkCover.<sup>158</sup> It was also argued that medical panels should not be used on the basis that they cannot form a true medical opinion by 'just looking'.<sup>159</sup> The Committee was told that in 1999 an administrative review commission recommended the disbanding of medical tribunals.<sup>160</sup>

3.100 In relation to medical panels, Dr Paul Pers explains that the effectiveness of panels may depend on:

whether the panel is able to get the best doctors who can assess in a non-judgmental and very appropriate clinical way and also take into account all the other psychosocial and behavioural factors that are involved in workers' compensation claims. I think medical panels are seen sometimes as a panacea for dispute resolution. I guess we see it as just a part of that process; perhaps an essential part, but just a part of it - not to be seen as a cure-all for all of these problems.<sup>161</sup>

## Legal system

3.101 The Australian Plaintiff Lawyers Association argued that injured workers need protection, legal advice and legal representation because the administrative nature of workers' compensation schemes does not take care of them.<sup>162</sup> Dr Pers believes that the current legal system lacks a fundamental understanding of how occupational injury occurs and how disability should be managed.<sup>163</sup>

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156 Workers' Compensation Support Network, Submission No. 5, pp. 1-5.

157 Mr Paul O'Halloran, O'Halloran and Associates, Transcript of Evidence, 20 November 2002, p. 223; See also Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 442.

158 Ms Muriel Dekker, Workers' Compensation Support Network, Transcript of Evidence, 22 November 2002, p. 349.

159 Ms Leah Palazzolo, Submission No. 8, p. 3.

160 Ms Muriel Dekker, Workers' Compensation Support Network, Transcript of Evidence, 22 November 2002, p. 350.

161 Dr Paul Pers, Transcript of Evidence, 26 November 2002, p. 362.

162 Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, p. 404.

163 Dr Paul Pers, Transcript of Evidence, 26 November 2002, p. 360.

3.102 The Australian Manufacturing Workers' Union provided an example of a worker with an accumulated injury such as a hearing loss being required to use the legal system a number of times if the worker has had a number of employers in an attempt to obtain an outcome. Ms Gwyneth Regione has attended conferences in the workers' compensation tribunal where each employer is represented by their insurance company agent and each agent is represented by a lawyer:

They have been in the tribunal for five or six conferences in which everyone in the room accepts that this worker has an entitlement and that the sole question to be determined is: who is going to pay it? That is such an abuse and waste of money. By the time the process is over, the amount of money that has been spent is many times what the worker is entitled to receive.<sup>164</sup>

#### Cost of legal fees

3.103 The cost of legal services in all jurisdictions is high. For example, NSW WorkCover has the highest involvement of the legal profession nationally, even though it is a no fault scheme.<sup>165</sup> To place this in perspective, insurance companies are paid \$180m for administration, doctors \$160m and lawyers \$240 million.<sup>166</sup> The point was made to the Committee, however, that a number of significant expenses that are usually included under legal expenses are in fact medical reports.<sup>167</sup>

3.104 In relation to the high level of legal costs, the Australian Plaintiff Lawyer Association added that in a system where the unsuccessful party is required to contribute to the costs of the other party, if insurers got it right more often, their legal costs would be reduced. Mr Burt added that:

In fact, the courts do award costs in favour of the insurer against the injured worker. If the injured worker has the assets or capacity to meet such a judgment then the insurer does in fact chase the injured worker.<sup>168</sup>

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164 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 380.

165 The Risknet Group, Submission No. 10, p. 7.

166 The Risknet Group, Submission No. 10, p. 7.

167 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 194.

168 Mr Peter Burt, Australian Plaintiff Lawyers Association, Transcript of Evidence, 26 November 2002, p. 405.

## Legal professionals

3.105 Allegations against lawyers in evidence to the Committee were largely criticisms of allowing a claim to drag on for years, and endemic systematic collusion.<sup>169</sup> The National Meat Association of Australia alleged that:

lawyers are the major reason for deficiencies in the operations of the spirit of the schemes, especially in escalating and inhibiting rehabilitation.<sup>170</sup>

3.106 It was also suggested that lawyers may encourage legal action even if a claim has little chance of success, on the basis that it is likely that the matter will be settled out of court. The Australian Plaintiff Lawyers Association stated that they settled about 98 per cent of cases out of court as the system encourages the resolution of claims without going to court for a full hearing.<sup>171</sup> The NMAA believes that lawyers know that WorkCover will settle out of court and that therefore a lawyer may be prepared to proceed with a fraudulent claim.<sup>172</sup>

3.107 The APLA argued that:

We actually filter a lot of claims that should not go to court at all. The no-win no-fee policy is much talked about in society these days. Lawyers are not going to risk their own fees and their own disbursements that they have to incur to run these cases if there is going to be a fanciful chance of success. We cannot operate that way as a business.<sup>173</sup>

3.108 It was argued that the no win no fee system is a significant disincentive for lawyers to take on cases without merit, because lawyers will only be paid in full if the claim is successful. In a 'no win no fee' situation the lawyer can in fact charge the injured worker 25 per cent of the legal fees if the case is not successful. If the claim is worth less than \$30 000 the defendant does not have to pay legal costs and the claimant is limited to the recovery of

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169 Name not released, Submission No. 1, p. 1; Workers' Compensation Support Network, Submission No. 5, p. 1; Mr Mark Moore-McQuillan, Transcript of Evidence, 21 November 2002, p. 292; See also Mr Max Tomlinson, Submissions Nos. 51 and 51a.

170 National Meat Association of Australia, Submission No. 41a, p. 8.

171 Mr Peter Burt, Australian Plaintiff Lawyers Association, Transcript of Evidence, 26 November 2002, pp. 406-7.

172 Mr Ross Wotherspoon, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 162.

173 Mr Simon Garnett, Australian Plaintiff Lawyers Association, Transcript of Evidence, 26 November 2002, p. 405.

medical expenses and income. The disincentive to bringing a small claim will in effect shift the cost to the Commonwealth.<sup>174</sup>

- 3.109 In situations where the claimant has a genuine claim, the advice offered by the lawyers may not always be in the best interests of the client in terms of the goal of achieving a timely return to work. MAXNetwork commented that:

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.<sup>175</sup>

- 3.110 The Master Cleaners Guild of Western Australia believes that solicitors frequently encourage their clients to keep their options open:

This simply means that in instances where return to work is imminent and medically certified as achievable, workers are being advised not to return to work, not to return to full-time work, to assume only part-time work and in some instances to maintain a level of disability or impairment.<sup>176</sup>

- 3.111 The Guild adds that this may adversely affect redemption entitlements under the claim and that workers use up their statutory entitlements before pursuing a common law entitlement.<sup>177</sup>

- 3.112 Mr Glover emphasised that while he was satisfied with the insurer, the system and the Regulations forced unnecessary litigation, for evaluation and settlement.<sup>178</sup> The Australian Industry Group commented that:

The nature of proof that is required in a legal forum requires an injured worker to make the best case they can about the nature and the extent of the injury. This is done to maximise compensation. This goal is often inconsistent with good injury management in which the ultimate aim is always to return the worker to their pre-injury duties. In the legal forums that exist in the different schemes across

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174 Mr Peter Burt, Australian Plaintiff Lawyers Association, Transcript of Evidence, 26 November 2002, pp. 412-3.

175 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 335.

176 Mr Kerry Jones, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002, p. 214.

177 Master Cleaners Guild (WA) Inc, Submission No. 59, p. 3.

178 Mr B C Glover, Submission No. 44, p. 2.

Australia there are inadequate checks and balances between those two conflicting principles.<sup>179</sup>

- 3.113 Mr Robert Guthrie believes that a lawyer acting ethically would be able to detect employee fraud and would advise against proceeding. He told the Committee that fraud is usually detected at trial if a case does proceed, and that the incidence of straightforward fraud is very low indeed.<sup>180</sup>

### Courts and judges

- 3.114 A number of issues were raised in relation to court proceedings, including the failure to introduce or allow relevant material, and suggested bias. The National Meat Association of Australia argued that employers should have the unfettered right to introduce evidence before tribunals and the court that denies the claim.<sup>181</sup>

- 3.115 Mr Kim Mettam suggested the need for a template rule in relation to the benefits and the process involved:

As an example there is no uniform Evidence Act in Australia and in some states an individual can make a claim for workers compensation for the aggravation of an illness and use the Evidence Act to refuse to allow an employer to objectively examine the allegation. We need a Federal Evidence Act template covering this area ... Claiming prejudice under an Evidence Act to prevent the review of the previous medical history is not either fair or correct.<sup>182</sup>

- 3.116 Mr Mettam argued that if someone has a history of illness then the truth should be discovered.<sup>183</sup> It is very important that early in the process full discovery should be given.<sup>184</sup>

- 3.117 Mr Peter Reynolds, a former investigator, stated that it was commonplace that evidence that was helpful to the claimant was never declared. He said that investigators are encouraged not to collect evidence detrimental to the cause as this would not assist in reducing the payout for claims.<sup>185</sup> He stated that:

There are indications of attempts and indeed success by investigators and members of the legal profession, right through to

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179 Australian Industry Group, Submission No. 53, p. 12.

180 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 189.

181 National Meat Association of Australia, Submission No. 41b, p. 5.

182 Mr Kim Mettam, Submission No. 54, p. 3.

183 Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 244.

184 Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 245.

185 Mr Peter Reynolds, Transcript of Evidence, 21 November 2002, pp. 284, 286.

the court system, to avoid, ignore and/or cover over certain important and/or pertinent information relevant to the individual claimant who is being assessed and/or disputed in his claim ... A pattern of gross incompetence in some areas is evident, as is one of obvious misrepresentation and/or deception on the part of some lawyers and judges.<sup>186</sup>

- 3.118 There were also suggestions of bias within the court system. For example, the Insurance Australia Group believes that in cases where judges favour the defendant there may be no point in proceeding to court and it would be better to settle out of court.<sup>187</sup> It was suggested that the chances of winning in court depend on which judge deals with the case, and that 'defendant' judges who are confronted with an injured worker and a deep pocket on part of the employer may exercise a social conscience.<sup>188</sup>

### Common law

- 3.119 The Committee received arguments for and against access to common law for injured workers. The Australian Plaintiff Lawyers Association commented that:

There have been many amendments to the statutory schemes across Australia. Some have abolished the access to common law; some have got thresholds which injured workers have to get over in order to be able to access those. The Australian Plaintiff Lawyers Association's view on common law access is that it should be available to injured workers because it provides a much better system of compensating people for the injuries that they suffer than the base statutory schemes.<sup>189</sup>

- 3.120 WorkCover Western Australia believes that a balance has been achieved in that scheme:

I think that we do have a balance in our system between statutory benefits and common law. The ability of governments to balance that and to maintain a stable environment is certainly important, but probably more important are PPR - prevention, payment and rehabilitation and/or injury management. They are the three key

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186 Mr Peter Reynolds, Transcript of Evidence, 21 November 2002, p. 283.

187 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 75.

188 Mr Garry Brack, Employers First, Transcript of Evidence, 18 October 2002, p. 88.

189 Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, p. 404.

elements of any system, and getting those in balance is the challenge.<sup>190</sup>

- 3.121 It was suggested that one of the benefits of common law is that in its absence there is no incentive to provide a safe working environment if the employee cannot sue for negligence.<sup>191</sup>
- 3.122 The Chamber of Commerce and Industry of Western Australia argued that common law has been the greatest barrier to successful injury management or return to work. The Chamber suggested that when legal advice is sought there is a change in the injury management program from a return to work to being unfit for work.<sup>192</sup>
- 3.123 The Department of Employment and Workplace Relations suggested that workers may be encouraged to act in a manner which would maximise a possible lump sum payment because of access to common law.<sup>193</sup> DEWR commented further on the adversarial aspects of common law:
- common law system creates an atmosphere of poor employment relations. The employee must prove fault on the part of the employer for the injury and the delays inherent in the common law system are unlikely to enhance trust relations between the two parties. In these circumstances, both employees and employers are less likely to cooperate in any rehabilitation and return to work arrangements.<sup>194</sup>
- 3.124 The National Meat Association of Australia would like to see some limitation on the common law approach.<sup>195</sup> NMAA argued that claimants see this as a natural step in getting the maximum compensation.<sup>196</sup> Another concern is that the insurer rather than the employer is the respondent in proceedings in the court system and the employer's wishes are often overridden.<sup>197</sup>

Sadly, once it becomes a habit or people become comfortable with a prolonged period off work, very commonly that then escalates to common law. Whilst there may be only 20 per cent of fraudulent

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190 Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p. 186.

191 O'Halloran & Associates, Submission No. 62, p. 12.

192 Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia, Transcript of Evidence, 20 November 2002, p. 204.

193 Department of Employment and Workplace Relations, Submission No. 48, p. 21.

194 Department of Employment and Workplace Relations, Submission No. 48, p. 21.

195 Mr Garry Johnston, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 148.

196 National Meat Association of Australia, Submission No. 41, p. 14.

197 National Meat Association of Australia, Submission No. 41, p. 27.



claims at that level, when it escalates to common law often the costs rise to 40 to 50 per cent of the total dollars in payout. The sad fact about that is that, of that payout figure, the claimant or the injured person may receive as little as 40 per cent, with 60 per cent of the payout figure remaining with the legal or medical professions. You have to ask yourself: who are we really compensating? Are we compensating the genuinely injured person or are we compensating the legal and medical professions?<sup>198</sup>

- 3.125 The NMAA argue that there has to be a national approach to limit access to common law courts, and suggest that one approach may be to limit access to cases of significant impairment.<sup>199</sup>

### Insurance companies

- 3.126 Fraudulent activities by insurers or workers' compensation schemes suggested in submissions include denying natural justice through a failure to provide injured workers with opportunities to comment on contradictory statements made by the employer, treating an accumulated injury as an instant injury, manipulating outstanding claims provisions to attain the desired result and price fixing to attain similarities in premium between competitors.<sup>200</sup>
- 3.127 Another issue raised was the readiness of insurance companies to claim that fraud exists, in order to shape public opinion.<sup>201</sup>
- 3.128 The Australian Plaintiff Lawyers Association provided the Committee with examples of questionable conduct by insurers and added that it happens more often than is brought to their notice, because in many cases injured workers accept insurers' decisions without questioning their validity.<sup>202</sup>

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198 Mr Terry Nolan, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 152.

199 National Meat Association of Australia, Submission No. 41a, p. 12.

200 Workers' Compensation Support Network, Submission No. 5, p. 2; Injured Persons Action and Support Association, Submission No. 71, p. 4; O'Halloran & Associates, Submission No. 62, p. 4 citing transcript of Mr Brendan McCarthy.

201 Injuries Australia Ltd, Submission No. 27, p. 2; Injured Workers Association, Submission No. 29, p. 4.

202 Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, p. 406. See also Mrs Lorraine Briggs, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 447.

## Automatic acceptance of small claims

- 3.129 On the other hand, employers are concerned at the apparent readiness of insurance companies to accept small claims unchallenged.

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.<sup>203</sup>

- 3.130 The Council of Small Business Organisations of Australia commented that insurers will automatically accept small claims because they do not have the resources to investigate all claims. The Council believes that small business operators may be aggrieved that issues are not investigated but that there is a cost factor to be considered in small claims.<sup>204</sup>

The frustration for small business is that often these types of claims are accepted by the insurance companies and as a result the premium to the small business is increased to cover the payout of the claim where the small business person has no say in the settlement of the claim.<sup>205</sup>

- 3.131 While it can be argued that this is a cost effective mechanism to deal with less substantial claims, it does raise the issue of increased cost to schemes if there are significant numbers of fraudulent claims dealt with in this manner. The situation could be expected to worsen as it becomes known that insurers are not likely to pursue these matters. Equally, the Committee is concerned at the potential impact on premium levels if insurance companies were to increase the pursuit of small doubtful claims to ensure their elimination.

## Alleged incompetence and inaction by insurers

- 3.132 When claims are not dealt with adequately the employer bears the costs, directly or indirectly through premiums.<sup>206</sup> The National Meat Association of Australia expressed concern at what it sees as the 'just pay up' mentality and mismanagement of insurance claims.<sup>207</sup> The Association suggested that the only reason that employers question claims is a genuine belief

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203 Mr Michael Potter, Council of Small Business Organisations of Australia Ltd, Transcript of Evidence, 4 December 2002, p. 415.

204 Mr Michael Potter, Council of Small Business Organisations of Australia Ltd, Transcript of Evidence, 4 December 2002, p. 417.

205 Council of Small Business Organisations of Australia Ltd, Submission No. 49, p. 1.

206 Mr Garry Brack, Employers First, Transcript of Evidence, 18 October 2002, p. 85.

207 Mr Terry Nolan, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 152.

based on evidence and knowledge, that the claim is doubtful but often this falls on deaf ears. There are other doubtful claims but, from sheer frustration, they are simply not pursued.<sup>208</sup>

- 3.133 Another area of concern was the inability of employers to recoup the cost of claims:

That is the case unless there is fraud involved, in which case you can seek to take the matter on in the Workers Compensation Commission. If there is criminal fraud the proof requirements are obviously pretty significant, but even if the claim is rejected you do not recoup because that becomes part of the investigation costs. Those people who are claims experience rated wear those costs in their premiums and if they are not claims experience rated the whole industry bears those costs.<sup>209</sup>

- 3.134 The costs of taking civil action against an employee that the employer believes is not entitled to compensation would be very high. The process would also become very disruptive for the workplace, and there are a range of reasons why an employer would not pursue such matters in addition to costs.<sup>210</sup>

- 3.135 The Victorian Automobile Chamber of Commerce argued that insurer inaction contributes to fraudulent claims. VACC also gave the example of a claim that was rejected by the insurer but was later reinstated without consultation with the employer, because the rejection had not been recorded properly. VACC also provided the example of an injured employee undertaking his pre-injury work with another employer and the insurer not being prepared to provide assistance in investigating the worker.<sup>211</sup>

- 3.136 Mr D and Mrs J Garvey expressed a number of concerns about the operation of the WorkCover in Queensland, including inadequate advertising of the fact that private insurance is no longer needed and their belief that the monies paid by subcontractors should be refunded as there is over-insurance and double dipping by insurance companies.<sup>212</sup> They also believe that the timing of WorkCover's new 'worker' definitions, in conjunction with the introduction of GST was unfair to small businesses already struggling with the additional paperwork and legislation. They

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208 Mr Ross Wotherspoon, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, pp. 156-7.

209 Mr Garry Brack, Employers First, Transcript of Evidence, 18 October 2002, p. 86.

210 Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia, Transcript of Evidence, 20 November 2002, p. 210.

211 Victorian Automobile Chamber of Commerce, Submission No. 65, pp. 7, 9.

212 Mr Danny and Mrs Jeanette Garvey, Submission No. 6, pp. 1, 4.

argued that the need for employers to pay the premium before they can lodge an appeal against the level of premium being charged is also unfair.<sup>213</sup>

- 3.137 Employers also believe that if the claimant is not meeting their responsibilities, the insurer should take a more active role. Moreton Exhibitions and Events found that the insurer let an employee's claim go unchecked for months, did not request the assistance of a specialist but later advised the employers that this was a case of fraud but that the case could not be proved. The insurer advised that the only option was to seek an equitable solution through demonstrating a solid and conscientious approach to the Commission.<sup>214</sup>

### Treatment of injured workers

- 3.138 Injuries Australia make the point that while it may be acceptable to treat all claims as suspicious, it is not acceptable to behave in an uncivilised and unethical manner to attempt to deny or delay claims.<sup>215</sup>

This obsession with this so-called injured worker "fraud" has caused enormous disruption to the medical and social treatment and the lives of tens of thousands of injured people and their families. People have been traumatised while they wait months of [sic] a claim to be accepted, had their income terminated without notice, their medical and vocational rehabilitation terminated without notice. They become unemployed and unemployable through no fault of their own.<sup>216</sup>

- 3.139 Reports of insurers using standover tactics upon injured workers' solicitors to persuade the claimant to settle their claim,<sup>217</sup> are also of concern to the Committee. The Injured Workers Association commented on the lack of publicity for tactics used against workers:

WorkCover agents misuse their position of power and treat the injured workers as a lower being, often intimidating him/her psychologically and "pushing" to a state of depression with the aim to make the worker willing to accept any, even the most ridiculous proposition to get him/her off the system.<sup>218</sup>

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213 Mr Danny and Mrs Jeanette Garvey, Submission No. 6, p. 3.

214 Moreton Exhibitions and Events, Submission No. 63, p. 3.

215 Injuries Australia Ltd, Submission No. 27, p. 2.

216 Injuries Australia Ltd, Submission No. 27, p. 3.

217 Mr Stig Hellsing, Transcript of Evidence, 16 October 2002, p. 44.

218 Injured Workers Association, Submission No. 29, p. 4.

- 3.140 The Australian Plaintiff Lawyers Association cited a number of examples of unacceptable conduct by insurers, in which the insurer's conduct was variously described by the courts as unconscionable, amongst the most shameful thing the judge had ever seen, and a travesty.<sup>219</sup>
- 3.141 Concerns were also expressed in relation to the inaction by insurance companies in situations where the employer does not do the right thing.<sup>220</sup> The injured workers are disadvantaged because of the uneven power and resources and influence of the parties in the dispute.<sup>221</sup> The Injured Workers Association believes that 80 percent of injured workers give up their fight for compensation. The Association stated that injured workers are weakened physically and mentally, and are unaware of their rights and have limited legal representation because of their financial situation. On the other hand WorkCover can afford the best lawyers and is a powerful organisation.<sup>222</sup>
- ...the combined psychological pressure of the agents and some media, the open and unpunished disregard of the agents for the law and the fear to be financially broke by legal expenses, makes most of the injured workers fearful and unable to fight for their rights.<sup>223</sup>
- 3.142 Mr Helling told the Committee that in his case, when applying to the Supreme Court, the insurer did not present a medico-legal opinion in his favour which had been commissioned by the insurer, and that he was not able to use that report in Court. Mr Helling claimed that the insurer withheld parts of a magistrate's decision in briefing the medico-legal specialists and that he was denied witnesses.<sup>224</sup>

### Accountability of workers' compensation schemes

- 3.143 The Australian Plaintiff Lawyers Association asserted that amendment to workers' compensation schemes over the last two decades have resulted in the curtailing of injured workers' rights and entitlements such as:
- abolition and restrictions of access to common law;
  - abolition of journey claims;
  - introduction of medical assessment and monetary thresholds;
  - limitation on weekly payment entitlements, resulting in costs shift to the Commonwealth;

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219 Australian Plaintiff Lawyers Association, Submission No. 39, pp. 12-16

220 Ms Leah Palazzolo, Submission No. 8, p. 2.

221 Injured Workers Association, Submission No. 29, p. 6.

222 Injured Workers Association, Submission No. 29, p. 5.

223 Injured Workers Association, Submission No. 29, pp. 5-6.

224 Mr Stig Helling, Submission No. 33, p. 3.

- changing the definition of compensable injury;
  - limitation on stress claims;
  - introduction of medical panels as the final arbiter; and
  - use of the Australian Medical Association guides as an objective tool to measure impairment.<sup>225</sup>
- 3.144 Injuries Australia stated that in NSW the commercial agents involved are paid by the Government, which is also accountable for policing the workers' compensation legislation.<sup>226</sup> Injuries Australia commented that NSW WorkCover spends five times more money pursuing potential fraud than in rehabilitation of injured workers.<sup>227</sup> The group questioned whether the failure of workers' compensation schemes to guarantee the provision of adequate rehabilitation services to injured workers could be considered fraud.<sup>228</sup>
- 3.145 Mr Kazimir Kowalski provided documents obtained from WorkCover South Australia under Freedom of Information that indicated that his employer spent \$239 166.44 on legal expenses, \$1718.02 on investigation costs, \$46 333.47 on other expenses and only \$35 on rehabilitation after a workplace injury.<sup>229</sup> On a previous claim by the same employee, the company spent \$56 140 on legal costs and \$80 468 on other costs to avoid paying \$283 for a claim for an injured finger.<sup>230</sup>
- 3.146 Mr Peter Reynolds argued that the high cost of disputing alleged fraudulent claims is unnecessary, and suggested that disputing of claims is entirely lacking in honesty, integrity, benevolence and altruism to society in general. He suggested that the methods used are questionable, if not fraudulent themselves.<sup>231</sup>

### Self insurers

- 3.147 The perceptions offered to the Committee on self insurance also covered the full spectrum of opinions from those opposed to self insurance to those with a strong preference for the self insurer approach.
- 3.148 Those who saw significant benefit in the approach of self insurance pointed out that in the case of self insurers there are far fewer claims

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225 Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, pp. 403-4.

226 Injuries Australia Ltd, Submission No. 27, p. 3.

227 Injuries Australia Ltd, Submission No. 27, p. 4.

228 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 95.

229 Mr Kazimir Kowalski, Transcript of Evidence, 21 November 2002, p. 304.

230 Mr Kazimir Kowalski, Transcript of Evidence, 21 November 2002, p. 305.

231 Mr Peter Reynolds, Submission No. 9, p. 2.

proceeding to court and fewer employees losing their jobs.<sup>232</sup> Self insurers also appear to operate 40 per cent more cheaply and the return to work rate is almost 100 per cent.<sup>233</sup>

- 3.149 One concern expressed was that there is sometimes confusion in relation to the perceived separation of roles between the employer and the insurer, with the injured worker seeing active case management as harassment by the employer.<sup>234</sup> The self insurer's aim is to close cases as soon as possible, and the injured workers may not feel that they have had natural justice.<sup>235</sup>
- 3.150 The Australian Manufacturing Workers' Union gave the example of one exempt employer who was prosecuted and found to be negligent and responsible for a death of a worker but did not lose their self insurance status.<sup>236</sup> The AMWU argued that:

If a company is insured through the workers compensation system their claims are assessed by somebody independent of the workplace and the rehabilitation is managed by somebody independent of the workplace.<sup>237</sup>

## Workers' compensation costs

- 3.151 The Department of Employment and Workplace Relations commented that:

Ultimately, the costs of fraud and non-compliance are borne by all employers and employees as well as the community at large. Significantly, fraud can also act to inhibit the efficiency and effectiveness of workers compensation in reducing work-related injury and illness and restrict efforts to promote rehabilitation and return to work. To the extent that fraud adds to the costs borne by employers, it can impact adversely on the creation of job opportunities for all Australian workers.<sup>238</sup>

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232 Injuries Australia Ltd, Submission No. 27, p. 5.

233 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 91.

234 Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14a, p. 2.

235 Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14a, p. 2.

236 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 376.

237 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 379.

238 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p.13.

- 3.152 The 1994 Industry Commission report estimated that 60 per cent of the cost of long term injury cases is borne by the worker, their family and the community.<sup>239</sup>

The Commission is convinced that too many of the costs of work-related injury and illness are being borne by affected individuals and taxpayers and that redressing some of the imbalance will create the sorts of incentives which will, in the longer term, lead to fewer (and less serious) workplace injuries/illnesses (and therefore workers' compensation premiums).<sup>240</sup>

## Cost to injured workers and their families

- 3.153 Injuries Australia estimates that the cost of compensation claims to workers, their families and the community at 85 per cent of the total workers' compensation cost.<sup>241</sup> The Workers' Compensation Support Network lists the costs of personal and financial losses to the injured workers in addition to suffering from injury and a level of disability and loss of income as including:

- loss of appropriate workers' compensation payment;
- loss of rehabilitation and an opportunity to return to work;
- sometimes loss of home; and
- family breakup.<sup>242</sup>

- 3.154 MAXNetwork expressed empathy for injured workers 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.<sup>243</sup>

- 3.155 Injuries Australia claims to identify up to fifty suicides per year in NSW caused by experiences following work injury.<sup>244</sup>

239 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 91.

240 Industry Commission, *Workers' compensation in Australia, Report No. 36*, 4 February 1994, p. xxxiv.

241 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 91.

242 Workers' Compensation Support Network, Submission No. 5, p. 5.

243 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 339.

244 Injuries Australia Ltd, Submission No. 27, p. 7; Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 94. See also Mrs Muriel Dekker, Transcript of Evidence, 22 November 2002 p. 352 and Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 381; Mr Evald Orrman, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 445;



## Cost to the employer

- 3.156 A significant concern to employers is the increased cost of premiums to cover the cost of those who fraudulently minimise their premiums, payments for fraudulent claims, over-servicing or incompetence and inaction by insurance companies or workers' compensation schemes. Concern was also expressed over estimates for fraudulent claims being carried over two to three years and the inclusion of increasing taxes in the calculation of premiums.
- 3.157 The Victorian Automobile Chamber of Commerce argued that there should be an easier process than employers bearing the onus of proof to disprove a claim.<sup>245</sup>
- 3.158 There may also be repercussions within the workplace, such as copycat claims. Dr Catchpole also told the Committee that:
- 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.<sup>246</sup>
- 3.159 Some employers find that the premiums applied to their business bear little or no relationship between the activities their workers undertake within the organisation or the workplace safety of their business.<sup>247</sup> The industry classification used to determine premiums may encourage employers to arrange their businesses in a way which will minimise their premium.<sup>248</sup>
- 3.160 In situations where an employer fails to pay and the insurer liquidates the company at its own cost, the costs of that process are passed onto other employers who pay through higher premiums.<sup>249</sup>

## Costs to the workers' compensation scheme

- 3.161 Savings can be achieved by eliminating claims without merit at the beginning of the process, and close management of claims enables easier

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Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 448.

245 Victorian Automobile Chamber of Commerce, Submission No. 65, p. 7.

246 Dr Sherryl Catchpole, Workers' Medical Centre, Transcript of Evidence, 22 November 2002, p. 343.

247 Department of Employment and Workplace Relations, Submission No. 48, p. 20.

248 Department of Employment and Workplace Relations, Submission No. 48, p. 20.

249 Council of Small Business Organisations of Australia Ltd, Submission No. 49, p. 2.

recovery, which leads to the closure of claims.<sup>250</sup> It was suggested that twenty per cent of the claims take up 80 per cent of the costs, and these are the claims that should be researched in attempts to make the system more effective.<sup>251</sup> Most of these are illness based cases.<sup>252</sup>

- 3.162 The RSI and Overuse Injury Association of the ACT believes that there are also potential savings if injured workers had more control over their treatment. The Association believes that there should be the capacity to match the frequency of the treatment to the state of the illness and that there may be times when less frequent treatments would be adequate.<sup>253</sup> The Association added that control over their working life has been found to be crucial for people's health.<sup>254</sup>

## Costs to the Commonwealth

### Social Security

- 3.163 A number of submissions refer to the transfer of costs to the taxpayer in situations where employees are willing to work but denied the opportunity. Injured workers who do not achieve a return to work often become the responsibility of the Commonwealth Government and the Commonwealth's social security system is seen as a de facto workers' compensation system. If injured workers are unable to gain insight into alternative career options and strategies they may move to the Disability Support Pension.<sup>255</sup>
- 3.164 It was strongly argued that this is very stressful for people who find themselves in this situation, and is a very unsatisfactory outcome for people who wish to lead a meaningful life through their work. In situations where the employer does not provide suitable employment in some jurisdictions:

The employee gets weekly payments for two years, gets terminated at the end of two years and then is on his or her own, or on the social security system. It is a wearing down process. Along with that, they have the stigma and everything else attached with having a

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250 Mr Barry Leahy, Comcare, Transcript of Evidence, 18 September 2002, p. 8.

251 Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 241.

252 Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 242.

253 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 38.

254 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 39.

255 MAXNetwork Pty Ltd, Submission No. 4, p. 3.

WorkCover claim. There needs to be much better and more effective rehabilitation.<sup>256</sup>

3.165 There are a significant number of people who find themselves in this situation. The Risknet Group suggested that one of the factors that should be considered in the determining the cost of workers' compensation systems is the cost shifting to the Commonwealth Social Security scheme.<sup>257</sup>

3.166 The Australian Manufacturing Workers' Union emphasised the transfer of the cost of the workers' compensation system onto the public system.<sup>258</sup>

because workers compensation systems over the last decade have cut down in terms of how long people are able to access workers compensation payments, ceasing payment in many cases at the end of two years, there are people who, despite the fact that they may not be able to work full time, actually go out of the workers compensation system and often go onto sickness benefit, so there is actually a cost transfer of people from the insurance system onto a Commonwealth benefits system.<sup>259</sup>

3.167 In Victoria, it was estimated that three per cent of those in the manufacturing sector with long term injuries would still be in the workers' compensation system after two years and they would have nowhere to go.<sup>260</sup>

If the evidence is that they have no work capacity, they are entitled to continue to receive weekly payments beyond that 104-week period. A lot of factors are taken into account; it is not just a medical scenario: it is their age, education standard and background which are taken into account as to whether they can satisfy that definition. If they cannot, their payments are terminated and they will go onto social security - if they qualify.<sup>261</sup>

3.168 In some circumstances an injured worker can obtain assistance from the Commonwealth when awaiting the settlement of a claim, if the scheme

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256 Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, p. 411.

257 The Risknet Group, Submission No. 10, p. 4.

258 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 377.

259 Dr Deborah Vallance, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 375.

260 Dr Deborah Vallance, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 385.

261 Mr Simon Garnett, Australian Plaintiff Lawyer Association, Transcript of Evidence, 26 November 2002, p. 410.

caps the time and amount of compensation or if a common law settlement is mismanaged.<sup>262</sup> Workers' compensation can affect about 45 000 people in the social security system per annum.<sup>263</sup> The number may be higher than this as Centrelink clients seeking assistance are not required to declare whether the injury or disease is work related.<sup>264</sup> Claimants may be required to repay a large amount of their settlement to Centrelink.<sup>265</sup>

- 3.169 When the injured worker is offered a redemption of liability payment, after a preclusion period, they may be eligible for social security.

These workers ultimately get thrown on the social security scrap heap, and the federal government foots the bill.<sup>266</sup>

- 3.170 The Injured Workers Association (SA) attributed cost savings since the changes to the South Australian *Workers Rehabilitation and Compensation Act 1986* to moving workers onto the Commonwealth's social security and welfare systems and/or moving medical costs to Medicare and hence to the taxpayers of Australia.<sup>267</sup>

- 3.171 The Insurance Australia Group believes that there needs to be national uniformity in relation to the interfaces between workers' compensation and health and social welfare so that these are clearly understood and appropriately designed.<sup>268</sup> The extent to which States rely on the social security and public health systems must be defined in the benefit structure of each of the States and Territories.<sup>269</sup>

- 3.172 One of the issues the Productivity Commission is expected to consider is the extent to which the Commonwealth social security system has become a de facto workers' compensation scheme.<sup>270</sup>

## Health services

- 3.173 The Council of Small Business Organisations suggested that minor injuries treated by local doctors or hospitals should be bulk billed, with the gap

262 Mr Tom Kenna, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 21.

263 Mr Tom Kenna, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 21.

264 Department of Employment and Workplace Relations, Submission No. 48, p. 25.

265 Name not released, Submission No. 1, p. 1.

266 Mr Kazimir Kowalski, Transcript of Evidence, 21 November 2002, p. 305.

267 Injured Workers Association, Submission No. 29, pp. 3-4.

268 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 79.

269 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 80.

270 Mr Tom Kenna, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 21.

being paid by the employer or the insurer.<sup>271</sup> The Committee does not support the transfer of these costs from the workers' compensation schemes and the employers to the Australian taxpayer. Mr Michael Potter argued, however, that if workers' compensation was a national scheme, these matters could be accommodated.<sup>272</sup>

- 3.174 Under the *Health and Other Services (Compensation) Act 1995* Medicare benefits and residential aged care subsidies are recoverable where the expenses are related to compensations arrangements. In settlements under \$5000, Medicare does not require notification as these are not cost efficient to recover.<sup>273</sup>

The extent to which the Medicare system is utilised for workplace injuries by persons that do not enter the workers' compensation system is unknown.<sup>274</sup>

## The Committee's comments

- 3.175 While the weight of evidence to the inquiry suggests that claimant fraud is minimal, the incidence and cost of fraud within the workers' compensation system is simply not known. Nor does the Committee believe that fraud as it is perceived by the various participants, is confined to any particular sector. In addition there are significant failings in the system that have ongoing costs to workers and the broader community.
- 3.176 The Committee believes that a large proportion of what is currently perceived as fraud or fraudulent activity reflects inefficiencies, incompetence, mismanagement, misinterpretation and a lack of understanding of the process and of the perspective of the other participants. In an adversarial system, the participants appear to be largely focused on regulatory compliance or perceived lack of compliance by others and this has, on occasion, taken precedence over the goal of returning the injured worker to meaningful employment. In cases where fraud or overservicing is suspected, the timely return to work of the claimant will reduce costs and to a large extent control the extent of fraudulent activities without the extensive use of legal intervention.

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271 Council of Small Business Organisations of Australia Ltd, Submission No. 49, p. 3; Mr Michael Potter, Council of Small Business Organisations of Australia Ltd, Transcript of Evidence, 4 December 2002, pp. 420-1.

272 Mr Michael Potter, Council of Small Business Organisations of Australia Ltd, Transcript of Evidence, 4 December 2002, p. 421.

273 Department of Employment and Workplace Relations, Submission No. 48, p. 25.

274 Department of Employment and Workplace Relations, Submission No. 48, p. 25.

- 3.177 The submissions to the inquiry have raised a number of features within the current workers' compensation system that may encourage or enable fraudulent activities by the various participants. Some of this is attributable to the lack of monitoring and accountability of various stages of the process and the participants.
- 3.178 What is also evident to the Committee is that there is a great deal of knowledge and expertise in relation to what is best practice in every aspect of the workers' compensation industry. The Committee believes that greater cooperation and liaison between the various partners would enable a number of improvements to workers' compensation, which could result in a simpler, more efficient and effective rehabilitation of injured workers, and at the same time reduce or eliminate fraudulent activities and the associated costs. These matters are further discussed in the next two chapters.