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## Fraud detection and elimination

- 5.1 The detection and elimination of fraud by employees, employers, service providers and insurance companies is important because of its potential to have significant financial and social costs to the other participants and the community. Australian workers' compensation schemes have sophisticated processes in place to identify employee fraud and the level of employee fraud is now considered to be low.
- 5.2 The Australian Plaintiff Lawyers Association states that:
- The detection of fraud in Australian workers' compensation schemes is focused on the more easily identifiable fraud, that of the claimant. Employer and service provider fraud is much harder to detect and there is less incentive to eliminate such conduct as a result of the structure of the various schemes.<sup>1</sup>
- 5.3 Different jurisdictions have different approaches to how severely they deal with fraud. Also, in privately underwritten systems there are strong incentives to pursue fraud because insurers will be bearing the claims cost, but when insurers are acting on behalf of the government insurer it depends on the legislation, their instructions and what insurers are paid to do.<sup>2</sup> Insurance Australia Group believes that statutory provisions should require a fraud investigation capacity to be mandatory.<sup>3</sup>

### Employee fraud

- 5.4 The schemes in each of the jurisdictions have developed extensive fraud detection strategies. For example, Comcare has a Fraud Control Plan and an Investigation Management Unit, and the Director of Public

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

2 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 78.

3 Insurance Australia Group, Submission No. 47, p. 4.

Prosecutions conducts prosecutions on behalf of Comcare.<sup>4</sup> Comcare complies fully with the Commonwealth Fraud Control Guidelines 2002.<sup>5</sup> The cost of investigations in 2000-01 was \$752 073 and the estimated savings of the 129 investigations closed was approximately \$8 million.<sup>6</sup>

5.5 Comcare has a range of checks at each stage in the claims management process, to ascertain entitlement and prevent fraudulent claims. Comcare attempts to eliminate non-meritorious claims at the start of the process. Comcare outlined the steps included at the various stages including the lodgement of claim forms, initial liability determination, treatment plans, periodic reviews, other benefits, occupational rehabilitation and case management, decision review and the Administrative Appeals Tribunal, reporting to stakeholders and staff training and education.<sup>7</sup> In the identification of fraud, Comcare utilises audit and quality systems, informants, employers, providers and other agencies such as police.<sup>8</sup> Another initiative by Comcare is the introduction of fraud filters to assist in a more proactive approach to the identification of potentially fraudulent claims.<sup>9</sup>

5.6 Evidence based injury management can also expose fraudulent claims. In the ACT, regulations require that medical assessments for workers' compensation utilise evidence based methodology:

Traditionally, claimants that were suspected of being fraudulent were put under surveillance, sent to a plethora of specialists and their claims were assessed for legal options. This approach drives the claim towards litigation, and eventually to court or a legal settlement. On the other hand, a consistent injury management program inevitably exposes individuals who are intentionally pretending to be injured.<sup>10</sup>

5.7 Schemes must send a clear message by testing claims rigorously and using medical panels and advice, including constant reviewing and more medical training in certification issuing.<sup>11</sup> The ACT's Workers'

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4 Comcare, Submission No. 32, pp.17-18.

5 Comcare, Submission No. 32, p. 17.

6 Comcare, Submission No. 32, p. 20.

7 Comcare, Submission No. 32, pp. 12-15; Mr Barry Leahy, Comcare, Transcript of Evidence, 18 September 2002, p. 4.

8 Comcare, Submission No. 32, p. 15.

9 Comcare, Submission No. 32, p. 22.

10 Australian Capital Territory Government, Submission No. 45, p. 2.

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

Compensation Advisory Committee is currently developing draft guides to assist doctors in their assessments.<sup>12</sup>

5.8 Further, within the legal system:

usually the fraud is detected through adequate and appropriate questioning by the worker's own lawyer. If it unfortunately gets past that gate-keeping process and goes on to trial then, certainly in my experience, the worker tends to be detected at trial.<sup>13</sup>

5.9 While these processes need be sufficient to identify and manage fraud, they also need to be fair and not disadvantage those with genuine injuries. The Chamber of Commerce and Industry of Western Australia cautioned that the strategies designed to contain costs or behaviours may disadvantage those genuinely supporting the system or claiming against it.<sup>14</sup> However, ultimately this preserves funds for those most in need and will benefit genuinely injured workers.<sup>15</sup>

If greater determination to stamp out fraud was evident, and publicised, one of the key incentives to mount fraudulent claims would be removed.<sup>16</sup>

### Provisional liability in workers' compensation

5.10 It was suggested to the Committee that the recent introduction of provisional liability in NSW where seven days are allowed to commence payments in claims where more than seven days is expected off work, is not enough time to assess a claim properly.<sup>17</sup> If the insurer does not approve the claim in seven days or does not have one of the statutorily prescribed 'reasonable excuses', they can be fined \$5 500. In these circumstances the insurer will be more inclined to approve a claim rather than question it or put it aside.<sup>18</sup> Provisional liability claims can continue for 12 weeks and up to \$5000 in medical expenses can be paid with virtually no questions asked.<sup>19</sup> Some see this as another opportunity for rorting as this only requires verbal notification to either the employer or the insurer.

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12 Australian Capital Territory Government, Submission No. 45, p. 3.

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

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

15 Australian Industry Group, Submission No. 53, p. 15.

16 Association of Risk and Insurance Managers of Australasia, Submission No. 11, p. 3.

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

18 Mr Garry Brack, Employers First, Transcript of Evidence, 18 October 2002, p. 82.

19 Mr Garry Brack, Employers First, Transcript of Evidence, 18 October 2002, p. 83; Hotel, Motel and Accommodation Association, Submission No. 34, p. 1.

- 5.11 In its submission, the Insurance Australia Group called for a provisional liability to be offered for a three-month period, during which liability would be assessed. The Group added that in New South Wales the compulsory third party insurance arrangements include this and there are similar provisions in workers' compensation if provisional liability is accepted within seven days. All workers' compensation schemes require a determination of liability within ten to twenty-eight days from when the claim is lodged, which creates some difficulty in investigating a potentially fraudulent claim.<sup>20</sup>
- 5.12 The employer is unable to recoup these expenses if the claim is declined, except in obvious cases of fraud, where the employer can seek a hearing in the Workers' Compensation Commission.<sup>21</sup> The Hotel Motel and Accommodation Association of Australia would like to see mechanisms implemented that would enable employers to recoup the cost, by applying for an adjustment of premium calculation and deducting the leave taken from sick or annual leave entitlements, in cases when the claim is determined not to be work related.<sup>22</sup>
- 5.13 The Australian Manufacturing Workers' Union presented the alternative view that the introduction of provisional liability in NSW was supported by all parties, knowing that the financial viability of the scheme would not be threatened because of the low incidence of fraudulent claims.<sup>23</sup>
- 5.14 The Labor Council of New South Wales stated that:
- the new reforms that have gone through in terms of provisional liability are excellent reforms. There have hardly been any disputes since the reforms were implemented in January, and there have only been half a dozen disputes in the new Workers Compensation Commission; so there is a lot to be said for the way that scheme is operating. Also the latest actuarial advice indicates that the scheme is going forward well, claims are down and people are returning to work. Even though it is early days, there is certainly a trend of people going back to work early. We believe that is because, when people are paid on time, disputes are less likely to occur. People are getting treatment early and that is really encouraging and certainly beneficial to any scheme.<sup>24</sup>

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20 Insurance Australia Group, Submission No. 47, p. 4.

21 Hotel Motel and Accommodation Association of Australia, Submission No. 34, p. 1.

22 Hotel Motel and Accommodation Association of Australia, Submission No. 34, p. 1.

23 Australian Manufacturing Workers' Union, Submission No. 35, p. 11; See also Media Entertainment and Arts Alliance, Submission No. 43, p. 2.

24 Ms Mary-Louise Yaagar, Labor Council of New South Wales, Transcript of Evidence, 18 October 2002, p. 116.

5.15 In relation to the introduction of provisional claims acceptance, concern was expressed that:

that might drive claimant behaviour and you may find that you have a lot more claims and a lot more non-legitimate claims. Once you have non-legitimate claims in the system, it is very hard to establish the appropriate proofs to finalise those claims.<sup>25</sup>

5.16 Because of the recent introduction of provisional liability, it is not yet clear whether this will result in a change to the level of fraudulent behaviour.

### Data sharing

5.17 The Insurance Australia Group believes that information from government agencies would significantly enhance and streamline fraud investigations, particularly information from the Australian Taxation Office, Centrelink and Customs.<sup>26</sup> An exchange of information and resources between Australian compensation authorities would assist in the control and eventual elimination of employer fraud and would result in considerable cost savings to the schemes.<sup>27</sup>

5.18 The Group notes that information sharing has been a contentious issue between State and Commonwealth agencies but would like future information sharing arrangements to be considered.<sup>28</sup>

5.19 WorkCover Queensland agreed that the capacity to match data would be of considerable assistance.<sup>29</sup> WorkCover currently have a data matching arrangement in relation to employers with the Australian Taxation Office but not employees.<sup>30</sup>

5.20 The Recruitment and Consulting Services Association argued that a government managed database would enable them to identify persistent workers' compensation claimants. The Association provided examples that they state are representative of many similar cases nationally.<sup>31</sup> The RCSA believes that there is a need to ensure that employers and workers' compensation authorities are not exploited by workers who do not

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25 Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 326.

26 Insurance Australia Group, Submission No. 47, p. 5.

27 Australian Plaintiff Lawyers Association, Submission No. 39, p. 17.

28 Insurance Australia Group, Submission No. 47, p. 5.

29 Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 312.

30 Mr Gordon Lawson, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 312.

31 Recruitment and Consulting Services Association, Submission No. 20, pp. 6-7.

disclose relevant information.<sup>32</sup> Other submissions referred to previous injuries which are perhaps aggravated in the new employment being accepted as a claim by the insurer.<sup>33</sup>

## Employer non-compliance and fraud

- 5.21 There are a number of significant reforms being undertaken by the various jurisdictions to identify and eliminate employer non-compliance through reviewing premium structures, improving communication with employers, and increasing incentives for employers to improve their safety and return to work performances. The benefits of these reforms should be fewer injuries, better return to work outcomes, fairer and more equitable premiums, lower costs, less complexity, less volatility in premiums unrelated to performance of the employer, greater transparency and more choice.<sup>34</sup>
- 5.22 Each jurisdiction targets industry sectors including those where there is known confusion of WorkCover Industry Classifications, high use of contractors or outworkers, new businesses, specific areas of employment where issues have been identified, data matching with other organisations and where policies have not been renewed.<sup>35</sup> The Victorian Government stated that the extent to which audits achieve subsequent compliance from both audited and non-audited companies has not been quantified.<sup>36</sup>
- 5.23 The Queensland Government's five year strategic plan to maximise employer compliance will utilise data matching through an agreement with the Australian Taxation Office, and involve external specialist auditors, other audits, the use of performance indicators, the use of enhanced technology to identify compliance targets, staff training programs, advertising and collaborative partnerships with other government agencies.<sup>37</sup>
- 5.24 Employers not complying usually receive administrative penalties. For example, in compliance enforcement the Western Australian Government

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32 Recruitment and Consulting Services Association, Submission No. 20, p. 11.

33 Old Boyanup Bakery Café /Boyanup Woodfired Bakery, Submission No. 22, pp. 1-2.

34 Victorian Government, Submission No. 37, p. 8.

35 Victorian Government, Submission No. 37, p. 10; Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p. 179; Mr Gordon Lawson, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 320.

36 Victorian Government, Submission No. 37, p. 11.

37 Queensland Government, Submission No. 30, p. 5.

only prosecutes those deemed to have deliberately not met the workers' compensation requirements.<sup>38</sup>

5.25 In situations where claims management is outsourced to a choice of insurance companies, however, those insurers have a vested interest in protecting the interests of employers, and some agents are paid bonuses for finalising claims.<sup>39</sup> Dr Christine Roberts-Yates made the point that in South Australia:

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.<sup>40</sup>

5.26 There were a number of suggestions that could facilitate an improvement in the level of employer compliance. A Green Paper was released by the New South Wales Government in September 2001 listing a number of options to improve employer compliance:

- requiring principal contractors to have responsibility for ensuring subcontractors are correctly insured under the correct tariff and declared correct wages;
- requiring employees' pay slips to contain details of the lawful employers' full legal name and workers' compensation insurer; and
- the introduction of grouping provisions to enable assessment of premiums at the group level to overcome restructuring of groups aimed at minimising premiums or avoidance of premiums.<sup>41</sup>

5.27 Other suggestions included that the methodology for the calculation of premiums be clearly defined in legislation and that the workers' compensation statutory responsibility rest with the direct employer.<sup>42</sup> Injuries Australia suggested a simple fee assessment structure based on the employers' Federal Government Employee Income Tax Deduction Scheme coupled with an increase in the policing of the Act.<sup>43</sup>

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38 Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p. 179.

39 Australian Plaintiff Lawyers Association, Submission No. 39, p. 17.

40 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 255. 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* and Mr Robert Guthrie, *Report on the Implementation of the Labor Party Direction Statement in Relation to Workers' Compensation*, report to the Workers' Compensation and Rehabilitation Commission, July 2001.

41 Department of Employment and Workplace Relations, Submission No. 48, p. 27 citing NSW WorkCover, *Workers Compensation Insurance Compliance Green Paper* September 2001.

42 Chamber of Commerce and Industry of Western Australia Inc, Submission No. 21, p. 7.

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

- 5.28 Not all solutions need to be costly or difficult. Injuries Australia provided the example of the Victorian claims form which is in triplicate: one each for the injured worker, the employer and the insurer.<sup>44</sup>
- 5.29 Mr D and Mrs J Garvey expressed a number of concerns about the operation of the WorkCover in Queensland, including double dipping by insurance companies covering subcontractors who are now deemed 'workers', and suggested an amnesty period for legitimate contractors who have been genuinely misled by the varying opinions of industry leaders, sub-contractors and insurance companies.<sup>45</sup>

## Service providers

- 5.30 Comcare uses treatment plans to provide decision making guidelines and has a number of controls in the payment system to limit the opportunities for over-servicing and overcharging through matching treatment plans, injury types and identifying costs that are not included in the defined parameters.<sup>46</sup>
- 5.31 The development of treatment plans or protocols as mentioned above was suggested as one of the best ways of minimising the potential for fraud by exaggeration, and some are already in use in Victoria and South Australia.<sup>47</sup>
- Best practice protocols for various injuries are developed using evidence-based medicine. These are used by GPs in their management of claimants and the compensation payer audits treatments against the protocols and monitors recovery times against those expected.<sup>48</sup>
- 5.32 Medical panels can also introduce 'decision consistency' to disputes over the claimant's fitness level which is not always achieved by the courts or other dispute resolution mechanisms.<sup>49</sup>

## Surveillance

- 5.33 The issues around the use of surveillance were raised in a number of submissions. The major concerns relate to the professionalism of those employed to conduct the surveillance and the value and accuracy of the

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44 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 90.

45 Mr Danny and Mrs Jeanette Garvey, Submission No. 6, pp. 1, 4-5.

46 Comcare, Submission No. 32, pp. 13, 16.

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

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

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



evidence collected. Surveillance is considered to lack reliability as it is frequently brief, disjointed segments, and does not simulate a fulltime work situation.<sup>50</sup>

One hears lots of feedback in that surveillance is very expensive. One cannot generalise, but the word 'cowboy' comes to mind when one thinks of the people who undertake these surveillance activities, and this has been mentioned several times. There is not a professional aspect to this surveillance: they identify the wrong people and they do things—such as following people, being intrusive et cetera—which in other areas of life would definitely be criminal.<sup>51</sup>

5.34 If proper controls and management are in place, surveillance is considered a useful tool in some situations. For example, Comcare undertakes just over twenty episodes of surveillance each year with 18000 claims at a cost of about \$225 000.<sup>52</sup> Surveillance is outsourced under instruction and with very close management from the Investigation Management Unit. Comcare has adopted the Commonwealth fraud control guidelines which require accredited investigation techniques.<sup>53</sup>

5.35 Dr Paul Pers and Ms Anita Grindlay found that surveillance is infrequently successful at claim resolution and often serves only to inflame an already problematic situation.<sup>54</sup> The use of video surveillance is still widespread in Tasmania but is usually only used to force settlement negotiation.<sup>55</sup> Mr Andrew Hemming commented that:

My experience is that insurers use video surveillance to particularly force claimants into a position they want and they can control, and usually that means wrapping up a common law entitlement as well.<sup>56</sup>

5.36 Ms Anita Grindlay had not seen surveillance result in the closure of any claims:

Surveillance alone does not stand up when you get to conciliation, unless it is used very strategically where you have a doctor, an

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50 Dr Peter Shannon, Submission No. 3, p. 2; HEMSEM, Submission No. 28, p. 5.

51 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 259. See also Mr Evald Orrman Briggs, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 445 comments on private investigator who repeatedly let down his son's car tyres to video him bending over.

52 Mr Barry Leahy, Comcare, Transcript of Evidence, 18 September 2002, p. 4.

53 Mr Gary King, Comcare, Transcript of Evidence, 18 September 2002, p. 7.

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

55 HEMSEM, Submission No. 28, p. 5.

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

independent medical report and surveillance - then surveillance can be used. But the way surveillance is used at the moment is: 'Oh, it's got to six months. We're not quite sure what to do. We'll order surveillance.' By itself it means nothing, and it is thrown out of conciliation every time.<sup>57</sup>

- 5.37 Mr Peter Reynolds, a former investigator, told the Committee of a number of concerns he had in relation to the surveillance industry. These include collusion with other participants, selective use of evidence, fabrication of, and inaccuracies in evidence and 'bluff' tactics to persuade injured workers to settle their claim.<sup>58</sup>
- 5.38 The RSI and Overuse Injury Association of the ACT made the point that the knowledge of potential video surveillance can deter claimants from undertaking activities that will aid a return to normal life. The Association adds that the use of surveillance can intimidate people out of their rights, when people are recorded undertaking necessary tasks which may be painful or difficult, such as hanging out clothes.<sup>59</sup>

### Self insurance

- 5.39 The capacity to become a self insurer enables larger organisations greater control over their premiums and claims management. It was suggested that audit controls may not be sufficient to deter those fraudulent claims. The Australian Manufacturing Workers' Union made the point that when the regulators audit self insurers these are paper systems and do not necessarily deal with occupational health and safety issues.<sup>60</sup>

### Other approaches

- 5.40 Much of the perceived fraud related to a lack of understanding of processes, poor communication between participants and inefficiencies within the various section of the workers' compensation system. The early identification of problems within a particular claim will aid in the detection and elimination of fraudulent activities by employees or employers or issues relating to the involvement of service providers or workers' compensation schemes. There are a number of reforms suggested below that would address many of the issues raised.

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57 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, pp. 359-360.

58 Mr Peter Reynolds, Submission No. 9, pp. 1-2.

59 The RSI and Overuse Injury Association of the ACT, Submission No. 24, p. 2.

60 Dr Deborah Vallance, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 379.

### Partnership approach

5.41 Dr Christine Roberts-Yates commented on the complexity of the claims/injury management and rehabilitation process which needs a partnership approach. This concept of partnership includes:

- ongoing, open and respectful communication between the stakeholders;
- stakeholders acquiring a detailed knowledge of the workplace;
- collaborative problem solving by all the stakeholders;
- implementing change as a learning process;
- increasing opportunities for creativity and flexibility;
- recognition of basic human needs;
- restructuring costs and benefits to the various stakeholders;
- minimising the stressors involved; and
- timely interventions and decision making.<sup>61</sup>

### Human safety and workplace injury indemnity

5.42 Injuries Australia suggested that the workers' compensation system be replaced by a human safety and workplace injury indemnity.<sup>62</sup>

one-third to three-quarters of all injuries that require medical assistance are non-compensable—so they are not on the road and they are not at work. This found that, for people who had a non-compensable injury, their chances of not losing their job and getting back to work were far greater than anybody who had a compensable identical injury.<sup>63</sup>

### Multifaceted approach

5.43 The Australian Industry Group favoured a multi faceted approach including:

- the development of appropriate publicity/education campaigns to alert workers, doctors, lawyers and health professionals to the penalties for fraud;
- the development of fraud detection systems whereby all claims are allocated points for suspicious characteristics and those with high scores are referred for special investigation;
- a requirement that all musculoskeletal claims with total incapacity of over four weeks to be transferred to an independent medical practitioner for management. This is necessary to overcome the pressure family doctors would be under when confronted by a long-

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61 Dr Christine Robert-Yates, Submission No. 56, p.1.

62 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 96.

63 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 96.

term patient claiming work related claim for which they can find no basis;

- a photograph of the claimant to ensure that independent doctors are conducting assessments on the claimant and that a different person has not presented for examination on the day; and
- a consistent Statute of Limitations of two years governing claims across the States.<sup>64</sup>

5.44 The AIG also supported the introduction of sanctions for failure to cooperate. Most systems have the ability for workers to be penalised where they fail to cooperate but AIG argued that insurers are understandably reluctant to impose this penalty. AIG suggested that workers could be required to participate constructively and cooperatively in their own return to work process as a precondition to commencing legal proceedings. Their final settlement could be reduced for refusing to take up opportunities.<sup>65</sup>

### Prosecutions and penalties

5.45 Some risk managers believe that there are insufficient prosecutions of fraudulent claims, including exaggerated claims. The experience of others is that insurers and the self-insured do actively investigate claims but that no action is taken in terms of cost recovery and the claimant merely receives a letter stating that the claim is denied.<sup>66</sup> In some States the necessary legislation is in place but there are, in ARIMA's view, insufficient investigations and prosecutions.<sup>67</sup>

When a scheme works on the basis that the more serious the injuries, the higher the payments, there is always an incentive for an unscrupulous injured worker to exaggerate symptoms or invent them. The schemes do not appear to have sufficient will to pursue those people which, in turn, encourages others to follow the same path.<sup>68</sup>

5.46 Mr Robert Guthrie stated that only a very small number of workers are actually prosecuted for perjury in relation to workers' compensation matters.<sup>69</sup> The situation is not always clear cut:

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64 Australian Industry Group, Submission No. 53, pp. 15-16.

65 Australian Industry Group, Submission No. 53, pp. 17-18.

66 Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia Inc, Transcript of Evidence, 20 November 2002, p. 207; See also Victorian Automobile Chamber of Commerce, Submission No. 65, p. 6.

67 Association of Risk and Insurance Managers of Australasia, Submission No. 11, pp. 2-3.

68 Association of Risk and Insurance Managers of Australasia, Submission No. 11, p. 3.

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

It is very difficult to say that a worker is fraudulent when they have a disease which they see as having a connection with their work but which a medical practitioner says there is none. There is frequently a temporal connection between the onset of a disease - because, for example, it became worse at work - and yet the aetiology of the disease is such that a medical practitioner says that it could not be work related. In those situations it is not fraud but a mistaken claim.<sup>70</sup>

- 5.47 In South Australia, in the rare cases of reported fraud and malingering, there appear to be more cases that go to a hearing for prosecution. Mr Guthrie argued that that State has quite strict provisions in relation to fraud, in that the language of the legislation is broader and catches more people.<sup>71</sup>
- 5.48 Queensland WorkCover compliance strategy focuses on those cases with potentially significant commercial return and those which will serve as a future deterrent to others.<sup>72</sup> The most common form of fraud prosecuted in Queensland is when someone is reemployed and does not notify WorkCover to have their compensation payment adjusted.<sup>73</sup> In Queensland last year there were ten prosecutions but claimants may have softer penalties, depending on the level of infringement, and be required to pay the money back.<sup>74</sup> Queensland has legislative provisions including penalties up to \$30 000 or eighteen months imprisonment.<sup>75</sup> If a worker makes a wrongful claim or omits to advise that they have commenced work with a new employer, they are able to repay moneys by agreement.<sup>76</sup>
- 5.49 In the year 2000-01 Comcare had 151 new cases referred for investigation. Of these, eleven resulted in a cessation of liability for benefits, four resulted in reduced liability, one resulted in a denial of benefit, one resulted in recovery of overpayment, one was a successful prosecution, two are not completed, nineteen resulted in no change to benefit and in eighty-nine cases no formal investigation was considered warranted. Of

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70 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, pp. 189-190.

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

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

73 Ms Evron McMahon. WorkCover Queensland, Transcript of Evidence, 22 November 2002, pp. 311-312.

74 Ms Evron McMahon. WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 319.

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

76 Ms Evron McMahon. WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 328.

the 146 cases finalised in 2001-02, only two cases were prosecuted. The cost of investigations was \$623 249 with estimated savings of \$2 457 348 with an addition potential saving of over \$3.8 million on the cases pending.<sup>77</sup>

- 5.50 The AIG believes that examples involving the prosecution of workers, doctors, lawyers and employers who defraud the scheme should be regularly publicised to extinguish the prevailing beliefs about the lack of an effective gatekeeper to the fund.<sup>78</sup> If a claim is declined because it is found to be fraudulent, there are no ramifications or penalties for the employee.<sup>79</sup>
- 5.51 On the other hand, it was argued that insurer inaction can contribute to fraudulent claims. This may be due to apathy and a lack of follow up when an employer wishes to dispute liability, lack of monitoring and continuity of the claims managers handling each case and the volume of claims they handle.<sup>80</sup> In relation to employees the Australian Industry Group commented on the reluctance of insurers to impose penalties for failure to cooperate, which reflects the insurers' experience that this process does not usually succeed.<sup>81</sup>

### Accountability of stakeholders

- 5.52 It was suggested that workers' compensation is fraught with a lack of accountabilities. There is a lot of paper shuffling which is process not management. When there is proactive injury management, often people get back to work almost in spite of the system. That is, 80 per cent of people who have an injury will get back to work on their own with very little help, but the other 20 per cent of the claims become long term and take up 80 per cent of the costs to the system.<sup>82</sup>
- 5.53 Dr Paul Pers and Ms Anita Grindlay commented that the 'legitimacy of many long term claims becomes clouded by issues relating to the claim that are not related to the initial legitimate injury'. They conclude that the lack of accountability on the part of many stakeholders results in poor return to work outcomes due to poor enforcement of both employee and employer responsibilities. Further poor case management and return to work outcomes is due to a process rather than outcome focus, high caseloads and poor skill level and training at insurer level. There can be a

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77 Comcare, Submission No. 32, p. 19, 21.

78 Australian Industry Group, Submission No. 53, p. 19.

79 Victorian Automobile Chamber of Commerce, Submission No. 65, p. 6.

80 Victorian Automobile Chamber of Commerce, Submission No. 65, p. 6.

81 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 62.

82 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 355.

variety of structural (including legislative) factors that provide perverse incentives to both employers and employees to operate within the letter of the legislation but outside of the spirit. A culture of litigation, safety bonuses, make up pay, and limited time periods for the provision of suitable duties can be contributory factors.<sup>83</sup>

5.54 For example, legislative compliance may mean that alternative duties are only available for the required fifty-two weeks, and in cases where a small place of employment obviously can not provide alternative duties, no effort is put into finding another job. People are allowed to drift through for the twelve months and are not being managed.<sup>84</sup>

5.55 In relation to service providers:

We would argue that what the system needs to do is look at outcomes and pay on the delivery of outcomes, not pay for the hours that it has taken to do something. We have seen claim after claim where multitudes of services have been provided, and there is still not even a clear direction about where it is happening.<sup>85</sup>

5.56 The Australian Industry Group made the point that:

the remedies that are applied to some of the service providers, such as doctors, tend to be a bit softer than the remedies that are applied to employers. When we talk about employer premium non-compliance, for example, we talk about fines and monitoring and things like that. When we talk about doctors we just talk about education, and I think it needs to be a bit stronger than that. There needs to be, in general terms, performance monitoring of doctors on how well they are returning people to work.<sup>86</sup>

5.57 Other suggestions included an independent government inquiry into each work related accident as to the cause and the resultant compensation case with input from claimant and company and that lawyers should also be accountable to an independent inquiry.<sup>87</sup> The confidentiality clause in the release signed by the claimant should be eliminated to ensure greater accountability for the employer.<sup>88</sup>

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

84 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 355.

85 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 356.

86 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 57.

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

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

## The Committee's comments

- 5.58 A great deal of resources have already been involved in improving practice to detect and eliminate fraudulent activities in the workers' compensation system. There are already extensive reforms being implemented in the various jurisdictions and other reviews are currently under way.
- 5.59 In relation to employee fraud, there are comprehensive systems available to identify this and the level of fraud is now considered low although where it does occur, there are significant costs.
- 5.60 Jurisdictions are also addressing the issue of employer non-compliance. While the number of prosecutions in this area remains low, administrative penalties and education programs are assisting in increasing the level of compliance.
- 5.61 A move to evidence based medicine and exception based reporting in conjunction with other improved accounting practices may lead to closer monitoring of potential overservicing or overcharging of doctors and rehabilitation providers, and lead to greater accountability and better outcomes. As the focus moves more to outcomes and a quicker return to work for the injured worker, these costs will be reduced.
- 5.62 The Committee did not receive a great deal of information on mechanisms to monitor and detect 'fraudulent activities' by the legal profession. The extent to which this could have a significant impact on injured workers and employers would not come within the regulatory practices of the insurers and the workers' compensation schemes. It is therefore even more difficult to identify and eliminate.